

Contextualizing Islamic Law Through Istihsan: An Analysis of Customary Inheritance Practices in Air Nipis Sub-District, South Bengkulu

Mualimin Mochammad Sahid
Universiti Sains Islam Malaysia
mualimin.sahid@usim.edu.my

Toha Anis Malik
Universiti Islam Sultan Sharif Ali, Brunei Darussalam
malik.thoha@unissa.edu.b

Zurifah Nurdin
Universitas Islam Negeri Fatmawati Sukarno, Indonesia
iimfahimah@mail.uinfasbengkulu.ac.id

| Received: 29-07-2024

|| Revised: 28-08-2024

|| Accepted: 30-09-2024

| Published On: 30-10-2024

Abstract: This study analyzes the practice of customary inheritance in Air Nipis District, South Bengkulu, using the istihsan approach in Islamic law. The research uses a qualitative method with a descriptive-analytical approach, collecting data through in-depth interviews and direct observation of customary leaders, inheritance law experts, and community members involved in inheritance distribution. The results show that the traditional inheritance system in Air Nipis prioritizes family welfare by considering the roles and responsibilities of heirs, particularly those who care for the deceased, although this sometimes leads to uneven distribution. The contextualization of Islamic law in this practice can be understood through the concept of istihsan, which provides flexibility in applying inheritance rules to align with the social conditions and needs of the family. Istihsan allows deviations from rigid inheritance provisions when there are strong reasons that support justice and benefit within the family. This study offers insights into how istihsan can be an inclusive and responsive approach to customary inheritance practices while maintaining a balance between legal norms and social needs.

Keywords: *customary inheritance, istihsan, contextualization of Islamic law, legal flexibility, substantive justice.*

Abstrak: Penelitian ini menganalisis praktik waris adat di Kecamatan Air Nipis, Bengkulu Selatan, dengan pendekatan istihsan dalam hukum Islam. Metode yang digunakan adalah kualitatif dengan pendekatan deskriptif-analitis, melalui wawancara mendalam dan observasi langsung terhadap tokoh adat, ahli hukum waris, serta anggota masyarakat. Hasil penelitian menunjukkan bahwa sistem waris tradisional di Air Nipis lebih mengutamakan kesejahteraan keluarga, dengan mempertimbangkan peran dan tanggung jawab ahli waris, meskipun terkadang distribusi warisan tidak merata. Kontekstualisasi hukum Islam dalam praktik ini dapat dipahami melalui konsep istihsan, yang memberikan fleksibilitas dalam penerapan aturan waris untuk menyesuaikan dengan kondisi sosial keluarga. Istihsan memungkinkan penyimpangan dari ketentuan fikih waris yang rigid demi keadilan dan kemaslahatan keluarga. Penelitian ini memberikan wawasan tentang bagaimana istihsan dapat menjadi pendekatan yang inklusif dan responsif terhadap praktik waris adat, menjaga keseimbangan antara norma hukum dan kebutuhan sosial.

Kata kunci: *waris adat, istihsan, kontekstualisasi hukum Islam, fleksibilitas hukum, keadilan substantif.*

How to cite this article:

Mualimin Mochammad Sahid and others, Contextualizing Islamic Law Through Istihsan: An Analysis of Customary Inheritance Practices in Air Nipis Sub-District, South Bengkulu, *Jurnal Ilmiah Mizani: Wacana Hukum, Ekonomi Dan Keagamaan*, 11.2 (2024), 501-510 <http://dx.doi.org/10.29300/mzn.v11i2.5155>



Copyright (c) 2024 The Authors

Jurnal Ilmiah Mizani: Wacana Hukum, Ekonomi, dan Keagamaan

Published by Faculty of Sharia, State Islamic University of Fatmawati Sukarno Bengkulu

This work is licensed under a [Creative Commons Attribution-ShareAlike 4.0 International License](#)

Introduction

Inheritance distribution in Indonesia, particularly in regions like Air Nipis Subdistrict, South Bengkulu, is a complex issue shaped by the interplay of national law, Islamic law, and local customary law. The pluralistic legal framework in Indonesia creates a unique environment where these different legal systems coexist, often leading to conflicts and challenges in inheritance practices. Customary law, which reflects the values and norms of local communities, frequently takes precedence in inheritance matters, as evidenced by the practices observed in Air Nipis Subdistrict. Here, the head of the local village, Suprianto, noted that inheritance distribution is influenced by the living arrangements of heirs with the deceased, which diverges from the more rigid frameworks of Islamic and national laws.¹

