

Distributing Inheritance Before Death: Juridical Insights from Shafi'i Madhhab in Bangun Village

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Abstract

This study investigates the practice of pre-mortem inheritance distribution in Bangun Village, Gunung Malela District, Simalungun Regency an emerging phenomenon driven by the intention to prevent family conflict. Despite its pragmatic rationale, this practice contradicts Islamic inheritance law as articulated in the Shafi'i Madhhab, which mandates that inheritance be distributed only after the testator's death in accordance with *faraid* principles established in the Qur'an and Sunnah. Employing a qualitative design and an empirical juridical approach, this research draws on interviews with three local families (Mr. I, Mrs. R, and Mr. S), direct field observations, and a thorough analysis of primary Islamic legal texts and existing scholarly literature. The findings reveal a consistent pattern: inheritance is divided equally among heirs before the testator's death, often without reference to the obligatory shares stipulated in Sharia. While intended to foster familial harmony, this informal practice risks undermining the legal structure of Islamic inheritance, potentially resulting in systemic injustice and intra-family disputes. The study's novelty lies in its empirical focus on a rural Muslim community's deviation from classical jurisprudence, an area rarely explored in existing literature. It also highlights an urgent need for community-based legal education tailored to Islamic inheritance law within the Shafi'i Madhhab. This research contributes to the discourse on legal pluralism, revealing the tension between local customs and normative Islamic law, and calls for integrative strategies to realign community practices with the ethical and juridical imperatives of the Qur'an and Sunnah.



1. Introduction

When someone dies, there is an obligation to make a division of distribute the assets left behind according to the size that has been determined to the heirs.¹ The proper and fair distribution of Inheritance property not only fulfills the rights of the Heirs, but also plays an important role as a solution in preventing potential conflicts and disputes that often arise due to the struggle for Inheritance property.² The Law of Inheritance in Islam, or known as Faraid, the Quran and hadith explicitly regulate so as to ensure justice and benefit for all existing Heirs.³

Each Heir is entitled to a share according to their position and level of kinship with the Heir.⁴ However, in practice, there are often deviations from the main sources above, such as before the Heir dies, the Inheritance property has been distributed without considering justice in its distribution. Especially if the distribution is distributed evenly among the Heirs.

يبدأ من تركة الميت بمؤنة تجهيزه⁵

"It starts from Treasure Legacy People who died world with the cost of burying him."

From the Nash, we can understand that the distribution of inherited property is the property owned by the heir during his lifetime and when he dies, it turns into inherited property.

The phenomenon of the distribution of inheritance before the heir dies in Bangun Village, Gunung Malela Sub-district, Simalungun Regency, is a common practice for the reason of avoiding family conflict. This division is carried out evenly by the heir during his lifetime, which in the view of the Shafi'i Madhhab is not in accordance with Islamic law because the inheritance is only valid after the heir dies. This practice has the potential to cause injustice in the family because it does not consider the rights of each heir as stipulated in faraid law. This discrepancy raises the possibility of conflict in the family. later on even though it was originally intended to prevent conflict.

Although Islam recommends that the distribution of the Inheritance property be carried out as soon as possible after the Heir dies, delays are also permitted in certain conditions. The delay is justified if there is a valid and urgent Hujjah, for example to settle the affairs of the Heir first or also because of considerations of benefit for all Heirs.

¹ Muhammad Hajatol Eslam Siregar, Mhd Amar Adly, dan Heri Firmansyah, "Kaidah إعمال الكلام أولى من إعماله dan Penerapannya dalam Hukum Keluarga Islam," *ARMADA: Jurnal Penelitian Multidisiplin* 2, no. 7 (14 Juli 2024): 456–61, <https://doi.org/10.55681/armada.v2i7.1393>.

² Muhammad Zuhirsyan, Pagar Pagar, dan Ansari Ansari, "Penerapan Distribusi Harta Warisan Komunitas Muslim Suku Batak Simalungun Dalam Perspektif Hukum Islam," *istinbath* 21, no. 1 (24 Agustus 2022): 87–106, <https://doi.org/10.20414/ijhi.v21i1.488>.

