

When the Eldest Daughter Creating Family Harmony: The Practice of *al-Ma'rūf* within Collective Inheritance Distribution System among the Semende Migrant Community

Ahmad Bahauddin. AM,* Ahmad Rofiq,* Agus Nurhadi,*
Ahmad Luqman Hakim**

* Universitas Islam Negeri Walisongo Semarang, Indonesia

** King Abdul Aziz University, Arab Saudi

Email: 2200029042@student.walisongo.ac.id

Abstract: This article examines the collective inheritance distribution system in the Semende migrant community. This article focuses on two aspects: how the inheritance distribution system works in the Semende migrant community in the Kaur Regency and to what extent this inheritance distribution model creates harmony among family members. The data were obtained from academic works and interviews with community leaders in the field. This article concludes that the inheritance distribution in the Semende migrant community in Bengkulu uses a system called “tunggu tubang,” where the eldest daughter (tunggu tubang) keeps and manages the inherited wealth. Inheritance distribution always emphasizes consensus through deliberation. The inheritance distribution in the Semende tribe with the tunggu tubang system has proven to achieve harmony in both the legal system and among families. The research findings show a concept of *al-ma'rūf* in the inheritance distribution in the Semende migrant community. The idea of *al-ma'rūf* in the inheritance customs of Semende migrants reflects values respected and firmly held by the community. This concept forms the basis for maintaining harmony, preserving cultural identity, and regulating the inheritance process based on mutual agreement.

Keywords: *Inheritance distribution; al-ma'rūf; Semende migrants; Bengkulu*

Abstrak: Artikel ini mengkaji sistem pembagian warisan kolektif pada komunitas Semende migran yang dikelola secara kolektif dan produktif. Kajian dalam artikel ini difokuskan pada dua hal, yakni bagaimana sistem pembagian harta warisan di komunitas Semende migran yang ada di Kabupaten Kaur Provinsi Bengkulu, dan sejauhmana model pembagian warisan tersebut dapat mewujudkan keharmonisan hukum dan keharmonisan di antara anggota keluarga. Data-data dalam artikel ini diperoleh dari literatur ilmiah dan wawancara dengan tokoh masyarakat di komunitas Semende. Menggunakan metode penelitian kualitatif dengan perspektif harmoni

hukum, artikel ini menyimpulkan bahwa pembagian harta warisan pada masyarakat Semende migran di Bengkulu menggunakan sistem yang disebut *tunggu tubang*, di mana harta warisan disimpan dan dikelola oleh anak perempuan tertua (*tunggu tubang*). Pembagian harta warisan selalu mengedepankan musyawarah mufakat. Pembagian harta warisan yang ada di suku semende dengan sistem *tunggu tubang* terbukti dapat mewujudkan keharmonisan baik pada sistem hukum maupun keharmonisan di antara keluarga. Temuan penelitian ini menunjukkan bahwa terdapat bangunan konsep *al-ma'ruf* dalam pembagian warisan pada komunitas Semende migran. Konsep *al-ma'ruf* dalam kewarisan adat Semende migran ini mencerminkan nilai-nilai yang dihormati dan dipegang teguh oleh masyarakat. Konsep ini membentuk dasar untuk menjaga keharmonisan, memelihara identitas budaya, serta mengatur proses kewarisan dengan prinsip kesepakatan bersama.

Kata kunci: *Pembagian harta waris; al-ma'ruf; Semende migran; Bengkulu*

Introduction

The issue of distributing inheritance has emerged as a recurring discourse in societal discussions. This arises due to the substantial influence that the direct allocation of inherited assets exerts on everyday practices and frequently incites disputes among family heirs. Furthermore, Islamic inheritance law faces frequent criticism, particularly from advocates of gender equality. However, Islamic jurists (*fuqahā*) assert that Quranic verses elucidating inheritance distribution unequivocally fall under the classification of *qat'i al-dilalah* (definite evidence), thereby precluding any scope for *ijtihad* (independent reasoning).¹ Therefore, a concept is needed to address societal issues related to the distribution of inherited wealth, ensuring acceptance across all groups and maintaining family harmony.

Traditional inheritance in Indonesia consists of various patterns and characteristics that define the values of conventional Indonesian society. This cultural heritage is rooted in communal culture with a background of concrete thinking.² The institution of

¹ Arip Purkon, "Pembagian Harta Waris Dengan Wasiat (Pendekatan Ushul Fiqih)," *Mizan: Journal of Islamic Law* 2, no. 1 (2018): 47–56, <https://doi.org/10.32507/mizan.v2i1.133>.

² Siah Khosyi'ah and Ayi Yunus Rusyana, "Inheritance Settlement of Descendants of Children and Siblings in Islamic Law with Local Wisdom in

inheritance law is an integral part of community life, especially in customary law societies, as it directly impacts the continuity of the social system within families, relatives, and the community.³ Communities adhering to customary law apply various inheritance systems.⁴ The inheritance law in Indonesia is characterized by its complexity, where three legal systems serve as its sources within the national legal framework: Islamic law, customary law, and Western law.⁵

The customary inheritance law in Indonesia encompasses various kinship systems, including patrilineal, matrilineal, and bilateral or parental. Each of these systems carries its consequences in inheritance distribution, with patrilineal emphasis on male dominance, matrilineal emphasis on the significant role of women, and bilateral or parental emphasis on equality between sons and daughters. Meanwhile, in the context of customary inheritance, there are three types of systems: individual inheritance, collective inheritance, and majorat inheritance. Understanding these principles in developing national inheritance law is a foundational reference that reflects Indonesian society's cultural diversity and values.⁶

Indonesia,” *Cogent Social Sciences* 8, no. 1 (2022), <https://doi.org/10.1080/23311886.2022.2126615>.

³ Soerjono and Soleman B. Taneko Soekanto, *Hukum Adat Indonesia* (Jakarta: Rajawali Press, 1986).

⁴ Hilman Hadikusuma, *Hukum Waris Adat* (Bandung: Alumni, 2003).

⁵ Syaikhu Syaikhu et al., “Legal Harmonization in the Distribution of Inheritance in the Dayak Ngaju Community in Central Kalimantan, Indonesia,” *Samarah* 7, no. 1 (2023): 195–215, <https://doi.org/10.22373/sjhk.v7i1.12410>.