In Air Nipis, the distribution of inherited assets—such as land, houses, and livestock—is not strictly based on blood relations but rather on the roles and positions of heirs within the family structure. This practice is perceived as equitable by the local community, despite the absence of formal written regulations governing it. However, this system is not without its challenges; disputes often arise due to the differing economic values of the inherited assets. For instance, heirs receiving agricultural land may feel disadvantaged compared to those inheriting more valuable properties like houses or plantations.² The reliance on family deliberations to resolve

these disputes, while culturally significant, lacks formal enforcement mechanisms, which can lead to unresolved tensions among heirs.³

Moreover, the practice of distributing inheritance during the lifetime of the testator, commonly known as *hibah*, is prevalent in the community. This method aims to preemptively address potential conflicts over inheritance.⁴ However, it often circumvents the equitable distribution principles outlined in Islamic law, raising concerns about fairness and justice in inheritance practices. The challenge lies in reconciling these customary practices with Islamic legal principles, which emphasize equitable distribution among heirs.⁵

The concept of *istihsan*, which allows for flexibility in applying Islamic law to accommodate local customs and social conditions, presents a potential solution to these challenges.⁶ *Istihsan* can facilitate a more context-sensitive approach to inheritance distribution that respects local traditions while adhering to Islamic principles of justice.⁷ This approach could help bridge the gap between customary practices and Islamic law, fostering a more harmonious coexistence of these legal

¹ Leni Nurmala and Yoslan Koni, 'Differences And Similarities In The Division Of Inheritance Law According To Islamic Law And Javanese Customary Law In Indonesia In A Comparative Study Of Law, so That', *International Journal of Educational Review, Law And Social Sciences (IJERLAS)*, 2.1 (2022), doi:10.54443/ijerlas.v2i1.134.

² Adelina Nasution, 'Pluralisme Hukum Waris Di Indonesia', *Al-Qadha*, 5.1 (2019), doi:10.32505/qadha.v5i1.957.

³ Erkhani Maskuri, 'Patterns of Inheritance Distribution in Tlogoharjo Village, Giritontro Subdistrict in the Review of Islamic Law', *QURU: Journal of Family Law and Culture*, 2.1 (2024), doi:10.59698/quru.v2i1.102.

⁴ Sodikin Sodikin, 'The Implementation of Islamic Heritage Distribution in Community of Setu Subdistrict, South Tangerang Region', *SALAM: Jurnal Sosial Dan Budaya Syar-i*, 8.5 (2021), doi:10.15408/sjsbs.v8i5.22224.

⁵ Hasan Basri and Muhammad Azani, 'Asas Keadilan Dan Ahli Waris Pengganti Dalam Praktik Kewarisan Masyarakat Berdasarkan Hukum Islam Di Kecamatan Bantan Kabupaten Bengkalis', *Perspektif Hukum*, 2017, doi:10.30649/ph.v17i1.56.

⁶ Salma Salma, 'Istihsan Dan Pembaruan Hukum Islam', *Jurnal Ilmiah Al-Syir'ah*, 13.1 (2016), doi:10.30984/as.v13i1.7.

⁷ Abdulmuid Aykul, 'Discussions Around Legitimacy of the Istihsân's Definitions in the Early Period', *Cumhuriyet İlahiyat Dergisi*, 26.1 (2022), doi:10.18505/cuid.1071242.

systems.⁸

In conclusion, the inheritance distribution practices in Air Nipis Subdistrict exemplify the complexities of navigating a pluralistic legal landscape in Indonesia. By analyzing these practices and their alignment with Islamic legal principles, this study aims to contribute to the broader discourse on legal anthropology and Islamic law, offering insights and recommendations for harmonizing customary and Islamic laws in inheritance matters.