³ Siregar, Adly, dan Firmansyah, "Kaidah إعمال الكلام أولى من إعماله dan Penerapannya dalam Hukum Keluarga Islam."

⁴ Yulin Kamumu, "Problems and Obligations in the Division of Children's Inheritance According to Islamic Law," *Damhil Law Journal* 2, no. 2 (1 Desember 2022): 127, <https://doi.org/10.56591/dlj.v2i2.1754>.

⁵ Al-Mahalli dan Muhammad Jalaluddin, *Minhajut Thalibin jilid 3* (banten: Darr al-fikr, 2008). 135

The Republic of Indonesia is predominantly Muslim, which in the teachings of Islam in Indonesia has become a provision by following the Shafi'i Madhhab rather than other Madhhabs, because the Shafi'i Madhhab is a teaching that is suitable for use with the conditions of a flexible and moderate society in various issues in helping the integrity of Islamic teachings with local culture without eliminating Indonesia's tribal characteristics. Shafi'i Madhhab which is widely spread in the world region Islam and has a major influence on the view and determination of Islamic Sharia.⁶

In addition to contributing to the thought of Islamic Law, the Shafi'i Madhhab also faces contemporary problems and plays a role in the dissemination of Islamic knowledge.⁷ However, in that case there are still many people who do not apply the Shafi'i Madhhab due to the lack of knowledge and legal socialization of the community, so that the division of inheritance is not carried out based on the provisions of the Shafi'i Madhhab theory which refers to the Al-Quran and Sunnah.

Inheritance property can be distributed to the Heirs with several obligations and conditions that have been regulated according to Islam, especially Islamic Law according to the Shafi'i Madhhab

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

In QS.An-Nisa': Verse 7 means that men have the right to a share of inherited wealth from their parents and relatives, for women also have the right to inherit the property of their parents and family, whether the amount is small or large in accordance with the stipulated provisions.

The conclusion of the verse is that the condition for the division of inheritance is the death of a person who leaves wealth, so that all the assets of the testator are transferred to the heirs left by the testator. The division is based on the provisions in the Qur'an and Sunnah. In a hadith, the Prophet ordered every Muslim to divide the inheritance according to the Qur'an, according to his words: "Ibn Abbas r.a. reported that the Messenger of Allah said: divide the property among the faraid according to the book of Allah." (HR Muslim and Abu Daud).

Ibn Abbas RA said that the Prophet said:

حَدَّثَنَا ابْنُ عَبَّاسٍ عَنْ النَّبِيِّ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ قَالَ: أَلْحِقُوا الْفَرَائِضَ بِأَهْلِهَا فَمَا بَقِيَ فَهُوَ لِأَوْلَى رَجُلٍ ذَكَرَ أَخْرَجَهُ الْبَخَارِيُّ فِي: ٨٥: ٥: كتاب الفرائض: باب ميراث الولد من أبيه وأمه

⁶ F Rahman, "The emergence of the Shafi'i school of law In southeast Asia," *studies islamika* 18, no. 3 (2011): 501-22.

⁷ Imam Hanafi Imam, Moh. Wardi, dan Eko Adi Sumitro, "Peran Pesantren Dalam Mewujudkan Indonesia Emas 2045 Melalui Pendidikan Karakter," *Jurnal Ilmiah Edukatif* 9, no. 2 (23 November 2023): 69-77, <https://doi.org/10.37567/jie.v9i2.2492>.



1041. Ibn Abbas said: "The Prophet said: 'Give the share of inheritance to the rightful person, then if there is a remainder, then to the nearest male relative.'" (Reported by al-Bukhari in the 85th book of Faraidh, 5th chapter, chapter on the inheritance of the son and his father and mother)⁸

This Hadith explains the importance of distributing the inheritance fairly among the heirs, in line with the Shari'ah rules that Allah has laid down in the Qur'an. It not only ensures that everyone gets their fair share of the inheritance, but also emphasizes the importance of maintaining harmonious relations among the heirs and obeying Allah's commands.⁹

The practice of inheritance distribution among Indonesian Muslim communities shows significant diversity, influenced by customary factors, religious understanding, and social conditions. For example, in a previous study conducted by Jamaludin that in Sesetan Village, South Denpasar, Bali, Muslim families still apply the patrilineal customary inheritance system, where the first male child becomes the heir. The only heir who gets the inheritance, while the other heirs do not get a share¹⁰. This shows a discrepancy with Islamic law, which regulates the distribution of inheritance fairly to all heirs.

