

**ANALYSIS OF *MAQASID SHARI'AH* JASSER AUDA ON THE  
IMPLEMENTATION OF ROTATING INHERITANCE (*WARIS BERGILIR*)**

**(Case Study In Pagelaran Village, Pagelaran District, Malang Regency)**

**THESIS**

**BY: EKA ZAHROTUL FA'IZAH**

**SIN 200201110009**



**ISLAMIC FAMILY LAW DEPARTEMENT**

**SHARIA FACULTY**

**MAULANA MALIK IBRAHIM ISLAMIC STATE UNIVERSITY MALANG**

**2024**

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**2024**

## STATEMENT OF THE AUNTENTICITY

In the name of Allah,

With conscieusness and responsibility toward the development of science, the writer declares that thesis entilted:

### ANALYSIS OF MAQĀSID SHARĪ'A JASSER AUDA ON THE IMPLEMENTATION OF ROTATING INHERITANCE (*WARIS BERGILIR*)

(Case Study In Pagelaran Village, Pagelaran District, Malang Regency)

Is truly writer's original work which can be legally justified. If this thesis is proven result of duplication or plagiarism form another scientific work, it as precondition of degree will be stated legally invalid.

Malang, 04<sup>th</sup> April 2024

Writer



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## APPROVAL SHEET

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### **ANALYSIS OF MAQĀSID SHARĪ'A JASSER AUDA ON THE IMPLEMENTATION OF ROTATING INHERITANCE (*WARIS BERGILIR*)**

**(Case Study In Pagelaran Village, Pagelaran District, Malang Regency)**

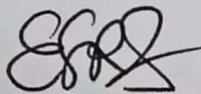
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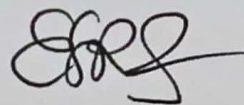
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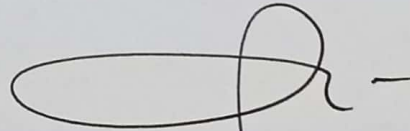
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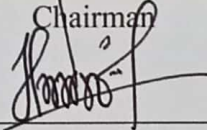
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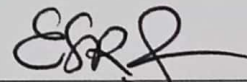
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## MOTTO

وَلَا تَأْكُلُوا أَمْوَالَكُمْ بَيْنَكُمْ بِالْبَاطِلِ وَتُدْلُوا بِهَا إِلَى الْحُكَّامِ لِتَأْكُلُوا فَرِيقًا مِّنْ أَمْوَالِ النَّاسِ بِالْإِثْمِ وَأَنْتُمْ تَعْلَمُونَ

“And do not eat of the wealth among yourselves by means of falsehood, and do not bribe the judges with it, that you may eat of the wealth of others by way of sin, while you know.”

**“AL-BAQARAH:188”**

## **ACKNOWLEDGEMENT**

All praise and gratitude to Allah SWT who has bestowed His grace, taufik and guidance to all of us so that the author can complete this thesis entitled:

**“REVIEW OF *MAQASID SHARI'A* JASSER AUDA ON THE  
IMPLEMENTATION OF ROTATING INHERITANCE (*WARIS BERGILIR*)  
(Case Study In Pagelaran Village, Pagelaran District, Malang Regency)”**

Shalawat and salam may remain poured out to our lord the Prophet Muhammad SAW, who has become a role model in all aspects of our lives.

The preparation of this thesis is intended as one of the requirements to obtain a bachelor's degree and complete studies at the Faculty of Sharia, Islamic Family Law Study Programme, Maulana Malik Ibrahim State Islamic University Malang. The author realises that this research cannot be separated from the help of many parties, as well as various forms of motivation, both directly and indirectly, always appear in all situations and conditions. The author expresses his deepest gratitude to all those who have helped the author in completing this thesis, both directly and indirectly, therefore please allow the author to thank:

1. Prof. Dr. H. M. Zainuddin, M.A as the Rector of Maulana Malik Ibrahim State Islamic University Malang.
2. Prof. Dr Sudirman, M.A as the Dean of the Faculty of Sharia, Maulana Malik Ibrahim State Islamic University Malang.

3. Mrs Erik Sabti Rahmawati MA. M.Ag as the Head of the Department of Islamic Family Law at Maulana Malik Ibrahim State Islamic University Malang as well as the supervisor who has guided and directed the author in preparing this thesis, so that it can be completed properly.
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9. For someone whose name cannot be written here, but has been written in the *lauhul mahfudz* for the author, thank you for being a source of motivation in



completing this paper as an effort to stabilise herself. Because the author believes that something that is destined to be ours will go to us no matter what.

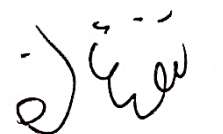
10. Family of Ma'had Sunan Ampel Al-Aly Maulana Malik Ibrahim State Islamic University Malang, which has become the author's second home and motivates about the meaning and blessings of dedication.

11. As well as to all parties who helped researchers in completing this thesis, which the author cannot mention one by one.

Hopefully this final project can be useful for writers in particular and for readers in general and can be a reference in scientific development, especially in the field of law. In writing this thesis, the author is not free from mistakes and is far from perfection. Therefore, the author really hopes for constructive criticism and suggestions from all parties for the improvement of this work in the future.

Malang, 04<sup>th</sup> April 2024

Author



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## TRANSLITERATION GUIDENCE

### A. General

Transliteration is the transfer of Arabic writing into Indonesian writing (Latin), not the translation of Arabic into Indonesian. Included in this category are Arabic names of Arabs, while Arabic names of nations other than Arabs are written as the spelling of their national language, or as written in the book being referred to. The writing of book titles in footnotes and bibliographies, still uses this transliteration provision.

There are many options and transliteration provisions that can be used in writing scientific papers, both international and national standards, as well as the provisions of certain publishers. However, the transliteration used in the preparation of this thesis is the transliteration used by the Faculty of Shari'ah, Maulana Malik Ibrahim State Islamic University Malang.

### B. Consonants

The list of Arabic letters and their transliteration into Latin letters can be seen in the following table:

Arabic	Indonesian	Arabic	Indonesian
أ	`	ط	ṭ
ب	b	ظ	ẓ
ت	t	ع	‘
ث	th	غ	gh
ج	j	ف	f
ح	ḥ	ق	q
خ	kh	ك	k

د	d	ل	l
ذ	dh	م	m
ر	r	ن	n
ز	z	و	w
س	s	هـ	h
ش	sh	ء	'
ص	ṣ	ي	y
ض	ḍ		

Hamzah (ء) at the beginning of a word follows its vowel without any sign. If the hamzah (ء) is located in the middle or at the end, it is written with a sign (').

### C. Vowels, Lengths, and Diphthongs

Single vowels in Arabic, whose symbols are signs or harakat, are transliterated as follows:

Arabic Letters	Name	Latin Letters	Name
أَ	Fatḥah	A	A
إِ	Kasrah	I	I
أُ	Ḍammah	U	U

Arabic double vowels, whose symbols are a combination of harakat and letters, are transliterated as a combination of letters, namely:

Tanda	Nama	Huruf Latin	Nama
أَيَّ	Fatḥah and ya	Ai	A and I
أَوَّ	Fatḥah and wau	Iu	A and U

كَيْفَ : *kaifa*

هَوَّلَ : *hauḷa*

Long vowels or maddah are in the form of harakat and letters, transliterated in the form of letters and signs, namely:

Harkat and Letters	Name	Letters and Sign	Name
اَ اِ	Fathah and alif or ya	ā	a and the line above
اِ اِي	Kasrah and ya	ī	i and the line above
اُ اِي	Ḍammah and wau	ū	u and the line above

Example:

مَاتَ : *māta*

رَمَى : *ramā*

قِيلَ : *qīla*

يَمُوتُ : *yamūtu*

#### D. Ta Marbūṭah

There are two transliterations for *ta marbūṭah*, namely *ta marbūṭah* which is alive or gets *fathah*, *kasrah*, and *ḍammah*, the transliteration is [t]. While *ta marbūṭah* which is dead or gets the letter sukun is transliterated as [h]. If the last word with *ta marbūṭah* is followed by a word that uses the article *al-* and the reading of the two words is separated, then *ta marbūṭah* is transliterated with *ha* (h), for example:

رَوْضَةُ الْأَطْفَالِ : *rauḍah al-atfāl*

المَدِينَةُ الفَضِيلَةُ : *al-madīnah al-fāḍīlah*

الحِكْمَةُ : *al-ḥikmah*

### E. Sandang Letters and Lafadh Al-Jalalah

The article is symbolised by a letter (alif lam ma'rifah) with the transliteration al-, either when it is followed by a Shamsiah letter or a Qomariah letter. The article does not follow the letter immediately following it. The article is written separately from the word that follows it and is connected with a horizontal line (-) For example:

الشَّمْسُ : *al-syamsu* (bukan *asy-syamsu*)

الزَّلْزَلَةُ : *al-zalزالah* (bukan *az-zalزالah*)

الفَلْسَفَةُ : *al-falsafah*

The word "Allah" which is preceded by particles such as jarr and other letters or acts as a mudāf ilaih (nominal phrase), is transliterated without the letter hamzah. Example:

دِينُ اللَّهِ : *dīnullāh*

As for the ta mar'būṭah at the end of a word that is based on lafẓ al-jalālah, it is transliterated with the letter [t]. Example:

هُمْ فِي رَحْمَةِ اللَّهِ : *hum fī raḥmatillāh*

## F. Hamzah

The letter hamzah when transliterated into apostrophe (') only applies to hamzahs located in the middle and end of words. However, if the hamzah is located at the beginning of the word, it is not symbolised because in Arabic writing it is an alif. For example:

تَأْمُرُونَ : *ta'murūna*

النَّوْءُ : *al-nau'*

شَيْءٌ : *syai'un*

## G. Capital Letters

Although the Arabic writing system does not recognise capital letters (All Caps), in transliteration these letters are subject to the provisions on the use of capital letters based on the applicable Indonesian spelling guidelines (EYD). Capital letters, for example, are used to write the initial letters of proper names (person, place, month) and the first letter at the beginning of a sentence. When a proper name is preceded by the word sandang (al-), the initial letter of the proper name is written in capital letters, not the initial letter of the article. If it is at the beginning of a sentence, then the letter A of the article is capitalised (Al-). The same provision also applies to the initial letter of the title of the reference preceded by the article al-, both when it is written in the text and in the reference notes (CK, DP, CDK, and DR).

Example:

*Wa mā Muḥammadun illā rasūl*

*Inna awwala baitin wudi'a linnāsi lallazī bi Bakkata mubārakan*

*Syahru Ramadān al-lazī unzila fī al-Qur'ān*

## TABLE OF CONTENT

<b>INSIDE COVER</b> .....	<b>i</b>
<b>STATEMENT OF THE AUNTENTICITY</b> .....	<b>ii</b>
<b>APPROVAL SHEET</b> .....	<b>iii</b>
<b>LEGITIMATION SHEET</b> .....	<b>iv</b>
<b>MOTTO</b> .....	<b>v</b>
<b>AKNOWLEDGEMENT</b> .....	<b>vi</b>
<b>TRANSLITERATION GUIDENCE</b> .....	<b>ix</b>
<b>TABLE OF CONTENT</b> .....	<b>xv</b>
<b>ABSTRAK</b> .....	<b>xvii</b>
<b>CHAPTER I</b> .....	<b>1</b>
<b>INTRODUCTION</b> .....	<b>1</b>
A. Background .....	1
B. Statement of Problem.....	5
C. Objective of Research .....	5
D. Research Benefits .....	5
E. Structure of Discussion .....	6
<b>CHAPTER II</b> .....	<b>8</b>
<b>LITERATURE REVIEW</b> .....	<b>8</b>
A. Previous Research.....	8
B. Conseptual Framework.....	14
1. Inheritance According to Islam .....	14
2. <i>Maqāṣid Sharī'ah</i> .....	20
<b>CHAPTER III</b> .....	<b>30</b>
<b>RESEARCH METHODS</b> .....	<b>30</b>
A. Type of Research.....	30
B. Research Approach .....	30
C. Research Location.....	31



D. Data Type and Source .....	31
E. Technique of Data Sources Collection.....	32
F. Data Analysis.....	33
<b>CHAPTER IV .....</b>	<b>36</b>
<b>DISCUSSION OF RESEARCH FINDING.....</b>	<b>36</b>
A. Overview and Research Location .....	36
B. The Practice of Implementing Rotating Inheritance in Pagelaran Village .....	38
C. Analysis of <i>Maqāṣid Sharī'ah</i> Jasser Auda on The Implementation Rotating Inheritance .....	49
<b>CHAPTER V .....</b>	<b>64</b>
<b>CLOSING.....</b>	<b>64</b>
A. Conclusion.....	64
B. Suggestion.....	66
<b>BIBLIOGRAPHY.....</b>	<b>68</b>
<b>APPENDIXES.....</b>	<b>72</b>
<b>CURRICULLUM VITAE .....</b>	<b>75</b>

## ABSTRAK

Eka Zahrotul Faizah, NIM 200201110009, 2024. *Analysis of Maqāsid Sharī'ah Jasser Auda On the Implementation of Rotating Inheritance (Waris Bergilir) Case Study In Pagelaran Village, Pagelaran District, Malang Regency*. Skripsi. Jurusan Hukum Keluarga Islam, Fakultas Syariah, Universitas Islam Negeri Maulana Malik Ibrahim Malang. Pembimbing: Erik Sabti Rahmawati MA. M.Ag

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Kata Kunci: Harta Waris, Bergilir, *Maqāsid Sharī'ah*.