⁶ Soerojo Wignjodipoero, *Pengantar Dan Asas-Asas Hukum Adat* (Jakarta: CV. Haji Mas Agung, 1995). See Khairuddin Hasballah et al., “Patah Titi and Substitute Heirs: A Study of Legal Pluralism on the Inheritance System in Aceh Community,” *Abkam: Jurnal Ilmu Syariah* 21, no. 2 (2021). See Muhammad Jazil Rifqi, “The Superiority of Customary Law over Islamic Law on the Existence of Inheritance,” *Millah*, December 31, 2021, 217–52, <https://doi.org/10.20885/millah.vol21.iss1.art8>. See Ulfiani Rahman et al., “Men and Women in the Distribution of Inheritance in Mandar, West Sulawesi, Indonesia,” *Samarah* 6, no. 1 (2022), <https://doi.org/10.22373/sjhk.v6i1.9094>. See Zainal Arifin Haji Munir, “Analysis of Patterns for Inheritance Dispute Settlement in the Tradition of Sasak Community in Lombok,” *Maḥabib Jurnal Pemikiran Hukum Islam* 20, no. 2 (2021), <https://doi.org/10.21093/mj.v20i2.3774>. See Andre Indrasukma, “Pengelolaan

This research focuses on the customary inheritance of Semende, where the inheritance system within the indigenous community of the Semende Tribe has its distinctive features. In this system, special privileges in wealth distribution are granted to the eldest daughter, who is known as *tunggu tubang*. *Tunggu tubang* plays a central role in preserving the continuity of the family's inherited wealth. In the Semende customary tradition, inheritance follows the maternal lineage, granting daughters the right to receive and care for the inherited wealth. When the parents pass away, all assets are transferred to the eldest daughter, even though these assets cannot be sold. Therefore, *tunggu tubang* becomes a critical element of the survival of the Semende Tribe community. The responsibilities of *tunggu tubang* involve managing and preserving the family's inherited wealth, serving as the primary foundation for community life.⁷

Customary inheritance law is one of the fundamental elements of customary law for developing national inheritance law. One way to identify the elements of customary inheritance law is through field research. The aim is to identify similarities among various systems and principles of customary inheritance law in Indonesia, which can serve as a standard reference and align with national legal awareness.

This paper complements previous studies that have examined the inheritance of the Semende tribe. Syaikhu delves into the rivalry, interaction, or conflicts among various legal systems in the Dayak Ngaju tribe. Syaikhu asserts that harmonizing customary law with national law is a progressive step in maintaining social harmony, avoiding conflicts, and prioritizing broader justice values in the context of the Dayak Ngaju community.⁸ The subsequent research conducted by Sidik Tono presents significant findings regarding the harmonization between Minangkabau customs and Islamic teachings

Harta Pusaka Tinggi Di Minangkabau: Studi Kasus Di Kubang Putih Kecamatan Banuhampu Kabupaten Agam Sumatra Barat,” *Al-Abwal: Jurnal Hukum Keluarga Islam* 14, no. 1 (2021), <https://doi.org/10.14421/ahwal.2021.14108>. See too “3 Sistem Kewarisan Adat: Individual, Kolektif, Dan Mayorat,” accessed January 26, 2024, <https://www.hukumonline.com/berita/a/sistem-kewarisan-adat-lt6302e0a5c7e43/>.

⁷ Azelia Velinda, Wilodati Wilodati, and Aceng Kosasih, “Tunggu tubang dalam Pembagian Harta Warisan Pada Masyarakat Suku Semende,” *SOSIETAS* 7, no. 2 (2018), <https://doi.org/10.17509/sosietas.v7i2.10360>.

⁸ Syaikhu et al., “Legal Harmonization in the Distribution of Inheritance in the Dayak Ngaju Community in Central Kalimantan, Indonesia.”

in inheritance distribution. The approach is taken, dividing the inheritance into high and low-level ancestral properties, reflecting an effort to align the matrilineal principles of Minangkabau customs with the bilateral parental principles in Islamic teachings.⁹

In customary inheritance, research on *tunggu tubang* has also been extensively conducted, including studies carried out by Salmudin.¹⁰ The research results provide a new dimension to understanding the dynamics of inheritance in the Semende tribe. The alignment between customary norms and Islamic law creates an inclusive alternative and highlights the importance of dialogue and understanding within the community to maintain justice and harmony in the context of wealth inheritance.¹¹ Similarly, research conducted by Rohmansyah has explored similar aspects. This research highlights the complexity and diversity of inheritance practices in Semendo Desa Pajar Bulan while also demonstrating efforts to understand and categorize these practices from the perspective of Islamic law. It contributes to a deeper understanding of the dynamics of inheritance traditions in Semendo society and their relevance to Islamic law principles.

In contrast, the research conducted by Arifin regarding the Semende customary inheritance revealed that standard rules grant authority to the eldest daughter (*tunggu tubang*) to manage the family inheritance. However, males often take over this authority in practice, resulting in *tunggu tubang* having control only over the house inheritance. This indicates a decline in the authority of *tunggu tubang* and a shift in dynamics in the governance of Semende customary inheritance, reflecting a mismatch between standard rules and actual practices in

⁹ S Tono, "The Harmonious Relationship between Minangkabau Custom and Islam in the Distribution of Inheritance," *Al-Shajarah* 2019 (2019): 39–55, https://api.elsevier.com/content/abstract/scopus_id/85079488642.

¹⁰ Salmudin - Salmudin, Firman Muntaqo, and 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 (2021), <https://doi.org/10.18860/j-fsh.v13i1.11028>.

¹¹ Salmudin, Muntaqo, and Hasan.

heritage management. This phenomenon needs special attention to preserve the traditions of regular inheritance in Semende society.¹²

Based on the previous literature review, the author attempts to complement earlier studies and propose a concept relevant to Semende customary inheritance to maintain harmony in Semende society. This research is considered essential because the Semende tribe shares similarities with the expected inheritance found in Minangkabau and Dayak Ngaju. Through this study, it is hoped that a broader perspective on harmonious inheritance patterns in various community groups can be identified, contributing to a deeper understanding of customary inheritance practices in Indonesia. Similarities with other groups can also provide a more comprehensive insight into the values and norms embedded in the traditional inheritance system, thereby laying the groundwork for developing more inclusive and just policies.