In previous research conducted by Budi Kurniati that in Kaliputih Village, the community divides the inheritance when the parents or heirs are still alive, with the amount of shares received by the heirs being equal, without distinguishing between men and Women¹¹. These phenomena reflect the gap between the practice of inheritance distribution in the community and the provisions of Islamic law

Previous studies have mostly discussed the distribution of inheritance in general or the formal legal aspects of the Compilation of Islamic Law. The novelty of the research specifically discusses the practice of inheritance distribution before the heir dies in Bangun Village, an area that has not been much explored in Islamic law research, especially in the context of inheritance according to the Syafi'i Madhhab, studies regarding the community's understanding of the difference between inheritance and grants, as well as how local values influence this practice, are still very limited. Another novelty lies in the empirical juridical approach with three real case studies from families in the village. This research is not only theoretical, but presents social reality as the basis for legal analysis.

The purpose of the research is to analyze the practice of dividing the inheritance before the heir dies in Bangun Village in the perspective of

⁸ Abdullah Muhammad bin Ismail al Bukhari, *Shahih al-bukhari* (Beirut: Dar al Kotob Al Ilmiyah, 1992).

⁹ Tinuk Dwi Cahyani, *Hukum Perkawinan (Pertama)* (Malang: UMM Press, 2020). 12

¹⁰ Jamaludin, "Praktek Pembagian Harta Warisan Keluarga Muslim Dalam Sistem Kewarisan Patrilineal (Studi di Desa Sesetan Denpasar selatan Kota Denpasar)" (Skripsi, Malang, UIN Maulana Malik Ibrahim Malang, 2013), Fakultas Syariah UIN Maulana Malik Ibrahim Malang.

¹¹ Budi Kurniati, "Praktek Pembagian Warisan Sebelum Orang Tua Meninggal Dunia Dalam Perspektif Hukum Kewarisan Islam" (Thesis, Yogyakarta, Uin Sunan kalijaga Yogyakarta, 2011), <https://digilib.uin-suka.ac.id/id/eprint/6607/>.



Islamic law, especially the Shafi'i Madhhab. Revealing the reasons behind the practice of dividing the inheritance and the community's perception of it. And Providing a correct understanding of Islamic law regarding the distribution of inheritance and grants and the importance of justice in its implementation according to the Qur'an and Sunnah.

2. Method

Qualitative methods are used as research methods. This method does not use statistics or other counting methods, but instead explores in understanding the object of a problem. Qualitative research is defined as a study that aims to examine and interpret phenomena the practice of dividing the inheritance before the heir dies in the Village Wake up in the perspective of Islamic law, especially the Shafi'i Madhhab.

By using an empirical juridical approach to describe the conditions seen in the field in fact regarding the distribution of Inheritance to the Heir who has not died by leveling the parts of the Inheritance property to the Heirs. The writing of this research is sourced from primary and secondary data. Secondary data is from legal journals, turast books, and other scientific works. And primary data is derived from interviews and survey results in the field. Then the process or method of collecting data with a library research process both from books, journals, previous research results, accurate interviews. Then the results obtained in this study are organized systematically for perfection in this scientific research work.

3. Analysis or Discussion

3.1 Inheritance And Grant According to the Shafi'i Madhhab

The definition of Inheritance according to the Shafi'i Madhhab is the transfer of property rights from someone who has died to the surviving Heirs.¹⁶ Meanwhile, the definition of Grant according to the Shafi'i Madhhab is the giving of property voluntarily to others without expecting compensation and is done when the giver is still alive.¹² Meanwhile, the definition of Grant according to the Shafi'i Madhhab is the giving of property voluntarily to others without expecting compensation and is done when the giver is still alive.¹³

In the view of Imam Syafi'i, the will to the heirs is permissible as long as it is approved by the other heirs. Because basically the will to the is considered something that does not exist, so that if it is allowed for the will it means that the heirs have given up their share of property to the person who was given the referee, this means that the handover of the testamentary property to the heirs applies as a grant law not as a will

¹² Azmil Mukarrom Nabila Rizka Kamelia, "Menimbang Kekuatan Hukum Antara Wasiat dan Waris Menurut Madzhab Imam Syafi'i," 16 Agustus 2024, p. 63 <https://doi.org/10.5281/ZENODO.13329113>.

