

AN IN-DEPTH EXAMINATION OF JUDICIAL INTERPRETATIONS OF 'RADD' IN SPOUSAL INHERITANCE WITHIN THE RELIGIOUS COURTS OF SAMPANG AND TANJUNG

¹ Wahidah, ² Farihatni Mulyati

¹ Head of Study Program at S.2 Family Law (HK) PPS. UIN Antasari Banjarmasin, Indonesia

² Permanent Lecturer at the Faculty of Sharia UIN Antasari Banjarmasin, Indonesia

Email: wahidah.antasari@gmail.com¹, farihatnimulyati@ymail.com²

Received 24-09-2023 | Revised 09-02-2024, 13-03-2024, 23-04-2024 | Accepted 17-05-2024

Abstrak: Penetapan dan Putusan Pengadilan Agama Sampang dan Tanjung, merupakan dua sampel produk hukum yang mengadopsi teori Utsman dalam penyelesaian kasus *radd*. Yaitu sisa lebih harta warisan diberikan terhadap suami/istri pewaris yang selama ini tertolak oleh *faraidh*. Dua fakta hukumnya; anak perempuan *menghijab* saudara, dan *radd* diberikan kepada ahli waris *sababiyah*, tampaknya sudah jauh bergeser dari pendapat kelompok mayoritas. Atas dasar ini, tujuan penelitian yang diselaraskan dengan dua rumusan masalah, difokuskan untuk mengetahui bagaimana pertimbangan dan amar putusan, serta alasan hakim di dua Pengadilan Agama terkait suami/istri dalam kasus kewarisan *radd*? Metode penelitian hukum normatif ini, menjadikan dua produk hukum tersebut sebagai bahan hukum primernya, yang dikumpulkan, diolah, dan dianalisis melalui survei kepustakaan dan studi literatur. Respon sejumlah pihak terkait, diperoleh melalui "open ended question" untuk melihat korelasinya. Temuan penelitian menunjukkan, bahwa pada kasus kewarisan di PA. Sampang; Istri mendapat tambahan sisa lebih harta, dengan menjadikan 19 sebagai *ashal masalah* baru (Pasal 193 KHI). Sedang pada Putusan di PA. Tanjung, *radd* diberikan kepada suami, yaitu 1/6 saham yang seharusnya dibagi secara proporsional dengan ibu pewaris. Namun karena ada kesalahan teknis dalam metode perhitungannya, *radd* tidak dibagi secara berimbang sebagaimana gagasan Utsman. Kenyataan ini menunjukkan, bahwa pola pembagian berimbang dalam upaya penyelesaian kasus *radd*, perlu memperhatikan metode pemecahan kasus sebagaimana *faraidh*. Simpulan tulisan ini, sekaligus membedakan dengan beberapa temuan hasil penelitian terdahulu yang hanya melihat permasalahan *radd* berdasarkan konsep *faraidh*, atau Kompilasi Hukum Islam (KHI) saja.

Kata Kunci: *Radd*, Sisa Lebih, *Ashâl Masâlah*, Teori Utsman, Berimbang.

Abstract: The Determination and Decision of the Sampang and Tanjung Religious Courts are two samples of legal products that adopt Uthman's theory in resolving *radd* cases. That is, the remaining inheritance is given to the husband/wife of the heir who has been rejected by *faraidh*. The two legal facts; daughters *veil* brothers, and *radd* is given to *sababiyah* heirs, seem to have shifted considerably from the opinion of the majority group. On this basis, the research objectives, which are aligned with the two problem formulations, are focused on finding out how the considerations and rulings, as well as the reasons for judges in the two Religious Courts related to husband/wife in *radd* inheritance cases? This normative legal research method makes the two legal products as primary legal materials, which are collected, processed, and analyzed through literature surveys and literature studies. The responses of a number of related parties were obtained through an "open ended question" to see the correlation. The research findings show that in the case of inheritance in PA. Sampang; The wife gets additional remaining assets, by making 19 as a new *problem* (Article 193 KHI). While in the decision in PA. Tanjung, *radd* is given to the husband, namely 1/6 share which should be divided proportionally with the mother of the heir. However, due to a technical error in the calculation method, the *radd* was not divided equally as Uthman's idea. This fact shows that the pattern of balanced distribution in an effort to resolve *radd* cases, needs to pay attention



to the method of solving cases as *faraidh*. The conclusion of this paper also distinguishes it from the findings of previous studies that only looked at *radd* issues based on the concept of *faraidh*, or the Compilation of Islamic Law (KHI).

Key words: Radd, Residual Surplus, Ashâl Masâlah, Uthman's Theory, Balanced.

INTRODUCTION

Allah Swt. through three inheritance verses, all of which are in the Qur'an letter al-Nisâ, has confirmed and detailed the *nashîb* (share) of each heir who is entitled to receive it. These verses are also the foundation of *farâidh* science. It contains all the rules and procedures related to the rights and distribution of inheritance in detail and complete.¹

However, there are still many inheritance issues that require the role of mujtahids to solve all problems that have no evidence (*nashnya*). So that *ijtihad* products appear in the context of solutions to solve these inheritance problems. One of them is related to the way of receiving inheritance through *radd*.²

In language, *radd* means *i'âdah*, and it can also mean *sharf*, as it is said: *Radda 'anhu kaida 'adumwih*.³ That is the return of the remaining property (more) because it is not distributed to the *dzawil furûdh*.⁴

According to the majority group, (as the opinion of Ali bin Abi Talib) who are entitled to receive the additional remainder, only *dzawil furûdh nasabiyah*. However, this fact is no longer applied to the article of inheritance in Book II of the Compilation of Islamic Law (KHI) in Indonesia, which is sought to be a guideline for each Religious Court when resolving inheritance cases in the community.⁵

On this basis, the provisions of "Indonesian-style" inheritance *fiqh* seem to have changed over time from the provisions that existed a dozen centuries ago. The husband or wife as a *sababiyah* heir is also entitled to the additional remainder. Because Uthman's theory, which was previously only based on logical arguments, has been adopted in the provisions of article 193 of the Compilation of Islamic Law (KHI).⁶

"If the division of the inheritance among the *Dzawil furud* heirs shows that the numerator is smaller than the denominator, and there are no *asabah* heirs, then the division of the inheritance is done radically, that is, according to the rights of each heir, while the rest is divided equally among them."

Two legal products that have been issued by the Religious Courts in Indonesia are concrete evidence of the application of *radd* inheritance cases as the theory of Uthman.

¹ Muhammad Ali Ash Shabuny, *Al-Mawârits fi al-Syar'at' al-Islâmiyyah fi-Dhawi al-Kitâb wa al-Sunnah* (Dar al-Kutub al-Islamiyyah, 2010), 14.

² Akhmad Wafi dkk., "Reaktualisasi Persyaratan Perempuan Menjadi Saksi Perkara Perdata Dalam Fikih Klasik Dan Korelasinya Pada Hukum Modern," *JOURNAL OF ISLAMIC AND LAW STUDIES* 7, no. 2 (27 November 2023): 186–206, <https://doi.org/10.18592/jils.v7i2.11550>.

³ Sayyid Sâbiq, *Fiqh al-Sunnah*, 3 ed. (Beirut: al-Maktabah al-'Ashriyyah, 2012), 318.

⁴ Tengku Muhammad Hasbi Al Shiddieqy, *Fiqh Mawaris Hukum Pembagian Warisan Menurut Syariat Islam* (Semarang: PT. Pustaka Rizki Putra, 2010), 193.

⁵ Salmudin- Salmudin, Firman Muntaqo, dan KN Sopyan Hasan, "Tunggu Tubang as a Method for Peaceful Inheritance Distribution of Semende Indigenous Peoples/Tunggu Tubang Sebagai Metode Pembagian Harta Waris secara Damai Masyarakat Adat Semende," *De Jure: Jurnal Hukum dan Syar'iah* 13, no. 1 (28 Juli 2021), <https://doi.org/10.18860/j-fsh.v13i1.11028>.