This research utilizes an empirical qualitative descriptive method, drawing data from the field obtained through interviews with traditional leaders and the Semende community. This approach is employed to draw profound conclusions when addressing the research questions. This article explores the potential for harmonization using the concept of *al-ma'rūf* in the context of the distribution of ancestral wealth in the Semende Migrant community (specifically the Semende community in Bengkulu). The author will discuss the meaning and implications of the *al-ma'rūf* concept in the distribution of ancestral wealth and explore ways to integrate *al-ma'rūf* values with customary inheritance practices. Potential challenges in implementing this harmonization will also be identified, and recommendations will be presented to achieve the stated objectives.

The Meaning of *al-Ma'rūf*

From an etymological perspective, the term *al-ma'rūf* is a form of *isim maf'ul* (a noun indicating the receiver of an action) that indicates understanding, recognition, or acknowledgment and the ability to perceive sharply or recognize differences. *Ma'rūf* is interpreted as something known, recognized, or acknowledged and means

¹² Zainal Arifin, "Harte Dan Tungguan : Redefinisi Adat Tunggu Tubang Pada Komunitas Semende Migran," *Jurnal Masyarakat Dan Budaya* 22, no. 2 (2020): 31–44, <https://doi.org/10.14203/jmb.v22i2.887>.

appropriate and adequate.¹³ The term *al-ma'rūf* is found in the al-Munawwir dictionary, indicating that the word means “virtue” or “goodness.”¹⁴ Similarly, according to Mahmud Yunus in the Arabic-Indonesian dictionary, *ma'rūf* means “virtue, goodness, well-known, recognized.”¹⁵ Meanwhile, in the *Mu'jam al-Wasith* dictionary, it is explained that the meaning of *al-ma'rūf* is “anything that is considered good according to reason or religious law.”¹⁶ As a result, the term *al-ma'rūf* can be concluded to signify a relative goodness. This implies that the practice of *al-ma'rūf* may vary in different places.¹⁷

Ibn Hajar al-Asqalani and Abu Mansur al-Maturidi share a similar perspective regarding the meaning of *al-ma'rūf*. According to al-Asqalani, *al-ma'rūf* refers to every reasonable action based on religious law and reason. A similar opinion is expressed by al-Maturidi, who interprets *al-ma'rūf* as something deemed suitable from the perspective of human intellect and reason.¹⁸ Therefore, the term *al-ma'rūf* also has a synonymous counterpart with *'urf*, indicating something in line with reason. *Al-ma'rūf* can also be interpreted as an affair recognized and easily understood by the community.¹⁹

If we look in the Quran, the word *al-ma'rūf* in the form of *ma'rūf*, *al-ma'rūf*, *ma'rūfah* is repeated a total of 39 times.²⁰ In addition to mentioning the word *al-ma'rūf*, the term *'urfis* also found in Surah al-A'raf, verse 199: “Show forgiveness, enjoin what is good, and turn away from the ignorant.”²¹

¹³ Al-Raghīb al-Ashfahani, *Al-Mufradāt fī Gharīb Al-Qur'ān*, in 1 (Beirūt - Libanon: Dār al-Qalām, 1993): 591.

¹⁴ Ahmad Warson Munawwir, *Kamus Al-Munawwir* (Surabaya: Pustaka Progresif, 1984).

¹⁵ Mahmud Yunus, *Kamus Arab-Indonesia* (Jakarta: PT.Hidakarya Agung, 1990).

¹⁶ Jumhur Masrul Arobiyah, *Mu'jam Al-Wasith* (Maktabah al-Syarug al-Daulah, 2005).

¹⁷ Asrizal Saiin, “Menelaah Hukum Waris Pra-Islam Dan Awal Islam Serta Peletakan Dasar-Dasar Hukum Kewarisan Islam,” *Al-Ahwal: Jurnal Hukum Keluarga Islam* 9, no. 1 (2017): 125, <https://doi.org/10.14421/ahwal.2016.09108>.

¹⁸ M. Dawan Rahardjo, *Ensiklopedi Al-Qur'an* (Jakarta: Paramadina, 1996): 625.

¹⁹ Ali Nurdin, *Qur'anic Society: Menelusuri Konsep Masyarakat Ideal Dalam Al-Qur'an* (Jakarta: Erlangga, 2006): 165.

²⁰ M. Fuad Abd Baqi, *Al-Mu'jam al-Mufabras li Alfaz Al-Qur'an* (Kairo: Dār al-Hadis, 1992): 458-459.

²¹ QS. al-A'raf [7]: 199.

Wahbah al-Zuhaili explains that in this verse, *'urf* is interpreted as a command to engage in everything considered excellent and beautiful. The encompassed meaning of *al-ma'rūf* involves all forms of goodness, such as obedience, devotion, good behavior, and courtesy towards fellow human beings. Additionally, al-Zuhaili adds that the concept of *al-ma'rūf* also includes everything widely known to humanity, both in social interactions (muamalah) and customary practices.²² The Ministry of Religious Affairs' interpretation (*Tafsir Kementerian Agama*) aligns with Zuhaili's, defining *ma'rūf* as things considered good by society and not contradictory to Islamic teachings. *Ma'rūf* can encompass customs, norms, and social interactions within a community.²³

As explained above, the term *al-ma'rūf* shares the same root as *'urf* (customs and traditions), signifying something commonly recognized and known by society. *'Urf* is generally used with the meaning of tradition, and in this context, *al-ma'rūf* undoubtedly carries the meaning of all good traditions. The interpretation of "good" here aligns with revelation. Indeed, the prevailing customs or traditions should not contradict Islamic teachings.

Implementation of the Concept of *al-Ma'rūf* in the Inheritance Practice

The division of inheritance has existed since the pre-Islamic period (the era of Jahiliyyah), specifically among the Arab people. The pre-Islamic Arab society was familiar with an inheritance system, adhering firmly to customs and traditions passed down by their ancestors. However, the division of inheritance in the pre-Islamic era significantly differed from the post-Islamic era. Inheritance during the pre-Islamic period, also known as the customary laws of Jahiliyyah, had three leading causes, namely:

1. Due to lineage, inheritance was based on the bloodline, referring to the bond of blood between parents and adult male descendants who were proven to have combat abilities. Adult women and children did not have inheritance rights based on lineage.

²² Wahbah al-Zuhaili, *Tafsir al-Munir fi al-Aqīdah wa al-Syarī'ah wa al-Manhaj* (Damaskus: Dar al Fikr, 2009): 231.

