

## Substantive Justice in Women's Inheritance Rights: A Welfare and Deliberation Approach in Indonesia

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**ABSTRACT:** This article examines the status of women's inheritance rights in Indonesia through a substantive justice approach, grounded in public interest and deliberation. Normatively, Islamic law and positive law have determined the inheritance portion for women, but in practice, injustice often arises due to rigid interpretations and social practices that marginalise women. This research employs a qualitative normative method, incorporating legal hermeneutic analysis and the *maqāṣid al-syarī'ah* approach, to assess the relevance of justice values in the contemporary context. The results suggest that a reinterpretation of inheritance law is necessary to ensure the public interest and provide opportunities for women in accordance with their contributions and socio-economic conditions. Family deliberation has proven to be an effective mechanism for achieving fair agreements without neglecting religious norms. The integration of public interest and deliberation can be an alternative model for upholding substantive justice for women in Indonesia.

**KEYWORDS:** Substantive Justice; Women's Inheritance Rights; Public Interest; Deliberation; Islamic Law; Indonesia.

### 1. INTRODUCTION

The issue of women's inheritance rights remains a significant topic of discussion in Islamic law and legal practice in Indonesia (Choerunnisa & Tjempaka, 2024). Normatively, the Qur'anic provisions in Surah an-Nisa' verses 11 and 176 emphasise that women's share is generally half that of men (2:1) (Firmansyah, 2024). This formulation was later used as the basis for the Compilation of Islamic Law (KHI), which serves as a legal reference in Indonesia (Azhar, 2024). However, social reality shows that this textual provision often gives rise to problems, particularly when women have economic responsibilities that are no less significant than those of men (Begum et al., 2024). In practice, many women are the breadwinners of their families or contribute significantly to the household economy, so rigid inheritance distribution has the potential to create injustice (Maulana & Dahrial, 2025).

This dilemma between normative justice and substantive justice is a fundamental issue. Normative justice adheres to the formal text, whereas substantive justice emphasises the objectives of the law, specifically the welfare and protection of vulnerable parties. Progressive legal thought, as proposed by Satjipto Rahardjo, emphasises that the law should prioritise humanity and justice over mere formal rules (Aisyah & Hidayah, 2023). Similarly, the *maqāṣid al-syarī'ah* (the principles of goodness and justice) in Islamic law emphasise the protection of five fundamental aspects (*al-ḍarūriyyāt al-khams*), including property (*ḥifẓ al-māl*) and descendants (*ḥifẓ al-nasl*) (Aslati et al., 2024). Therefore, inheritance distribution should be viewed not only from a legal perspective but also in the broader context of Sharia, namely, achieving welfare.

In Indonesia, social practices often resolve inheritance issues through family deliberation mechanisms. This deliberation allows for a fairer distribution of inheritance according to the specific circumstances of the heirs (Khasanah et al., 2025). In some cases, inheritance distribution through deliberation results in agreements that differ from formal provisions, for example, granting a larger share to women due to considerations of economic responsibility or social role. This demonstrates that the deliberation mechanism is not merely a cultural practice but also a representation of substantive justice that exists within society (Tasbih et al., 2024). This phenomenon demonstrates the need for a reinterpretation of women's inheritance rights in Indonesia. Reinterpretation does not mean rejecting normative texts, but rather rereading the spirit of justice embodied in Sharia through a welfare and deliberation approach.

Many studies have been conducted on women's inheritance rights and substantive justice. These studies serve as important references in developing the argument that justice cannot be understood solely in formalistic terms but also through contextual reinterpretation. A study by Wahid (2025) highlighted that inheritance provisions in classical Islamic law are often applied textually without considering social change. She demonstrates that in contemporary society, women's economic roles have undergone a significant transformation, necessitating a reinterpretation based on the *maqāṣid al-syarī'ah* (the principles of Islamic law) to ensure

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the achievement of substantive justice. This research reinforces the notion that Islamic law is dynamic and can be continually adapted to meet the needs of the times. Jalaludin (2024) examines the practice of Islamic inheritance law in Indonesia, particularly in the context of religious courts. He found that judges often face dilemmas when formal law does not fully reflect a sense of justice. In some decisions, judges even open up space for family deliberation in resolving inheritance matters. This indicates a shift from formal justice to substantive justice through a social approach.