Proses pembagian waris diperlukan konsep yang tepat tanpa mengurangi esensi keadilan yang terkandung didalamnya. Berkembangnya isu-isu kontemporer menjadikan berbagai hal termasuk pembagian harta waris menjadi semakin kompleks. Sebagaimana yang dilakukan oleh masyarakat Desa Pagelaran yang membagikan harta warisan dengan tidak mendasarkan pembagian waris pada hukum islam. Mereka memiliki cara tersendiri yakni dengan menggilirkan lahan yang menjadi objek waris untuk diambil manfaatnya oleh para ahli waris, penggiliran tersebut terjadi karena minimnya jumlah lahan yang ada sedangkan ahli warisnya banyak. Hal ini menjadi suatu hal yang menarik apabila dikaji dengan konsep *maqāsid sharī'ah* karena kita dapat mengetahui esensi dari tujuan disyariatkannya hukum waris bagi umat islam. Penelitian ini mengandung dua rumusan masalah yaitu: (1) Bagaimana praktik pelaksanaan sistem waris bergilir di Desa Pagelaran Kabupaten Malang? (2) Bagaimana pembagian harta waris bergilir di Desa Pagelaran Kabupaten Malang ditinjau dari *maqāsid sharī'ah Jasser Auda* ?

Penelitian ini adalah penelitian empiris yang menggunakan pendekatan deskriptif kualitatif. Sumber data primernya berasal dari hasil wawancara sedangkan sumber data sekunder diperoleh dari kepustakaan yang kemudian data-data yang telah terkumpul diolah menggunakan pemeriksaan, klasifikasi, analisis, dan kesimpulan data.

Hasil penelitian dapat disimpulkan dalam dua aspek yaitu: (1) Praktik pemanfaatan harta waris bergilir di Desa Pagelaran dilakukan secara bergantian antar ahli waris sesuai kesepakatan bersama yang dalam praktiknya dilatarbelakangi oleh minimnya lahan atau tanah yang hendak dibagi dan juga sebagai langkah awal menuju pembagian tanah waris secara permanen yang hasil dari penggiliran tanah tersebut untuk biaya penyertifikatan tanah masing-masing ahli waris. (2) Praktik pembagian waris secara bergilir telah memenuhi maksud dan tujuan *maqāsid sharī'ah Jasser Auda* dan telah sesuai dengan esensi dari pensyariaan hukum waris yakni dijaminnya pendistribusian harta waris yang adil sebab adanya kesepakatan bersama antar ahli waris serta didalamnya juga memperhatikan aspek perlindungan dan ketahanan dalam keluarga.

## ABSTRACT

Eka Zahrotul Faizah, SIN 200201110009, 2024. *Analysis of Maqāṣid Sharī'ah Jasser Auda On the Implementation of Rotating Inheritance (Waris Bergilit) Case Study In Pagelaran Village, Pagelaran District, Malang Regency*. Thesis. Islamic Family Law Department, Sharia Faculty, Maulana Malik Ibrahim Islamic State University Malang. Supervisor: Erik Sabti Rahmawati MA. M.Ag

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*Keyword:* Inheritance, Rotating, *Maqāṣid Sharī'ah*

The practice of distributing inherited property will never be separated from human life, so the process of distributing it requires the right concept without reducing the essence of justice contained therein. The development of contemporary issues makes various matters including the distribution of inheritance assets increasingly complex. The Pagelaran Village community does not base the distribution of inheritance on Islamic law. They have their own way of rotating the land that is the object of inheritance to be taken advantage of by the heirs, the rotation occurs because of the small amount of land available while the heirs are many. This becomes an interesting thing when studied with the concept of *maqāṣid sharī'ah* because we can find out the essence of the purpose of the law of inheritance for Muslims. This research contains two problem formulations, namely: (1) How is the practice of implementing a rotating inheritance system in Pagelaran Village, Malang Regency? (2) How is the distribution of rotating inheritance in Pagelaran Village, Malang Regency viewed from *maqāṣid sharī'ah Jasser Auda*?

This research is empirical research that uses a qualitative descriptive approach. Primary data sources come from interviews while secondary data sources are obtained from the literature which then the data that has been collected is processed using examination, classification, analysis, and data conclusions.

The results of the study can be concluded in two aspects, namely: (1) The practice of rotating inheritance property utilization in Pagelaran Village is carried out alternately between heirs according to mutual agreement which in practice is motivated by the lack of land or land to be divided and also as a first step towards permanent inheritance land division which results from the land rotation for the cost of certifying the land of each heir. (2) The practice of sharing inheritance in rotation has fulfilled the aims and objectives of Jasser Auda's *maqāṣid sharī'ah* and has been in accordance with the essence of the proscription of inheritance law, namely the guarantee of fair distribution of inheritance property because of mutual agreement between heirs and in it also takes into account aspects of protection and resilience in the family.

## مستخلص البحث

إيكا زهرة الفائزة، ٢٠٠٩، ٢٠١١، ٢٠١٢، ٢٠٢٤، تحليل مقاصد الشريعة الإسلامية جاسر عودة حول تطبيق نظام الإرث بالتناوب (وارس بيرجيلير) دراسة حالة في قرية فاغلاران، مقاطعة فاغلاران، مالانج. بحث الجمعي. قسم الأحوال الشخصية. كلية الشريعة. جامعة مولانا مالك إبراهيم الإسلامية الحكومية مالانج. المشرف: ايريك سبتي رحموتي الماجستير.

الكلمة الإشارة: وريثة، يناوب، مقاصد الشريعة.

إن تطبيق تقسيم التركة لا يخلو عن حياة الإنسان وكذلك يحتاج إلى كيفية مناسبة في تقسيمها بغير نقص عن زبدة العدالة التي فيها. وكذلك ما فعله فاغلاراني (Pagelaran) المقسمي التركة بغير ما جاء في شريعة الإسلام. ولهم طريقة أخرى يعني يناوب الأرض المتروكة عليه لينتفع الوريثة. ويكون يناوب لقلة عدة الأرض الموجودة مع أن الوريثة أكثر منها. وهذا شيء عجيب إذا بحثنا بمنهج مقاصد الشريعة. لأننا نستطيع أن نعرف الزبدة من مقصود المشروع بها أحكام الوريثة عند المسلمين

فهذا البحث يحتوي على سؤالين وهي: ١. كيف تطبيق نظام التركة الجاري في فاغلاران مالانج؟ ٢. كيف تقسيم التركة الجاري في فاغلاران مالانج نظراً من مقاصد الشريعة جاسر عودة؟ فهذا البحث هو التجريبي الذي يستخدم الوصفي النوعي. والمصدر الأساسي هو من نتيجة المقابلة. و أما المصدر الثانوي فهو من المصادر والمراجع التي يرمى بها - طبعاً بعد ما جمعت المعلومات - بطريقة التقطيش والتصنيف والتحليل والنتيجة .

والنتيجة في معظمها تقتضي أمرين: ١. إن تطبيق إنتفاع التركة النوب في باغلاران يعمل بطريقة التعاقب بين الوريثة حسب الإتفاق مع الذي أسستها الأرض القليلة وكذلك البقعة المراد بالإنقسام. و يكون خطوة أولية أيضاً إلى تقسيم الأرض الموروث الدائم التي سيستخدمه يناوب الأرض لثمن سند ملكيته لكل من الوريثة ٢. أن تطبيق تقسيم التركة بشكل النوب قد وافق بالزبدة من تشريع حكم الوريثة وقد حققت ممارسة تقاسم الإرث بالتناوب أهداف ومقاصد مقاصد الشريعة الإسلامية في مقاصد جاسر عودة في مقاصد الشريعة الإسلامية، وجاءت متفقة مع جوهر إدارة قانون الميراث، وهو ضمان التوزيع العادل للميراث بسبب الاتفاق بين الوريثة بالتراضي بينهم، كما أن فيه مراعاة لجوانب الحماية والمرونة في الأسرة. والله أعلم

## CHAPTER I

### INTRODUCTION

#### A. Background

Indonesia as a nation was colonized by the Dutch for a very long period of time, therefore most of the policies in the form of legislation were strongly influenced by the colonial government, which of course aimed to benefit the colonizers. Similarly, the implementation of inheritance law, which was influenced by the thoughts of Sunni Ulama, was not codified by the Dutch government. In fact, the implementation of inheritance was mixed up with customary law. As a result, the practice of patrilineal, matrilineal and bilateral inheritance division differs from one region to another in Indonesia.<sup>1</sup>

However, despite the three structures of Indonesian society, the implementation of inheritance law is still colored by customary law. This is the fault of the reception theory that ignores the existence of Islamic law, as a guide for Muslims, namely prioritizing customary law over Islamic law so that Islamic law is considered appropriate as law if it has entered into customary law. So it depends on the willingness of the local community to implement the law. This reception theory error is fatal to the validity of Islamic law, especially Indonesian inheritance law at this time, despite the fact that Muslims in Indonesia are the majority, but only a small portion implement the laws of

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<sup>1</sup> Saifullah Basri, "Hukum Waris Islam (Fara'Id) Dan Penerapannya Dalam Masyarakat Islam," *Jurnal Kepastian Hukum dan Keadilan* 1, no. 2 (2020): 37, <https://doi.org/10.32502/khdk.v1i2.2591>.

Allah. Whereas The threat for Muslims who do not implement the laws of Allah is very severe, as explained in Q.S Ali Imran verse 4.<sup>2</sup>

There are three inheritance laws that apply in Indonesia, namely Islamic inheritance law, customary inheritance law, and civil inheritance law.<sup>3</sup> Inheritance law itself is part of Islamic law and occupies a very important place in it, this can be seen in the verse of the Qur'an which regulates because the problem of inheritance must be experienced by everyone.<sup>4</sup> Inheritance law is a determination that regulates the problem of property, if it is not regulated in detail this will result in the emergence of disputes in the family even the dispute will be very fatal, even fighting between families themselves can not be avoided.<sup>5</sup>

As already mentioned, Indonesia is a country where the majority of the population is Muslim and is obliged to carry out the sharia in it. Including the population in Pagelaran Village, Pagelaran District, Malang Regency, the majority of the population is also Muslim, but in terms of the distribution of inheritance property, not all residents use Islamic law but have their own customs according to the customs of their respective families. Among them is by dividing the inheritance in rotation. So that in the process the inheritance property is only taken advantage of, not physically divided to each of them. each heir. This is done by the people of Pagelaran Village because the land area is narrow

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<sup>2</sup> Basri.

<sup>3</sup> Muhamad Syaifullah Abadi Manangin, Leni Dwi Nurmala, dan Nurmin K Martam, "Pengalihan Atas Harta Warisan Di Indonesia," *DiH: Jurnal Ilmu Hukum* 16, no. 2 (2020): 177–89, <https://doi.org/10.30996/dih.v16i2.3345>.

<sup>4</sup> Basri, "Hukum Waris Islam (Fara'Id) Dan Penerapannya Dalam Masyarakat Islam."

<sup>5</sup> Basri.

so that if it is physically divided it will only be divided into several small parts, besides that they apply rotating inheritance to maintain what has been passed down by their ancestors.