⁶ Tarmizi M. Jakfar, Boihaqi bin Adnan, dan M. Andreansyah Sitorus, "The Main Prayer Place for Women According to Hadith: Method Analysis al-Jam'u Wa al-Tawfiq with Islamic Family Law Approach," *Samarah: Jurnal Hukum Keluarga Dan Hukum Islam* 8, no. 1 (31 Januari 2024): 172, <https://doi.org/10.22373/sjhc.v8i1.13974>.

That is, by giving the "remaining more" of the inheritance to one of the husband and wife who live the longest.⁷

A copy of the stipulation issued by PA. Sampang; in the ruling part, the judges have determined that the heirs who are entitled to receive part of the inheritance are the wife and two daughters of the testator only. While the sister is seen as a person who is *mahjûb* (*terhijab hirmân*) by the testator's daughter. Therefore, there is excess property which is then returned to the **wife** and daughters of the testator in balance.⁸

Likewise, the decision of the Tanjung Religious Court (South Kalimantan) states:

"Based on the provisions of Article 178 paragraph (1) jis Article 179 and Article 193 of the Compilation of Islamic Law that the mother's share if there are no children or two or more siblings, then she gets a third part. The widower gets half the share, if the testator does not leave children, and if the division of the inheritance among the Dzawil furud heirs shows that the numerator is smaller than the denominator, while there are no asabah heirs, then the division of the inheritance is carried out rad, In the event that the numerator is smaller than the denominator, and there are no asabah heirs, then the distribution of the inheritance is done by rad, i.e. according to the rights of each heir, while the remainder is divided equally between them, then the respective shares are: the plaintiff as the mother gets $1/3 = 2/6$, while the defendant as the widower gets $1/2 = 3/6$, the remaining $1/6$ is divided into $1/12$, then the mother's share after *radd* becomes $5/12$ and the **widower's share** after *radd* becomes $7/12$."⁹

Referring to the two legal products, there are two facts that are different from the provisions of *farâidh*. Namely, the heir's daughter can *veil* the inheritance of brothers, and Uthman's theory has been adopted in the context of resolving the case of "radd", namely the existence of "excess residue of inheritance." However, the operational method of calculating the settlement of the case here does not seem to be in accordance with what was intended by Uthman's theory with the concept of distributing the "remaining surplus" in a balanced manner. Because the *radd* (excess) of $1/6$ is divided by two directly into $1/12$. Whereas it should be divided based on the *faridh* of each heir proportionally.¹⁰

In many perspectives, this theory is seen as fairer. Especially for the husband or wife who are directly related to the case of the remaining excess inheritance. According to the author, the selection of this theory as a method of resolving the case of the remainder of the inheritance, has at least considered several thoughts that have been noted related to this *radd* inheritance case.

First, in Indonesia (in practice), the husband / wife in addition to getting a share of inheritance as *dzawîl furûdh*, they also get a share of the joint property (before). *Second*, the husband/wife together with *dzawîl furûdh nasabiyah* in one case structure, both are heirs in one family bond (clump).¹¹

In other words, in the practice that occurs in Indonesian society, when the breakup of marriage either due to death or "divorce alive," the husband or wife (first) will get a share of one-half ($1/2$) on behalf of joint property. After that they will get the right / share of inheritance determined by *farâidh*, then does he also have to get more from the "remaining more" of the inheritance in the case of *radd*?

⁷ Anugrah Reskiani dkk., "Reform Methods of Islamic Inheritance Law in Indonesia in Jurisprudence," *JURIS (Jurnal Ilmiah Syariah)* 21, no. 1 (9 Juni 2022): 39, <https://doi.org/10.31958/juris.v21i1.5564>.

⁸ Copy of Sampang Religious Determination, 21.

⁹ Copy of Judgment of the Religious Court of Tanjung, 26.

¹⁰ Muhammad Yusron, "Penalaran Rasional dan Masalah: Ijtihad Umar ibn al-Khattab pada Kasus-Kasus Kewarisan Islam," *Journal of Islamic Law* 2, no. 2 (5 Agustus 2021): 197, <https://doi.org/10.24260/jil.v2i2.327>.

¹¹ Akhmad Kamil Rizani, "Musyawarah Sebagai Alternatif Penyelesaian Sengketa Waris Beda Agama: Avidence Based Solution From Indonesia," *El-Mashlahab* 10, no. 2 (30 Desember 2020): 52, <https://doi.org/10.23971/maslahah.v10i2.2063>.

Nasabiyah and *sababiyah* heirs (such as the husband and wife of the testator) when inheriting together in one case, are people who are within the scope of one family. So that the husband or wife of the testator is also the closest person to the testator (not *veiled*, must be able to share).¹²

The study of this problem becomes something interesting and has novelty when seen in the context of different discussions. That is in the form of stipulations and decisions of judges in two Religious Courts (PA) as the object. Because the results will also reveal many perspectives with each argument or reason, and the judge's legal considerations that are the background for the application of the *radd* case settlement method as Uthman's theory.¹³

Literature review of several previous studies; The discussion of *radd* is only in the context of the issue of daughters who can *veil* the heir's siblings (when connected with the results of the Sampang Religious Court (PA) determination. On this basis, the paper then highlights again, that in the Stipulation there has been a case of *radd inheritance*, and the remaining more inheritance property (*radd*) is also given to the wife of the testator.

Although the author confirmed this with three judges at the Banjarmasin Religious Court (PA), it was only in the context of whether or not they agreed with the statement that *radd* is also given to the husband/wife of the heir. There is no reason for the judges' consideration.¹⁴

The findings shown here are clearly different from the research that the research team has conducted. That is, it focuses on legal products (stipulations and decisions) that have been issued by the Religious Courts that already have binding legal force. In addition, this normative study is combined with information from several relevant sources such as judges, lawyers, and heirs (related to the case). Including a review of several perspectives; Sociological, psychological, and aspects of justice.¹⁵

So that this research relates to "novelty" in terms of the formal object of research. Moreover, document review in the form of copies of decisions and decisions from the two Religious Courts (PA) is correlated with various approaches. The combination of information in question, at the same time, will also distinguish this paper from previous studies that both made the Judge's decision as an object. Such as Judge Decisions Related to Radd Issues in Religious Courts in North Sumatra. Or an article about the Radd inheritance share for the second wife according to the prevailing Islamic inheritance law in Indonesia (Case Study; Religious Court Decisions).¹⁶

¹² Diana Zuhroh, "Konsep Ahli Waris dan Ahli Waris Pengganti: Studi Putusan Hakim Pengadilan Agama," *Al-Abkam* 27, no. 1 (30 April 2017): 43, <https://doi.org/10.21580/ahkam.2017.27.1.1051>.

¹³ Ahmad Rajafi, "Kewarisan Produktif (Meramu Makna Adil Melalui Waris Produktif)," *Al-Risalah: Forum Kajian Hukum Dan Sosial Masyarakat* 16, no. 02 (2016): 303, <https://doi.org/10.30631/alrisalah.v16i02.313>.

