

Inheritance in Banjar Customary Law and Islamic Law: a Study of The Status of Children as Recipients of Inheritance

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ABSTRACT

This study presents a comparative analysis between inheritance systems in Banjar customary law and Islamic law, focusing specifically on the status of children as heirs. In Banjar society, not only biological children but also stepchildren, adopted children, and children born out of wedlock (referred to as anak kampang) are potentially entitled to inheritance, often based on family discussions and social-emotional considerations. In contrast, Islamic inheritance law (faraid) only recognizes the right to inherit based on three legal causes: marriage, bloodline (nasab), and wala' (loyalty through manumission). The study finds that while Banjar inheritance customs may diverge from the strict rules of Islamic law, they can be harmonized through the concept of ihsan, showing kindness to non-heirs, provided all legitimate heirs consent. This research adopts a normative legal method with comparative and conceptual approaches, using secondary data analyzed qualitatively. The findings suggest that harmonization between local custom and Islamic law is possible as long as justice and mutual consent are preserved.

Keywords : Inheritance Law, Banjar Custom, Islamic Law, Adopted Children, Ihsan.

A. INTRODUCTION

Inheritance law constitutes an essential component of the family legal system in every society, particularly within Muslim communities. In Islam, inheritance law is not merely a matter of transferring ownership after someone passes away; rather, it is a divine ordinance from Allah Subhanahu wa Ta'ala that must be upheld. It serves as a means of safeguarding the rights of family members. As clearly stated in the Qur'an:

{لِّلرِّجَالِ نَصِيبٌ مِّمَّا تَرَكَ الْوَالِدَانِ وَالْأَقْرَبُونَ وَلِلنِّسَاءِ نَصِيبٌ مِّمَّا تَرَكَ الْوَالِدَانِ وَالْأَقْرَبُونَ مِمَّا قَلَّ مِنْهُ أَوْ كَثُرَ ۚ نَصِيبًا مَّفْرُوضًا}

*"To men is allotted a share of what parents and close relatives leave, and to women is allotted a share of what parents and close relatives leave, whether it be little or much — an obligatory share."*¹

Imam al-Qurtubi emphasized in his tafsir regarding this verse:

"فَإِنَّ الْآيَةَ لَيْسَ فِيهَا تَعَرُّضٌ لِلْقِسْمَةِ، وَإِنَّمَا افْتَضَتْ الْآيَةُ وَجُوبَ الْحِظِّ وَالنَّصِيبِ لِلصَّغِيرِ وَالْكَبِيرِ قَلِيلًا كَانَ أَوْ كَثِيرًا، رَدًّا عَلَى الْجَاهِلِيَّةِ فَقَالَ: (لِلرِّجَالِ نَصِيبٌ) (وَلِلنِّسَاءِ نَصِيبٌ) وَهَذَا ظَاهِرٌ جَدًّا."

*"This verse does not discuss the detailed distribution of inheritance. Instead, it affirms the obligation of assigning a portion and a rightful share to both the young and the old, male and female alike, whether the inheritance is small or large, as a refutation of pre-Islamic ignorance. Allah thus states: 'To men is allotted a share, and to women is allotted a share', and this is very clear."*²

In the multicultural context of Indonesian society, inheritance law is regulated not only by state and religious law but also influenced by customary legal norms passed down through generations. This is evident in everyday life, where Indonesians generally favor a familial approach in resolving issues. In inheritance matters, communities often prioritize deliberation and kinship-based solutions. This approach aims primarily to preserve the harmony of familial relationships and to prevent disputes over wealth from fracturing family bonds — ensuring that kinship values remain intact and well-maintained.³

One prominent ethnic group with a strong customary tradition is the Banjar community. Broadly speaking, the Banjar people are divided into two major groups: Banjar Hulu and Banjar Kuala. Banjar Kuala consists of residents of Banjarmasin and surrounding areas, including Martapura, whose dialect was adopted in the Sultan Adam Law Code. Meanwhile, Banjar Hulu includes those who inhabit the Hulu Sungai region, commonly referred to as “Banua Lima,” encompassing Rantau, Kandungan, Barabai, Amuntai, and Tabalong. Today, South Kalimantan comprises 13 regencies and cities, a result of the expansion of previously existing administrative regions.⁴

¹ Qur'an, 4:7.