The implementation of rotating inheritance is mostly carried out on inherited property in the form of fields or rice fields. The inheritance in the form of rice fields is not divided but only the benefits are taken. The distribution of inheritance in rotation is considered not in accordance with Islamic law, because in the rotation of inheritance between men and women get the same rights, while Islamic inheritance between men and women has a ratio of 2: 1 in its distribution.<sup>6</sup> However, at the same time, reality shows that Islamic inheritance law that carries the concept of 2:1 is no longer in line with the spirit of justice of Indonesian society, so that not a few Indonesian Muslims leave it.

This statement implies that people, both laypeople and religious leaders, consider that faraid is not the best way to deal with inheritance issues. Social conditions continue to change, the needs of the heirs are different, and the role of women has changed compared to the early days of Islam, causing the community to consider faraid as the best way to deal with inheritance issues. avoiding faraid in the distribution of inheritance. Faraid is indirectly considered no longer ideal in the face of all these changes.<sup>7</sup>

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<sup>6</sup> Adelina Nasution, "Pluralisme Hukum Waris Di Indonesia," *Al-Qadha* 5, no. 1 (2019): 20–30, <https://doi.org/10.32505/qadha.v5i1.957>.

<sup>7</sup> Abdul Aziz, "Pembagian Waris Berdasarkan Tingkat Kesejahteraan Ekonomi Ahli Waris dalam Tinjauan Maqashid Shariah," *De Jure: Jurnal Hukum dan Syar'iah* 8, no. 1 (2016): 48–63, <https://doi.org/10.18860/j-fsh.v8i1.3729>. 49.

If this is allowed to continue, the assumption that faraid science does not reflect justice will cause Islamic law to be considered rigid and outdated. Gradually, faraid as Islamic inheritance law, will be increasingly abandoned by Muslims themselves. And the Qur'an *hadith* as the source of Islamic law is no longer considered *shālih likulli zamān wa makān*. Therefore, inheritance distribution regulations that accommodate social change should be formulated by scholars.<sup>8</sup>

Based on the practices carried out by the Pagelaran Village community, the author is interested in further research on the distribution of inheritance in rotation, because in essence Islam has regulated all forms of activities carried out by humans in world life including in terms of inheritance. Human activities are regulated by Islam to achieve certain goals or what is commonly known as *maqāṣid sharī'ah*.

Therefore, it is necessary to conduct an in-depth study of the rotating inheritance distribution system in Pagelaran Village, Pagelaran Subdistrict. Malang Regency, then analyzed using *maqāṣid sharī'ah Jasser Auda* theory, which is where Jasser Auda as a contemporary scholar who initiated *maqāṣid sharī'ah* as an effort to seek legal certainty. This is done to find out the nature and purpose of the law of inheritance. In addition, the development of inheritance distribution with the *maqāṣid sharī'ah* approach is the right step to deal with social changes by not getting out of the *nāṣ*.

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<sup>8</sup> Aziz. 49



## **B. Statement of Problem**

Based on the description above, the subject of this research can be formulated as follows:

1. How is the implementation of the rotating inheritance system practiced in Pagelaran Village, Malang Regency?
2. How is the distribution of rotating inheritance in Pagelaran Village, Malang Regency in terms of *maqāṣid sharī'ah* Jasser Auda?

## **C. Objective of Research**

Based on the background and problem formulation above, this research aims as follows:

1. Identifying the practice of implementing a rotating inheritance system in Pagelaran Village, Malang Regency.
2. Analyzing the *maqāṣid sharī'ah* Jasser Auda of the distribution of rotating inheritance in Pagelaran Village, Malang Regency

## **D. Research Benefits**

1. Theoretical Benefits

This research is expected can useful for the development of science, adding to author's repertoire of insights related to science law, especially those related to the inheritance system that applies in the community of Pagelaran Village and is able to provide a broad understanding of the concept of *maqāṣid sharī'ah*.

## 2. Practical Benefits

For researchers, this research activity is a new experience that is only obtained outside the lecture bench and new knowledge that can compare the theory obtained in lectures with the reality that occurs in society.

### **E. Structure of Discussion**

In this case the researcher will describe or explain the systematics of writing and discussion in the thesis which will be divided into 5 chapters, namely:

Chapter I contains an introduction which includes the background of the problem being studied. In this chapter, it describes the background of the problem taken, in the form of a summary that explains the interesting factors behind this problem that need and are important to be researched, the formulation of the problem that is the focus, the research objectives that explain the reasons for this research which are then coupled with the benefits of research. By observing this chapter, the initial understanding of the flow and flow of research can be clearly understood.

Chapter II contains a literature review. In this discussion, researchers describe previous research to see the differences in research problems studied by previous researchers. The need to include this previous research The purpose of this chapter is to measure the differences in the issues studied, so that researchers are not considered plagiarism. This chapter also explains the theoretical framework that briefly discusses the research theories that will be used as material for analysis in the discussion chapter.

Chapter III contains research methods that review the methods used in this research. These methods include the type of research, research approach, research location, and types and sources of data. So that the discussion can reveal systematic, logical, rational, and directed data. In this study, the method used is more of a field research that bases informants on the results of interviews and documentation.

Chapter IV explains the results of research related to the problems that have been formulated in the formulation of masallah accompanied by analysis of primary and secondary data sources. In this study, researchers will analyze the results of interviews to describe the distribution of inheritance in rotation which is then analyzed using *maqāṣid shari'ah* theory.

Chapter V contains conclusions and suggestions. This conclusion is not a summary of the research but contains a brief answer to the problem formulation, as well as suggestions that are shown to the parties involved with the aim of prosperity as a follow-up to the results of this study.

## CHAPTER II

### LITERATURE REVIEW

#### A. Previous Research

This previous research aims to find similarities or differences with research that has been done before as a reference material for consideration and footing in this research. The previous studies listed are as follows:

First, a journal article written by Ayu Aigisia and Iim Fahima in 2020 with the title “*Pemanfaatan Harta Waris Bersama dengan Cara Gilir Sawah Perspektif Hukum Islam (Studi Pada Masyarakat Kecamatan Kelam Tengah Kabupaten Kaur Provinsi Bengkulu)*.” The article explains that there is a custom of utilizing joint inheritance property by way of gilir sawah which is carried out by rotating the object of inheritance sequentially from the wife or husband who is left behind next to the first child onwards and is not fully owned, only the benefits are taken. According to Islamic law, the utilization of joint inheritance property by way of rotating rice fields can be done because of mutual consent and agreement among the heirs. The similarities between the research in the article and the research conducted by the author are both examining the utilization of inherited property by way of rotating rice fields. Meanwhile, the difference lies in the location of the research, Ayu Aigisia examined the Central Kelam District of Bengkulu Province while the author in Pagelaran District of East Java Province. In addition, the

theory of analysis used by Ayu uses Islamic law. While the researcher is more specialized, namely using *maqāṣid sharī'ah* theory<sup>9</sup>

Second, an article written by Isran Idris, Taufik Yahya, and Windarto in 2018 with the title “*Pola Penguasaan Tanah Sawah Secara Gilir Ganti dalam Perspektif Hukum Agraria.*” The article explains customary law in the Kerinci region of Jambi. This article discusses the pattern of tenure and ownership of paddy fields by gilir ganti in the perspective of agrarian law. The gilir ganti sawah system is influenced by kinship and inheritance systems that distinguish between sons and daughters. The article is analyzed from the perspective of agrarian law, which states that the pattern of rotating land tenure as carried out by the indigenous people of Kerinci Jambi makes it difficult to determine the legal subject of the owner, making it impossible to be registered to obtain a certificate. Even so, the system still survives and is maintained on the grounds that it is a marker of one family descent. The similarities between this research and what will be done are both discussing the inheritance of rice fields in rotation. Meanwhile, the difference lies in the theory of analysis, namely in Isran's article focusing on agrarian law while the author focuses on *maqāṣid sharī'ah*.<sup>10</sup>

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<sup>9</sup> A Aigistia dan I Fahima, “Pemanfaatan Harta Waris Bersama Dengan Cara Gilir Sawah Perspektif Hukum Islam (Studi Pada Masyarakat Kecamatan Kelam Tengah Kabupaten Kaur Provinsi Bengkulu),” *Qiyas: Jurnal Hukum Islam dan ...* 7 (2022): 79–85, <https://ejournal.iainbengkulu.ac.id/index.php/QIYAS/article/view/6643%0Ahttps://ejournal.iainbengkulu.ac.id/index.php/QIYAS/article/download/6643/3717>.

<sup>10</sup> Isran Idris, Taufik Yahya, dan Windarto Windarto, “Pola Penguasaan Tanah Sawah Secara Gilir Ganti dalam Perspektif Hukum Agraria,” *Undang: Jurnal Hukum* 1, no. 2 (2019): 245–65, <https://doi.org/10.22437/ujh.1.2.245-265>.

Third, a thesis written by Alfiyaturrokhmaniyah in 2020 with the title “*Fenomena Pemanfaatan Harta Waris Secara Bergilir Ditinjau Dari Masalah Mursalah (Studi Kasus: Desa Ketemas Dungus Kecamatan Puri Kabupaten Mojokerto)*” The thesis explains that the practice of rotating utilization of inherited property only applies to inherited property in the form of rice fields. The implementation process is by not dividing the agricultural land which is the object of the inheritance, but is used in rotation by the heirs by working on the inherited rice fields of the heirs in turn between the heirs. The generation of the practice of utilizing inherited property can run depending on the agreement of the heirs. The similarities between the research conducted by Alfi and the research that the author examines are first, the data used are primary data sources in the form of interview results, and secondary data sources obtained from literature. Second, the objectives to be achieved both want to know the practice of utilizing inherited property in rotation. Meanwhile, the difference between this research and what will be done is the location of the research conducted by Alfi in the Ketemas Dungus area, while the author chose the location in Pagelaran Village and also the research conducted by Alfi was analyzed using the *maṣlahah mursalah* theory while the researcher used the *maqāṣid sharī’ah* theory.<sup>11</sup>

Fourth, a thesis by Dyah Ayu Saraswati in 2019 with the title “*Pembagian Harta Waris Secara Kekeluargaan di Desa Ngunut Kecamatan Babadan Kabupaten Ponorogo Perspektif Kompilasi Hukum Islam*” The practice of dividing the inheritance of Ngunut

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<sup>11</sup> Alfiyaturrokhmaniyah, “Fenomena pemanfaatan harta waris secara bergilir ditinjau dari Masalah Mursalah: Studi Kasus Desa Ketemas Dungus Kecamatan Puri Kabupaten Mojokerto” (UIN Maulana Malik Ibrahim, 2020).

Village which adheres to the family system. The results of his research show that the implementation of the division of inheritance is divided equally so that there is no envy that causes misunderstanding among the heirs, this is because the heirs do not know the actual share as determined in Article 183 of the Compilation of Islamic Law. In addition, in the Ngunut Village community there is also a practice of dividing inheritance carried out before the heir dies to avoid quarrels between heirs after the death of the heir, this is in accordance with the alternatives regulated in Article 187 of the Compilation of Islamic Law. The similarities between the research by Dyah and that which will be carried out by the author are in terms of the agreement to divide the inheritance, both of which are both based on kinship and equal distribution, while both differ in the type of implementation of the distribution of inheritance in Dyah's research the community divides it equally physically, but in this study the inheritance is distributed in terms of benefits only. Besides that, it is also different from the analysis theory used, Dyah analyzes in terms of the Compilation of Islamic Law, while the author uses *maqāṣid sharī'ah* theory<sup>12</sup>

Fifth, the thesis of Syarif Hidayatullah State Islamic University Jakarta by Eiga Irwana with the title “*Pembagian Harta Waris Secara Kekeluargaan Ditinjau Dari Maqasid Syariah (Kajian Akta Van Dading 404/Pdt.G/2020/Pa.Bji)*” The results of this study indicate that the law of agreement on the division of inherited property without being based on *farā'id* law or KHI is okay if it is done with willingness. The similarities between the research conducted by Zulham Wahyudani and that which will be carried out

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<sup>12</sup> Dyah Ayu Saraswati, “Pembagian Harta Waris Secara Kekeluargaan di Desa Ngunut Kecamatan Babadan Kabupaten Ponorogo Perspektif Kompilasi Hukum Islam,” *Proceedings of the Institution of Mechanical Engineers, Part J: Journal of Engineering Tribology* (Institut Agama Islam Negeri Ponorogo, 2019).

by the author are both discussing inheritance which is divided in a family manner, but in the research by the author it is more specified again the distribution system, namely by rotating alternately between heirs, besides that it is different from the type of research in research by Zulham using normative legal research while the author uses empirical legal research<sup>13</sup>

Therefore, even though this research is not the latest research, there are points of discussion that are different and important to be examined further.