Method

This study employs a qualitative method with a descriptive-analytical approach.⁹ Data collection was conducted through in-depth interviews with customary leaders, inheritance law experts, and local community members involved in inheritance distribution practices.¹⁰ These interviews aimed to capture the perspectives, experiences, and interpretations of key stakeholders regarding the prevailing inheritance customs in Air Nipis Subdistrict.¹¹

In addition to interviews, direct observation of the inheritance distribution process was conducted to gain a comprehensive understanding of the customary practices in the community. This allowed the researchers to document the procedures, interactions, and decision-

making processes involved in inheritance distribution. Observational data provided critical insights into the dynamics of customary practices and their alignment with community norms and values.¹²

The collected data were analyzed by correlating the observed inheritance practices with the principles of *istihsan* in Islamic law. *Istihsan*—as an Islamic jurisprudential method—was employed as a lens to examine how the flexibility of customary law can be harmonized with the principles of justice and societal benefit in Islamic law. Through this approach, the study explored the potential for integrating local traditions with broader Islamic legal frameworks.¹³

Data analysis was conducted qualitatively, emphasizing the identification of patterns, themes, and relationships within the data. The analysis aimed to evaluate the congruence of customary inheritance practices with the principles of *istihsan*, particularly in terms of justice, equity, and public welfare.¹⁴ The ultimate goal of the research was to identify opportunities for harmonizing customary inheritance practices with Islamic inheritance law, providing insights relevant to both the local community and broader legal discourse.

This methodology ensures a robust examination of the research objectives, balancing theoretical exploration with

⁸ Fipy Rizky Amalia Luawo and Haswida Amalia, 'The Implementation of Inheritance Based on The Tribe of Kaili Ledo and Islamic Inheritance Laws', *Jurnal Dinamika Hukum*, 19.2 (2019), doi:10.20884/1.jdh.2019.19.2.2525.

⁹ Nitish Sardana and others, 'Qualitative and Quantitative Research Methods', in *Substance Use and Addiction Research: Methodology, Mechanisms, and Therapeutics*, 2023, doi:10.1016/B978-0-323-98814-8.00008-1.

¹⁰ Sara L. Gill, 'Qualitative Sampling Methods', *Journal of Human Lactation*, 36.4 (2020), doi:10.1177/0890334420949218.

¹¹ Rosanne E. Roberts, 'Qualitative Interview Questions: Guidance for Novice Researchers', *Qualitative Report*, 2020, doi:10.46743/2160-3715/2020.4640.

¹² André Queirós, Daniel Faria, and Fernando Almeida, 'Strengths And Limitations Of Qualitative And Quantitative Research Methods', *European Journal of Educational Studies*, 3.9 (2017).

¹³ Mohd Anuar Ramli, Mohd Hafiz Jamaludin, and Mohd Norhusairi Mat Hussin, 'Pemakaian Instrumen Istihsan Dengan 'Urf (Al-Istihsan Bi Al-'Urfi) Dalam Amalan Pembahagian Harta Sepencarian Di Malaysia = The Application of the Instrument Of Al-Istihsan Bi Al-'Urf in Harta Sepencarian Practice in Malaysia', *'Ulūm Islāmiyyah Journal*, 14 (2014), doi:10.12816/0012615.

¹⁴ Diky Faqih Maulana and Abdul Rozak, 'Istihsan As A Finding Method Of Progressive Islamic Law In The Industrial Revolution Era 4.0', *El-Mashlahah*, 11.2 (2021), pp. 127 – 145, doi:10.23971/elma.v11i2.2981.

empirical observation to produce findings that are both contextually grounded and theoretically significant.

Customary Law and Inheritance Distribution in Air Nipis Maju Village

The community of Air Nipis Maju Village has a tradition of dividing inheritance based on customary law, with family discussions as the primary process. Customary law serves as the main guideline in determining the distribution of assets, including land, rice fields, farms, houses, gardens, and livestock. This division is often influenced by the position of heirs within the family. Children who live with the testator typically receive a larger share as recognition for their role in caring for the testator until their passing. The eldest son is regarded as the successor to the testator, often receiving a larger portion to lead the family. Additionally, unmarried sons frequently receive a larger share to support their future needs.

According to Mr. Suprianto, the village head, the inheritance distribution procedures in Air Nipis Maju Village still follow local customs. He explained:

"The procedure for inheritance distribution I carry out follows customary practices. Male or female children who live in the testator's house receive a larger portion than other heirs. The assets typically inherited include livestock, housing, land for buildings, farmland, and gardens. The share size depends on the heir's position within the family."¹⁵

Although this customary system is widely accepted, inheritance distribution often triggers disputes. Common challenges include differences in the value of inherited assets, such as land and buildings, which are difficult to equalize. Heirs' dissatisfaction with what they perceive as unfair

distribution is another primary cause of conflict. The customary system prioritizing male children frequently leads to jealousy among female heirs. Conflict resolution is typically conducted through family discussions without involving courts, with sanctions in the form of customary admonitions or advice, which lack formal legal authority.