² Muhammad bin Ahmad al-Anshari al-Qurtubi, *Al-Jami' li-Ahkam al-Qur'an*, 2nd ed. (Dar al-Kutub al-Misriyyah, 1964), 5:48, <https://shamela.ws/book/20855>.

³ Ahdiyatul Hidayah, “Pembagian Harta Waris Menurut Adat Masyarakat Banjar Kalimantan Selatan, Dalam Al Qalam,” *Al Qalam: Jurnal Ilmiah Keagamaan Dan Kemasyarakatan* 16, no. 6 (2022): 25, <https://doi.org/10.35931/aq.v16i6.1390>.

⁴ Wahidah dan Faridah, *Praktik Penyelesaian Harta Warisan pada Masyarakat Banjar* (Antasari Press, 2018).

Sociologically, the Banjar people are recognized as a community that deeply upholds Islamic values. This is reflected in their daily practices, which are filled with religious observance such as prayer, fasting, zakat, as well as Islamic principles in family affairs and inheritance matters⁵. In principle, the Banjar community continues to regard Islamic inheritance law as the foundational guideline—both in identifying rightful heirs and in determining their respective shares.

In practice, the Banjar inheritance system includes several categories of individuals considered eligible to receive inheritance, such as biological children, stepchildren, adopted children, and children born outside of wedlock. In Islamic inheritance (*faraid*), however, it is stipulated that biological children are among those with a definite right to inheritance, as affirmed in the verse:

{يُوصِيكُمُ اللَّهُ فِي أَوْلَادِكُمُ لِلذَّكَرِ مِثْلُ حَظِّ الْأُنثَيَيْنِ ۚ}

*“Allah instructs you concerning your children: for the male, what is equal to the share of two females.”*⁶

Although this verse clearly establishes that children—particularly biological children born within a legitimate marriage—are entitled to inheritance, it raises the question: does the term “children” in this context also include stepchildren, adopted children, or those born out of wedlock, as is found in the inheritance practices of the Banjar community? This is particularly relevant given the strong Islamic character of the Banjar society.

Based on the aforementioned context, this study aims to further investigate the status of children deemed eligible for inheritance under Banjar customary law. It seeks to explore the justifications or reasons underlying the recognition of their eligibility, and to assess these practices in light of Islamic law. The objective is to determine the extent to which such practices align with, or potentially conflict with, Islamic legal principles. Furthermore, this research aspires to contribute theoretically to the discourse on harmonizing customary law with religious law, in the hope that it may serve as a reference for the formulation of legal policies that are more context-sensitive and responsive to local realities.

⁵ Gusti Muzainah, *Asas Kemanfaatan tentang Kedudukan Perempuan dalam Hukum Waris Adat Masyarakat Banjar*, 1st ed. (Pustaka Akademika, 2016).

⁶ Qur’an, 4:11.

B. METHOD

This research is classified as normative legal research, as its object of study is purely normative legal norms⁷ rather than empirical aspects or field practices. As stated in its objectives, the study examines legal norms in both Banjar customary law and Islamic law, with a specific focus on the status of children considered eligible to receive inheritance. The approach employed in this study is a comparative approach, which involves assessing customary law in relation to Islamic law. The aim is to identify similarities and differences between the two systems, as well as to explore the extent of their compatibility or the potential for conflict that may arise⁸. In addition, the researcher also adopts a conceptual approach, by examining Islamic inheritance law⁹ as stipulated in the Qur'an, Hadith, and classical fiqh literature. This approach is expected to provide theoretical insights that can enrich the discourse on harmonizing customary and religious legal systems, particularly in relation to the classification of rightful heirs.