NO.	IDENTITY & TITLE	EQUATION	PERBEDAAN
1.	Ayu Aigistia & Iim Fahima (2020) <i>Pemanfaatan Harta Waris Bersama Dengan Cara Gilir Sawah Perspektif Hukum Islam (Studi Pada Masyarakat Kecamatan Kelam Tengah Kabupaten Kaur Provinsi Bengkulu)</i> Artikel Jurnal (2020)	Regarding the utilization of inherited property in rotation	- The research location in previous research in the district of Kelam Tengah Bengkulu, while the location research by author at Pagelaran District East Java. - facet theory analysis on The previous article used a global concept, namely Islamic law, while the author is more specialized back using theory <i>maqāṣid shatī'ah</i>
2.	Isran Idris, Taufiq Yahya & Windarto (2018)	Both discuss about	- Different from in terms of the

<sup>13</sup> Eigi Irwana, "Pembagian Harta Waris Secara Kekeluargaan Ditinjau Dari Maqasid Syari'ah" (Universitas Islam Negeri Syarif Hidayatullah Jakarta, 2021).



	<i>Pola Penguasaan Tanah Sawah Secara Gilir Ganti dalam Perspektif Hukum Agraria.</i> Journal Article 2018	inheritance of rice fields in rotation	analytical theory used article by Isran Idris law agrarian law <i>maqāsid sharī'ah</i> .
3.	Alfiyaturrokhmaniyah (2020) <i>Fenomena Pemanfaatan Harta Waris Secara Bergilir Ditinjau Dari Mashlahah Mursalah (Studi Kasus: Desa Ketemas Dungus Kecamatan Puri Kabupaten Mojokerto)</i> Thesis from UIN Maulana Malik Ibrahim Malang (2020)	The data used are both sourced from primary data in the form of interview results and secondary sources. secondary sources come from literature studies. Besides that, it has the same goal, namely to find out the practice of utilizing inherited property in rotation.	- The research location, in the previous study in the Ketemas Dungus area, while the author in Pagelaran Village. - The theory of analysis in previous studies used the theory of <i>maṣlaḥah mursalah</i> while the author used <i>maqāsid sharī'ah</i> theory
4.	Dyah Ayu Saraswati Tahun (2019) <i>Pembagian Harta Waris Secara Kekeluargaan di Desa Ngunut Kecamatan Babadan Kabupaten Ponorogo Perspektif Kompilasi Hukum Islam</i> Thesis from Institut Agama Islam Negeri Ponorogo (2019)	The same in terms of the agreement on the division of inheritance is both based on kinship and the division is equal	- The type of implementation of the distribution of inheritance property in Dyah's research, the community divides it equally physically, but in this research the inheritance property is distributed in terms of benefits only. in this research, the inheritance property is distributed in terms of its benefits only. - The theory of analysis used by

			Dyah is in terms of the Compilation of Islamic Law. Islam, while the author uses the theory of <i>maqāsid shari'ah</i>
5.	Eiga Irwana (2021) <i>Pembagian Harta Waris Secara Kekeluargaan Ditinjau Dari Maqasid Syariah (Kajian Akta Van Dading 404/Pdt.G/2020/Pa.Bji)</i> Skripsi Universitas Islam Negeri Syarif Hidayatullah Jakarta (2021)	Discuss about inheritance which shared on a family basis	- Research the author's research is more specialized in terms of its distribution, the inheritance property is distributed among the heirs. - Type of research in research by Zulham uses normative legal research while the author uses research normative law research while the author uses empirical legal

## B. Conceptual Framework

### 1. Inheritance According to Islam

Islamic inheritance law literature recognizes several terms to embed Islamic inheritance law, such as fiqh mawaris, *farā'id* science, and inheritance law. The word *mawāris* itself comes from the Arabic word *mīrath*. The jama'nya form is *mawāriṭh*

which means the property of a person who dies and wants to be distributed to his heirs.<sup>14</sup>

As is well known, the applicable law of inheritance is the *farāiḍ* Law. *Farāiḍ* according to the term is destiny / qadar / determination and in shara' is the portion that is made up / determined for the heirs. According to Islamic law, inheritance is the process of transferring the property of someone who has died, both in the form of tangible objects and in the form of property rights to his family who are declared entitled according to the law. Based on these restrictions, it can be obtained that according to Islamic law inheritance only occurs after the heir dies. Thus the process of inheriting property to the heirs when the testator is still alive is not considered as inheritance.<sup>15</sup>

Heirs in Islamic law are broadly divided into three major groups, namely:<sup>16</sup>

- 1) Heirs according to the Qur'an or those who have been determined in the Qur'an are called *dhūl farāiḍ* so that their shares are forever certain and do not change.
- 2) Heirs drawn from the father's line are called '*aṣābah*, which is a group of heirs who get an open or residual part. So, the part of the heirs that is first issued is *dhūl farāiḍ*, after which the rest is given to '*aṣābah*.

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<sup>14</sup> Tinuk Dwi Cahyani, *Hukum Waris Dalam Islam: Dilengkapi Contoh Kasus dan Penyelesaiannya* (Malang: UMM Press, 2018). 11.

<sup>15</sup> Cahyani. 12.

<sup>16</sup> Nasution, "Pluralisme Hukum Waris Di Indonesia." 26.

- 3) Heirs according to the mother's line, called *dhūl arḥām*. This group will only inherit if there is no *dhūl farā'id* and no *aṣābah*.

To be able to be made an heir or a person who is entitled to a share of the testator's inheritance must be motivated by the following reasons:

- 1) The existence of kinship or nasab, such as father, mother, children, grandchildren, siblings, brothers and sisters, as well as brothers and sisters. Grandparents and grandparents descendants upwards. As mentioned in the Qur'an letter al-Anfal: 75 which means: "Those who have kinship are as much entitled to each other than those who are not relatives" Q.S an-Nisa verse 7 which means "For men there is a right to a share of the inheritance of their fathers and relatives, and for women there is a right to a share of the inheritance of their fathers and relatives, both little and much according to the predetermined portions."
- 2) Because of the marriage relationship. After a legal marriage relationship between a man and a woman is marked by *ijab* and *qobul* conducted by the marriage guardian with the prospective bridegroom, then since then between a man and a woman become husband and wife, which causes them to become relatives and both can inherit each other if one of them dies as Allah says Q,S an-Nisa verse 12.
- 3) Freeing a slave. If someone frees a slave, then he is entitled to be the heir of the slave who has been freed. Descent obtained in this way is called nasab *ḥukmi* or *walā'* or called *walā' itaaq*. While descent based

on kinship is called *wala' al- muawaiah*..<sup>17</sup>

Inheritance is a transfer of property ownership rights from a testator to the relatives of the testator or who are referred to as heirs. who is left behind. Therefore, to be able to be used as a heir or heir, it must fulfill the following pillars or conditions: First, the death of the heir, the death of the heir must be proven, either by *ḥaqiqi*, *ḥukmi*, or *taqdiri* by analogizing the dead. Hakiki death is the absence of life, sometimes by seeing, such as someone witnessed dead, reported dead, or with proof letters. Hukmi death is by judicial decree. According to the opinion of the Malikiyah and Hanbaliyah scholars, if the length of time away from the place lasts for four years, it can be declared dead. According to the opinion of the scholars of other madhhabs, it is up to the judge's *ijtihad* to consider various possibilities. Secondly, the heir was actually alive when the testator died or by a judge's decision was declared alive at the time the testator died. So if two people who have the right to inherit from each other die together or consecutively, but it cannot be known who came first, between them there is no inheritance. For example, people who die in an aviation accident, drowning, fire and so on and Third, it can really be known that there is a cause of inheritance in the heir, or in other words, it can really be known that the heir is entitled to inheritance.<sup>18</sup>

As for inheritance, it requires 3 pillars, namely First, the heir (*wāriṭh*), namely the person who has a relationship with the deceased with one of the causes of the

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<sup>17</sup> Basri, "Hukum Waris Islam (Fara'Id) Dan Penerapannya Dalam Masyarakat Islam."

<sup>18</sup> Aigistia dan Fahima, "Pemanfaatan Harta Waris Bersama Dengan Cara Gilir Sawah Perspektif Hukum Islam (Studi Pada Masyarakat Kecamatan Kelam Tengah Kabupaten Kaur Provinsi Bengkulu)."

cause. inheritance. Second, heirs (*muwarith*), namely people who die in reality or legally. For example, a missing person whose death is determined. Third, Inheritance (*maurūth*) which is also called *tirkah* and *mīrath*, namely property or rights that are transferred from the heir to the heir.

Among the heirs who are not patit and are not entitled to a share of inheritance from their heirs for several reasons, namely<sup>19</sup>

- 1) Heirs who kill the heir, not entitled to inheritance from the family he killed
- 2) Slave (*ar-riq*)
- 3) Different religious

Since the issuance of Law No. 7 of 1989 concerning Religious Courts, where the power of the Court to examine, hear and resolve inheritance disputes was restored, the need for a clear, detailed, easy and definite inheritance law and in accordance with the bilateral life of Indonesian Islamic society has become increasingly urgent. For this reason, the Compilation of Islamic Law (KHI) was issued which was enacted by Presidential Instruction Number 1 of 1991, dated June 10, 1991.<sup>20</sup>

Inheritance law according to Presidential Instruction No. 1 of 1991 concerning the Compilation of Islamic Law, hereinafter referred to as INPRES No. 1/1991 concerning KHI. is the law that regulates the transfer of ownership of the heirs'

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<sup>19</sup> Nasution, "Pluralisme Hukum Waris Di Indonesia." 26.

<sup>20</sup> Nasution. 26.

property (*tirkah*), determining who is entitled to become heirs and how much each share is (Article 171 letter a)..<sup>21</sup>

Regarding inherited property, sometimes there are also heirs who do not immediately divide their inheritance, this is what is then referred to as delaying the division of inheritance. Some experts in inheritance law in Indonesia, the delay in the division of inheritance is also called undivided inheritance, deferred inheritance, and inheritance in an undivided state. From some of the definitions of the postponement of the division of inheritance above, it can be concluded that what is meant is an intermittent delay from the death of the heir until the implementation of the division of the inheritance..<sup>22</sup>

In Islam, the time for the distribution of inheritance begins when the heir dies. These instructions can be found and understood in Surah an-Nisa' verses 11, 12, and 176. However, the habits of the Muslim community in Indonesia vary in the time interval for completing the division of inheritance. Some are after the seventh anniversary of the testator, forty days, one hundred days, or even one thousand days. With this time consideration, it is hoped that the heirs can gather at the place of the testator to deliberate regarding the estate of the deceased..<sup>23</sup>

The provisions for the share of heirs are basically already contained in the Qur'an and sunnah as the main source of Islamic law. In the Qur'an and Sunnah, a

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<sup>21</sup> Nasution. 26.

<sup>22</sup> Muhammad Syakroni, *Konflik Harta Warisan Akar Permasalahan dan Metode Penyelesaian dalam Perspektif Hukum Islam* (Yogyakarta: Pustaka Pelajar, 2007). 46.

<sup>23</sup> Syakroni.47.

definite number or a predetermined amount is stated. These parts in the books of fiqh are commonly referred to as faraid.

Islamic law determines the number of shares that have been determined based on surah An-Nisaa' verses 11, 12, and 176, there are 6 types, namely as follows:<sup>24</sup>

- a) Two-thirds, for more than two daughters and two or more sisters if the testator has no children.
- b) One-third, obtained by the mother if the testator does not leave children, and more than one brother gets the share if the testator does not have children.
- c) One-sixth is received by each mother and father if the testator leaves children, the mother receives one-sixth if the testator does not leave children but has several siblings, and brothers and sisters if the testator has no children.
- d) One-half shall be allocated to the only daughter, the husband if the wife has no children, and a sister if the testator has no children.
- e) One-fourth shall go to the husband if his wife leaves children and to the wife if her husband leaves no children.