¹⁴ Euis Nurlaelawati, "Menuju Kesetaraan Dalam Aturan Kewarisan Islam Indonesia: Kedudukan Anak Perempuan versus Saudara Kandung," *Jurnal Indo-Islamika* 2, no. 1 (2012): 75–90, <https://doi.org/10.15408/idi.v2i1.1653>; Agustina Kumala Dewi, "Ahli Waris Penerima Radd Dalam Perspektif Fiqih Mawaris (Farâidh) dan Kompilasi Hukum Islam," *Bilancia* 10, no. 2 (2016): 172–216; Maryati Bachtiar, "Hukum Waris Islam Dipandang Dari Perspektif Hukum Berkeadilan Gender," *Jurnal Ilmu Hukum* 3, no. 1 (8 Maret 2013), <https://doi.org/10.30652/jih.v3i01.1026>; Latifah Ratnawaty, "Pelaksanaan Konsep Al Radd Dalam Pembagian Waris Berdasarkan Hukum Waris Islam," *Yustisi* 5, no. 1 (2018): 57–69, <https://doi.org/10.32832/yustisi.v5i1.4412>; Lia Murlisa, "Ahli Waris Penerima Radd Menurut Kompilasi Hukum Islam Pasal 193 Dan Relevansinya Dengan Sosial Masyarakat," *Jurnal Ilmiah Islam Futura* 14, no. 2 (1 Februari 2015): 281–97, <https://doi.org/10.22373/jiif.v14i2.334>.

¹⁵ Sri Astuti A. Samad, "Kajian Hukum Keluarga Islam Dalam Perspektif Sosiologis Di Indonesia," *El-Ushrah: Jurnal Hukum Keluarga* 4, no. 1 (23 Juni 2021): 138, <https://doi.org/10.22373/ujhk.v4i1.9899>.

¹⁶ Ali Muhtarom dan Yuli Sutoto Nugroho, "Grants as a Model of Inheritance Prospective Distribution in the Coastal Santri Community," *Al-Abkam* 32, no. 2 (30 Oktober 2022): 169, <https://doi.org/10.21580/ahkam.2022.32.2.12557>.

Because in the theory of Islamic inheritance law (*farâidh*) which is associated with these various aspects, this problem will be something that is very contributive in relation to the assessment of the effectiveness of an Islamic inheritance law norm *farâidh* in society, which has been seen by many opinions (circles) as something *qath'iyu al-dilâlah*.

People as "justice seekers and law enforcers" are often faced with rigid normative understanding. When there is a shift in *farâidh* (Islamic inheritance law), this problem is often understood as something that is contrary to the law that has become *ijma' ulama*. Stipulations and decisions as legal products that have been issued should be applied, but in practice, they are often not used as guidelines in resolving cases of division of inheritance that have more residue (*radd*).¹⁷

In this context, this research focuses on copies of Stipulations and Decisions that have been issued by two Religious Courts, namely the Sampang and Tanjung Religious Courts. The legal considerations and rulings of these two courts regarding *radd* inheritance cases are at the center of attention. Religious Courts are often based on legal certainty through a formal legalistic approach in accordance with the provisions of the law. However, in law enforcement, judges must also consider the community's sense of justice. Judges in making decisions do not only refer to the law, because it is possible that the law does not clearly regulate, so judges are required to be able to explore legal values such as customary law and unwritten laws that live in society.

In addition, the reasons or arguments of the judges of the Sampang and Tanjung Religious Courts related to the husband or wife in *radd* inheritance cases are also of concern. Judges have a strategic role in answering contemporary and empirical problems, including in *radd* inheritance cases. Judges can use progressive legal methods to provide solutions to problems that cannot be answered by the Compilation of Islamic Law or the applicable national law. In some cases, judges can deviate from legislation (*contra legem*) to achieve ideal justice for the community.

METHOD

The analysis of the determination and decision of the Sampang and Tanjung Religious Courts (PA) on *radd* against the husband and wife of the heir, is descriptive research that is not intended to test certain hypotheses. In accordance with the theme of the paper, this normative legal research method makes the legal products of two Religious Courts in Indonesia as primary legal material.

To see the correlation, comments on the court's decision from a number of parties related to this *radd* case, such as: Judges,¹⁸ Lawyers, Sociologists, Psychologists, and Spouses of heirs (*sababiyah* heirs) as a sample of cases, are also an important part to know, in addition to other secondary sources of material, such as research reports or related legal journals.

The decision of the Sampang and Tanjung Religious Courts (PA) is related to the issue of inheritance law that gives the remaining inheritance to the husband or wife of the heir. Whereas so far in the concept of *faraidh*, the issue is not a solution (ways of solving) that is guided. Because it does not come from the opinion of the majority group as the opinion of Ali bin Abi Talib.

¹⁷ Miftahul Huda, Niswatul Hidayati, dan Khairil Umami, "Fiqh And Custom Negotiation In Inheritance Dispute Tradition At Mataraman Society, East Java," *AL-IHKAM: Jurnal Hukum & Pranata Sosial* 15, no. 2 (29 Desember 2020): 224, <https://doi.org/10.19105/al-lhkam.v15i2.3787>.

¹⁸ Meray Hendrik Mezak, *Jenis, Metode dan Pendekatan Dalam Penelitian Hukum* (Law Review: Fakultas Hukum Universitas Pelita Harapan, 2006), 88.

This is worth investigating, because in the practice of applying the law, Uthman's theory has been used as a method of resolving *radd* cases which has been clearly accommodated through article 193 of the Compilation of Islamic Law (KHI) in Indonesia. In another sense, this fact shows that there is something different from the theoretically written law.¹⁹

The method used is a qualitative (positivistic) method or also called the artistic method. Because the research process is more artistic / less patterned). Or it can also be called an *interpretive* method because what is the result of research here is more related to the interpretation of primary legal material found in two legal products in the form of Determinations and Religious Court Decisions.²⁰

Research legal materials are collected through literature survey techniques and literature studies on primary legal sources. Namely the stipulations and decisions of the Sampang and Tanjung Religious Courts. Comments from a number of informants were obtained through an "open ended question" interview technique. This is intended so that the subjects can freely express their opinions/thoughts related to applied law that has not been widely understood by the public.

Procedures or ways of presenting and interpreting legal materials here, using editing techniques (when all legal materials are collected). Then classification is carried out on the part of legal material related to *radd* given to the husband or wife of the heir as mentioned in the legal products in the two Sampang and Tanjung Religious Courts.

The legal considerations and rulings, as well as the reasons or arguments of the panel of judges regarding *radd* inheritance cases were studied carefully. Especially with regard to the remainder given to *sababiyah* heirs such as the husband and or wife of the testator. Because this study has never been found in a number of previous studies.

The item that becomes the formulation of the problem describes the way/method of solving *radd* cases and the ways judges adjudicate them (from two different types of cases, namely applications and lawsuits). So that the analysis of the legal products of the Religious Court is more focused on the material side only. Because there seems to be a problem when Uthman's theory becomes the chosen legal fact.

So far, the concept of *faraidh* has been very strict when providing guidelines for resolving *radd* cases in which there is one of the heir's spouses in the inheritance structure. In order not to let the husband or wife of the heir be carried away in receiving the "remaining more" of the inheritance. Because both of them inherit by marriage, while *radd* is only received by way of the *womb*,

To facilitate interpretation in relation to presentation, all legal materials are then summarized, and then analyzed objectively, by discussing the findings with related theories, to draw an argumentative conclusion.²¹

RESULTS AND DISCUSSIONS

***Radd* in the Stipulations and Decisions of the Sampang and Tanjung Religious Courts**

Based on the results of the author's search related to legal products (stipulations and decisions) of the Religious Court regarding the issue of *radd* "the rest of the more" of the inheritance given to *sababiyah* heirs such as the husband or wife of the heir, there are at

¹⁹ Ahmad Zuhdi Muhdlor, "Perkembangan Metodologi Penelitian Hukum," *Jurnal Hukum Dan Peradilan* 1, no. 2 (31 Juli 2012): 205, <https://doi.org/10.25216/jhp.1.2.2012.189-206>.

²⁰ Sugiyono, *Metode Penelitian Kuantitatif, Kualitatif, dan R & D* (Bandung: CV. Alfabeta, 2017), 7–8.