¹³ Najmia, ""Konsep Hibah menurut imam syafi'i (serah terima dan penarikan kembali harta hibah)" (Pare pare, skripsi IAIN Parepare, 2020). 91

Conditions of Inheritance ¹⁴	Grant Conditions ¹⁵
Death Heir: Inheritance can only occur after the Heir dies	Owner of the Property: the grantor must be the legal owner of the object being granted
Life of the Heir: the condition that the Heir must be alive	The giver is an adult and is happy with the item being given and is not forced to do so.
Kinship: The recipient of the inheritance must have a valid blood or kinship relationship with the giver of the inheritance, such as descendants, father and mother, or siblings.	The object being donated is valuable and can be possessed.
	The existence of contract in granting something

3.2 The Practice of Inheritance distribution in Bangun Village, Gunung Malela Sub-District according to the Shafi'i Madhhab

The implementation of the distribution of Inheritance according to the Shafi'i Madhhab emphasizes that the distribution of Inheritance can be carried out after the obligations and conditions are fulfilled, one of which is that the Heir or the one who has the Inheritance has died. However, many practices in the field of the distribution of Inheritance Property distributed before the Heir dies are often found in the community, one of which is the author's research site, namely Bangun Village, Gunung Malela District, Simalungun Regency, North Sumatra Province. North Sumatra. Bangun Village is one of the villages located in the western part of Simalungun Regency, North Sumatra Province which has 6 Huta (hamlets). According to the Central Bureau of Statistics (BPS) 1,890 family heads occupy this area, and in this case the author took as many as three cases contained in Huta 1, 3 and 4 the author researched.

The following is information that exists in Bangun Village regarding the distribution of inheritance equally before the heir dies:

1. Division of Inheritance in Mr. I's Family

¹⁴ Najmia. 93

¹⁵ Muallif, "Hibah : Pengertian, Dasar Hukum, Rukun, Syarat, dan Permasalahannya," *Universitas Islam An Nur Lampung* (blog), 2022, <https://an-nur.ac.id/hibah-pengertian-dasar-hukum-rukun-syarat-dan-permasalahannya/?utm>.



The distribution of inheritance before the death of the heir that took place in Mr. I's family. Mr. I has 3 other siblings, namely two older sisters and one biological brother. Mr. I was a teacher at one of the primary education institutions in Patumbak Sub-district. Mr. I's parents reside in Bangun Village. The process of distributing the inheritance was carried out before Mr. I's parents passed away. Mr. I is a man born in 1999, in 2019 the parents of Mr. I died, but in 2015 the assets of Mr. I's parents distributed the assets with equal distribution to those given by the Heir to the Heirs before the death of the Heir.

From the results of interviews with the Family, he said that the assets that had been distributed before the heir died were distributed evenly, therefore the distribution of the inheritance was not in accordance with the parts of the heirs in practice, and also in order not to create social inequality related to the distribution of inheritance to the heirs, the distribution of inheritance was carried out before the heir died. Therefore, the transfer of inheritance is carried out when the testator is still alive. and from the source information, the distribution is also not in accordance with the Al-Quran and Sunnah but with the distribution of equal shares of the existing Inheritance, which is given to each Heir ¹⁶.

2. Division of Inheritance in Mrs. R's Family

The distribution of inheritance before the testator died occurred in family I. Mrs. R is the eldest and has three other siblings, namely two younger brothers and one younger sister. Mrs. R works as a housewife and lives in Patumbak Sub-district, Deli Serdang Regency. Mrs. R's parents had divided their inheritance to their children before they died. Mrs. R is a woman born in 1991, in 2020 Mrs. R's parents passed , but in 2018 Mrs. R's parents' assets have distributed the inheritance with equal shares given to each heir.