## **2. *Maqāṣid Sharī'ah***

*maqāṣid sharī'ah* is etymologically a combination of two words namely maqasid and *al-sharī'ah*. The word shari'ah linguistically means the path to the spring.

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<sup>24</sup> Amir Syarifudin, *Hukum Kewarisan Islam* (Jakarta: Kencana, 2008). 49.



While terminology means God's commands and prohibitions that relate to the behavior of human life. While *maqāṣid* means purpose. *Maqāṣid Sharī'ah* means the purpose or meanings that are expected and maintained from the existence of law both in terms of behavior and in creed and other aspects of life. Allah revealed a rule of course has *maqṣid* (certain goals) either it provides *maṣlahah* or prevents the arrival of mafsadah.<sup>25</sup>

Contemporary scholars define *maqāṣid sharī'ah* as the goals and secrets that Allah has set in every law. From some of these definitions, it can be concluded that the essence of *maqāṣid sharī'ah* leads to the purpose of the creation of *sharī'ah* law in order to provide benefits for human life in this world and in the hereafter, in general (*maqāṣid sharī'ah al-'ammah*) or specifically (*maqāṣid sharī'ah al-khaṣah*). Therefore, the question arises "whether the law established by Allah SWT is motivated by 'illat (cause)?" when examined from the discipline of ushul fiqh, the scholars argue that the law of Allah SWT is motivated by 'illat as *al-'alamah al-mu'arifah li al-ahkam* which means, 'illat is only a sign of the law, not the one who establishes (*mutsbit*) the law. Indeed, the one who establishes the law is Allah SWT, That is why Imam Syatibi said: "I have studied the Islamic *sharī'ah*, and it was revealed for the benefit of the people."<sup>26</sup>

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<sup>25</sup> Rony Sandra dkk Ridwan, Muhammad, *Maqashid Syariah*, ed. oleh Ariyanto (Padang Sumatra Barat: CV GET Press Indonesia, 2023). 5.

<sup>26</sup> Ridwan, Muhammad. 6.

The concept of *maqāṣid sharī'ah* becomes important in determining Islamic law based on several considerations. First, Islamic law is a law derived from the Qur'an and Sunnah, both of which emerged several centuries ago and must deal with social change. From here, Islamic law must be able to adapt to every time that always experiences development. Therefore, it is necessary to thoroughly study the elements of Islamic law, one of which is maqasid Sharia. Second, historically *maqāṣid sharī'ah* has been applied by the Prophet, companions and tabiin as well as generations after him in determining Islamic law. Third, knowledge related to maqasid Sharia is the key to success in ijtihad, because with *maqāṣid sharī'ah* every problem can be resolved.<sup>27</sup>

Maqasid consists of several parts, including; First, *maqāṣid 'ammah* (Global purpose of legislation). It is the fundamental purpose of the establishment of all laws in Islamic Sharia. In other words, all the laws that have been established contain this purpose. Such as the urgency of being five things: religion, soul, intellect, property and offspring, lifting the evil (damage and loss), lifting hardship, establishing justice, and forbidding people to do what they want (according to their lusts).

*Second, maqāṣid khaṣah* (Specific purpose of legislation). *maqāṣid khaṣah* is a specific purpose of legislation, namely the purpose of legislation related to certain sub/sections in Islamic *sharī'ah*. Such as maqashid sharia behind inheritance law,

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<sup>27</sup> Abd Rouf dan Zaenul Mahmudi, "Telaah Kompilasi Hukum Islam Pasal 173 Huruf a Terhadap Pelaku Euthanasia Pasif Perspektif Maqashid Syari'Ah," *Muslim Heritage* 7, no. 1 (2022): 183–216, <https://doi.org/10.21154/muslimheritage.v7i1.3676>. 205.

*maqāṣid sharī'ah* behind the provision of muamalah laws and family laws. It also includes the purpose of legislation related to certain chapters of fiqh. Third, *maqāṣid juz'iyyah* (The purpose of the legislation that is part). *Maqāṣid juz'iyyah* is the intent and purpose of *sharī'* (Allah SWT) behind the provision of each of the five rulings; obligatory, sunnah, makruh, permissible, haram and conditional. For example, when the dowry is prescribed in marriage, the purpose of its provision is to foster love and affection between husband and wife. The provision of witnesses aims to actualize the marriage if there is later rejection and debate.<sup>28</sup>

Fourth, *maqāṣid sharī'ah* (The purpose of the legislator). Often used in the mufrad مقصد and sometimes in *jama'* مقاصد . *Maqāṣid shar'i* is divided into two; *maqāṣid khiṭab* dan *maqāṣid hukum*. *maqāṣid khiṭab* is a *maqāṣid* that is sometimes referred to as *maqāṣid ayah*, *maqāṣid naṣ* and *maqāṣid hadith*. This term is often used If a text (verse or hadith) has two meanings, one of which is the intended meaning while the other is not intended. Sometimes one of the two meanings of the text can be immediately understood and digested, but upon further and in-depth observation and study it is discovered that the meaning that can be easily understood is not the intended meaning, but the other meaning.

As for *maqāṣid ahkām*, when someone knows and understands the *maqāṣid khiṭab* with the right understanding, namely by upholding the rules of language, and

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<sup>28</sup> Zulham Wahyudani, “Bagian Warisan Anak Perempuan Pada Penetapan Nomor 18/pdt.p/2021/ms.lgs Dalam Perspektif Maqashid Syariah,” *Al-Qadha : Jurnal Hukum Islam dan Perundang-Undangan* 9, no. 2 (2022): 323–40, <https://doi.org/10.32505/qadha.v9i2.4139>. 328.

other basics that are used as the basis for interpreting verses, then at that time he has understood the command of Allah Swt contained in the text, in other words, he can understand what Allah Swt actually requires in the text. Then we are required to know what is the purpose of Allah Swt behind the stipulation in the text, and what faidah is obtained by a mukallaf when carrying out the command / avoiding the prohibition.<sup>29</sup>

For example: *خذ من أموالهم صدقة*, which mean take it from some of their wealth zakat. Based on the verse above, it can be understood that Allah swt commands us to take a certain portion of wealth in the name of zakat. The above meaning is the plain meaning of the verse. If we try to understand the maqashid khitab of this verse, the intention of the creator of this verse is The obligation of zakah is on all people who are controlled by the rulers. Furthermore, what is meant by the share of wealth in this verse is: a certain portion of certain types of wealth called the nisab. So what is the purpose, benefit and faidah behind the ordinance of zakat, and why should it be given to the asnaf mentioned in the Qur'an? These questions are answered through *legal maqāṣid*.

a. Level of *Maqāṣid Sharī'ah*

Imam *Al-Shaṭibi* reported the results of the scholars' research on the verses of the Qur'an and the Sunnah of the Prophet that the laws are prescribed by Allah to realize the benefits of mankind, both in this world and the hereafter. The benefit to be

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<sup>29</sup> Wahyudani.

realized according to Al-Shaṭibi is divided into three levels, namely the level of *ḍaruriyat* needs, *hajiyyat* needs, and *tahsiniyat* needs.<sup>30</sup>

- 1) The level of *ḍaruriyat* is the goal or level of needs that must exist or called primary needs. If this level of need is not met, the safety of mankind will be threatened both in this world and in the hereafter. This need cannot be ignored or postponed in order to maintain the integrity of the five basic kemashlahatan. According to *Al-Shatibi*, the five interests are maintaining religion, maintaining the soul, preserving the mind, preserving honor and offspring, and preserving property.<sup>31</sup>

- a. *Ḥifẓ al-dīn* (maintaining religion)

Maintaining religion in the concept of dharuriyat needs is a form of self-devotion to Allah's law in the form of implementing obligations, worship, the value of faith, monotheism, and other aspects. One of the verses that contains the value of maintaining religion is surah Ali Imran: 85:

وَمَنْ يَبْتَغِ غَيْرَ الْإِسْلَامِ دِينًا فَلَنْ يُقْبَلَ مِنْهُ وَهُوَ فِي الْآخِرَةِ مِنَ الْخٰسِرِيْنَ

“And whoever seeks a religion other than Islam, it will not be accepted, and he will be among the losers in the Hereafter.”

- b. *Ḥifẓ al-nafs* (preserving the soul)

Preserving the soul is maintaining the right to life to be able to avoid forms of violence, torture, murder, violence, and other forms of criminal offences. The

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<sup>30</sup> Ahmad Jalili, “Teori Maqasid Syariah Dalam Hukum Islam,” *Teraju: Jurnal Syariah dan Hukum* 3 (2021): 282.

<sup>31</sup> Musolli Musolli, “Maqasid Syariah: Kajian Teoritis dan Aplikatif Pada Isu-Isu Kontemporer,” *AT-TURAS: Jurnal Studi Keislaman* 5, no. 1 (2018): 60–81, <https://doi.org/10.33650/at-turas.v5i1.324>.

form of maintenance of the soul can be seen from the existence of the law of qishas contained in QS. Al-Baqarah: 179:

وَلَكُمْ فِي الْقِصَاصِ حَيَوةٌ يَا أُولِي الْأَلْبَابِ لَعَلَّكُمْ تَتَّقُونَ

“And in the qishaash there is life for you, O ye of understanding, that ye may fear.”

c. *Hifz al-Aql* (maintaining the mind)

One of the goals of Islam is to maintain the mind which is also a benchmark for someone to be said to be a mukallaf (person who is burdened with the law). The form of the maintenance of this mind can be seen from the obligation to study and the prohibition of drinking alcohol contained in QS. Al- Maidah: 90

يَا أَيُّهَا الَّذِينَ آمَنُوا إِنَّمَا الْحُمُرُ وَالْمَيْسِرُ وَالْأَنْصَابُ وَالْأَزْلَامُ رِجْسٌ مِّنْ عَمَلِ الشَّيْطَانِ فَاجْتَنِبُوهُ

لَعَلَّكُمْ تُفْلِحُونَ

“O you who believe! Verily, drinking alcohol, gambling, sacrificing to idols, and casting lots with arrows are abominable and the works of the devil. So avoid them so that you may be fortunate.”

d. *Hifz al-Nasl* (preserving offspring)

The purpose of sharia to preserve offspring in order to protect the honour and glory of the bloodline according to the correct guidance in the corridors of religion. This is illustrated in the sharia of establishing relationships in the shade of marriage, as found in QS. An-Nur:34:

وَلَقَدْ أَنْزَلْنَا إِلَيْكُمْ آيَاتٍ مُّبَيِّنَاتٍ وَمَثَلًا مِّنَ الَّذِينَ خَلَوْا مِن قَبْلِكُمْ وَمَوْعِظَةً لِّلْمُتَّقِينَ

“And indeed, We have sent down to you verses of explanation, and examples from those who were before you, and a lesson for the pious.”

e. *Hifz al-Māl*

Maintaining property in the sharia goal is to maintain property ownership rights to avoid taking property incorrectly and avoid injustice. As Allah SWT said in QS. Al-Baqarah: 188

وَلَا تَأْكُلُوا أَمْوَالَكُمْ بَيْنَكُمْ بِالْبَاطِلِ وَتُدْخِلُوا بِهَا إِلَى الْحُكَّامِ لِتَأْكُلُوا فَرِيقًا مِّنْ أَمْوَالِ النَّاسِ بِالْإِثْمِ  
وَأَنْتُمْ تَعْلَمُونَ

“And do not eat of the wealth among yourselves by means of falsehood, and do not bribe the judges with it, that you may eat of the wealth of others by way of sin, while you know.”

- 2) The *Hajjiyāt* level is a condition that does not threaten the existence of the five essentials, but will only cause hardship. Islamic law eliminates all these difficulties. In other words, if *maslahat* in this level is not fulfilled, it can cause obstacles and difficulties to realize the benefit.<sup>32</sup> For example, the *rukhsah* of being allowed to make up the fasts and *jamaa'* for travelers.<sup>33</sup> In the realm of worship, Islam prescribes several *rukhsah* laws or relief when in reality there is difficulty in carrying out the *taklif* commandments. In the field of *muamalat*, many kinds of contracts are prescribed, as well as various kinds of buying and selling, renting, *shirkah* (partnership) and *muḍarabah* (trading with other people's

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<sup>32</sup> Rouf dan Mahmudi, “Telaah Kompilasi Hukum Islam Pasal 173 Huruf a Terhadap Pelaku Euthanasia Pasif Perspektif Maqashid Syari’Ah.”. 208.