Fithriani & Faridah (2024) research emphasises the importance of a gender justice perspective in Islamic law. They argue that the 2:1 inheritance distribution should not be understood as an absolute provision, but rather as a historical product born from the classical Arab social context. In the modern Indonesian context, a re-reading of inheritance law is necessary to prevent discrimination. Furthermore Lembong et al., (2024) research examines the practice of inheritance distribution through deliberation in Aceh. Their research results show that family deliberation often leads to fairer agreements, for example, providing equal shares to sons and daughters, while also taking socio-economic conditions into account. This study confirms that local wisdom can serve as a means of achieving substantive justice without compromising Sharia principles.

Furthermore, Mera et al., (2024) examine the role of *maqāṣid al-syarī'ah* in the reform of Islamic family law in Indonesia. They concluded that the *maqāṣid* approach, particularly through the benefit of the community, provides a strong theoretical basis for reinterpreting inheritance law. Thus, inheritance law is no longer viewed as a rigid rule, but rather as an instrument that must ensure social justice.

From these various studies, there is an academic tendency to encourage new interpretations of women's inheritance law. Reinterpretation through the benefit approach, deliberation, and gender justice is considered a path to achieving substantive justice. However, there is still room for research to comprehensively integrate these approaches in the Indonesian context, which has a plurality of laws (Islamic, customary, and national) and cultural diversity. Therefore, this research is crucial to find a framework that can connect normative law with social reality, so that women's inheritance rights can be upheld more fairly, contextually, and in accordance with human values.

## 2. METHODOLOGY

The research methodology in this article uses a normative qualitative approach with a juridical-philosophical foundation. This approach was chosen because the issues studied are not only related to positive legal texts, but also concern the philosophical, theological, and social values that underlie the birth of these regulations. The normative study was conducted by examining primary legal sources, including the Qur'an, Hadith, the Compilation of Islamic Law (KHI), the Civil Code, and customary law that remains alive in Indonesian society. In addition, secondary sources were also utilised in the form of scientific literature, books, national and international journals, and the results of relevant research conducted within the last ten years. Data analysis was conducted using a legal hermeneutics approach, namely, rereading normative texts while considering the social context and the intended legal objectives. The *maqāṣid al-syarī'ah* approach serves as an important framework in the interpretation process to discover the meaning of substantive justice, particularly regarding the protection of women's rights in inheritance.

Furthermore, this research adopts a progressive legal perspective, emphasising that the law should prioritise humanitarian values and justice, rather than merely normative certainty. Within this framework, public interest (*malahlah*) is positioned as the primary instrument in assessing the relevance of inheritance laws to the needs of contemporary society. Meanwhile, deliberation (*musyawarah*) is understood as a social mechanism deeply rooted in Indonesian culture that can be used as a practical means to achieve substantive justice in the distribution of inheritance. Therefore, this research methodology aims not only to outline existing legal provisions but also to offer a reinterpretation grounded in social reality and universal human values that align with the objectives of Islamic law.

## 3. RESULTS AND DISCUSSION

### 3.1 Position of Women's Inheritance Rights in Indonesia

Women's inheritance rights in Indonesia occupy a unique position due to the influence of the plurality of prevailing legal systems, namely Islamic law, customary law, and Western civil law (Haidar, 2023). This plurality means that the understanding and practice of women's inheritance rights are not singular, but rather vary according to the social, cultural, and religious context of society. In the context of Islamic law, the normative basis for women's inheritance rights is derived from the Qur'an, specifically Surah an-Nisa' verses 11, 12, and 176, which stipulate that women's share is generally half that of men. This provision was later adopted in the Compilation of Islamic Law (KHI) as positive law applicable to Indonesian Muslim society (Mufti, 2024). Formally, women's position as heirs is recognised, but the portion they receive is relatively smaller. This formulation is often understood legally as something fixed and inviolable. However, in real life, problems arise when women also play a significant role in supporting the family's economy. This situation raises questions about whether textual inheritance distribution truly provides substantive justice.