Mr. Kasman, a resident of Hamlet I, noted that conflicts often arise due to the value or location of inherited assets. He stated:

"If the size of farmland or rice fields is sufficient, the assets are divided by area. However, if not feasible, heirs are given portions in other locations. Houses are usually inherited by only one heir."¹⁶

Additionally, Mr. Pi'inudin, the local customary leader, explained that the eldest son often assumes control of the parents' assets. He remarked:

"The eldest son is considered the successor to the parents and the family leader. Therefore, he often receives a larger portion."¹⁷

However, not all residents follow the same customary system. Some community leaders advocate for equal distribution to maintain family harmony. Mr. Isa Ansari, a customary figure, shared:

"I distribute the inheritance equally so that no disputes arise. This division is considered fair because all heirs receive the same portion."¹⁸

Conversely, Mr. Indra noted that in some cases, an unmarried son inherits the entirety of the parents' assets, as he is deemed lacking sufficient capital for his livelihood. This highlights the diversity in

¹⁵ Suprianto, *Personal Communication*, 28 July 2024, Air Nipis Maju Village

¹⁶ Kasman, *Personal Communication*, 29 July 2024, Air Nipis Maju Village

¹⁷ Piinuddin, *Personal Communication*, 30 July 2024, Air Nipis Maju Village.

¹⁸ Isa Ansari, *Personal Communication*, 3 August 2024, Air Nipis Maju Village

inheritance distribution practices in Air Nipis Maju Village.

Nevertheless, customary law remains the primary choice for the community due to their familiarity with its rules. While some heirs wish for Islamic or equal distribution, the majority feel comfortable with the customary system, considering it more flexible and aligned with local values.

The main difficulties encountered in inheritance distribution include differences in the value or location of assets, the absence of written rules to resolve disagreements, and jealousy among heirs who receive unequal shares. Mr. Sudirman, a former village head, stated that family discussions serve as the primary solution to resolve disputes:

"If disputes occur, discussions become the main solution to find a middle ground."¹⁹

The system of inheritance distribution in Air Nipis Maju Village is based on customary law, with variations in implementation at the family level. Despite frequently causing disputes, this approach is still relied upon by the community, as it is considered fair by most. Family discussions are the primary solution to resolve conflicts, although the lack of strict sanctions remains a weakness of this system. Moving forward, a more structured approach that accommodates justice values is needed to reduce the potential for conflicts.

Table 1. key points of inheritance distribution practices in Air Nipis Maju Village:

Key Aspect	Details
Customary Law as the Foundation	Inheritance distribution follows customary law, involving assets like the land, houses, and livestock.
	Decisions are made through family discussions.

¹⁹ Sudirman, *Personal Communication*, 6 August 2024, Air Nipis Maju Village

Key Aspect	Details
Prioritization of Certain Heirs	Male heirs, especially the eldest son or unmarried sons, receive larger portions due to their roles as family leaders or future needs.
Conflict Resolution	Disputes are resolved through family discussions without formal legal intervention, reflecting local values and customs.

Istihsan-Based Analysis of Customary Inheritance Practices in Air Nipis Sub-District

The customary law system in Air Nipis Maju Village, particularly regarding inheritance distribution, provides a fascinating case study of how **istihsan**—an Islamic legal principle focused on flexibility and fairness—can reshape traditional legal interpretations in a socially relevant manner. Through a deeper analysis, we can see how **istihsan** offers a more dynamic, context-sensitive approach to legal rulings than the more rigid, formulaic application of classical Islamic jurisprudence.²⁰

The first step in applying **istihsan** is the identification of the underlying legal issue that requires intervention. In this case, the issue concerns the distribution of inheritance in a way that reflects familial relationships and caregiving responsibilities rather than strictly following the prescribed shares in Islamic inheritance law.²¹ In Air Nipis Maju Village, heirs do not receive equal shares based solely on gender or a fixed rule; instead, the division of assets such as land, livestock, and property is influenced by the roles that different family members played during the lifetime of the deceased. For instance, children who provided care or lived with the deceased may receive a larger

²⁰ Ahmad Hasan, 'The Principle of Istihsān in Islamic Jurisprudence', *Source: Islamic Studies*, 16.4 (1977).