<sup>33</sup> Musolli, “Maqasid Syariah: Kajian Teoritis dan Aplikatif Pada Isu-Isu Kontemporer.” 64.

capital with a profit-sharing agreement), and several *rulings on rukhṣah* in *muamalat*. Islam prescribes the punishment of diyat (fine) for unintentional killing, and suspends the punishment of cutting off the hand of a person who steals because he is desperate to save his soul from starvation. A hardship resulting in leniency in Islamic law is taken from the guidance of the Qur'anic verses as well such as Q.S. Al-Maidah verse 6.<sup>34</sup>

- 3) The *Tahsiniyat* level is a need that supports the improvement of human dignity in society and before God, of course paying attention and conformity to its appropriateness.<sup>35</sup> Or it can also be interpreted as tertiary or complementary needs. This tahsiniyat level boils down to goals based on the barometer of human needs that are complementary or perfect. It is said *tahsiniyat* because it deals with taking good habits that are in the community. Taking this habit is included in the category of *makārim akhlak* (nobility of *character*).<sup>36</sup> At this level, if not fulfilled, it will not threaten the existence of one of the five basic things in the dharuriyat level.<sup>37</sup>

In the writing of Totok Jumentoro and Samsul Munir Amin, who quoted the opinion of Al-Syatibi in understanding *maqāṣid sharī'ah*. In this case, Ash-Syatibi combines two approaches, namely the approach of *zāhir al-ladz* and consideration of

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<sup>34</sup> Jalili, "Teori Maqasid Syariah Dalam Hukum Islam." 76.

<sup>35</sup> Musolli, "Maqasid Syariah: Kajian Teoritis dan Aplikatif Pada Isu-Isu Kontemporer." 64.

<sup>36</sup> Syaiful Arif, *Islam dan Pancasila: Perspektif Maqasid Syariah* (Yogyakarta: Cakrawala Jogjakarta, 2023). 75.

<sup>37</sup> Rouf dan Mahmudi, "Telaah Kompilasi Hukum Islam Pasal 173 Huruf a Terhadap Pelaku Euthanasia Pasif Perspektif Maqashid Syari'Ah." 207.



meaning (illah). Ash-Syatibi formulated three ways to understand *maqāṣid sharī'ah*, among others:

1. Analyse the pronunciation of commands and prohibitions
2. Examining the 'illah of amr (command) and an-nahi (prohibition) in the Qur'an or hadith. Sometimes the 'illah is clearly written and sometimes it is not clearly written. If the 'illat is clearly written in the verse or hadith, then one must follow what is written. However, if the 'illat is not clearly written, then one must do *tawaqquf* (leave the matter to the law-maker) who knows better the purposes of the law.
3. Analysing the silence of the *shar'ī* from the provision of something. This method is used to develop Islamic law by understanding legal issues that are not mentioned by *sharī'*.<sup>38</sup>

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<sup>38</sup> Totok Jumantoro dan Samsul Munir Amin, *Kamus Ilmu Ushul Fikih*, 2009. 197.

## CHAPTER III

### RESEARCH METHODS

#### A. Type of Research

The type of research used is empirical research, which is a research used by researchers by going directly to the field or community. Empirical legal research is a legal research method that has a function to see the law in real terms and examine how the law works in the community. Because this research is a study of people in the community, the empirical legal research method can also be said to be sociological legal research, namely law that is taken based on facts that exist in a society, legal entities and government. The facts referred to in this study are facts that occur in the community of Pagelaran Village, Pagelaran Subdistrict, Malang Regency relating to the distribution of inheritance in rotation.

#### B. Research Approach

The research approach used by the author is a sociological juridical approach or also called empirical juridical which is carried out by going directly to the field.<sup>39</sup> Because the problems that occur in the legal material of this research are social problems that require a sociological approach. By using this approach, it directly examines the reality that occurs in the Pagelaran Village community regarding rotating inheritance. In addition to this approach. This research also uses a conceptual approach, namely the

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<sup>39</sup> Ika Atikah, *Metode Penelitian Hukum*, ed. oleh Zulfa (Sukabumi: Haura Utama, 2022). 65.

*maqāṣid sharī'ah* theory which will be used as a legal review in the practice of rotating inheritance distribution in Pagelaran Village.

### **C. Research Location**

Among the research stages in general are selecting, exploring, and assessing the research field. The research location chosen for the study is located in Pagelaran Village, Pagelaran Subdistrict, Malang Regency. This area is an area where the majority of livelihoods are farmers, so it is not surprising that most of the inheritance is in the form of fields or rice fields.

The author chose Pagelaran Village, Pagelaran Subdistrict, Malang Regency as the research location because in that location there is an implementation of inheritance whose application is not in accordance with the existing provisions in the Qur'an and hadith.

### **D. Data Type and Source**

#### **1. Primary Data Source**

Primary data is data obtained by researchers directly from the main source of the object of research.<sup>40</sup> In this case, primary data taken from the field is in the form of interview results regarding the practice and implementation of the utilization of joint property in rotation in Pagelaran Village. Primary data taken from this research is obtained from the people who are involved in the research. involved in the phenomenon under study as the informant. The method of

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<sup>40</sup> Atikah. 68.

determining informants in this study uses *snowball sampling* or chain sampling method, where the selection of the second informant is based on information from the first informant, the third informant based on the recommendation of the second informant and so on. So that in interviewing it is very good using in-depth interviews.<sup>41</sup>

## 2. Secondary Data Source

Secondary data is data collected and obtained from a second person or other party.<sup>42</sup> If primary data sources are sources received directly from informants, then secondary data sources are data obtained from other people's research, the data is obtained from literature and previous research. Secondary data sources are in the form of studies of several books and journals on inheritance both in general and collective inheritance and also a discussion of *maqāṣid sharī'ah* as an analysis in this study.

## E. Technique of Data Sources Collection

### 1. Interview

In this case the author used structured interviews. This interview stage begins with the preparation of questions first then asking the informant to get an accurate answer. The interviews were conducted with community leaders and actors in the implementation of inheritance in rotation in Pagelaran Village, Malang

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<sup>41</sup> U. E. Heryana, A., & Unggul, "Informan Dan Pemilihan Informan Dalam Penelitian Kualitatif," *Sistem Informasi Akuntansi: Esensi dan Aplikasi*, no. Desember (2018): 14, eprints.polsri.ac.id. 9.

<sup>42</sup> Atikah, *Metode Penelitian Hukum*. 69.

Regency. In this interview, the researcher chose several sources who knew directly and were involved in the social situation being studied. Among the sources concerned are as follows:

No	Name	Role
1.	Mr. Ahmad	Community leaders and property utilization actors rotating inheritance
2.	Mrs. Karsini	Actors utilization of rotation inheritance
3.	Mrs. Ngatemi	Actors utilization of rotation inheritance
4.	Mrs. Marni	Actors utilization of rotation inheritance
5.	Mrs. Sumakyah	Actors utilization of rotation inheritance

## 2. Dokumentation

Documentation as a method of data collection by researchers which includes several photos and documents related to the topic being discussed in this study. For example, the profile of Pagelaran Village, the population, economic conditions, and the beliefs held by the residents of Pagelaran Village.

## F. Data Analysis

The data processing method is useful for processing the analysis of data that has been collected objectively in order to obtain good research results. This section explains the process of managing and analyzing legal materials tailored to the approach used. The procedure for processing is as follows:

### 1. Data checking (editing)

Data checking or *editing* is the initial stage carried out by researchers, in this case the researcher will sort through and double-check some of the data obtained from interviews and literature studies. Then adjusted to the formulation of existing problems so that it can be seen that the data is to be included (used) or not.

### 2. Claassifications

Classification or grouping of data both from interviews with research subjects, observations, and direct recording in the field. All data obtained is read and reviewed in depth, then classified as needed. This is done so that the data obtained is easy to read and understand, and is able to provide objective information according to the needs of the researcher. Then the data is sorted out to answer the existing problem formulation.

### 3. Analysis

Data analysis is an effort to systematically search and organize all the results of interviews and others to increase the researcher's understanding of the topic being studied. Therefore, in this case the researcher will analyze in depth related to the topic being studied in order to answer the existing problem formulation. The purpose of this analysis is to obtain conclusions at the end. In this stage, data from the implementation of inheritance in rotation in Pagelaran Village, Pagelaran Subdistrict, Malang Regency will be analyzed using *maqāṣid sharī'ah* theory.

Therefore, this stage must use descriptive qualitative, namely by making a series of interpretative activities so that the data has its own scientific value.

#### 4. Conclusion

The last stage is the conclusion, this is the core of the object of research being studied. Therefore, the researcher will make conclusions related to the implementation of inheritance in rotation in Pagelaran Village, Pagelaran Subdistrict, Malang Regency with the analysis of *maqāṣid sharī'ah*. That way the purpose of this research can be well understood by the readers.

## CHAPTER IV

### DISCUSSION OF RESEARCH FINDING

#### A. Overview and Research Location

##### 1. Condition of the Research Object Pagelaran Village Pagelaran District Malang Regency

This research was conducted in Pagelaran Village with the following description of the condition of the research object:

###### a. Geographical Location

Pagelaran Village is one of 10 villages in the Pagelaran Subdistrict of Malang Regency. Pagelaran Village is approximately 30 km south of Malang City and 13 km east of Malang Regency's capital, Kepanjen. With an area of 423.850 hectares, the village has a total area of 423,850 hectares. 114 hectares of settlements, 1.15 hectares of buildings, 162 hectares of agriculture, 80 hectares of fields, 0.87 hectares of sports and recreation areas, and 0.5 hectares of fisheries, while the remaining 65 hectares are unutilized land. Pagelaran Village consists of four hamlets: Sipping Hamlet, Krajan Hamlet, Mentaraman Hamlet and Sumbergempol Hamlet, and there are 7 RW and 37 RT with details of most of the area is residential and agricultural and plantation areas as mentioned above.

The Pagelaran Village area has geological characteristics in the form of land that is very suitable as agricultural and plantation land. Based on data entered in



the agricultural sector, the average land in Pagelaran Village is planted with rice, sugar cane, beans, and some are planted with fruits such as papaya, salak, and others.

The boundaries of Pagelaran Village are:

- 1) North of the border with Banjarejo Village
- 2) The east is bordered by Sidorejo Village
- 3) The south is bordered by Suwaru Village
- 4) The west is bordered by Kademangan Village

In Pagelaran Village, the boundaries between hamlets are also clear, as there are gates dividing each hamlet in Pagelaran Village.

#### b. Residents

Based on the administrative data of the Village Administration in 2023, the village, which is the capital of Pagelaran Sub-district, has a population of 7579 people with 3773 males and 3806 females.<sup>43</sup>

#### c. Religious Conditions

Islam is the religion of the majority of the population, and according to data from the Pagelaran Subdistrict Central Bureau of Statistics, of the 7579

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<sup>43</sup> Ir Surya Astuti, "Kecamatan Pagelaran dalam Angka," BPS Kabupaten Malang, 2023, <https://malangkab.bps.go.id/publication.html?page=3>. diakses pada 21 februari 2024.

inhabitants of Pagelaran Village, only 13 are non-Islamic, 11 are Christian and 2 are Catholic, while the remaining 7566 are Muslim.<sup>44</sup>

d. Sosio-economic Conditions

The socio-economic situation of the population of Pagelaran Village is mostly dependent on the agricultural sector, this is because the agricultural land is very wide, reaching 162 ha and 80 ha for fields or moorland so that more than 50 percent of the area is used as farming, only a small portion of the population works as civil servants, TNI / POLRI, private employees and entrepreneurs.

**B. The Practice of Implementing Rotating Inheritance in Pagelaran Village**

In this case, researchers seek data directly by going to the field in order to extract information from the general public, especially as the perpetrators of the utilization of rotating inheritance assets and religious leaders in Pagelaran Village. The implementation of inheritance in rotation is the distribution of inheritance property which is carried out in turn between heirs in turn to take advantage of it, this is because the number of heirs is more than one person and the land is small so as to anticipate disputes between other heirs. The only way to do this is by taking turns in dividing the inheritance. The Pagelaran Village community divides the inheritance in rotation to find a way out of the inheritance problems that occur in one family by deliberation to seek justice.