²¹ Zulfi Diane Zaini, "Implementasi Pendekatan Yuridis Normatif dan Pendekatan Normatif Sosiologis Dalam Penelitian Ilmu Hukum," *Jurnal Pranata Hukum* 6, no. 2 (2011): 117–32.

least two legal products that have been issued by the Religious Court (PA) in the jurisdiction of Indonesia. Namely:

1. Determination of the Sampang Religious Court (PA), with Case Register Number: 415/Pdt.P/2011/PA. Spg.

Regarding the *positives*, that at the core of this case, the petitioners have filed a Determination of Heirs (PAW). A wife and two daughters of the testator, filed this application on the basis of the existence of inherited property, namely a plot of land with an area of 220 M2 with Taxpayer Number (NWP) 1254a Persil Number 8 located in Dalpenang Village, Sampang Subdistrict, Sampang Regency with its boundaries.²²

As for the *petition*, among other things, it relates to the determination of the heirs and their respective shares (rights). On the basis of the petition, the Religious Court, in its reasoning, stated:

ABOUT THE LAW

There are 18 considerations of the Panel of Judges that precede the consideration (19) of the determination of each heir's share which is part of the *petition* (number 3) of the petitioners' letter. (See pp. 12-19 of the copy of the decision of PA. Sampang). The panel of judges then determined the share of each heir:

1. The widow/wife of a testator gets 1/8 of the inheritance because the testator leaves children, based on Article 180 of the Compilation of Islamic Law, as well as the *text* in the Qur'an surat al-Nisa verse (12).
2. The biological daughter of two joint heirs received 2/3 of the share based on Article 176 of the Compilation of Islamic Law (KHI), as well as the text of al-Qur'an Surah al-Nisa verse 11. (In the copy of the PA Stipulation, the text of the verse is written with its respective translation).

Based on these considerations, the PA Judge. Sampang, has determined the formulation of the division as follows: (Regarding the rights of the heirs here, the author converts the description by adding an explanation through the inheritance table).

Table 1. Methods of Settlement of *Radd* Inheritance Cases

No	Heirs	<i>Furudh</i>	<i>Ashal Problem = 24</i>
1	Wife	1/8	$1/8 \times 24 = 3$ shares
2	Two daughters	2/3	$2/3 \times 24 = 16$ shares
Total			19 shares Remaining surplus = 5 shares

Considering that since the *original issue* of 24 shares after deducting the total number of *furudbul muqaddarah* of 19 shares, there is a difference/remainder of 5 shares, then a "rad" division must be made by reducing the *original issue* to 19 shares, so that the division formulation is as follows:

²² Liza Diniarizky Putri dkk., "Developing Ecological Piety in Pesantren: The Kyai's Cognition and the Practice of Living Fiqh al-Bī'ah in Banten," *Ijtihad: Jurnal Wacana Hukum Islam Dan Kemanusiaan* 23, no. 2 (2023): 235, <https://doi.org/10.18326/ijtihad.v23i2.235-259>.

Table 2. Settlement of cases of wife's inheritance receiving *Radd*

No	Heirs	<i>Furudh</i>	<i>Ashal Problem = 24</i>
1	Wife (Applicant I)	1/8	3 shares = 3/19 x inheritance
2	Two biological daughters of the testator (Applicant II and Applicant III)	2/3 unionized	16 shares = 16/19 x inheritance so that Applicant II and Applicant III each received 8 shares.

Considering and paying attention to all applicable laws and regulations and *Shari'i law* relating to this case.

ESTABLISH

1. One of the points was to determine the heirs (in this case) as: Wife (Applicant I), Daughters (Applicants II and III).
2. Determining before the faraidization, $\frac{1}{2}$ of the entire estate as joint property which is the share of Petitioner I (the testator's wife) and the other $\frac{1}{2}$ as inheritance property to which the heirs are entitled.
3. Determine the share of each heir as follows: Wife $\frac{1}{8}$ share = 3 shares, two daughters jointly in $\frac{2}{3}$ share = 16 shares.
(This Stipulation was made in Sampang, on Monday, October 7, 2011, coinciding with 19 Zulkaidah 1432 AH).

2. Decision of the Tanjung Religious Court (PA), with Case Register Number: 442/Pdt.G/2019/PA.Tjg.

It can be explained that the mother of the testator has sued the deceased's husband who has full control of the joint property. Whereas during his lifetime, the testator still had unpaid debts of Rp. 53,800,000 including to the mother/plaintiff in this case.²³

The petitum of this lawsuit requires the plaintiff to request the determination of joint and several property and its distribution in accordance with Islamic law. In addition, the plaintiff also requested that the decision be implemented immediately even though the defendant made legal efforts such as *verzet*, appeal, and cassation. The plaintiff requested that the Panel of Judges give a decision (among others):

1. Declare that the joint property during the marriage of the husband and wife of the heir and the respondent is valid, and the property is also an inheritance that is distributed in accordance with Islamic inheritance law.
2. Sentencing the respondent to divide and hand over half of the joint property to the plaintiff in accordance with Islamic law. (See a copy of the decision of the Tanjung Religious Court, pp. 4-6, which contains 9 points of the plaintiff's claim).

In the legal considerations section; the copy of the Tanjung Religious Court (PA) Decision has mentioned as many as 30 points of consideration before then adjudicating.

²³ Details of the amount are in the copy of the Decision of the Tanjung Religious Court, 3.

(See copy of the Tanjung Religious Court Decision, pp. 18-26.)²⁴ Among those related to the material side (the issue of inheritance) are:

1. This case falls within the field of inheritance, and the subject matter of this case is that the plaintiff is claiming his rights or share of the *tirkah* of his daughter who is the heir.
2. The defendant is the legal husband of the testator, and the plaintiff is the biological mother.
3. Property acquired during marriage becomes joint property.
4. Based on the provisions of article 97 KHI: Widows / widowers divorce each entitled to one-half of the joint property as long as not specified otherwise in the marriage agreement.
5. Article 171 letter (c), and article 174 KHI concerning the entitled heirs, and the group of heirs including the widow/widower of the testator.
6. The judges may determine that half of the testator's assets and debts are *tirkah*, and that the heirs are the testator's mother and husband.
7. Based on the provisions of Article 178 paragraph (1) jis Article 178 and Article 193 KHI, that the mother's share is $1/3$, while the widower $1/2$ part. As for the case of **radd**, the excess remainder is distributed equally between them, so that the mother's share is $1/3 = 2/6$, while the husband / widower $1/2 = 3/6$. The remaining $1/6$ is divided into $1/12$, so the mother's share after *radd* becomes $5/12$ shares and the widower's share after *radd* becomes $7/12$ shares.
8. Since there is a difference/remainder of 1 share from the *original issue* 6, a "rad" division must be made by dividing in half directly to the husband and mother of the testator, i.e. $1/6 : 2 = 1/12$. The *ashal of the problem* is then changed to the number 12. So the division formulation is as follows:

Table 3. Settlement of Husband's inheritance case Gets Radd

N o.	Heirs	<i>Furudh</i>	<i>Ashal Problem = 6</i>
1	Husband	$1/2$	$1/2 \times 6 = 3 \text{ shares} = 6/12 + 1/12$
2	Mom	$1/3$	$1/3 \times 6 = 2 \text{ shares} = 4/12 + 1/12$
Total			5 shares* Remaining over 1 share
*One share is given to the husband and mother of the heir by direct division, i.e. each gets $1/12$. The remainder (<i>radd</i>) is added to the husband ($6/12 + 1/12 = 7/12$), and the mother ($4/12 + 1/12 = 5/12$). Total ($7/12 + 5/12 = 12/12$).			

Adjudicate:

1. Determining that the Defendant gets half of the joint property, and half of the joint property is the heir's *tirkah*, after taking part of the joint property, the costs to pay off the joint debt of the heir and the defendant.