²¹ Harith Issa, 'The Reality of the Istihsan According to Al Hanafia School', *Jordan Journal of Islamic Studies*, 19.2 (2023), doi:10.59759/jjis.v19i2.22.

share to compensate for their responsibilities, while others may receive more for future support. This form of inheritance distribution, while seemingly unequal, is designed to maintain family harmony and to account for varying levels of emotional and material contribution to the family dynamic. The goal of **istihsan** here is not just to uphold the letter of the law, but to offer a more holistic approach that addresses the material and emotional needs of the community.²²

When looking at the application of **qiyas** (analogy), it becomes evident that Islamic legal theory, with its emphasis on comparison and consistency, struggles to provide a fair resolution in this context. **Qiyas** seeks to compare new issues with those that have been addressed in previous legal cases, drawing analogies based on shared characteristics.²³ However, this method can lead to disparities between the written texts of Islamic inheritance law and the complex, culturally rooted practices seen in Air Nipis Maju Village. For example, the Quranic injunctions regarding inheritance, which allocate specific shares to male and female heirs, do not always align with the village's customs, where the eldest son or unmarried sons are often given more substantial shares to reflect their caregiving roles. Although these practices may deviate from the Quranic model, they do not necessarily result in injustice when viewed through the lens of family dynamics, where care for the deceased and future support needs are prioritized. In this case, **qiyas** could potentially impose a rigid, impersonal rule that ignores the deeper, relational

aspects of inheritance, highlighting the limitations of relying solely on analogy in this context.

This is where **istihsan** proves crucial. Unlike **qiyas**, which may rigidly apply general rules, **istihsan** allows for flexibility in the application of Islamic law, tailoring legal decisions to the specific circumstances of the case.²⁴ The application of **istihsan** in Air Nipis Maju Village allows for the modification of the inheritance distribution based on cultural practices and the personal needs of the heirs. For example, giving a larger share to the eldest son or an unmarried son is seen as a way of rewarding the person who has taken on the most responsibility in caring for the deceased, even though this may not be explicitly supported by the Quranic injunctions. The practice reflects the cultural importance of caregiving within the family, which can take precedence over the formal, legal distribution outlined in the Islamic texts. By applying **istihsan**, the community adapts the law to better serve the greater good, ensuring that the inheritance process reflects the changing and dynamic realities of family roles and responsibilities. This approach acknowledges that social and familial contexts are central to understanding justice and fairness, which might otherwise be obscured by rigid legal rules.²⁵

In the next stage, **istihsan** also involves considering the broader social consequences, specifically the benefits

²² Tahir Mahmud, 'Istihsan: Anwa'uhu Wa Hukumuhu', *Pakistan Journal of Islamic Research*, 10 (2012).

²³ Remiswal Remiswal and others, 'Introduction to Qiyas and Maslahah Mursalah and Its Application In The Future', *YUDISIA: Jurnal Pemikiran Hukum Dan Hukum Islam*, 12.2 (2021), doi:10.21043/yudisia.v12i2.10425.

²⁴ Wardatun Nabilah, Arifki Budia Warman, and Nurul Aini Octavia, 'istihsan dalam literatur syafi'iyah (telaaah istihsan dalam kitab al-mustaṣfa al-ghazali)', *Juris: Jurnal Ilmiah Syariah*, 20.1 (2021), doi:10.31958/juris.v20i1.3323.

²⁵ Supriyadi Supriyadi and Sukron Ma'mun, 'Contemporary Inheritance: Application Of Inheritance Division In Juridical, Psychological, Sociological And Economic Perspectives', *MILRev: Metro Islamic Law Review*, 2.2 (2023), doi:10.32332/milrev.v2i2.8037.

(**masalah**) and harms (**mafsadah**) of the legal decision.²⁶ In the case of Air Nipis Maju, the unequal distribution of inheritance may lead to dissatisfaction, particularly among female heirs who might feel marginalized or treated unfairly. This dissatisfaction, however, is weighed against the potential harm caused by family conflict. By continuing to follow customary practices, the community avoids more severe conflicts and ensures that family relationships remain intact, which is often deemed a greater societal benefit. **Istihsan** thus provides a mechanism for addressing potential harms by ensuring that the decision supports the collective good, even when the legal outcome deviates from the more literal or formal interpretation of Islamic law.²⁷ This is a hallmark of **istihsan**—the prioritization of social welfare and family harmony over rigid adherence to texts, reflecting Islamic principles of justice that encompass the well-being of individuals and the community as a whole.²⁸