From the results of the interview with Mrs. R, she said that the inheritance that had been distributed before the heir died was distributed evenly and not in accordance with the parts of the heirs in practice, and also the distribution of the inheritance was carried out before the testator died on the grounds of avoiding conflicts among the heirs after the testator died regarding the distribution of inheritance. Therefore, the division is carried out while the testator is still alive. Based on the informant's information, the distribution was not in accordance with the provisions of the Qur'an and Sunnah, but was distributed evenly to all heirs.

The distribution of the inheritance in the form of 2 housing units and 170 million rupiah, the allocation of the distribution of the inheritance is 1 house for the youngest son and 1 housing unit for the third son of the heir, and each child who has not received the inheritance of 170 million rupiah, the practice of distributing the inheritance that is not evenly distributed in accordance with

¹⁶ Bapak I, wawancara Pembagian Harta Warisan di Keluarga Bapak I, 15 September 2024.



Islamic law and is not in accordance with the Al-Quran and Sunnah and the views of the Shafi'i Madhhab¹⁷.

3. Division of Inheritance in the Family of Mr. S .

The distribution of inheritance before the death of the testator occurred in the family of Mr. S. Mr. S is the second of six children, who has one older sister, one younger sister, and three younger brothers. Mr. S works as a principal in an elementary school in Medan Denai Sub-district, Medan City. Mr. S's parents had distributed the inheritance to their children before they passed away. Mr. S, a man born in 1976, lost his parents in 2022, but by 2021, the estate had been divided equally to the heirs by the testator during his lifetime.

Based on the results of interviews with Mr. S, he said that the distribution of inheritance carried out before the testator died was distributed evenly, which was not in line with the provisions of the Shafi'i Madhhab because it was not in accordance with the distribution of heir rights according to existing rules. This division was carried out on the grounds of minimizing conflicts and unwanted activities after the testator died regarding the distribution of inheritance. Therefore, the testator chose to distribute the property during his lifetime. Based on the informant's information, the distribution also does not follow the rules of the Qur'an and Sunnah, but is carried out equally according to the will of the testator in giving a share according to the heirs.

The inheritance assets are 2 houses, 13 hectares of plantation, and 126 million rupiah. 1 unit of house is distributed to the youngest daughter of the heir, 1 unit is given to the wife of the heir, 8 hectares for the second son, 7 hectares for the eldest daughter, and 42 million rupiah each to the heir's sons who have not received the inheritance. In this case, the distribution of the inheritance is not in accordance with the teachings of Shafi'i Madhhab by not following the Qur'an and Sunnah¹⁸.

From the results of the researcher's interviews with the existing sources, it can be concluded that the practice of distributing the inheritance evenly before the heir dies has positive and negative responses from each of existing family cases above, where the practice of distributing the inheritance is as follows:

In Muslim communities in Indonesia, especially in Bangun Village as studied in this research, the practice of distributing inheritance before the heir dies is not solely done on the basis of a violation of Islamic law, but is also born from various complex motives. These motives can be classified into the following factors.

a) Avoiding Family conflicts:

The division of inheritance during life can help reduce the potential for conflict after the heir dies. The heir can directly arrange and witness the distribution of the inheritance that the heir considers fair in the eyes of the heir, in accordance with his wishes;

b) Flexibility in grants:

¹⁷ Ibu R, Wawancara Pembagian Harta Warisan Di Keluarga Ibu R, 25 Januari 2025.

¹⁸ Bapak S, Wawancara Pembagian Harta Warisan Di Keluarga Bapak S, Oktober 2024.