The data used in this research is secondary data obtained through a literature study. In normative legal research, secondary data serves as the primary source, as it contains legal materials that can be examined systematically to gain a comprehensive understanding of relevant legal concepts and norms¹⁰. The data includes the Qur'an, Hadith, classical Islamic jurisprudential texts (fiqh) relevant to inheritance law, as well as academic books, previous studies, and scholarly journal articles that discuss Banjar customary law. The data analysis in this study is conducted using a qualitative method, by processing, examining, and interpreting the collected legal materials¹¹, both from sources of Banjar customary law and Islamic law. The analysis involves tracing legal norms related to the status of children entitled to inheritance in each legal system and then systematically comparing them to identify points of convergence, divergence, and the rationale behind the recognition of specific groups as heirs. The results of this analysis are then interpreted within the context of legal harmonization. It is expected that the findings will offer theoretical contributions to

⁷ Nur Solikin, *Pengantar Metodologi Penelitian Hukum*, 1st ed. (CV. Penerbit Qiara Media, 2021).

⁸ Muhammad Siddiq Armia, *Penentuan Metode dan Pendekatan Penelitian Hukum* (Lembaga Kajian Konstitusi Indonesia, 2023).

⁹ Solikin, *Pengantar Metodologi*.

¹⁰ Solikin, *Pengantar Metodologi*.

¹¹ Solikin, *Pengantar Metodologi*.

the development of Islamic family law that is more responsive to the socio-cultural realities of the society.

C. ANALYSIS/DISCUSSION

1. The Status of Children as Heirs in Banjar Customary Law

In the context of Banjar customary inheritance, the groups potentially eligible to receive inheritance are terminologically divided into two categories: *waris* (heirs) and *ahli waris* (legal heirs). The term *waris* refers to all individuals who receive a portion of the inheritance, regardless of whether they legally qualify as *ahli waris*. Meanwhile, *ahli waris* specifically refers to individuals entitled to inheritance by virtue of blood ties or lineage with the deceased, as established in Islamic *faraid*¹². Therefore, the meaning of *waris* is broader than that of *ahli waris*, as it includes both those who are legally entitled to inherit and those who are not, according to Islamic inheritance law. Thus, in Banjar customary practice, every *ahli waris* is a *waris*, but not every *waris* qualifies as an *ahli waris*.

The following are the categories of children recognized or considered as potential recipients of inheritance under Banjar customary law:

a. Biological Children (Anak Bujur)

Biological children are those born from a legally valid marriage between a man and a woman. Based on whether their parents' marriage is officially registered, biological children are divided into two groups. First, children born from a religiously valid marriage that was not registered with the civil authorities—commonly referred to as an unregistered or informal marriage (*nikah siri*). Although valid in religious terms, this type of marriage lacks formal legal recognition under state law. Second, children born from a legally valid and state-registered marriage, in accordance with marriage legislation, particularly the Indonesian Marriage Law. Children in this category are not only legitimate in religious terms but also legally recognized by the state due to official documentation such as a marriage certificate.

Under Banjar customary inheritance, both categories of biological children are acknowledged as legitimate heirs of their parents¹³, as the lineage between them and their parents is clearly established. Despite administrative differences, both are equally

¹² Gusti Muzainah, *Asas Kemanfaatan tentang Kedudukan Perempuan dalam Hukum Waris Adat Masyarakat Banjar*.

¹³ Gusti Muzainah, *Asas Kemanfaatan tentang Kedudukan Perempuan dalam Hukum Waris Adat Masyarakat Banjar*.

recognized as legitimate children in Banjar custom and, therefore, enjoy the same inheritance rights.

b. Anak Kampang (Illegitimate Children)

Anak kampang is a term used in Banjar society to describe children born out of wedlock or from illicit sexual relations, where the identity of the biological father is not publicly known. In most cases, the man who fathered the child has left or refused responsibility, leaving only the mother aware of his identity. The term carries a social stigma, often linked to negative perceptions of women who become pregnant outside of marriage. In many instances, such pregnancies are also unplanned or unwanted. Even if the mother later marries—whether to the biological father or another man—the child’s status as *anak kampang* remains unchanged in the eyes of society.