Unlike Islamic law, customary law in Indonesia exhibits more flexible variations. In Minangkabau society, for example, the matrilineal kinship system places women in a primary position in inheriting property. Conversely, in Batak society, which adheres to a patrilineal system, women tend to be marginalised in inheritance matters (Lembong et al., 2024). Meanwhile, the Javanese and

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Bugis communities more often resolve inheritance issues through family deliberation, allowing women to receive a relatively equal share to men based on mutual agreement (Yumna, 2024). This variation demonstrates that women's position in inheritance is determined not only by legal texts but also by the culture and social values prevalent within the community.

Western civil law, as regulated by the Civil Code, provides more equal treatment for men and women. In this system, all heirs of equal rank receive an equal share regardless of gender. However, its application in Indonesia tends to be limited to non-Muslim communities or those who choose to comply with civil law (Karimullah, 2022). This confirms that for the Muslim majority, Islamic law and customary law are the dominant influences on inheritance practices.

Upon closer examination, the position of women's inheritance rights in Indonesia demonstrates a tension between formal legal norms and social practices. Islamic law, as outlined in the Compilation of Islamic Law (KHI), provides a clear normative framework; however, customary practices and a culture of deliberation allow for greater flexibility (Amin et al., 2025). This phenomenon demonstrates that, although women are recognised as heirs normatively, substantive justice is often determined more by family deliberation than by written rules.

Thus, the position of women's inheritance rights in Indonesia can be understood on three levels: first, as legal subjects guaranteed by normative texts (the Qur'an, the Compilation of Islamic Law (KHI), and the Civil Code (KUH Perdata); second, as social actors whose position is highly dependent on local customary traditions; and third, as parties who in daily practice often rely on family deliberation to obtain more proportional justice. This legal plurality, on the one hand, opens up opportunities for flexibility, but on the other hand also creates complexity in realising consistent substantive justice for women.

### 3.2 Substantive Justice as a Basis for Reinterpretation

Substantive justice is a concept of justice that focuses not only on compliance with formal rules but also on achieving true justice in real life. In the context of inheritance law, formal justice is evident in the implementation of normative rules, as stated in the Qur'an and adopted in the Compilation of Islamic Law (KHI), specifically that men's share is twice that of women (Nasution, 2023). This rule is formally considered valid and consistent with the text. However, the question arises as to whether these provisions still adequately address the needs and social conditions of contemporary society.

Substantive justice seeks to address this dilemma by viewing the law not merely as a normative text but also as an instrument aimed at achieving public welfare. In the progressive legal theory introduced by Satjipto Rahardjo, law is viewed as a means to help humans achieve justice, rather than an end in itself (Manse, 2024). Therefore, when existing laws actually create inequality, reinterpretation is necessary to ensure the law remains relevant to social reality. From an Islamic legal perspective, the principle of *maqāṣid al-syarī'ah* (the principles of Islamic law) is closely aligned with the concept of substantive justice. *Maqāṣid* emphasises the protection of five fundamental aspects: religion, life, intellect, lineage, and property. The provisions of inheritance in the Qur'an essentially exist to safeguard these aspects, including guaranteeing justice and the survival of heirs (Mufti, 2024). However, in situations where women bear equal or even greater economic burdens than men, textual application without considering the context can diminish the essence of justice itself.

Substantive justice requires that inheritance distribution not only follow mathematical formulas but also consider the socio-economic conditions of the heirs. For example, a daughter who spends her life caring for her parents or supporting her family financially has different needs and contributions than her brothers (Bahauddin et al., 2023). If the law adheres solely to textual provisions without any room for flexibility, the value of justice, the goal of Islamic law, will be diminished. In other words, formal justice is not always synonymous with substantive justice.

Therefore, reinterpreting women's inheritance law through a substantive justice approach is highly relevant in the Indonesian context. This reinterpretation is not intended to negate the text of the Quran, but rather to reread its message of justice so that it remains in line with the spirit of the *maqāṣid al-syarī'ah* (the principles of Islamic law). In this way, law is seen not merely as a rigid rule, but as a dynamic instrument capable of adapting to social developments and societal needs.