²⁴ See copy of the Judgment of the Tanjung Religious Court, 18-26.

2. To order the parties (plaintiff and defendant) to distribute the testator's *estate*, respectively to the plaintiff 5/12 shares and to the defendant 7/12 shares.

Discussion

In accordance with the legal products that have been issued by the two Religious Courts (Sampang and Tanjung) are Determinations and Decisions, then in formal law it can be understood, that the type of case is a petition and lawsuit (in which there is an element of dispute).

To more clearly see the differences between the two, below can be illustrated as the following table:

Table 4. Sample of *Radd* Cases Against the Wife and Husband of the Heir.

No	Case type	Products/ PA.	<i>Radd is given to</i>
1.	Application	Determination/ PA. Sampang	Wife and two daughters, with the formulation of 3 and 16 parts. So that the <i>ashâl masâlah</i> changes to 19, from the initial <i>KPK / KPT of 24</i> (because the inheritance <i>fardh is 1/8 and 2/3</i>).
2.	Lawsuit	Verdict. PA. Cape	Husband and mother of the heir, with the formulation of 3 and 2 parts. So that the <i>ashâl masâlah</i> should change to 5 * from the initial <i>KPK 6</i> (because the inheritance <i>fardh is 1/2 and 1/3</i>).

*However, according to the author, there is an error when it is written that the *ashâl masâlah* remains with the initial *KPK (6)*, and there is a *radd of 1/6* which is immediately divided by two. So that it is written that each heir gets an additional 1/12th of the residue. Whereas the "remaining more inheritance" (after being resolved according to the provisions of *furûdbul muqaddarab*) should be given to the heirs proportionally (according to the *fardh of each heir*). That is $1/2 : 1/3 = 3 : 2$. So $3/5 \times 1/6$ and $2/5 \times 1/6 = 3/30$ versus $2/30$. $5/30 = 1/6$ part (*raddnya*). The total gain of the husband is $(1/2 = 3/6 = 15/30 + 3/30 = 18/30)$. While the mother's share becomes $(1/3 = 2/6 = 10/30 + 2/30 = 12/30)$. $18/30 + 12/30 = 30/30$.

It is understandable that this method of resolving *radd* cases by way of calculation seems a little "difficult". So if you are not careful, it is very possible that there will be an error (as in the copy of the decision of the Tanjung Religious Court above).

The settlement of the *radd* case as contained in the copy of the PA Decision does not result in the addition of a balanced remainder among the heirs in the structure of the case. This is because it can be understood that 7/12 and 5/12 (as shown in Table 3 above) already represent a balanced gain between the heirs of the husband and mother whose original *furudh is 1/2 versus 1/3 (3 : 2 = 5)*.

If the *ashal problem* is 12, it should be (7.2 : 4.8). This means that the application of Uthman's theory in the settlement of *radd* cases in the Tanjung Religious Court (PA) is still not in accordance with the operational method of resolving *radd* cases.

Operationally, the method of calculating *radd* cases according to Uthman's theory can be resolved in three ways. All three are ways of resolving the '*aul case*', which is the opposite of the *radd* case. Because in terminology, this *radd* is the opposite of the case of '*aul*' (see Muhammad Yusuf Musa, p. 319). One of them is *far'idhab al-qâshirah*, when (*basth*) is smaller than *maqâm*.²⁵

As for what relates to the Sampang Religious Court Determination, because the method of resolution uses the first method of the '*aul case*', the risk of error can be minimized. As in that case, *ashal problem* 19 is used as a new *ashal problem* number. So that each heir has received an additional remainder in a balanced manner. Although in this case, there was a brother of the heir, but he was *ignored* (in the sitting of the case; as Witness I, see copy of the Stipulation of the Sampang Religious Court, p.7).

In the rulings and decisions of the two Religious Courts (Sampang and Tanjung) above, they have determined and adjudicated regarding the division of joint property with a percentage of one-half, with the sentence "before *faraidkan* ... the inheritance is divided in half first" for the longest-living married couple.

This proves that in Indonesian positive law, the spouse of the heir, in addition to getting one-twelfth of the joint property, they also get an additional share of the remaining more inheritance through *radd*. Whereas in the structure of the case, there are still heirs who should also be considered to obtain their inheritance rights.²⁶

As in the case in PA. Sampang; the brother of the testator, who acted as witness I at the trial, was the younger brother/uncle of the testator's daughter, but did not receive any share because he was *stunned* (copy of the Stipulation, p.7).

Unlike the case in PA. Tanjung, although there was no *ashbobah* in this case except the testator's uncle (the mother's brother, called *Khal* in *faraidh* terms), the remaining inheritance was also given to the husband. Because it was argued in Article 193 KHI (see copy of Decision, p. 26).

Yet in the context of this case, Ali's opinion (the majority group) should be considered to be applied. Because the mother of the testator, is the only *nasabiyah* inheritance that is very instrumental towards the testator, starting from the problem of her giving receivables to the testator, even until the time of this lawsuit she filed, because the inheritance was controlled by the testator's ex-husband. But the facts in court, Uthman's theory is precisely the chosen method of settlement.

There is no legal reason for the application of Uthman's theory in the context of case settlement by the two courts, except to refer to article (193) of the Compilation of Islamic Law by the Tanjung Religious Court (PA). Meanwhile, the Sampang Religious Court did not include the argument at all.

This is understandable, because Uthman's theory is based solely on logic. According to this theory, it is only fair that in the case of excess inheritance; the husband/wife is also entitled to an additional remainder. Because in the case of '*aul*', the husband or wife is also reduced.

In line with this, comments from some parties in relation to *radd* cases that give the "remainder" of the inheritance to the husband or wife of the testator also seem to be argued on logical grounds only. As stated by several Religious Court judges.

²⁵ Eko Budiono dkk., "Analyzing the Legal Framework of Substitute Heirs in Islamic Inheritance Cases: DKI Jakarta High Religious Courts Perspective," *Syariah: Jurnal Hukum Dan Pemikiran* 23, no. 2 (2023): 281, <https://doi.org/10.18592/sjhp.v23i2.12545>.

²⁶ Akhmad Sukris Sarmadi, "Ahli Waris Pengganti Pasal 185 KHI Dalam Perspektif Maqasid Al-Syari'ah," *Al-Manahij: Jurnal Kajian Hukum Islam* 7, no. 1 (2013): 65, <https://doi.org/10.24090/mnh.v7i1.577>.

They agree that article 193 KHI is a method of resolving *radd*, and is part of the source of law that continues to be guided as long as there is no or no change. Either in the form of corrections, or because of the latest rules that regulate otherwise.

In other contexts, this method of resolution can be deviated from according to the situation, conditions and place of the problem. That is by paying attention to the most influential *madzhab*, and used as a legal reference (guideline) by the local community.

Another opinion, heirs such as the husband / wife of the testator, they remain and are still entitled to a share of the "remaining excess property". Because sociologically, the property left by one of the spouses, is the property of the results of their efforts, and the hard work (livelihood) of both of them when they were alive. So it is natural (appropriate) if they then get back the *radd*.

As for the issue of the *veiling of the* brother by the heir's daughter as in the PA decision. Sampang above, perhaps the problem will be different if the inheritance case is filed through a lawsuit. Because the brother of the heir will certainly be the plaintiff who will argue that he is also entitled to inherit with his brother's daughter.

However, what can be underlined in this regard is that the sociological reality in Indonesian society is different from Arab society. Brothers sometimes do not have a sense of "brotherly" sensitivity so that the heir's daughter (niece) does not feel protected, helped and defended for her rights when her parents have passed away.

Therefore, through the facts of the trial, the panel of judges may consider whether or not to apply the legal source of the Supreme Court's jurisprudence that makes this brother *veiled* by the heir's daughter. Because usually, this brother (uncle/aunt) is also presented to be heard and asked for information regarding whether or not he wants to be given a share of the inheritance as *ashobah*.