²³ Kementerian Agama, *Tafsir Kementerian Agama*, n.d., <https://quran.kemenag.go.id/quran/per-ayat/surah/7?from=199&to=199>.

2. Adopted children (*al-tabanni*), meaning inheritance through adoption, on the other hand, occurred when a male child was adopted by someone else and recognized, both de facto and de jure, as a biological child. Adopted children had inheritance rights equal to birth children.
3. Inheritance could also occur through agreements or solemn oaths, where two individuals agreed to inherit from each other. If one of them died, the surviving individual automatically became the inheritor.²⁴

Therefore, the division of inheritance during the pre-Islamic period was patrilineal - heirs among the children, and women would never experience the inheritance from the deceased. This was because women and children were considered incapable of participating in warfare to defend their people and tribes. The pre-Islamic Arab society explicitly stated,

How can we give inheritance (legacy) to someone who cannot and has never ridden a horse, is unable to carry weapons, and does not fight against enemies?²⁵

In summary, the three inheritance systems during the pre-Islamic period, namely the lineage system and the adoption system, can be explained with the following criteria:²⁶ Kinship ties, the existence of pre-Islamic oaths of allegiance, and the adoption of children. Meanwhile, in the early days of Islam, the division of inheritance still followed the methods and systems of inheritance from the pre-Islamic era until the revelation of verses related to the division of inheritance, specifically in Surah al-Nisa verse 7:

For men, it is a share of what the parents and close relatives leave, and for women, it is a share of what the parents and close relatives leave, be it minor or much - an obligatory share.²⁷

²⁴ Ahmad Musthafa al-Maragi, *Tafsir Al-Maragi*, in 2 (Beirut: Dār al-Fikr, 2006), 194–195.

²⁵ Muhammad Ali ash-Ṣabūni, *Pembagian Waris Menurut Islam*, translated. A.M Basamalah (Gema Inasani Press, 1995), x.

²⁶ Saiin, “Menelaah Hukum Waris Pra-Islam Dan Awal Islam Serta Peletakan Dasar-Dasar Hukum Kewarisan Islam.”

²⁷ QS. an-Nisa [4]: 7.

This verse reflects the abolition of the unfair inheritance system towards children and women in the pre-Islamic era, which was later replaced by a new system regulated in the Quranic verses. When Islam emerged, Prophet Muhammad (SAW) implemented inheritance laws promptly. This is evident from his actions when migrating from Mecca to Medina. The full support and acceptance of the people of Medina toward the Prophet and his followers laid the foundation for mutual inheritance. For instance, when someone had no heirs who migrated with them, the wealth could be inherited by their companion who relocated with them. Overall, the inheritance system in Islam not only brings justice to the distribution of wealth but also strengthens the bonds of brotherhood among the Muslim community.²⁸

The distribution of inheritance in early Islam can be understood from the events experienced by Prophet Muhammad (SAW). During that time, the division of inheritance was based on kinship ties, adoption of children, and bonds of brotherhood. Before Islam, the practice of inheritance was undignified and unjust, where the eldest son or his family could inherit the wives (widows) left behind by his father. This term also encompassed the possibility of marrying or selling these wives for personal gain.²⁹ This practice reflects the uncivilized nature of pre-Islamic society, which regarded women as material possessions that could be inherited and traded. In extreme cases, even women who could be inherited were the former wives of their fathers, which, according to Islamic teachings, makes marriage with a stepmother forever forbidden.

Islamic inheritance law does not completely overturn the patrilineal inheritance rights that prevailed in pre-Islamic times. Instead, Islamic inheritance law still provides significant space for the male line of descent, with a larger share than females. This is done because Islamic law is responsive, adapting to existing cultural and legal changes. In the early days of Islam, society was still influenced by a patrilineal culture. Therefore, Allah SWT, through His commandments, provided legal references for the distribution or

²⁸ Saiin.

²⁹ Muhammad Amin Suma, *Keadilan Hukum Waris Islam: Dalam Pendekatan Teks Dan Konteks* (Jakarta: Rajawali Press, 2013).

transfer of wealth left by the deceased by dividing it entirely.³⁰ From the development and changes in inheritance law from the early days of Islam until the revelation of the Quranic verses, it can be understood that Prophet Muhammad (SAW) implemented the concept of *ma'rūf*. This was done by providing explanations by the Quranic verses, stating that inheritance should also be given to children and women.

The concept of *al-ma'rūf* was also applied during the caliphate of Umar ibn Khattab through *ijtihād* (independent reasoning) adapted to his time context. One example is the *gharawain* or *umariyyatain*, which is even called *gharibatain* by Shihab al-Din al-Ramly because there was no similar issue.³¹

The leading proponent of *garawain* was Umar ibn Khattab, followed by Usman bin Affan, Zaid bin Tsabit, Ibn Mas'ud, ra'yu experts, and jurists such as al-Hasan, al-Tsauri, Imam Malik, and Imam Shafi'i. The *garawain* case had not occurred during the time of the Prophet Muhammad. The issue of *garawain* is one of the results of *ijtihād*, where the maternal part, as heirs of *aṣḥāb al-furūdh*, receives an alternative of 1/3 of the remaining estate (*sulus al-baqi*), which is one-third after the share of the husband or wife has been taken. This can happen in two cases:³²

First, if a woman dies and has heirs such as a husband, mother, and father, then the resolution is:

Table.1

Settlement of *Garawain* with Husband, Mother, and Father's Heirs

Heirs		AM : 6 & HP: Rp. 12.000.000
1	Husband 1/2	3 3 portion x Rp. Rp. 6.000.000 2.000.000
2	Mother 1/3 Remains	3 1 portion x Rp. Rp. 2.000.000 2.000.000

³⁰ Ahmad Rajafi, "Kewarisan Produktif (Meramu Makna Adil Melalui Waris Produktif)," *Ar-Risalah* 16, no. 2 (2016): 303–14, <https://doi.org/https://doi.org/10.30631/alrisalah.v16i02.313>.

³¹ Haji Wahidah and IAIN Antasari Press, *Buku Ajar Fikih Waris* (Yogyakarta: Aswaja Pressindo, 2014): 54.

³² Syuhada' Syarkun, *Menguasai Ilmu Faraidh* (Jakarta: Pustaka Syarkun, 2019), 121.