In terms of inheritance, *anak kampang* is legally considered to have lineage only to the mother, and therefore is entitled to inherit solely from her. However, in Banjar customary practice, such children may still be included as part of the *waris*¹⁴, those who receive a portion of the inheritance without necessarily having the legal status of *ahli waris* under Islamic law. This inclusion is driven by strong humanitarian and familial considerations within Banjar custom, where inheritance distribution is often decided through family consensus (*musyawarah*) to maintain harmony. As such, *anak kampang* may still receive a portion of the inheritance, even though they have no legal inheritance rights from the father's side.

c. Stepchildren

Stepchildren are those born from one party in a marriage, not from the marital union between the current husband and wife. In this context, stepchildren may come from two situations: first, children from a woman’s previous marriage; and second, children from a man’s previous marriage. In other words, stepchildren are biological children of one spouse who become part of a new family formed through remarriage.

In Banjar society, stepchildren are legally entitled to inherit only from their biological parent, either the mother or the father. Nevertheless, they are often treated as part of the *waris* and may be given a portion of inheritance. This typically occurs in families with close and harmonious relationships, where stepchildren, stepparents, and stepsiblings

¹⁴ Gusti Muzainah, *Asas Kemanfaatan tentang Kedudukan Perempuan dalam Hukum Waris Adat Masyarakat Banjar*.

maintain affectionate and respectful bonds. In daily Banjar life, distinctions between biological and step-siblings are often blurred, as all are commonly referred to as *dangsanak* (siblings)¹⁵. Accordingly, inheritance considerations may also factor in emotional and social ties, not merely lineage.

d. Adopted Children (Anak Pintaan)

Adopted children, locally known as *anak pintaan*, are children who are not biologically related to the adoptive parents but are raised and cared for by them from a young age, often to the point that the child regards the adoptive parents as their real parents (*kuwitan*). Adoption in Banjar society may arise from various motives, such as childlessness, compassion for underprivileged relatives, or the desire for a child of a particular gender. Typically, adoption is driven by a combination of these reasons. Despite being adopted, the child’s biological origins are usually still known.

Under Banjar customary law, adopted children are not regarded as *ahli waris* of their adoptive parents due to the absence of blood ties. Nevertheless, in inheritance practices, they are often included as part of the *waris*. Their inclusion is based on emotional and social considerations, having been raised as a family member from an early age, they often share a deep bond with the adoptive parents and other family members¹⁶. While not entitled to inherit under Islamic law from their adoptive parents, adopted children retain inheritance rights from their biological parents. This reflects a key distinction between Banjar customary adoption and Western legal adoption: the former does not sever the biological lineage, whereas the latter often does.

2. The Islamic Legal Perspective on Inheritance in Banjar Custom

In Islamic *fara’id* (inheritance law), the foundational principle is that a person is not entitled to inheritance except by one of three causes as agreed upon by the scholars, namely:

a. Marriage

One of the spouses is entitled to inherit from the other as soon as the marriage contract is legally concluded, even if no consummation or seclusion (*khalwah*) has occurred¹⁷. This is based on the *ḥadīth* in which the Prophet *Shallallahu ‘alaihi wa sallam*

¹⁵ Gusti Muzainah, *Asas Kemanfaatan tentang Kedudukan Perempuan dalam Hukum Waris Adat Masyarakat Banjar*.

¹⁶ Gusti Muzainah, *Asas Kemanfaatan tentang Kedudukan Perempuan dalam Hukum Waris Adat Masyarakat Banjar*.