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<sup>44</sup> Astuti.

The data regarding the practice of utilizing inheritance property in rotation, the researcher gets it from the perpetrators of the utilization of rotating inheritance property. From the interviews conducted, researchers obtained the following interview results:

*Tabel 1 Rotating Inheritance Data*

No	Name	Object of Rotating Inheritance	Area
1.	Mr Ahmad	Rice Fields	150 m <sup>2</sup>
2.	Mrs Ngatemi	Perengan Land	200 m <sup>2</sup>
3.	Mrs Sumarni	Farmland	10000 m <sup>2</sup>
4.	Mrs Karsini	Rice Fields	150 m <sup>2</sup>
5.	Mrs Sumakyah	Rice Fields	250 m <sup>2</sup>

The heirs in the utilization of inheritance in rotation are heirs who have a blood relationship with the testator, in this case the sons and daughters of the testator who has died as explained by Mr. Ahmad:

“Dadose ngeten, ten Desa Pagelaran niki khusus e Dusun Krajan ingkang mraktikaken waris bergilir dibagi rata jaler lan estri ingkang nggadah hubungan darah kaliyan pewaris, nggih roto-roto ten mriki nggih yugo-yugone kadang gilirane niku dimulai saking dulur paling tuwo sampek paling enem ngoten sakteruse terus balik malih ten dulur paling tuwo”<sup>45</sup>

(So, in Pagelaran Village, especially Krajan Hamlet, which practices the distribution of inheritance in rotation, the implementation is divided equally by both men and women who have blood relations with the testator. In this case, on average, it is their children whose turn distribution starts from the oldest sibling in order to the youngest and so on and then returns to the oldest).

<sup>45</sup> Ahmad, Interview (Malang, 16 February 2024).

In this case, the researcher also asked about the implementation of inheritance in rotation until what stage could be carried out. However, it turns out that the implementation of rotating inheritance generally only lasts one generation so that it does not take place from generation to generation, one of which is the factor of the family's busyness with other work which causes this activity to stop as expressed by Mrs. Marni:

*“rencanane warisan gilir niki mandek ngenteni gilirane kirul mari terus didol hasile dibagi roto. Sebab sekeluarga niki kan roto-roto kerjo tentara dadi gak ono waktu kanggo ngurusi tegal. Wengi-wengi iki ae ngongkon buruh gawe ngopeni tegal tapi ragat seng ditokno ambek sng diperoleh akehan ragat seng ditokno dadi itungane rugi mbak”<sup>46</sup>*

(The plan is to carry out the inheritance in rotation and wait until the kirul (youngest sibling) is finished, then sell it and divide the proceeds equally. Because most of us in the family work as soldiers, we don't have enough time to take care of the garden. In the past, this was done because some of us hired laborers to take care of the garden, but the costs incurred in taking care of the garden by hiring people with the results obtained were more than the costs incurred, so it was considered a loss).

However, there are also families who have not planned for the future whether it will be held for generations or not, because of the family concerned. The implementation of the inheritance in rotation is still at the stage of the heir's children, not yet their grandchildren. As stated by Mrs. Ngatemi.

*“Lek selama niki nggih dereng turun temurun, sebab e kan kesepakatan bersama sak keluarga keranten tanah warisan niku mboten pati luas, dadose giliran niki tasek dereng nurunaken teng anak putu”<sup>47</sup>*

(As long as the implementation of rotating inheritance has not occurred for generations because it comes from a mutual agreement because the inheritance

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<sup>46</sup> Marni, Interview (Malang, 10 February 2024)

<sup>47</sup> Ngatemi, Interview Malang, 10 February 2024).

land is not too large, so the rotation has not reached our children and grandchildren)

Based on the results of these interviews, it can be seen that the stage at which the utilization of inheritance takes place in rotation depends on the agreement of the heirs, which is generally only carried out for one generation.

### **1. Procedure for the Utilization of Rotating Inheritance**

The utilization of inherited property in rotation is one form of distribution of inherited property in the form of rice fields or land in Pagelaran Village. The implementation is by managing the rice fields or land by the heirs in rotation. The implementation is once a year, once every two years, or even once every five years depending on the agreement of the heirs. For example, Mrs. Ngatemi's family rotates the land every 5 years because the plants are sengon wood, which has a long growth process.

“Tanah warisan e tiyang sepah niku kan namung wonten setunggal yaiku tanah teng perengan mriko ingkang ditanemi kayu sengon, sak mantune bapak sedo dirembugaken amargi tanah e namung niku tapi sedanten putra-putrane kepingin angsal bagian warisan dados kan mboten mungkin menawi dibagi sebab putrane bapak niku katah wonten gangsal tapi tanahe kurang saking sak hektar, akhire sepakat digiliraken mawon urut saking dulur paling tuwo sampek paling enem saben gangsal tahun sepindah. Nggih dangu sebab masa tunggune gangsal tahun tapi nggih pripun malih ten mriko kan tanah e miring kate ditanemi pari utowo jagung y mboten mungkin sebab susah banyu dadi paling cocok nggih sengon niku”<sup>48</sup>

(The land inherited by the parents was only one, namely in the form of land planted with sengon trees, after the death of the father the land was discussed together, because it was the only land but all his children wanted to get a share of the inheritance so if it was divided equally it was not possible because the number of children of the father was a lot, namely 5 people while the land was less than 1 hectare in the end we agreed to rotate the land alternately starting from the oldest to the youngest sibling every 5 years). Yes, it takes a long time because the waiting period is 5 years, but what else can we do because the land is sloping and planting

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<sup>48</sup> Ngatemi, Interview (Malang, 10 February 2024).

rice or corn is not possible because it is difficult to get water, so the most suitable planting is sengan).

Regarding the type of plants planted by the heirs who get their turn to work on it depends on the type of land and the season, as Mrs. Ngatemi because the land is in the form of perengan land so that the planted type of sengan plants that have a longer growing period. However, there are also families who rotate land in the form of fields so that the types of plants adjust such as papaya trees, corn plants, and sugar cane as practiced by Mrs. Sumarni. If the land is in the form of rice fields with a good irrigation system, the types of plants adjust to the season if the rainy season is sometimes planted with rice and if the dry season is planted with corn or sugar cane. This is what is done by Mrs. Karsini, Mrs. Sumakyah and also Mr. Ahmad.

The type of land is one of the things that affects the length of the rotation of inheritance property, as land in the form of agricultural land and the type of crop is fast to harvest such as corn, sugar cane, and papaya crops. ranges from 1 to two years, this is done to equalize income as conveyed by Mrs. Marni as follows:

*“Suwene giliran iku kurang luwih rong tahunan per ahli waris, supoyo roto kabeh pendapatane kadang rong tahun iku oleh 3-4 panen, lek tandurane tebu biasane sak panen oleh 5 truk. Pokok oleh piro-piro ne jumlah panen rong tahun mari yo ws iku. Olehe kadang bedo-bedo ono sing sampek 5 panen tapi roto-roto 3-4 panen rong tahun iku”<sup>49</sup>*

(The length of the rotation period between heirs is two years each, so that the income is evenly distributed. Sometimes during the two-year cultivation period, each heir gets three to four harvests, if the crop is sugar cane, one harvest gets 5 trucks. Whatever the number of harvests obtained in essence during the two years

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<sup>49</sup> Marni, Interview (Malang, 10 February 2024)

is completed. The income is also sometimes different, namely there are up to 5 harvests in two years but the average is three to four years)

The utilization of joint inheritance property in rotation is carried out with prior deliberation within the family or between heirs. If there is an inheritance in the form of a field or paddy field and all heirs are willing to get the property, it will be discussed and discussed whether the field or paddy field will be divided or retained jointly owned and utilized in rotation. After deliberation, if the agreement is to rotate the management of rice fields or fields, then the rice fields are then cultivated starting from the oldest child in order to the youngest or last then back again to the first turn and so on until the period agreed upon by all heirs.

If one of the parents (heirs) is still alive they are not given a turn to manage the field or paddy field. However, if it is harvest time then the one who gets the turn at that time is obliged to give part of the harvest to the other person. parents who are still alive.

As explained by Mr. Ahmad as a religious figure in Pagelaran Village:

“Ngelola sawah e niku dimulai wafate tiyang sepah, misal bapak utowo ingkang wafat ninggalaken sawah, nggih sawah niku ingkang digiliraken dijupuk manfaate dining yugo-yugone. Salah setunggal e tiyang sepah ingkang tasik gesang mboten angsal giliran nggarap sawah namung yugo-yugone mawon, tapi engken pas panen yugo ingkang angsal giliran waktu niku wajib maringaken sebagian hasil panene ten tiyang sepah ingkang tasik gesang niku wau”<sup>50</sup>

(The management of rice fields begins when the parents die, for example, the father or mother dies and leaves an inheritance in the form of rice fields, then the rice fields are rotated and the benefits are taken by their children. One of the surviving parents does not get a turn to manage the rice fields, but later when harvest time arrives, the child who gets the turn to manage the rice fields at that time, is obliged to give part of the harvest to the surviving parents)

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<sup>50</sup> Ahmad, Interview (Malang, 16 February 2024)

This usually starts with the eldest child and then rotates back to the first child. The land is not divided to be fully owned, but only rotated in use between heirs. So that the property remains in the status of joint (collective) ownership, only has the right to use the inherited property. If someone is unable to work on the land then one person can replace him, this is termed rent so that the cultivator will pay the rent to the one who gets his turn at that time, as explained by Mrs. Karsini:

*“Tapi kadang pas giliranku kan seng mesti nggarap pak Suen wonge bendinone sibuk kerjo nyopir dadi sawah e gak kerumat akhire disewano nang mbak yu, seng nragati mbak yu tapi sawahe pas giliranku dadi mengko hasile dibagi loro aku oleh rego sewan seng wes disepakati ndek awal”<sup>51</sup>*

(But sometimes when it's my turn, the one who works on the rice fields is Mr. Suen (the perpetrator's husband) he is busy working every day as a driver, so the land is not taken care of so we rent it to my sister (mbak yu))

The purpose of the distribution of inheritance in rotation is so that all heirs can feel the inheritance from their parents, so that each of them can feel the results of their parents' hard work. This rotation of inheritance is also carried out because of the lack of land while the heirs are many, so it is very little when divided. So one of the goals is to equalize the income of the heirs. Therefore, a turn is made for the land object that is used as inherited property, so that the results can be utilized without fully controlling the object of inheritance. Mrs. Ngatemi added:

*“Yugone bapak niku kan katah wonten gangsal tapi tegal e namung setunggal luas e nggih namun 200 meter menawi dibagi dados e kedik. Akhire ben sedanten ngraosaken warisan e tiyang sepah digiliraken mawon ”<sup>52</sup>*

(Anaknya bapak itu banyak ada 5 orang tetapi ladangnya hanya satu luasnya pun hanya 200 m<sup>2</sup> jika dibagi rata hasilnya terlalu sedikit. Oleh karena itu, agar semua

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<sup>51</sup> Karsini, Interview, (Malang, 10 February 2024)

<sup>52</sup> Ngatemi, Interview (Malang, 10 February 2024)



ahli waris meerasakan harta warisan ladang tersebut kami mengambil keputusan untuk digilirkan )

## **2. Background to the Determination of the Utilization Of Rotating Inheritance**

### **a. Agreement of all heirs**

The first reason for the implementation of the use of inheritance property in rotation by the Pagelaran Village community is due to the agreement of all heirs to carry out the distribution of inheritance in rotation.

One of the cases that occurred in the family of Mr. Ahmad, apart from being a religious figure, he was also one of the perpetrators of the use of inheritance in rotation, he explained:

“Alesan keluarga nglaksanaaken pembagian waris giliran niku sebab kesepakatan saking sedanten ahli waris. Sedanten rembugkan akhire angsal kesepakatan digiliraken mawon tanah e kersane roto olehe”

(The reason Mr. Ahmad's family carried out the distribution of inheritance in rotation was because they made an agreement that the inheritance in the form of rice fields was used in rotation. All of them deliberated and agreed to rotate the land so that the income was evenly distributed)

### **b. For the cost of mailing land certificates that are being rolled out**

The practice of utilizing rice field inheritance in rotation does not have written rules, so it is only based on family agreement. So that the turn time is agreed upon in advance among the family, for example there are those who rotate per one year, per two years, or five years. Likewise with Mrs. Sumakyah, her family agreed to rotate the

inheritance in the form of rice fields for the cost of surveying the land plot with a rotation period every 2 years.