The final stage of **istihsan** involves adapting legal decisions to reflect the current social realities and cultural context.²⁹ In Air Nipis Maju, the local customs reflect a highly familial social structure in which caregiving and the roles of children within the family are deeply entrenched. The prioritization of the eldest son or unmarried sons in inheritance distribution is not simply

a matter of personal preference but is rooted in the understanding of family responsibilities. This practice reflects the social reality that some children take on more significant roles in caring for the family and thus deserve a larger share of inheritance. The flexibility inherent in **istihsan** allows the law to evolve and adapt to these social realities, acknowledging that the needs and circumstances of families are fluid and dynamic.³⁰ Unlike traditional interpretations of Islamic law, which may impose fixed solutions, **istihsan** enables the law to adapt without compromising fairness or justice, reinforcing its relevance in a changing society.³¹

The inheritance distribution system in Air Nipis Maju Village exemplifies how **istihsan** can be effectively applied to create a more just, context-sensitive, and socially relevant legal framework. The system, although it may occasionally lead to disputes, provides a nuanced and flexible solution that balances the need for fairness with the realities of family dynamics and social welfare. Through **istihsan**, Islamic law becomes more adaptable, ensuring that justice is served in a way that reflects the evolving needs and values of the community. This process highlights the capacity of Islamic jurisprudence to transcend rigid interpretations, offering a more compassionate and inclusive approach to the legal challenges of inheritance.³²

Here is a concise table of analysis using **istihsan** in inheritance distribution in Air

²⁶ Iim Fahimah and Zaenal, 'Maslahah and Sakinah Family's Review of Marriage Through Marriage Dispensation in Central Lampung Regency', *JURNAL ILMIAH MIZANI: Wacana Hukum, Ekonomi, Dan Keagamaan*, 9.1 (2022), pp. 65–79, doi:10.29300/MZN.V9i1.7516.

²⁷ R Repelita, 'Istihsan Menurut Pandangan Al-Syafi'i Dan', *Jurnal AL-AHKAM*, XXII (2021).

²⁸ Enny Nazrah Pulungan, 'Konsep Istihsan Abu Hanifah Dalam Pandangan Al-Syafi'i', *Jurnal Raudhah*, 06.01 (2018).

²⁹ Sudirman Suparmin, 'Istihsan Methodology In The Productive Waqf Application', *FITRAH: Jurnal Kajian Ilmu-Ilmu Keislaman*, 6.1 (2020), doi:10.24952/fitrah.v6i1.2650.

³⁰ Darliana Darliana and others, 'Pembaharuan Hukum Islam Di Indonesia (Pendekatan Metode Istihsan)', *Jurnal Al-Ahkam: Jurnal Hukum Pidana Islam*, 4.1 (2022), doi:10.47435/al-ahkam.v4i1.851.

³¹ Fitriani Saragih, Sudirman Suparmin, and Tuti Anggraini, 'Relevansi Istihsan Dan Istishab Di Masa Kini Dan Mendatang', *Jurnal AKMAMI (Akutansi, Manajemen, Ekonomi)*, 3.2 (2022).

³² Noorwahidah Noorwahidah, 'Istihsan: Dalil Syara' Yang Diperselihkan', *Syariah Jurnal Hukum Dan Pemikiran*, 16.1 (2017), doi:10.18592/sy.v16i1.1001.

Nipis Maju Village, presented in Scopus-compliant English:

Table 2. Istihsan Analysis on Inheritance distribution

Aspect	Brief Analysis
Legal Issue	Disputes over inheritance distribution based on familial roles, such as children who cared for the deceased.
Application of Qiyas	Qiyas may not provide a just solution, as it does not account for the social roles and contributions within the family.
Role of Istihsan	Istihsan allows flexibility, enabling a fairer distribution based on family contributions and needs.
Maslahah (Social Benefit)	Maintaining family harmony is prioritized, even if it leads to unequal distribution, preventing familial conflict.
Mafsadah (Potential Harm)	Dissatisfaction, especially among female heirs, may arise due to unequal shares.
Social Adaptation in Law	The customary law adapts to social realities, prioritizing family roles over rigid classical legal principles.

This table demonstrates how **istihsan** offers a more adaptable and contextually relevant legal solution, balancing fairness and social harmony in inheritance distribution.

Conclusion

The traditional system of inheritance, which prioritizes the roles and responsibilities of heirs—such as those who cared for the deceased—helps maintain family harmony, even though it sometimes leads to unequal distributions. This flexible approach addresses familial dynamics, ensuring that caregiving and future needs are considered, even if these considerations deviate from the more rigid applications of Islamic inheritance law. The practice exemplifies **istihsan's** capacity to balance legal fairness with the complexities of real-life family structures and responsibilities.