¹⁷ Kamal bin Sayyid Salim, *Shahih Fiqh as-Sunnah wa Adillatuhu wa Tawdhīḥ Madzāhib al-A’immah* (Al-Maktabah at-Taufiqiyah, 2003), <https://shamela.ws/book/13619>.

ruled in the case of Barwa' bint Washiq, whose husband passed away before having consummated the marriage. The Prophet *Shallallahu 'alaihi wa sallam* decreed that she was entitled to inherit from him¹⁸. Therefore, inheritance rights between spouses are established from the moment the marriage contract is valid, without requiring consummation (*dukhūl*) or seclusion.

b. Lineage (Nasab)

Nasab refers to kinship ties established through blood relations, either close or distant. In *fiqh*, nasab is categorized into three main types: first, ascending lineage (*aṣl*), such as parents, grandparents, and so forth; second, descending lineage (*furu'*), including children, grandchildren, and their progeny; and third, collateral relations (*ḥawashi*), such as siblings, nephews, uncles, and cousins from both paternal and maternal lines. These categories of kinship play a significant role in determining rights in Islam, including the right to inheritance¹⁹, as emphasized in the verse of Allah:

{وَأُولُو الْأَرْحَامِ بَعْضُهُمْ أَوْلَىٰ بِبَعْضٍ فِي كِتَابِ اللَّهِ}

*“And blood relatives are more entitled [to inheritance] in the Book of Allah”*²⁰

c. al-Wala' (Manumission of Slaves)

Wala' is a form of inheritance link not established by blood or marriage, but through the act of manumitting a slave. In Islam, the one who frees a slave has a special right to inherit from the freed person if the latter dies without leaving behind any heirs²¹. The Prophet *Shallallahu 'alaihi wa sallam* stated:

((الْوَلَاءُ لِحَمَةٍ كَأَحَمَةِ النَّسَبِ))

*“Walā' is a bond like that of lineage.”*²²

This right of inheritance is unilateral, meaning only the emancipator inherits from the freed slave. Conversely, the freed slave does not inherit from the emancipator, even if the emancipator leaves no other heirs.

¹⁸ Abu Dawud Sulaiman bin al-Asy'ats al-Azdi as-Sijistani, *Sunan Abu Dawud* (Dâr ar-Risâlah al-Âlamiyyah, 2009), <https://shamela.ws/book/117359>.

¹⁹ Kamal bin Sayyid Salim, *Shahih Fiqh as-Sunnah wa Adillatuhu wa Tawdhîh Madzâhib al-A'immah*.

²⁰ Qur'an, 8:75.

²¹ Kamal bin Sayyid Salim, *Shahih Fiqh as-Sunnah wa Adillatuhu wa Tawdhîh Madzâhib al-A'immah*.

²² Abu 'Abdillah Muhammad bin 'Abdillah al-Hakim al-Naisaburi, *Al-Mustadrak 'ala al-Shahihain*, 1st ed. (Dâr ar-Risâlah al-Âlamiyyah, 2018), <https://shamela.ws/book/1424>.

Accordingly, under the Islamic *fara'id* system, an individual qualifies as an heir entitled to a share of the estate only if they possess one of the three aforementioned causes: marriage, lineage, or *wala'*. If a person lacks any of these causes, they are not legally entitled to inherit. The term *waris* (heirs), as used in Banjar customary practice to include individuals who may receive a share of inheritance despite not being qualified heirs under Islamic law, does not have a parallel in the *fara'id* framework.

An example of alignment between Banjar custom and Islamic inheritance law is the status of biological children. Both systems explicitly recognize the right of biological children to inherit from their parents based on an established *nasab*. This includes children born from legally recognized marriages under state law as well as those born from religiously valid but unregistered marriages (commonly referred to as informal marriages); both are acknowledged as rightful heirs. This demonstrates the harmony between customary norms and Islamic principles regarding the inheritance rights of biological children.