3	Father	Remains (ashobah)	2 portion x Rp. 2.000.000	Rp. 4.000.000
A M O U N T				Rp.12.000.000

Completion:

1. The husband gets 3 shares, then the remaining 3, given to the mother one share = $1/3$ of the remainder and the father two shares = $2/3$.
2. The settlement above makes the mother's share half of the share received by the father.

Secondly, if a man dies and has heirs consisting of a wife, mother, and father, the resolution is as follows:

Table.2**Settlement of Garawain with wife, mother, and father's heirs**

Heirs		AM : 12 & HP: Rp. 12.000.000		
1	Wife	1/4	3 3 portion x Rp. 1.000.000	Rp. 3.000.000
2	Mother	1/3 Remains	9 3 portion x Rp. 1.000.000	Rp. 3.000.000
3	Father	Remains (ashobah)	6 portion x Rp. 1.000.000	Rp. 6.000.000
A M O U N T				Rp. 12.000.000

Completion

1. The wife gets 3 shares, then the remaining nine, given to the mother three shares = $1/3$ of the remainder, and the father six shares = $2/3$.
2. The settlement above makes the mother's share half of the share received by the father.

If garawain is not applied, then the resolution will be different, namely:

Table.3**Case 1**

Heirs		AM : 6	
1	Husband	1/2	Three portion
2	Mother	1/3	Two portion
3	Father	Ashobah (Remains)	One portion

Table.4
Case 2

Heirs		AM : 12	
1	Wife	1/4	Three portion
2	Mother	1/3	Four portion
3	Father	Ashobah (Remains)	Five portion

With this calculation, in case 1, the mother receives two shares while the father gets one share. This means the mother's share is twice as large as the father's. In case 2, the mother receives four shares while the father gets five shares, meaning the mother's share is almost the same as the father's share. This resolution does not adhere to the idea that the father's share is twice as large as the mother's. This solution contradicts the wording of the Quran in Surah al-Nisa, verse 11. Therefore, the solution offered by Caliph Umar bin Khattab, namely *garawain*, is an *ijtihad* that emphasizes the concept of *al-ma'ruf*.

In applying the concept of *al-ma'ruf* by the companion Ibn Abbas, he held a specific view regarding inheritance. According to his *ijtihad*, if a grandfather and siblings are the heirs, the grandfather's share should precede the siblings' share. He argued that the grandfather could act as an obstacle for the siblings in obtaining their inheritance because the grandfather's position is equivalent to that of the father, especially if the father has passed away before the grandfather. Therefore, the grandfather has the potential to prevent the siblings from inheriting, similar to the role that the father could play. Ibn Abbas rejected this viewpoint, stating that the grandfather cannot replace the father's role as an heir.³³

Another opinion from Ibn Abbas regarding inheritance is related to the interpretation of the word *walad* in Surah al-Nisa verse 176 and its implications on inheritance when concurrent with siblings. According to the consensus of scholars (*jumhur ulama*), the interpretation of the word *walad* in Surah al-Nisa verse 176 focuses only on male children. If this is the case, the legal consequence is that only male children can prevent full siblings from inheriting, while female children cannot hinder full siblings from inheriting the estate.

³³ Mustafa Sa'id al-Khan, "Abdullah Bin Abbas Habr Al-Ummah Wa Tarjuman Alquran," n.d., 79–80.

Meanwhile, Ibn Abbas's opinion states that the interpretation of the word *walad* in Surah al-Nisa verse 176 includes both male and female children. Thus, the presence of children (both boys and girls) can prevent full siblings from inheriting a share of the estate. According to the author, the concept of *al-ma'ruf* is crucial. It would be unfortunate if female children were not entitled to inheritance when there are still full siblings from the deceased. Yet, the children of the dead are in dire need of that inheritance.

The concept of *al-ma'ruf* can also be found in the Compilation of Islamic Law, for example, in the case of substitute heirs. This issue is addressed in Article 185 of the Compilation of Islamic Law. This *ijtihad* is not found in classical *fiqh* literature written by Islamic legal scholars. It is purely the result of *ijtihad* by Indonesian Islamic legal scholars such as Hazairin. Hazairin applies a bilateral inheritance system that includes substitute heirs (*mawali*).³⁴ Understanding the concept of substitute heirs opens up opportunities for a broader interpretation. Compilation of Islamic Law (KHI) Article 185. Substitute heirs refer to a situation where an heir dies before the deceased, and their child can replace their position. This indicates that Article 185 of the Compilation of Islamic Law is an innovation in granting the right to grandchildren to inherit from their father, especially if the father has passed away before the grandfather.³⁵

The designation of substitute heirs in the Compilation of Islamic Law is a step taken in response to the potential injustice that grandchildren might experience. This action is not only a policy in countries with a Muslim-majority population but also a concrete effort to ensure that grandchildren can obtain their inheritance rights through the regulation of compulsory bequests. This step reflects a concern for justice and the enforcement of inheritance rights within the framework of Islamic law.³⁶

Similarly, *al-ma'ruf* applies to customary inheritance systems in distributing inherited wealth. In Indonesia's legal system, customary law is recognized as one of the significant sources of law. Customary

³⁴ Hazairin, *Perdebatan Faraid Dalam Seminar Hukum Nasional* (Jakarta: Tintamas, 1963): 174.

³⁵ A. Sukris Samardi, *Dekonstruksi Hukum Progresif Ahli Waris Pengganti Dalam Kompilasi Hukum Islam* (Yogyakarta: Aswaja Pressindo, 2012): 189.

³⁶ Samardi.

law does not originate from legislatures but grows and forms within everyday legal communities in a specific region. Interestingly, the application of customary law occurs consistently and continuously, reflecting the continuity of legal traditions passed down from generation to generation within that community. This underscores the critical role of customary law in preserving the values and legal norms rooted in the local community's culture.³⁷

Cornelis van Vollenhoven categorized Indonesia into 19 legal environments (*rechtsringen*), further elaborated into parts known as *Kukuban Hukum* (*rechtsgouw*). This classification encompassed various regions in Indonesia, including Aceh, Gayo, and the Batak region; Minangkabau; South Sumatra; the Malay region, Bangka; and Belitung; Kalimantan; Minahasa; Gorontalo; Toraja region; South Sulawesi; Ambon Islands; Ternate Islands; West Irian; Timor Islands; Bali and Lombok; East Java and Madura; as well as Central Java; Yogyakarta and Surakarta; and West Java.³⁸

Most forms of customary inheritance in Indonesia follow a collective and majorat system, as seen in the Semende tribe in South Sumatra, Lampung, and Bengkulu. The eldest child (usually a daughter) manages the family's inheritance. This eldest child is called *tunggu tubang* and must oversee the family's productive assets, including houses, fields, and other properties, with the benefits shared among the extended family.