The panel of judges in charge of examining, *adjudicating* and deciding cases in this civil field, has the authority to apply methods that are appropriate and suitable for the settlement of inheritance cases including this residue, by taking into account various aspects. Either analysis based on normative perspectives, or sociological considerations.

Psychologically, the judges have also argued on aspects of the behavior, thoughts, and mental processes of the litigants during the trial process. All of this is of course a fact of the case to be used as part of the consideration of the judges in the process of making a decision or determination (Wilhelm Wundt; psychology is an experience that arises in humans, such as feelings, thoughts or ideas, and the will.

Therefore, based on the principle and sense of justice, the practice of the remainder of the inheritance given to one of the husband or wife of the testator is appropriate, as long as they do not have a legal obstacle to inherit, such as *mammū'* or *mabrūm* caused by one of the characteristics that nullify their rights as heirs.

In another context, when inheritance cases including *radd* are being handled by judges, many things must indeed be considered regarding the stipulation or decision that will later be issued as a legal product for this petition and lawsuit. For this reason, whether the surplus will be given to the husband/wife together with the children, or only to the children or only to the husband/wife, must certainly be preceded by a wise perspective to be able to interpret the facts of the case in the community, and be faced with them.

Sociologically (as per August Comte's theory), the Judge seeks to understand and study the phenomena that exist in society based on traditional logical analysis. However, logically related to the reality of the case, whether the "remaining more" of the inheritance will be given to people who are deserving / appropriate to receive it, then of course adjusting to the existing reality on a case-by-case basis.

Therefore, various perspectives such as *maqāshid al-syarī'ah*, and or sociological aspects, become the main arguments or considerations to then convey to a conclusion of

the judges in the form of a more just decision or determination. Because it cannot be denied that the people who come to the Court, in essence, are "people seeking justice."

In the case of *radd*, it may not be necessary to choose between 'Ali's opinion or 'Uthman's theory as the method of settlement. Because both of them both have the value of feasibility and appropriateness and justice, then both can be considered. Because whether *nasabiyah* heirs or *sababiyah* heirs such as husbands/wives who get additional residue, all of them belong to the inheritance group that is closer in relationship, degree, and strength of kinship to the testator.

However, in many perspectives, the sociological side may also have to be taken into consideration, because casuistically between the children of the heir and the wife or husband (in this *radd* case), it is not necessarily understood that between them is the child and his mother (if the wife is the heir), or the child and his father (if the husband is the heir).

This is because the heir's child here could be the child of another wife or the child of another husband. So that when juxtaposed in the case, the heir's child becomes a stepchild by the husband or wife of the heir. If this is the case, then the method or method of resolving the return of this excess residue, looks more at the facts in court. Because "benefit" is also the purpose of a legal determination or decision that will be issued.

This opinion, of course, is in accordance or in line with the intentions conveyed by the sociologist (the source of this research). This is because in the view of sociology, David Emile Durkheim states; that the fact that this is the case in society, these married couples in general habits always contribute in their efforts to get an income to fulfill life for their families.

This fact has even become a kind of social institution in the rules or systems that exist in society, that the contribution and involvement of one of these married couples in their efforts to collect family income (economic value) is not in doubt.

Based on this reality, it describes how the reasoning of the community, especially married couples, in the case of their involvement together; participating in having a share in obtaining joint property, which is then left as *tirkah* due to the death of one of the two of them.

Because the object of this paper is related to the issue of whether or not the heir's husband/wife is entitled to receive the remaining portion of the inheritance, the judges of the Religious Court do not seem to have any objections; in the sense of agreeing to adopt Uthman's theory in the context of case settlement. Moreover, this has become part of the existing rules in the provisions of KHI in Indonesia to be used as a source of law (guidelines).

Although this concept is not in accordance with what has been outlined by *far'aidh* so *far*; which makes Ali's opinion as a method of settlement. However, to ensure legal certainty, and stability in the process of determining/deciding the law that has become government policy, the judges will still make Article (193) of the Compilation of Islamic Law as a guideline for resolving *radd* cases.

This fact directly illustrates the method of thinking of a judge, to behave and act with all considerations of benefit, justice and certainty, before arriving at a decision or determination (legal product) that will be used by the community as "law" that must be obeyed and implemented.

The role of judges in their efforts through their trial panels to resolve community inheritance cases is certainly something that is very urgent, because the resulting *ijtihad* will become law. However, the problem is different when the case is resolved only through family deliberation among fellow heirs.

As in the case of Ant. the husband of the heir (2022), personal interview in Banjar, October 4, there are two parts of his inheritance rights to his wife's estate, which are

neglected because the "decision" made in the family meeting has no legal force and certainty that can be *executed*.

The community can only surrender to what has been produced in the family meeting, without being able to fight for their rights related to what is produced by the *fukaha* including the Compilation of Islamic Law (KHI), especially those related to this *radd* inheritance issue.

It is natural then, that a sense of justice in the law is not felt by the community when they only resolve inheritance cases/problems using only *non-litigation* channels. Especially for cases whose forms are not known, and are too well understood by ordinary people such as this *radd* issue.

What has been decided and determined by the judges in the context of *radd* cases that give the "remaining more" of the inheritance to *sababiyah* heirs such as the husband or wife of the testator, of course, has fulfilled and is in harmony and correlated with legal objectives in many perspectives.

As well as from the aspect of justice, Uthman's theory which is used as a method of resolving this *radd case*, seems to be appropriate for others (in this case the heirs in the case structure). Because all *nasabiyah* relatives including *sababiyah* have been given their rights proportionally.

As the theory of justice put forward by Thomas Aquinas; according to him justice (in addition to distributive justice, and legal) is "what is proper for others according to something proportional similarity." In line with this theory, Aristotle has also given the meaning of justice in the form of numerical and proportional equality. That is, giving each person what he is entitled to, according to his abilities and achievements.

In context with this *radd case*, the husband and wife of the testator have the same rights as other *nasabiyah* heirs (such as daughters, or the mother of the testator) to obtain the same rights in receiving the "remaining more" of the inheritance. This is because this marriage partner actually has a major contribution and contribution when collecting joint property.

The husband/wife of the heir as the owner of the property, has shown his ability and achievement in its context with the acquisition of property which then becomes part of the *tirkah/maurûts* at the time of his death. So it is natural and very fair if then they also participate in getting the "remaining more" of the inheritance based on a balanced distribution pattern (proportional), and this should also be applied in the community, even if the inheritance case is not resolved through *litigation*.

Because according to Derrida, justice in law is not solely obtained from sources within the legal order, but (possibly) from something that goes beyond the law itself. According to him, justice does not mean that it must always be in accordance with the law, because that cannot ensure the existence of justice.

Related to this, when Uthman's theory is used as a method of resolving *radd* cases, according to the author, it is not considered as something that has exceeded the law itself. This is because this theory is also part of the sources of law that can be guided in the context of resolving *radd cases*. It's just that in *faraidh* provisions, this theory is not supported by the opinion of the majority/*jumhur* group of *fukaha*).

CONCLUSION

The decisions and stipulations of the Sampang and Tanjung Religious Courts have decided and determined the existence of *radd* inheritance cases in these two legal products. As a matter of consideration, the widow/wife is entitled to 1/8 share, while the two daughters jointly receive 2/3 share. $1/8 + 2/3 = 3/24 + 16/24 = 19/24$, with the

remaining 5/24 being radd to them equally by making issue 19 the *ashal* of the new case.

The same is the case with the husband and mother of the heir in Tanjung. The husband is entitled to $\frac{1}{2}$ and the mother $\frac{1}{3}$. $\frac{1}{2} + \frac{1}{3} = \frac{3}{6} + \frac{2}{6}$, and the radd is $\frac{1}{6}$ divided by two directly ($\frac{1}{12}$).