In contrast, a *child born out of wedlock* (*anak kampang*) is generally recognized in Banjar customary inheritance as only entitled to inherit from the mother, due to an established maternal *nasab*. This view aligns with the ruling of Islamic *fara'id*, which affirms that a child born of *zinā* has a *nasab* relation only with the biological mother and thus inherits from her, but not from the biological father. This is the opinion of the majority of scholars, as noted by Ibn Qudamah:

"وَلَدُ الزَّانِي لَا يَلْحَقُ الزَّانِيَ فِي قَوْلِ الْجُمْهُورِ"

"A child born of zina is not affiliated with the fornicator (biological father) according to the majority of scholars."²³

In practice, Banjar custom sometimes allows a child born out of wedlock to receive a share of inheritance from the biological father on humanitarian or familial grounds, as part of the broader category of *waris*. Under Islamic law, this is permissible only if all legal heirs agree to it voluntarily. If such a child takes or claims inheritance from the father's estate without the unanimous consent of all heirs, this is deemed a violation of Islamic law, as it involves taking the rightful share of others.

The same principle applies to *stepchildren* and *adopted children*. These individuals

²³ Abdullah bin Ahmad bin Muhammad bin Qudamah al-Maqdisi al-Jamā'ilī ad-Dimasyqī ash-Shāliḥī al-Hanbali, *Al-Mughnī*, Cetakan Ketiga (Dār 'Ālam al-Kutub liṭ-Ṭibā'ah wa an-Nashr wa at-Tawzī', 1997), <https://shamela.ws/book/6910>.

may only inherit from the biological parent with whom they share a nasab connection. However, Banjar custom allows them to inherit from their stepparents or adoptive parents based on emotional ties or familial closeness. Under Islamic law, this is permissible as long as all legal heirs consent to it. If a stepchild or adopted child claims inheritance unilaterally, without such consent, it constitutes a breach of Islamic law.

In such matters, the approval of all rightful heirs is crucial, as Islam emphasizes the protection of others' rights. As articulated in the fiqh maxim:

"حُقُوقُ الْعِبَادِ مَبْنِيَّةٌ عَلَى الْمَشَاحَةِ وَالْمُطَالَبَةِ"

“The rights of fellow humans are based on reluctance to relinquish and the tendency to claim.”

Shaykh ‘Abd al-Raḥman ibn Saḥīḥ al-‘Abd al-Laṭīf explains that this is due to the natural human inclination to safeguard one’s property and rights, which cannot be nullified except by the explicit will of the rightful owner. Some scholars have clearly emphasized this understanding.²⁴

The inclusion of children born out of wedlock, stepchildren, and adopted children in Banjar customary inheritance is generally determined through family deliberation, taking into account factors such as kinship, emotional bonds, and other social considerations. The aim of such inclusion is to preserve family harmony and unity. These values align with the Islamic vision of fostering a family life characterized by *sakinah* (tranquility), *mawaddah* (affection), and *rahmah* (compassion). Nevertheless, such noble aims must be pursued within the limits set by the Sharī‘ah. A good purpose must be achieved through legitimate means so as not to harm others or usurp their rights, which could otherwise lead to discord and the loss of divine blessing within the family. As Allah says:

{فَمَنْ اتَّبَعَ هُدَايَ فَلَا يَضِلُّ وَلَا يَشْقَى، وَمَنْ أَعْرَضَ عَن ذِكْرِي فَإِنَّ لَهُ مَعِيشَةً ضَنْكًا}

*“So whoever follows My guidance will not go astray nor suffer. But whoever turns away from My reminder, he will surely have a life of hardship.”*²⁵

3. The Harmonization of Banjar Customary Inheritance and Islamic Faraid Law

The harmonization between Banjar customary inheritance and Islamic faraid law can be realized, among others, through the concept of *ihsan*—doing good toward others.

²⁴ ‘Abd ar-Raḥmān bin Ṣāliḥ al-‘Abd al-Laṭīf, *Al-Qawā‘id wa ad-Ḍawābiṭ al-Fiqhiyyah al-Mutaḍammanah li at-Taysīr*, Cetakan Pertama (‘Imādat al-Baḥs al-‘Ilmī, 2003), <https://shamela.ws/book/7270>.