The concept of managing wealth collectively and through a system of mayorat occurs in several indigenous communities in Indonesia, as identified by Ahmad Rajafi³⁹ under the term "productive inheritance." The essence of productive inheritance is that the wealth is not entirely divided; instead, it is managed continuously to generate profits, providing benefits for the extended family from the legacy of the deceased's assets. This kind of system is considered more responsive and progressive as it accommodates various legal opinions, whether in favor of a 2:1 or 1:1 distribution. Such a model fosters

³⁷ Oemar Moechtar, *Perkembangan Hukum Waris: Praktik Penyelesaian Sengketa Kewarisan Di Indonesia* (Jakarta: Prenadamedia Group, 2019): 200.

³⁸ Stefanus Laksanto Utomo, *Hukum Adat* (Jakarta: Raja Grafindo Persada, 2016): 172–74.

³⁹ Ahmad Rajafi, *Kewarisan Produktif (Meramu Makna Adil Melalui Waris Produktif)*.

harmony within the extended family. According to the author, these diverse concepts of *al-ma'rif* have been applied in inheritance systems during the time of Prophet Muhammad and in the traditional inheritance practices found in Indonesia.

Tunggu Tubang: Semende Customary Inheritance

Tunggu Tubang is a customary inheritance system of the Semende tribe in the Muara Enim region, South Sumatra. The Semende community originated from a splinter group of Basemah in Lahat Regency, South Sumatra. The myth of their origin involves three ancestral figures: *Puyang Lebi*, a local figure who opened up the Semende region; *Puyang Awak*, from Basemah, who played a role in the development of Semende customs; and *Puyang Rene* from the Sultanate of Palembang, who played a role in the formation of the governance system (*marga*) in the Semende community. Semende customs reflect the cultural influence of Basemah and the Sultanate of Palembang. The Semende community often migrates to surrounding areas such as Bengkulu, Lampung, and several regions in South Sumatra. Despite this, they continue to uphold Semende customs. One distinctive feature of Semende customs is *tunggu tubang*, especially in the distribution of inheritance."⁴⁰

Tubang is a term that refers to a bamboo pole (two or three segments) hung vertically above the kitchen stove to store spices. The presence of *tubang* in the kitchen, serving as a spice storage place, is often associated with the role of women. Therefore, "waiting for *tubang*" is often linked to women, as they frequently engage in kitchen activities, whether cooking or performing other tasks.⁴¹

In the context of inheritance, *tunggu tubang* refers to the eldest woman in the family who is responsible for safeguarding, maintaining, and utilizing the family's ancestral property, including houses, plantation land, or agricultural assets.⁴² As inherited property, the house

⁴⁰ Arifin, "Harte Dan Tungguan : Redefinisi Adat Tunggu Tubang Pada Komunitas Semende Migran."

⁴¹ Zainal Arifin, dkk., "Tunggu Tubang: Marginalisasi Perempuan Semende," *Musawa: Jurnal Studi Gender Dan Islam* 16, no. 2 (2017): 236–47, <https://doi.org/https://doi.org/10.14421/musawa.2017.162.236-247>.

⁴² Arifin, "Harte Dan Tungguan : Redefinisi Adat Tunggu Tubang Pada Komunitas Semende Migran."

and land should not be sold; instead, they must be passed down to her daughter, the *tunggu tubang*, in the future.⁴³ A *tunggu tubang* house is a gathering place for the family and a homecoming destination for family members living away. This house serves as the central hub for family activities, with the responsibility of welcoming and catering to the needs of all family members during gatherings or events. Additionally, the house reflects the family's identity and is a crucial reference to trace someone's family roots. Similarly, the land controlled by the *tunggu tubang* is intended for personal and family use. Therefore, a *tunggu tubang* must cultivate and utilize the inherited land to its fullest potential, ensuring its yields benefit her family.⁴⁴

Tunggu tubang is a position (role) held by the eldest daughter, which involves managing the inherited assets from her parents and allocating them for the benefit of the entire family. If her siblings require financial support, *tunggu tubang* will contribute the yields from the land to assist them financially. If a sibling needs a place to live, *tunggu tubang* is also responsible for providing a room or space in a specific part of the house and supplying all their needs. Beyond her siblings, *tunggu tubang* also must care for and support living parents, as well as clean and maintain the graves of deceased parents. Therefore, it's not uncommon for a *tunggu tubang* to sometimes feel lacking or insufficient with the land provided to fulfill all her responsibilities.⁴⁵

To ensure that all responsibilities of a *tunggu tubang* are carried out effectively, intensive supervision must be performed over utilizing the inherited assets. This supervision is conducted by all male siblings of the *tunggu tubang* (referred to as *jenang*), led by the eldest male sibling (*jenang jurai*). To maintain harmony within the family, the maternal male siblings also oversee the supervision (*meraje*). The *meraje* must monitor, provide guidance, and remind the *tunggu tubang* and her siblings. Moreover, a *meraje* can adjudicate if a *tunggu tubang* fails to uphold the customary practices appropriately.

The relationship within the family remains harmonious because there are guidelines. Conflicts cannot occur. Suppose the *jenang*

⁴³ Arifin, "Tunggu Tubang: Marginalisasi Perempuan Semende."

⁴⁴ Arifin.

⁴⁵ Arifin, "Harte Dan Tungguan: Redefinisi Adat Tunggu Tubang Pada Komunitas Semende Migran."

jurai (the eldest male sibling) wants to inherit according to his wishes. In that case, it is not allowed because, above the jenang jurai, there are the meraje (maternal male siblings of the tunggu tubang). The role of meraje is that of Payung Jurai (the umbrella, understanding everything in the family), and meraje is only for supervision. If, for example, the tunggu tubang is no longer comfortable here and decides to move to Jakarta, then based on mutual agreement, as there is no successor, the inherited assets can be sold and moved to the new location, namely Jakarta. So, the status of tunggu tubang remains even after moving to Jakarta, and this is an inherited characteristic.⁴⁶

The emergence of the *tunggu tubang* system began with the effort to pass down an inheritance to daughters, driven by dissatisfaction with the patrilineal pattern that tended to favor males, as practiced by their ancestors. The dominance of males in inheritance distribution led married women to leave their original families and become part of their husbands' families. The influence of customs in Basemah, the actual area of Semende, became the main driver for the birth of the Semende customary inheritance system known as *tunggu tubang*.