### 3.3 Benefit Approach to Inheritance Rights

Benefit (*al-maṣlaḥah*) is a fundamental principle in Islamic law, serving as a basis for consideration in establishing laws when explicit provisions are not found in the text. This concept is closely related to *maqāṣid al-sharī'ah*, the primary objectives of sharia, which are oriented towards the protection and benefit of humanity. In the context of inheritance law, benefit can be an important instrument for assessing whether the distribution of inheritance truly benefits and prevents harm to the heirs, especially women (Tarmizi et al., 2024).

Historically, inheritance provisions specifying women's share as half that of men emerged in the context of 7th-century Arab society, where men bore the primary economic responsibility. Women at that time generally remained in the domestic sphere and did not have significant financial burdens. However, the social context of modern Indonesian society demonstrates a very different situation. Many women serve as the backbone of the family, both as the primary breadwinner and as significant contributors to the household economy (Akmal et al., 2023). The formal 2:1 rule, if applied without considering these conditions, has the potential to create injustice and even violate the spirit of public interest.

The public interest approach allows for reinterpretation to maintain the relevance of inheritance law. For example, through the principle of public interest (*maṣlaḥah mursalah*) (public interest not explicitly mentioned in the text but aligned with the objectives

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of sharia), inheritance distribution can be tailored to the actual needs of the heirs. Suppose a daughter proves to be more needy due to social and economic responsibilities. In that case, public interest demands that she receive a larger portion, even if it does not conform to the textual formula. This aligns with the Islamic jurisprudence principle of *dar' al-mafāsīd muqaddam 'ala jalb al-maṣāliḥ* (preventing harm takes precedence over achieving public interest), which means that the law should prioritise preventing injustice (Rofiq, 2024).

In practice in Indonesia, the public interest approach has begun to be applied, although it has not yet been fully institutionalised in formal law. For example, several religious court decisions permit heirs to resolve inheritance distribution through family deliberation. In these deliberations, considerations of public interest are often the primary basis, allowing women's shares to be equal to or greater than men's, as agreed.

Thus, the public interest approach to inheritance rights is not a rejection of normative texts, but rather an effort to uphold the essence of justice, the goal of Islamic law. Public interest dictates that the law must adapt to social change, ensuring it remains capable of meeting society's needs and protecting the vulnerable, particularly women, who often find themselves in a vulnerable position regarding inheritance distribution.

### 3.4 Deliberation as a Social Mechanism

Deliberation is a fundamental value in Indonesian legal culture and a teaching emphasised in Islam. In the context of inheritance distribution, deliberation has long been a vibrant social mechanism in various regions for resolving disputes among heirs. Through deliberation, families not only adhere to formal rules but also consider the actual circumstances of the heirs, so that the justice achieved is more substantive than merely formalistic.

In practice, deliberation often provides a space for compromise where heirs agree to a distribution that differs from the normative provisions. For example, in families where a daughter has long cared for her parents, other heirs are often willing to give her a larger share as a token of appreciation for her contribution. Similarly, in situations where women are the family's economic breadwinner, deliberation opens up the possibility for a more proportional distribution to avoid inequality. In this way, deliberation functions as a social instrument capable of internalising the principle of benefit into inheritance law practices.

Local research also indicates that deliberation is a crucial means of achieving substantive justice. In Minangkabau, for example, the matrilineal customary inheritance system allows women to hold a central position in the ownership of heirlooms, although this is still done through family deliberation forums. In Java and Bugis, deliberation is often used to distribute inheritance more flexibly, sometimes even resulting in equal distribution between men and women. Meanwhile, in Aceh, the practice of family deliberation often resolves inheritance disputes without resorting to court (Lembong et al., 2024).

The advantage of deliberation lies in its ability to accommodate social, emotional, and humanitarian values that formal law cannot always address. Deliberation also reflects a deliberative spirit that emphasises the participation of all parties in decision-making, resulting in more acceptable outcomes for all parties (Firmansyah, 2024). This contrasts with court decisions, which tend to be rigid and often lead to prolonged conflict.