Despite the potential for disputes, particularly among female heirs, the system's emphasis on family welfare over strict legal uniformity is seen as more beneficial in this context. The flexibility allowed by **istihsan** enables the law to adapt to the social realities of the community, ensuring that justice is served in a way that reflects changing familial roles. This approach fosters social harmony and addresses the evolving needs of the family, demonstrating the relevance and adaptability of Islamic jurisprudence in the modern world. **Istihsan** offers a compassionate, inclusive solution to inheritance disputes, underscoring the importance of social welfare and family unity within the legal framework.

Credit Authorship Contribution

Mualimin Mochammad Sahid: Methodology, Data Collection, and Writing - Review & Editing. Toha Anis Malik: Formal Analysis, Resources, and Writing - Review & Editing. Zurifah Nurdin: Data Analysis, Resources, and Writing - Review & Editing.

Declaration of Competing Interest

The authors declare no competing interests related to this study. No financial or personal conflicts of interest are present.

Acknowledgements

The authors thank Universiti Sains Islam Malaysia; and Universiti Islam Sultan Sharif Ali, Brunei Darussalam, for their support and resources throughout this research.

References

- Aykul, Abdulmuid, 'Discussions Around Legitimacy of the Istihsân's Definitions in the Early Period', *Cumhuriyet İlahiyat Dergisi*, 26.1 (2022), doi:10.18505/cuid.1071242
- Darlina, Darlana, Sapriadi Sapriadi, St. Hadijah Wahid, and Muhammad Azhar Nur, 'Pembaharuan Hukum Islam Di Indonesia

- (Pendekatan Metode Istihsan)', *Jurnal Al-Ahkam: Jurnal Hukum Pidana Islam*, 4.1 (2022), doi:10.47435/al-ahkam.v4i1.851
- Fahimah, lim, and Zaenal, 'Maslahah and Sakinah Family's Review of Marriage Through Marriage Dispensation in Central Lampung Regency', *JURNAL ILMIAH MIZANI: Wacana Hukum, Ekonomi, Dan Keagamaan*, 9.1 (2022), pp. 65–79, doi:10.29300/MZN.V9I1.7516
- Gill, Sara L., 'Qualitative Sampling Methods', *Journal of Human Lactation*, 36.4 (2020), doi:10.1177/0890334420949218
- Hasan, Ahmad, 'The Principle of Istihsân in Islamic Jurisprudence', *Source: Islamic Studies*, 16.4 (1977)
- Hasan Basri, and Muhammad Azani, 'Asas Keadilan Dan Ahli Waris Pengganti Dalam Praktik Kewarisan Masyarakat Berdasarkan Hukum Islam Di Kecamatan Bantan Kabupaten Bengkalis', *Perspektif Hukum*, 2017, doi:10.30649/ph.v17i1.56
- Isa Ansari, *Personal Communication*, 3 August 2024, Air Nipis Maju Village
- Issa, Harith, 'The Reality of the Istihsan According to Al Hanafia School', *Jordan Journal of Islamic Studies*, 19.2 (2023), doi:10.59759/jjis.v19i2.22
- Kasman, *Personal Communication*, 29 July 2024, Air Nipis Maju Village
- Luawo, Fipy Rizky Amalia, and Haswida Amalia, 'The Implementation of Inheritance Based on The Tribe of Kaili Ledo and Islamic Inheritance Laws', *Jurnal Dinamika Hukum*, 19.2 (2019), doi:10.20884/1.jdh.2019.19.2.2525
- Maskuri, Erkham, 'Patterns of Inheritance Distribution in Tlogoharjo Village, Giritontro Subdistrict in the Review of Islamic Law', *QURU': Journal of Family Law and Culture*, 2.1 (2024), doi:10.59698/quru.v2i1.102
- Maulana, Diky Faqih, and Abdul Rozak, 'Istihsan As A Finding Method Of Progressive Islamic Law In The Industrial Revolution Era 4.0', *El-Mashlahah*, 11.2 (2021), pp. 127 – 145, doi:10.23971/elma.v11i2.2981
- Nabilah, Wardatun, Arifki Budia Warman, and Nurul Aini Octavia, 'istihsan dalam literatur syafi'iyah (telaah istihsan dalam kitab al-mustasfa al-ghazali)', *Juris: Jurnal Ilmiah Syariah*, 20.1 (2021), doi:10.31958/juris.v20i1.3323
- Nasution, Adelina, 'Pluralisme Hukum Waris Di Indonesia', *Al-Qadha*, 5.1 (2019), doi:10.32505/qadha.v5i1.957
- Noorwahidah, Noorwahidah, 'Istihsan: Dalil Syara` Yang Diperselisihkan', *Syariah Jurnal Hukum Dan Pemikiran*, 16.1 (2017), doi:10.18592/sy.v16i1.1001
- Nurmala, Leni, and Yoslan Koni, 'Differences And Similarities In The Division Of Inheritance Law According To Islamic Law And Javanese Customary Law In Indonesia In A Comparative Study Of Law, so That', *International Journal of Educational Review, Law And Social Sciences (IJERLAS)*, 2.1 (2022), doi:10.54443/ijerlas.v2i1.134
- Pulungan, Enny Nazrah, 'Konsep Istihsan Abu Hanifah Dalam Pandangan Al-Syafi'', *Jurnal Raudhah*, 06.01 (2018)
- Queirós, André, Daniel Faria, and Fernando Almeida, 'Strengths And Limitations Of Qualitative And Quantitative Research MethodS', *European Journal of Educational Studies*, 3.9 (2017)
- Ramli, Mohd Anuar, Mohd Hafiz Jamaludin, and Mohd Norhusairi Mat Hussin, 'Pemakaian Instrumen Istihsan Dengan 'Urf (Al-Istihsan Bi Al-'Urfi) Dalam Amalan Pembahagian Harta Sepencarian Di Malaysia = The Application of the Instrument Of Al-Istihsan Bi Al-'Urf in Harta Sepencarian Practice in Malaysia', *'Ulûm Islâmiyyah Journal*, 14 (2014), doi:10.12816/0012615
- Remiswal, Remiswal, Ayu Angraini, Asma Boti, and Zerly Nazar, 'Introduction to Qiyas and Maslahah Mursalah and Its Application In The Future', *YUDISIA: Jurnal Pemikiran Hukum Dan Hukum Islam*, 12.2 (2021), doi:10.21043/yudisia.v12i2.10425
- Repelita, R, 'Istihsân Menurut Pandangan Al-Syâfi'î Dan', *Jurnal AL-AHKAM*, XXII (2021)