Semende consists of two regions, Semende Darat and Semende Lebak, originating from Basemah. The daughters wait for the tungguan, which is why they are called tunggu tubang. Thus, the Semende tribe is symbolized by a net (jala or jale), waiting for the tungguan like a house or rice field. Therefore, daughters (*tunggu tubang*) have the authority to wait but not to sell. If the *tunggu tubang* has daughters, this authority will continue through generations, while the one inheriting is the son (anak lanang).⁴⁷

The traditional inheritance system of *tunggu tubang*, followed by the Semende community, will be upheld even though many have migrated to other regions, such as Lampung, Jambi, and Bengkulu. This is because the *tunggu tubang* tradition holds significant noble values for the Semende community, emphasizing the preservation and continuity of ancestral heritage, particularly high-value traditional property. High-

⁴⁶ Interview with Nasran, community figure of Maje sub-district, on June 10, 2023.

⁴⁷ Interview with Bin Sangkut, community leader of Kec. Maje, on May 6, 2023.

value traditional property is considered sacred and holds significant historical value. Therefore, the eldest daughter, *tunggu tubang*, must safeguard and maintain it. If the *tunggu tubang* tradition is successfully defended, family harmony is preserved. This is because the tradition underscores the crucial role of the eldest daughter in safeguarding and maintaining high-value ancestral property. *Tunggu tubang* is responsible for managing this property for the family's benefit. However, if the *tunggu tubang* tradition deviates from its ideal rules, it can pose economic challenges and internal conflicts within the family. This is due to the prohibition of dividing high-value ancestral property; instead, it must be preserved and maintained by *tunggu tubang*. The eldest daughter, serving as *tunggu tubang*, might face economic difficulties if her daily needs are unmet. Consequently, *tunggu tubang* may use the inherited property to fulfill personal needs. Additionally, brothers who do not receive a share of the inheritance might feel deprived of the benefits they should rightfully obtain. Such dissatisfaction has the potential to generate internal conflicts within the family. Therefore, the Semende community must uphold the *tunggu tubang* tradition per the prevailing ideal rules to maintain family harmony. This entails preserving and maintaining high-value ancestral property without utilizing it for personal needs.

Harmonization of Legal Systems in the *Tunggu Tubang* Custom

In the Semende Kaur Bengkulu community, traditional inheritance is implemented through a collective inheritance system. This system is characterized by assets not being divided individually among a group of heirs, except for productive purposes, especially for those who need it. This approach is based on the belief that as long as customary law has no negative impact, the community will feel secure, peaceful, and prosperous. With this perspective, traditional inheritance can create harmony within the family by interacting and integrating with the laws that apply beyond tradition.

The concept of legal harmonization, as a rule of life, determines how individuals should behave and act in society to protect their interests. The value of togetherness implies that humans depend on their society, and individuals must prioritize society's interests over their own. This can be realized through cooperation and mutual assistance in fulfilling common interests in harmonious community life.

This principle can then shape the attitudes and behaviors of citizens in achieving harmony and peace.⁴⁸

Everything is based on the results of deliberation. The results of inherited wealth, fields, and gardens are handed over to the *tunggu tubang*; whether it's for building a house or daily needs, it's up to the *tunggu tubang*. Inherited wealth is not divided, but every year, during Eid, there is a pilgrimage event, so the *tunggu tubang* must be ready, starting from the house, food, and other necessities, including taking care of the parents. Indeed, being a *tunggu tubang* comes with heavy responsibilities because families from anywhere may return to the *tunggu tubang* during specific occasions.⁴⁹

The harmony between customary law and Islamic law can be interpreted as follows: *first*, the distribution system in Islam can be applied to conventional systems, and vice versa. *Second*, although the Islamic legal system distinguishes the portions between men and women, the distribution is still resolved through mediation or peace settlements (following customs). This pattern can be considered legal harmonization, aiming to achieve social justice.

If we look at the Islamic legal system, what needs to be emphasized is the justice of God and then social justice. The justice of Allah is upheld through the laws of *farā'id* (clearly defined inheritance laws in Islam). Meanwhile, social justice is realized through aspects related to social interests, namely customary law.⁵⁰ Therefore, divine justice influences social justice. Nevertheless, social justice is formed after divine justice. In this context, divine justice can be considered imperative/mandatory law, so this scheme is a finding in harmonization, as there are essential elements in Islamic law and customary law. It is important to note that Islamic law can also be

⁴⁸ The method based on benefits in the science of *uṣūl al-fiqh* is generally referred to as the *al-Istishlah* method. See Agus Moh Najib, "Metodologi Ijtihad Mazhab Indonesia : Menelusuri Pemikiran Ushul Fikih Hazairin," *Asy-Syir'ah* 50, no. 1 (2016).

⁴⁹ Interview with Nasran, a community figure in Kecamatan Maje, on June 10, 2023.

⁵⁰ Syaikhu et al., "Legal Harmonization in the Distribution of Inheritance in the Dayak Ngaju Community in Central Kalimantan, Indonesia."

imperative, but its resolution is carried out through social concepts such as mediation.

Imperative law is not neglected in the context of the acculturation of law and harmonizing the Semende customary inheritance system. Compulsory law is still upheld, followed by the Semende familiar law system. This is what led to the formation of legal harmonization in the Semende community. They prioritize the principle of consensus in resolving inheritance distribution, with the appointment of *tunggu tubang* and constant supervision by *maje*, as well as their protector, *payung jurai*. Therefore, harmony is not just a conceptual idea but is observed in practice, considering social justice based on mutual agreements preserved by the Semende community.