The arguments or reasons from the judges of the Sampang and Tanjung Religious Courts related to the husband or wife in this radd inheritance case, are based on verse 12 of the Qur'an letter al-Nisa, and several articles of the Compilation of Islamic Law (KHI). Namely articles 179, 180, and 193. Article 193 of KHI is the only article applying cases that give the rest of the inheritance to the husband/wife of the heir.

In accordance with the duties of his position, the judge of the Religious Court has provided a reason (reason), and legal considerations that have been very wise when arguing that the husband/wife of the heir is entitled to receive additional "remaining more" inheritance in the case of radd. Various aspects such as sociological, psychological, justice, and legal certainty, are part of legal considerations that are quite logical (rational).

However, the Judges are still required to be careful and more cautious in operationalizing the calculation method. The alternative of solving the case by using the new *ashâl masâlah* number, seems to be more effective to avoid the risk of error in the application of Uthman bin Affan's theory.

In many perspectives, the husband/wife of the heir is entitled (worthy) to receive radd. But on a casuistic basis, it is possible (considered) to choose the opinion of Ali bin Abi Talib as a method of resolving the case of "remaining more" of the inheritance, because he sees the benefit behind the facts of the case.

REFERENCE

- Abdul Hamid, Muhammad Muhyiddin. *Ahkam al-Mawârits fi al-Syariat al-Islâmiyyah 'Ala Madzâhib al-Aimmah al-Arba'ah*. Dar al-Kitab al-'Araby.
- Abdullah, dan M. Zaid (2022) wawancara pribadi di Banjarmasin, 15 Juni dan 7 April.
- Al Bikaz, Abdul Qadir Mahmud. (2009) *Al-Ahkâm al-Syar'iyah fi al-Ahwâl al-Syakshiyah*. Dar al-Salam Li al-Thaba'ah wa al-Nasyr wa al-Tauzi' wa al-Tarjamah.
- Al Kaff, Hasan bin Ahmad bin Muhammad. (2013) *Al-Taqrîrat al-Sadîdah fi al-Masâil al-Mufîdah, Qism al-Buyu' wa al-Farâidh*. Riyadh: Dar al Mirâts al-Nabawy.
- Al Maky, Hasan Muhammad al Musyath. *Tuhfat al-Saniyahi Ahwal al-Warîtsah al-Arba'iniyyah*, Terj. Muhammad Syukry Unus al Banjary. *Is'af al-Khâidh fi 'Ilmi al Farâidh*. Martapura Kalimantan Selatan: Al Ma'had al-Islamy Dar al-Salam.
- Al Musawy, al-Sayyid Muhsin bin Ali. *Al-Nafhat al-Hasaniyyah 'Ala al-Tukhfah al-Saniyyah fi 'Ilmi al-Farâidh*. Indonesia: Al-Haramain Jaya.
- Al Shiddieqy, Tengku Muhammad Hasbi. (2010) *Fiqh Mawaris Hukum Pembagian Warisan Menurut Syariat Islam*. Semarang: PT. Pustaka Rizki Putra.
- Al Tarimy, Muhammad bin Salim bin Hafizh bin Abdilllah bin al Syaikh Abi Bakr ibn Salim al 'Alawy al Husainy. *Takmilah Zubdat al-Hadîts fi Fiqh al-Mawârits*. Indonesia: Al-Haramain Jaya.
- Ash Shabuny, Muhammad Ali. (2010) *Al-Mawârits fi al-Syarîat' al-Islâmiyyah fi-Dhawi al-Kitâb wa al-Sunnah*, Dar al-Kutub al-Islamiyyah.
- Badan Litbang dan Diklat Kementerian Agama Puslitbang Kehidupan Keagamaan. (2010) *Pelaksanaan Hukum Waris di Kalangan Umat Islam Indonesia*, Jakarta: Puslitbang Kehidupan Keagamaan Badan Litbang dan Diklat Kementerian Agama.
- Bachtiar, Maryati. 'Hukum Waris Islam Dipandang Dari Perspektif Hukum Berkeadilan Gender', Ilmu Hukum: 3 (1).

- Budiono, Eko, Oyo Sunaryo Mukhlas, Mustofa Mustofa, Ending Solehudin, dan Ahmad Hasan Ridwan. "Analyzing the Legal Framework of Substitute Heirs in Islamic Inheritance Cases: DKI Jakarta High Religious Courts Perspective." *Syariah: Jurnal Hukum Dan Pemikiran* 23, no. 2 (2023): 281–99. <https://doi.org/10.18592/sjhp.v23i2.12545>.
- Dewi, Agustina Kumala. "Ahli Waris Penerima Radd Dalam Perspektif Fiqih Mawaris (Farâidh) dan Kompilasi Hukum Islam." *Bilancia* 10, no. 2 (2016): 172–216.
- Ghozali, Fathur Rahman, (2022), wawancara pribadi di Banjarmasin, 12 Agustus.
- Hakim, M. Lutfi. (2016) 'Keadilan Kewarisan Islam Terhadap Bagian Waris 2:1 Antara laki-laki dengan Perempuan Perspektif Filsafat Hukum Islam', Al-Maslahah Ilmu Syariah, IAIN Pontianak, hlm. 1-18.
- Huda, Miftahul, Niswatul Hidayati, dan Khairil Umami. "Fiqh And Custom Negotiation In Inheritance Dispute Tradition At Mataraman Society, East Java." *AL-IHKAM: Jurnal Hukum & Pranata Sosial* 15, no. 2 (29 Desember 2020): 224–50. <https://doi.org/10.19105/al-lhkam.v15i2.3787>.
- Ja'far, A. Kumedi. (2020) *Hukum Keluarga Islam di Indonesia*. Bandar Lampung: Arjasa Pratama.
- Jakfar, Tarmizi M., Boihaqi bin Adnan, dan M. Andreansyah Sitorus. "The Main Prayer Place for Women According to Hadith: Method Analysis al-Jam'u Wa al-Tawfiq with Islamic Family Law Approach." *Samarah: Jurnal Hukum Keluarga Dan Hukum Islam* 8, no. 1 (31 Januari 2024): 172–95. <https://doi.org/10.22373/sjhc.v8i1.13974>.
- Komalasari, Shanty (2022), wawancara pribadi di Banjarmasin, 11 Oktober.
- Komite Fakultas Syariah Universitas al Azhar Mesir. (2000-2001). *Abkâm al-Mawâri'ât fi al-Fiqh al-Islamy*. Mesir, Maktabah al Risalah al Dauliyah. terj. Addys Aldizar dan Fathurrahman. Jakarta: (CV. Kuwais Media Kreasindo) Senayan Abadi Publishing.
- Kumala D.S, Agustina. (2016) 'Ahli Waris Penerima Radd Dalam Perspektif Fiqih Mawaris (Farâidh) dan Kompilasi Hukum Islam', *Bilancia* 10 (2), hlm. 172-216.
- M. Firdaus. (2015) 'Pembaharuan Hukum Waris Islam di Era Kontemporer', *Istinbath: Jurnal Hukum Islam IAIN Mataram*.
- Mezak, Meray Hendrik Mezak. (2006) 'Jenis, Metode dan Pendekatan Dalam Penelitian Hukum', *Law Review: Fakultas Hukum Universitas Pelita Harapan*, V (3), hlm. 85-97.
- Muhdhor, Ahmad Zuhdi. (2012) 'Perkembangan Metodologi Penelitian Hukum', *Jurnal Hukum dan Peradilan*, 1 (2), hlm. 189-206.
- Muhtarom, Ali, dan Yuli Sutoto Nugroho. "Grants as a Model of Inheritance Prospective Distribution in the Coastal Santri Community." *Al-Abkam* 32, no. 2 (30 Oktober 2022): 169–88. <https://doi.org/10.21580/ahkam.2022.32.2.12557>.
- Murlisa, Lia. (2015) 'Ahli Waris Penerima Radd Menurut Kompilasi Hukum Islam dan Relevansinya dengan Sosial Kemasyarakatan', *Futura*, 14 (2), hlm. 281-297.
- Musa, Muh. Yusuf, *Al-Tirkah wa al-Mîrats fi Al-Islam*. Dar al Ma'rifah.
- Nurhayati, Yati. (2021) 'Metodologi Normatif dan Empiris dalam Perspektif Ilmu Hukum', *Jurnal Penegakan Hukum Indonesia (JPHI)*, 2 (Issue 1).
- Nurlaelawati, Euis. (2012) 'Menuju Kesetaraan Dalam Aturan Kewarisan Islam Indonesia: Kedudukan Anak Perempuan Versus Saudara Kandung', *Indo-Islamika* 2, (1), hlm. 75-89.
- Purnanisa, Martina, (2022), wawancara pribadi di Banjarbaru, 27 Mei.
- Putri, Liza Diniarizky, Catur Nugroho, Abdul Malik, dan M. Nastain. "Developing Ecological Piety in Pesantren: The Kyai's Cognition and the Practice of Living Fiqh al-Bī'ah in Banten." *Ijtihad: Jurnal Wacana Hukum Islam Dan Kemanusiaan* 23, no. 2 (2023): 235–59. <https://doi.org/10.18326/ijtihad.v23i2.235-259>.