The Shafi'i view is that a bequest is a valid act, and the Heir has the freedom to provide flexibility in the distribution of the Estate, without being strictly bound by the rules of Farai'd;

c) Accommodate special needs:

Distribution before the death of the testator may take into account the specific needs of each heir. For example, a Heir who needs more financial assistance can get a larger share as needed;

d) Can be adjusted to social conditions: in community practice, the distribution during the lifetime of the heir can be adjusted to the economic conditions of the heirs, which may vary greatly. Some heirs may need the assets more quickly.¹⁹

These motives, although understandable from the point of view of humanity and social reality, must still be criticized within the framework of Islamic law. In the Shafi'i and other madhhabs, faraid rules aim to ensure justice, avoid discrimination, and safeguard the rights of each heir according to their levels and nisbah. If the distribution during life is carried out without paying attention to this principle, it is feared that it will damage the maqashid sharia in terms of hifzh al-mal (protecting property) and hifzh al-nasl (protecting offspring/family).

The negative Impact of the Distribution of Inheritance Before the Heir Dies :

a) Potential for injustice.

In the perspective of the Shafi'i Madhhab, after the dies, the division of the inheritance must follow the faraid law. If the Inherited Property is divided during life, the division is contrary to the Law of Inheritance in Islam, and can result in the distribution of the Inherited property so that there is injustice for some of the existing Heirs;

b) Disadvantages heirs who do not get a share.

Grants do not have to be given equally, there is the potential for some Heirs to get more of the Estate, while others may not get a share of the Estate at all. This can lead to a sense of social jealousy and conflict within the family left behind in the future;

c) Potentially undermining the principles of faraidh.

One of the disadvantages of distributing inheritance before the death of the testator is the possibility of violating the principle of justice in the Law of Faraidh. This law establishes certain rights for each Heir that are protected by the Shari'ah, which can be memorialized in a bequest during life;

d) There are regrets later on:

Heirs may feel regret after distributing their Estate during their lifetime. Once the bequest has been made and approved, the Estate is irrevocable (with exceptions in certain cases), and it is possible that the Heir may feel at

¹⁹ Novi Mayangsari, "Pembagian 'Harta warisan' sebelum pewris meninggal dunia perspektif sosiologi hukum islam (studi di desa lebanisuko wringinanom kabupaten gresik)." (Yogyakarta, Uin Sunan kalijaga Yogyakarta, 2023), <https://digilib.uin-suka.ac.id/id/eprint/62139/>.

a loss to manage the Estate or see dissatisfaction in the Family to whom the Estate has been given.²⁰

In this case, the Shafi'i Madhhab states that grants can and are valid as long as they do not violate the principles of grants, but in the case in the field that the wealth of the heirs is the entire Heir's Property which exceeds the principle of grants in theory, namely 1/3 of the Property that can be granted to the Heirs and also does not comply with existing faraidh practices according to Islamic Sharia, which is detrimental to other Heirs because their share is not in accordance with Shara'a law. The positive and negative responses are also often found in the community in practice, depending on how the family views between practical needs and family compliance with Sharia Law.

3.3 Perspective of the Compilation of Islamic Law on the distribution of inheritance before the heir dies.

In the Shafi'i Madhhab, inheritance (al-mirats) can only occur if the testator has actually died (biologically or declared by the judge), the heirs are still alive when the testator dies, there is a relationship of nasab or marriage, and is not hindered by causes that prevent inheritance (for example murder)²¹. The distribution of property before death cannot be called inheritance, but rather a grant, whose provisions are different from faraid. Grants may be made, but they must not take over the entire property, and must not cause harm to other heirs. In practice, heirs tend to distribute all assets equally without considering the inheritance ratio, such as 2:1 between men and women which has been determined in the Qur'an (QS. An-Nisa: 11, 12, and 176).

The implementation of the distribution of assets to the heirs carried out by the testator when the testator is still alive can be accommodated in articles 195 point (3) and 211 of the Compilation of Islamic Law. Article 195 point (3) states that "Wasiat to the heirs is only valid if approved by all heirs". Article 211 states that "Grants from parents to their children can be calculated as inheritance". This means that the inheritance of property by the testator to his heirs when the testator is still alive can be identified with inheritance through a will or inheritance through a grant.

Islamic inheritance law has a principle due to death, which means that inheritance occurs when someone dies, inheritance exists as a result of the death of a person. Therefore, the transfer of one's property to another person, called inheritance, occurs after the person who has the property dies. This means that a person's property cannot be transferred to another

²⁰ Nursyamsudin Nursyamsudin, "Pembagian Harta Waris Sebelum Muwaris Meninggal Dunia Menurut Perspektif Hukum Waris Islam," *Mahkamah : Jurnal Kajian Hukum Islam* 3, no. 1 (8 Juni 2018): 69, <https://doi.org/10.24235/mahkamah.v3i1.2747>.