²⁵ Qur’an, 20:123-124.

One of the general scriptural evidences (dalīl shar‘ī) supporting the concept of *ihsan* is the word of Allah, the Exalted:

{إِنَّ اللَّهَ يَأْمُرُ بِالْعَدْلِ وَالْإِحْسَانِ}

*"Indeed, Allah commands justice and ihsan (benevolence)."*²⁶

Ihsan in the context of inheritance refers to the heirs acting benevolently toward those who, according to Islamic faraid law, are not legally entitled to inherit—such as illegitimate children (*anak kampung*), stepchildren, adopted children, and others. For example, an illegitimate child does not inherit from their biological father upon his death. In this context, the heirs are encouraged to allocate a portion of the estate to such individuals based on mutual agreement.

This principle of *ihsan* is further emphasized when two conditions are met:

- a. The non-heirs are present during the calculation or distribution of the estate;
- b. They are still related by kinship, are orphans, or are among the poor and needy.

This is in accordance with the verse of Allah, the Exalted:

{وَإِذَا حَضَرَ الْقِسْمَةَ أُولُو الْقُرْبَىٰ وَالْيَتَامَىٰ وَالْمَسَاكِينُ فَارْزُقُوهُمْ مِنْهُ وَقُولُوا لَهُمْ قَوْلًا مَعْرُوفًا}

*“And when the relatives, orphans, and the needy are present at the time of distribution, give them something therefrom and speak to them kindly.”*²⁷

Imam Ibn Kathir (may Allah have mercy on him) explained that the phrase “*when [they] are present at the time of distribution*” refers to the presence of poor relatives, orphans, and the needy who are not among the legal heirs. When such individuals witness the distribution of a substantial inheritance, their hearts naturally yearn for a share, as they see others receiving while they themselves are excluded. Therefore, out of divine mercy and compassion, Allah commands the heirs to give them a portion of the estate as an act of goodness, charity, and social care. This is intended to comfort them and protect their dignity from being hurt or marginalized.²⁸

Thus, the harmonization between Banjar customary inheritance and Islamic faraid law can be achieved through the value-based approach of *ihsan*—by providing a share of inheritance to individuals who are not legally recognized as heirs in Islamic law, such as illegitimate children, stepchildren, and adopted children. This practice not only reflects the

²⁶ Qur’an, 16:90.

²⁷ Qur’an, 4:8.

²⁸ ‘Ismā‘īl bin ‘Umar bin Katsīr ad-Dimasyqī, *Tafsīr al-Qur’ān al-‘Aẓīm*, 1st ed. (Dār al-Kutub al-‘Ilmiyyah, 1998), <https://shamela.ws/book/23604>.

values of benevolence and social compassion but also aligns with the spirit of Islamic teachings, which advocate justice, mercy, and the maintenance of kinship ties. Through such an approach, inheritance distribution becomes not merely a legal procedure but also a means of preserving family harmony and fostering social justice within the community.

D. CONCLUSION

This study demonstrates that there are fundamental differences between the inheritance systems in Banjar customary law and Islamic law, particularly in determining who is entitled to receive an inheritance. Islamic law strictly limits inheritance rights to those who are connected to the deceased through one of three means: blood relations (*nasab*), marital ties, and *wala'* (emancipatory allegiance). In contrast, Banjar customary practice adopts a broader approach, considering familial bonds, emotional closeness, and humanitarian values. As such, stepchildren, adopted children (*anak pintaan*), and children born out of wedlock (*anak kampung*) may also receive a share of the inheritance through family consensus (*musyawarah keluarga*).

However, this difference is not inherently contradictory. Islamic law provides space for benevolence through the concept of *ihsan*, which allows giving a portion of the estate to non-heirs, provided that all legal heirs consent. Thus, Banjar customary inheritance practices can be harmonized with Islamic legal principles if they are carried out with the intention of preserving kinship ties, promoting justice, and remaining within the bounds of Islamic law.

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