Thus, deliberation in inheritance distribution can be seen as a concrete manifestation of substantive justice that exists within Indonesian society. It is not only a customary or cultural mechanism, but also a reflection of Sharia principles that emphasise *'adl* (justice) and *maslahah* (benefit). Therefore, strengthening deliberation as a mechanism for resolving inheritance needs to be encouraged not only at the cultural level but also recognised in formal legal practice as an alternative, equitable, and just way to resolve inheritance disputes.

### 3.5 Model of Reinterpretation of Women's Inheritance Rights

The reinterpretation of women's inheritance rights in Indonesia is an effort to bridge the tension between formal legal norms and the need for substantive justice in society. This reinterpretation model is not intended to negate the text of the Qur'an or positive law, but rather to reread the moral messages and objectives of sharia to maintain their relevance to contemporary social realities.

The first step in the reinterpretation model is to place substantive justice as the primary benchmark in inheritance distribution. This means that normative provisions are not understood rigidly but are interpreted taking into account the socio-economic conditions of the heirs. Using the *maqāṣid al-syarī'ah* framework, inheritance distribution is directed at ensuring public welfare, avoiding injustice, and protecting vulnerable parties. In this context, women who play a role as the family's economic supporter, caregiver, or have significant social responsibilities should receive a more proportional share.

The second step is to integrate deliberation as a practical mechanism in the distribution of inheritance. Deliberation enables heirs to reach an agreement that is tailored to the actual situation, without being constrained by the rigidity of formal law. In this way, deliberation can be viewed as a form of social *ijtihād* that aligns with the principle of public welfare. In practice, family deliberation can be facilitated by community leaders, religious scholars, or legal mediators to ensure the process remains fair, transparent, and does not disadvantage either party.

The third step is to encourage legal reconstruction through the implementation of formal policies and procedures. The Compilation of Islamic Law (KHI), for example, could be revised or given broader interpretive space for judges to consider public welfare aspects in inheritance decisions. This can be realised through regulations that incorporate the principle of substantive justice

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and legitimise the outcomes of family deliberation as a valid legal basis. In this way, Indonesian positive law can be more responsive to social dynamics without losing its normative roots.

This reinterpretation model ultimately creates a synergy between normative texts, public welfare values, and deliberation mechanisms. All three complement each other: the text provides legal legitimacy, public welfare serves as the moral-philosophical foundation, and deliberation serves as a practical means of implementation. With this integration, women's inheritance rights in Indonesia can be understood not only as a legal-formal issue, but also as part of the struggle to uphold substantive justice that is rooted in sharia values and at the same time in line with modern social needs.

### 4. CONCLUSION

Women's inheritance rights in Indonesia still face serious challenges between formal legal norms and social reality. Although the Qur'an and positive law provide a clear framework for inheritance distribution, practice often demonstrates injustice, both through the marginalisation of women and the unresponsive implementation of the law to the socio-economic context. This situation reflects the need for a new approach that relies not only on legal certainty but also on substantive justice. Through the maqāṣid al-syarī'ah approach, the reinterpretation of inheritance law can be directed toward ensuring public welfare, protecting vulnerable parties, and upholding the principle of justice, which is the primary objective of Islamic law. Meanwhile, deliberation—a unique mechanism in Indonesian society—can be a practical means to reach agreements that are fair, flexible, and in line with the realities of family life. The integration of the two creates a more inclusive, contextual, and humanistic model for reinterpreting women's inheritance rights. Thus, this discussion emphasises that substantive justice in women's inheritance rights in Indonesia can only be realised if the law is understood as a living and dynamic instrument, rather than as a rigid text. Reinterpretation based on public interest and deliberation is not a denial of religious norms, but rather a way to maintain the relevance of the moral message of sharia while addressing contemporary social challenges. Ultimately, reforming women's inheritance law in Indonesia is a crucial step in the effort to achieve genuine social justice and align with universal human values.

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