²¹ Imam Syafi'i, *Al-Umm*, juz 3 (Beirut: Darul Kutub Alamiah, t.t.).

person as long as the person who has the property dies. property is still alive. Likewise, any form of transfer of a living person's property to another person, either directly or to be carried out later after his death, is not included in the category of inheritance according to Islamic law²².

The evidence of Zayd ibn Tsabit and his followers is that Allah, the Almighty, has specified the share of each of the heirs in the text, so it is not permissible to increase it without proof, based on the Hadith narrated by Abu Daud: "Allah, the Almighty, has given each of the heirs his right, so it is not permissible for each of the heirs to get more than he is entitled to."

Rules of Inheritance in the Compilation of Islamic Law (KHI) Rules that determine the transfer of rights to ownership of the inheritance (tirkah) of the heir, determine the person entitled to be the recipient of the inheritance, and regulate the portion of each heir.²³ Whereas the heir in KHI is someone who has died or is decided to die based on a religious court decree, and leaves an inheritance and the party entitled to inherit it.²⁴ From the explanation of the article above, it is clear that the Inheritance Property is the inheritance of a heir where the heir has been declared dead, either from a judge's decision or dies in a worldly context. Article 187 paragraph 1 states that if the testator leaves an inheritance in the form of assets or wealth, then during his lifetime or through the decision of the heirs, he can have a number of parties to carry out the distribution of the inheritance with the responsibilities described in points a and b.²⁵ In this case, it is clearly stated that the Inheritance Property can be distributed after the Heir dies, where the Inheritance Property passes from the Heir to the existing Heirs in accordance with existing provisions.

4.CONCLUSIONS

Based on the findings of this study, it is evident that the practice of dividing property before the death of the testator in Bangun Village does not fulfill the legal definition of inheritance (*al-mirats*) as prescribed by Islamic law, particularly in the Shafi'i Madhhab. Instead, such a practice constitutes a *hibah* (grant) given during the lifetime of the property owner. As it is not subject to the *faraid* system, the equal distribution commonly practiced neglects the proportional entitlements outlined in the Qur'an and Sunnah, leading to potential violations of justice. This study reveals that pre-mortem distribution is motivated by a desire to avoid posthumous conflict and to provide a sense of perceived fairness among heirs. However, this method often disregards the obligatory shares defined by Sharia, thereby deviating from the foundational principles of Islamic inheritance law. Consequently, these practices carry a risk of intra-family disputes, long-term grievances, and systemic injustice.

²² nurjannah, "Pembagian Harta Sebelum Orang Tua Meninggal Dunia Pada Masyarakat Adat Bulukumba Ditinjau Dari Hukum Islam (Studi Kasus Di Kelurahan.Caile Kecamatan.Ujung Bulu Kabupaten. Bulukumba)" (Skripsi, Makassar, UIN Alauddin, 2012), <https://repository.uin-alauddin.ac.id/6043/>.

²³ Abdurahman, *Kompilasi Hukum Islam Di Indonesia* (Jakarta: CV Akademika. Pressindo, 2010).

²⁴ Abdurrahman, *Kompilasi hukum Islam di Indonesia*, Ed. 1 (Jakarta: Akademika Pressindo, 1992).

²⁵ Abdurrahman.

The conclusion drawn from this research underscores the gap between religious doctrine and community practice, highlighting the limited understanding and misapplication of inheritance principles within the Shafi'i framework. To bridge this gap, it is imperative to promote structured and culturally grounded legal education. It is recommended that community-based programs such as mosque-based counseling, village seminars, and visual educational media, be implemented to clarify the distinctions between inheritance and grants, and to reinforce adherence to the legal standards outlined in both the Qur'an and the Compilation of Islamic Law (KHI). These efforts are essential to uphold justice, legal certainty, and family harmony in accordance with Islamic jurisprudence.

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