Regarding *ijtihad*, *fiqh* is closely related to the interactions and realities of life in society. Scholars, as *mujtahids*, integrate both explicit and implicit texts with the context of what is happening in society. Thus, *fiqh* is born as a form of scholarly thought combined with consideration for local wisdom related to social issues and local customs. This aligns with the *fiqh* principle: *al-'ādah muhakkamah* (the customary practices can be established as law).⁵¹

The scholars of *usul al-fiqh* study *'urf* (custom) to find ways to resolve legal issues in society. They acknowledge that *'urf* constitutes routines and habits that play a significant role. Additionally, *'urf* receives positive responses from legal experts.⁵² Ibn Abidin argues that *'urf* faced with an emergency should be considered because prohibiting an action widely practiced in society can lead to various problems.⁵³ Customs are essential to legal decisions in different local contexts.⁵⁴ There are several conditions for a custom to be regarded as *'urf*. *First*, the custom must be logical and in line with the community's opinion. *Second*, the custom

⁵¹ Duski Ibrahim, *Al-Qawa'id Al-Fiqhiyah (Kaidah-Kaidah Fiqih)* (Palembang: Noer Fikr, 2019): 90.

⁵² Moh Rosyid and Lina Kushidayati, "Anticipating Disaster: The 'Urf Perspective of Rebo Wekasan Ceremony in Kudus, Central Java," *Al-Ihkam: Jurnal Hukum Dan Pranata Sosial* 17, no. 1 (2022): 91–112, <https://doi.org/10.19105/AL-LHKAM.V17I1.5705>.

⁵³ Rosyid and Kushidayati.

⁵⁴ Burhān al-Din Ibrāhīm Ibn Ali Ibn Abi al-Qāsim Ibn Muhammad Ibn Farhun, *Tabsirat al-Hukkām fī al-Aqdiyah wa Manābij al-Abkām* (Cairo: Maktabah al Kulliyat al-Azhariyyah, 1986): 382–85. See too Rosyid and Kushidayati, "Anticipating Disaster: The 'Urf Perspective of Rebo Wekasan Ceremony in Kudus, Central Java."

must be a widespread tradition. *Third*, the custom must have been practiced for a long time. *Fourth*, customs should not include excessive requirements. And *fifth*, the custom should not contradict religious law (sharia).⁵⁵ Another important consideration is that the custom should not cause harm (mafsadah), must align with the culture, and should not apply to ritual worship contexts (*ibadah mahdah*).⁵⁶

Under these rules, the implementation of inheritance in the Semende tradition occurs harmoniously within the community. This can be considered as ‘urf that needs to be preserved and upheld. The goal is to maintain tolerance within traditions and promote harmony among heirs, thus avoiding conflicts or disputes.

This aligns with the values inherent in the concept of *al-ma’rūf*. Applying the idea of *al-ma’rūf* in the distribution of inheritance among the Semende tribe has brought about profound harmonization. This can be observed from several aspects, namely:

1. Inclusive and participatory

The concept of *al-ma’rūf* emphasizes the importance of consultation and consensus in the distribution of inheritance. This creates an inclusive and participatory process involving all family members. The selection of the eldest daughter (*tunggu tubang*) through a consultative process in distributing the Semende tribe's inheritance is conducted openly and involves all heirs.

2. Harmonization

The concept of *al-ma’rūf* encourages the establishment of strong bonds and harmonious relationships among family members. This fosters a sense of togetherness that goes beyond the inheritance process itself. To maintain family harmony within the Semende tribe, efforts and cooperation from all family members are necessary. Every family member should show mutual respect, appreciation, and understanding. Additionally, effective and open communication among family members is crucial. In the *tunggu tubang* system, there is a monitoring mechanism to ensure the ongoing harmony of the family.

⁵⁵ Rosyid and Kushidayati, “Anticipating Disaster: The ‘Urf Perspective of Rebo Wekasan Ceremony in Kudus, Central Java.”

⁵⁶ Rosyid and Kushidayati.

Monitoring is carried out by the maternal uncles (*meraje*), who are supervisors, protectors, and reminders for *tunggu tubang* and her siblings.

3. Solidarity and Social Responsibility

The willingness to share and generosity create a supportive atmosphere among heirs. This reflects solidarity and social responsibility within the community. As evidence the house of *tunggu tubang* is not just a gathering place for the family but also the central hub for family activities, serving as a homecoming for family members who are away. *Tunggu tubang* is responsible for welcoming and catering to the needs of all family members when they gather or when there are activities, creating an atmosphere of togetherness and harmony. In addition to being the center of family activities, the house of *tunggu tubang* also plays a crucial role in determining the family's identity. As a symbol of the family and an essential reference to trace one's origins, this house becomes a factor that strengthens family bonds and preserves ancestral traditions. The inherited land owned by *tunggu tubang* serves as a residence and a source of livelihood. *Tunggu tubang* is responsible for managing and utilizing the land effectively, ensuring that the results can be used for the economic needs of the family members and heirs. This reflects the economic role and social responsibility inherent in the concept of *tunggu tubang* in society.

Overall, the concept of *al-ma'ruf* has been successfully implemented by the Semende tribe community, creating a harmony that involves Islamic values, customary norms, and local wisdom. Thus, this community preserves justice in distributing inherited wealth and nurtures harmony, sustainability, and cultural identity.

Conclusions

This study concludes that the distribution of inheritance in the Semende community in Bengkulu applies the concept of *al-ma'ruf*. Semende's customary inheritance wealth is distributed using a system called *tunggu tubang*, which is preserved and managed by the eldest daughter (*tunggu tubang*). The inheritance is allocated to the visiting family members in the ancestral home. In addition to managing the inherited wealth, a *tunggu tubang* is entrusted with caring for the living parents. The distribution of wealth always prioritizes mutual consultation (*musyawarah mufakat*). This is known as *al-ma'ruf*, contributing to the harmonious familial relationships within the

Semende community. The harmony is also evident in the legal system, whether it be Islamic law, Western law, or customary law, all of which emphasize the principle of mutual consultation in every action.

The strength of the *al-ma'rūf* concept lies in the foundation of solid values that act as social and cultural bonds among community members. The sustainability and adaptability of this concept serve as pillars for harmony in inheritance distribution. However, a noteworthy weakness is related to the diverse interpretations of the *al-ma'rūf* concept. Varying interpretations can lead to conflicts in the inheritance distribution, necessitating more precise guidelines. The role of religious institutions and the government in providing guidance and regulations that support the *al-ma'rūf* concept could be enhanced. This initiative can reinforce the sustainability of harmonization in the inheritance system through intensive education and mentoring. Meanwhile, potential challenges may include changes in cultural values, urbanization, and other external factors that could shift the stability of the *al-ma'rūf* concept in inheritance distribution. Therefore, proactive measures are needed to ensure the continuity of this concept in the face of changing times.

Conflicts of Interest

The authors have no conflict of interest with any party in writing this article.

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