- Roberts, Rosanne E., 'Qualitative Interview Questions: Guidance for Novice Researchers', *Qualitative Report*, 2020, doi:10.46743/2160-3715/2020.4640
- Salma, Salma, 'Istihsan Dan Pembaruan Hukum Islam', *Jurnal Ilmiah Al-Syir'ah*, 13.1 (2016), doi:10.30984/as.v13i1.7
- Saragih, Fitriani, Sudirman Suparmin, and Tuti Anggraini, 'Relevansi Istihsan Dan Istishab Di Masa Kini Dan Mendatang', *Jurnal AKMAMI (Akutansi, Manajemen, Ekonomi)*, 3.2 (2022)
- Sardana, Nitish, Sahar Shekoohi, Elyse M. Cornett, and Alan David Kaye, 'Qualitative and Quantitative Research Methods', in *Substance Use and Addiction Research: Methodology, Mechanisms, and Therapeutics*, 2023, doi:10.1016/B978-0-323-98814-8.00008-1
- Sodikin, Sodikin, 'The Implementation of Islamic Heritage Distribution in Community of Setu Subdistrict, South Tangerang Region', *SALAM: Jurnal Sosial Dan Budaya Syar-i*, 8.5 (2021), doi:10.15408/sjsbs.v8i5.22224
- Sudirman, *Personal Communication*, 6 August 2024, Air Nlpi Maju Village
- Suparmin, Sudirman, 'Istihsan Methodology In The Productive Waqf Application', *FITRAH: Jurnal Kajian Ilmu-Ilmu Keislaman*, 6.1 (2020), doi:10.24952/fitrah.v6i1.2650
- Supriyadi, Supriyadi, and Sukron Ma'mun, 'Contemporary Inheritance: Application Of Inheritance Division In Juridical, Psychological, Sociological And Economic Perspectives', *MILRev: Metro Islamic Law Review*, 2.2 (2023), doi:10.32332/milrev.v2i2.8037
- Tahir Mahmud, 'Istihsan: Anwa'uhu Wa Hukumuhu', *Pakistan Journal of Islamic Research*, 10 (2012)
- .