- Rajafi, Ahmad. "Kewarisan Produktif (Meramu Makna Adil Melalui Waris Produktif)." *Al-Risalah: Forum Kajian Hukum Dan Sosial Kemasyarakatan* 16, no. 02 (2016): 303–14. <https://doi.org/10.30631/alrisalah.v16i02.313>.
- Ratnawaty, Latifah. (2018) 'Pelaksanaan Konsep al Radd dalam Pembagian Waris Berdasarkan Hukum Waris Islam', *Yustisi*, 5 (1), hlm. 57-69.
- Reskiani, Anugrah, Dian Furqani Tenrilawa, Aminuddin Aminuddin, dan Rahman Subha. "Reform Methods of Islamic Inheritance Law in Indonesia in Jurisprudence." *JURIS (Jurnal Ilmiah Syariah)* 21, no. 1 (9 Juni 2022): 39–51. <https://doi.org/10.31958/juris.v21i1.5564>.
- Rizani, Akhmad Kamil. "Musyawarah Sebagai Alternatif Penyelesaian Sengketa Waris Beda Agama: Avidence Based Solution From Indonesia." *El-Masblahah* 10, no. 2 (30 Desember 2020): 52–64. <https://doi.org/10.23971/maslahah.v10i2.2063>.
- Sahli Ali, Muhammad, (2022) wawancara pribadi di Marabahan, 26 Agustus.
- Salihima, Syamsulbahri. (2015) *Perkembangan Pemikiran Pembagian Warisan dalam Hukum Islam dan Implementasinya pada Pengadilan Agama*. Jakarta: Prenadamedia Group.
- Sayyid Sâbiq. (2012) *Fiqh al Sunnah*, jilid 3. Beirut: al-Maktabah al 'Ashriyyah.
- Salmudin, Salmudin-, Firman Muntaqo, dan KN Sopyan Hasan. "Tunggu Tubang as a Method for Peaceful Inheritance Distribution of Semende Indigenous Peoples/Tunggu Tubang Sebagai Metode Pembagian Harta Waris secara Damai Masyarakat Adat Semende." *De Jure: Jurnal Hukum dan Syar'iah* 13, no. 1 (28 Juli 2021). <https://doi.org/10.18860/j-fsh.v13i1.11028>.
- Samad, Sri Astuti A. "Kajian Hukum Keluarga Islam Dalam Perspektif Sosiologis Di Indonesia." *El-Usrah: Jurnal Hukum Keluarga* 4, no. 1 (23 Juni 2021): 138–52. <https://doi.org/10.22373/ujhk.v4i1.9899>.
- Sarmadi, Akhmad Sukris. "Ahli Waris Pengganti Pasal 185 KHI Dalam Perspektif Maqasid Al-Syar'ah." *Al-Manahij: Jurnal Kajian Hukum Islam* 7, no. 1 (2013): 65–76. <https://doi.org/10.24090/mnh.v7i1.577>.
- Shabuny, Muhammad Ali Ash. *Al-Mawârits fi al-Syar'at' al-Islâmiyyah fi-Dhawi al- Kitâb wa al-Sunnah*. Dar al-Kutub al Islamiyyah, 2010.
- Shiddieqy, Tengku Muhammad Hasbi Al. *Fiqh Mawaris Hukum Pembagian Warisan Menurut Syariat Islam*. Semarang: PT. Pustaka Rizki Putra, 2010.
- St. Zubaidah, (2022), wawancara pribadi di Pelaihari, 6 Juni.
- Subhan, (2022), wawancara pribadi di Amuntai, 17 Mei.
- Suhairi. (2012) 'Perdamaian dan Pembagian Harta Warisan (Kritik atas Konsep Qat'iy dalam Hukum Kewarisan Islam)', *Al-Manahij: Jurnal Kajian Hukum Islam* 6, (1), hlm. 157-165.
- Sugiyono. (2017) *Metode Penelitian Kuantitatif, Kualitatif, dan R & D*. Bandung: CV. Alfabeta.
- Suma, Muhammad Amin. (2013) *Keadilan Hukum Waris Islam Dalam Pendekatan Teks dan Konteks*. Jakarta: PT. Rajawali Pers.
- Sumiati, (2022), wawancara pribadi di Banjarmasin, 7 dan 8 Oktober
- Umar, Nasaruddin. (2014) *Ketika Fikih Membela Perempuan*. Jakarta: PT. Elex Media Komputindo Kompas Gramedia.
- Unus al Banjary, Muhammad Syukri, *Is'af al-Khâidh fi 'Ilmi al-Farâidh*, terj. *Al Nafhat al-Hasaniyyah 'ala al-Tukhfat al-Saniyyah fi 'Ilmi al- Farâidh*. Dar al- Syakirin.
- Wafi, Akhmad, Almejiem Aditya Wijaya, Muhammad Noor Ridani, Budi Rahmat Hakim, dan Muhammad Haris. "Reaktualisasi Persyaratan Perempuan Menjadi Saksi Perkara Perdata Dalam Fikih Klasik Dan Korelasinya Pada Hukum Modern." *JOURNAL OF ISLAMIC AND LAW STUDIES* 7, no. 2 (27 November 2023): 186–206. <https://doi.org/10.18592/jils.v7i2.11550>.
- Wahidah. (2014) *Buku Ajar Fikih Waris*. Banjarmasin: IAIN Antasari Press.

- Yusron, Muhammad. "Penalaran Rasional dan Maslahah: Ijtihad Umar ibn al-Khattab pada Kasus-Kasus Kewarisan Islam." *Journal of Islamic Law* 2, no. 2 (5 Agustus 2021): 197–223. <https://doi.org/10.24260/jil.v2i2.327>.
- Zaini, Zulfi Diane. (2011) *Implementasi Pendekatan Yuridis Normatif dan Pendekatan Normatif Sosiologis Dalam Penelitian Ilmu Hukum*, Jurnal Pranata Hukum, 6 (2), hlm. 117-132.
- Zuhroh, Diana. "Konsep Ahli Waris dan Ahli Waris Pengganti: Studi Putusan Hakim Pengadilan Agama." *Al-Ahkam* 27, no. 1 (30 April 2017): 43–58. <https://doi.org/10.21580/ahkam.2017.27.1.1051>.