“Dadose ngeten, tanah niku tasik atas nama tiyang sepah, rencananipun bade dibagi terus disurataken piyambak-piyambak. Kersane cepet angsal dana, tanah niku wau mboten dibagi rumiyin, tapi digiliraken terus hasil panen e damel nyurataken sisa e sak kersopun damel nopo lek sisa, lek mboten nggeh pokok 2 tahun niku wayahe giliran e”<sup>53</sup>

(So this is how it is, the land is still in the name of the parents, the plan is to divide it later and then certify it in the name of each heir. In order to collect the funds quickly, the land is not divided first but rotated and then the crops are harvested to make a land certificate. If the harvest is still left over, it is up to the heirs to use it for what purposes. If not, the turn time is only 2 years)

c. Paddy field or land less than 2 hectares

Some of the sources above have explained some of the reasons and objectives themselves and it can be seen that the rotation of inheritance property aims to equalize the income of the heirs. Therefore, a turn of land or rice fields is made so that the harvest can be utilized. After the researchers found out from several informants' statements that the area of land that became the object of inheritance in this inheritance rotation did not reach 1.5 hectares, on average their land area was only 200 m<sup>2</sup>. Therefore, it makes it difficult for them to divide the inheritance because of the lack of inheritance to be divided and the number of heirs so that it is not possible for the rice fields and land to be divided except by selling them. However, most of them have the principle to maintain the inheritance from their parents. After knowing some of the reasons they carry out the

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<sup>53</sup> Sumakyah, Interview (Malang, 13 February 2024)

practice of utilizing inherited property in rotation. The following is the opinion of Mrs.

Karsini

*“Tanah waris e almarhum bapak iku digilirno kanggo anak-anak e, sebab anak e bapak kan loro mbak yu Sumarmi ambek aku, berhubung warisane tanah kanggo sawah iku tok seng luase mek satus seket meter lek didol eman soale warisane wong tuwo tapi lek dibagi dadine sitik mangkane ben penak digilirno iku mang. Giliran e iku dimulai soko dolor tuwo yo mbak yu iku saben setahun pisan terus aku setahun pindah, terus muter ngono.”<sup>54</sup>*

(The land inherited by the late father was distributed to all his children, the father had two children, namely my sister (mbak yu) Sumarmi and me. Because the inheritance is only in the form of a patch of land for rice fields, with an area of 150 m<sup>2</sup>, it is a shame if it is sold because the inheritance of parents wants to share the results a little so we agreed that it should be rotated. The rotation starts with the eldest sibling and then I each get one year's turn to work the land)

Several sources have explained their respective explanations. If it is concluded that they agree in terms of the rotation of inheritance starting from the eldest child of the heir. Regarding how many generations the practice of utilizing inherited property can run, it depends on the family agreement, but the custom found in the community is enough only until the first generation. If there are heirs who are unable to work on their turn, they agree that those who are unable to work can ask their relatives who are considered capable to be willing to rent their turn. Mr. Ahmad, as a religious figure in Pagelaran Village, responded that the implementation of the use of inheritance in rotation must essentially be mutually agreeable between the heirs or their families

*“Kawitan sejarah e nggih mboten wonten, sebab e nggilir waris niki kesepakatan keluarga. Misal e tiyang sepah e sedo terus nggadahi tegal utowo saben, otomatis tanah e mboten kerumat kan eman. Akhire kersane sedanten ngraosaken tanah e tiyang sepah nggih didamel giliran niku wau. Kawitane nggih mboten wonten*

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<sup>54</sup> Karsini, Interview (Malang, 10 Februari 2024)

sebab niki awal mula e saking pemikiran e keluarga mawon supoyo warisane tiyang sepah niki tetep wonten. Dados e sedanten kedah saling ridho supoyo tetep rukun selama giliran garap sawah niku.”<sup>55</sup>

(There is no historical origin, because the implementation of inheritance in rotation comes from family agreements. For example, one or both parents have passed away and they have a field or paddy field, so there is no one to take care of the land. In the end, in order for all heirs to feel the inheritance of our parents, we agreed to rotate the land. Initially there was nothing underlying but because of the family's thinking in order to preserve the inheritance of our parents we had to agree with each other to distribute the property so that there would be harmony).

From some of the explanations of the interviewees, the implementation of rotating inheritance in Pagelaran Village has no historical origin because it is only their thinking that if the inheritance in the form of fields or rice fields is not sold out, then a turn of rice fields is made to take advantage of it. And the practice is carried out on the basis of an agreement between the heirs and is carried out since the death of both parents or one of them.

However, in this inheritance rotation practice, there are things that according to the author become unfair in the implementation process, namely when the crops in the object of inheritance experience crop failure, it becomes a risk for the heirs who at that time become his turn. The time that has been determined has been clear for 2 years, if in 2 years it should get 6 harvests but as many as 2 crop failures, it is the risk of the heirs concerned if the results of the utilization of the inherited land are reduced. As stated by Pak Ahmad in an interview conducted by the author. Whereas in the context of crop failure is not the will of the heirs but from the decree of the almighty, therefore this is according to the author unfair in practice.

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<sup>55</sup> Ahmad, Interview (Malang, 16 Februari 2024)

After conducting a search, it turned out that the same practice also occurred in several areas, such as in Kecamatan Kelam Tengah, Kaur Regency, Bengkulu Province and in Kecamatan Dungus, Mojokerto Regency. In general, the process is the same, starting from the oldest sibling to the youngest. However, there are several things that distinguish the practice in Pagelaran Sub-district, namely in terms of the reasons underlying the implementation of rotating inheritance distribution. In Pagelaran Sub-district, in addition to the agreement of the heirs and the limited number of objects of inheritance, it is also based on the rotation of the object of inheritance as a means of increasing the cost of certifying the object of inheritance, and the object of inheritance that is rotated is not only in the form of rice fields but also fields and sloping land in the hills (perengan).

### **C. Analysis of *Maqāsid Sharī'ah* Jasser Auda on The Implementation Rotating Inheritance**

The establishment of inheritance law in Islam is a breath of fresh air, especially for women. In the pre-Islamic era, the distribution of inheritance was patrilinear, meaning that immature children and women were not entitled to inheritance, even though they were heirs of the deceased.<sup>56</sup> Historically, the pre-Islamic system of inheritance was very unfair, so the right of inheritance was given only to adult males who were able to bear arms for war and thus obtain inheritance from the spoils of war. Meanwhile, immature

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<sup>56</sup> Moh Muhibbudin, *Hukum Kewarisan Islam* (Jakarta: Sinar Grafika, 2009). 32.

men and women were not entitled to inheritance even if their parents were wealthy.<sup>57</sup> However, after the advent of Islam, every person, both male and female, has the right to inherit. This was realised in order to create justice in the distribution of inheritance in the family. In addition, clear and fair rules ensure that each heir gets their rights in accordance with religious provisions.

The issue of inheritance becomes very crucial if it is not divided according to its portion, causing conflict in the family environment. Moreover, families that should always be kept intact can break up just because the heirs feel unfair in the distribution of inheritance. Therefore, in order to realise the purpose of the *sharī'ah* on the distribution of inheritance, Islam regulates the exact share of inheritance for each heir based on the historical conditions at that time.

As well as the first classification of Jasser Auda's *maqāṣid sharī'ah* hierarchy, namely *maqāṣid al-'ammah* (General *maqāṣid*) is a *maqāṣid* that includes all the maslahah contained in the universal behaviour of *tashrī'* such as justice, equality, tolerance, convenience, including aspects of dharuriyat in classical maqasid. In realising the purpose of inheritance to create justice, harmony, and family resilience can be done if it fulfils the main objectives of maqasid sharia. The level of necessities (*darurat*) according to Jasser Auda there are six things that must be maintained in a row from the highest level is preserving of faith (*memelihara iman*), preserving of soul (*memelihara jiwa*), preserving

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<sup>57</sup> 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>.

of wealth (*harta*), preserving of mind (*akal*), preserving of offspring (*keturunan*), and preserving of honour (*kehormatan*).<sup>58</sup>

Maqasid sharia refers to the purpose, principles and intentions of Islamic law. It encompasses the general purpose of Islamic legislation which consists of the deeper meanings and aspects of wisdom considered by the lawgiver (Allah). Maqasid sharia is part of sharia itself and therefore, has no beginning and is not subject to change or evolution. Thus, *maqāṣid sharī'ah* plays an important role in ensuring that Islamic law is applied in a holistic and multidimensional manner to achieve the desired results while remaining true to the spirit of the law.

In the practice of rotating distribution of inheritance property in Pagelaran Village, Pagelaran Subdistrict, in principle, is closely related to the inheritance system, but there are several problems in the family that make them divide it land in rotation between heirs. They agree to rotate the land so that each of the heirs gets a sense of justice and no disputes arise due to the dissatisfaction of the heirs. As the data obtained by the researcher, there are several things that become important points in the use of inheritance in rotation in Pagelaran Village as follows:

1. Agreement of all heirs

The distribution of inheritance in rotation by the heirs is obtained through deliberation and family agreement, including the technical distribution and how long the heirs get their turn to work on the land is also determined on the basis of deliberation and mutual agreement. In the realm of deliberation, the heirs will

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<sup>58</sup> Saiin. 289.

discuss the settlement of the testator's dependents, both related to the care of the body and his debts, followed by a discussion of the problem of the testator's inheritance.

Allah SWT has said that in solving worldly affairs, it is recommended to deliberate as the best way out. If a matter is decided through deliberation, an agreement will be reached that guarantees all rights to obtain consensus and produce the best decision, this is in line with surah al-Shuro verse 38 which reads:

وَالَّذِينَ اسْتَجَابُوا لِرَبِّهِمْ وَأَقَامُوا الصَّلَاةَ وَأَمْرُهُمْ شُورَىٰ بَيْنَهُمْ وَمِمَّا رَزَقْنَاهُمْ يُنفِقُونَ ۝

Meaning:and (for) those who accept (obey) the call of their Lord and perform the prayer, and their affairs (are) decided by deliberation between them; and they spend some of the sustenance We give them.”<sup>59</sup>

Islam is very concerned about the integrity and harmony between human beings  
islam does not want discord and hostility in the family:

واعتصموا بحبل الله جميعا ولا تفرقوا ۝

And hold fast all of you to the rope (religion) of Allah, and do not be divided.<sup>60</sup>

By deliberating, a meeting point can be found that leads to a sense of mutual willingness and sincerity between heirs so that the integrity and harmony that is the main goal can be achieved as the purpose of Islamic law which realizes

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<sup>59</sup> Asy-Syuro.38

<sup>60</sup> Ali Imran 103



human benefit, namely attracting benefits and rejecting harm and eliminating distress.

The agreement of all heirs becomes a *maslahah* or concept that can be used as a consideration to be done in realising a quality family. The focus of *maqasid syariah* Jasser Auda is development by leading to a development based on human rights, social justice, and humanity and providing future orientation with full purpose.<sup>61</sup> The existence of a mutual agreement between heirs can be interpreted in the focus of Jasser Auda's *maqāṣid sharī'ah*. Jasser Auda's classification of *maqāṣid sharī'ah*, namely *maqāṣid al-'ammah* (general *maqāṣid*) is a *maqāṣid* that includes all the *maṣlahah* contained in universal tasyri' behaviour such as justice, equality and convenience, including aspects of *daruriyat* in classical *maqasid*. The agreement of all heirs in determining the distribution of inheritance objects is a form of conformity with *maqāṣid al-'ammah* which covers *maslahah* in the behaviour of involving all heirs in consensus with the nature of balance and justice.

## 2. For land certification fees that are being rolled out

Based on the findings of the data obtained by the researchers, the implementation of inheritance in rotation in Pagelaran Village is the first step towards permanent inheritance distribution. This is done to accelerate the acquisition of the cost of making certificates for inherited land so that each heir can obtain legal certainty over his or her share of inherited land.

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<sup>61</sup> Jasser Auda, *Maqashid Syariah A Beginner's Guide* (London: Cromwell Press, 2008).16

Land certification is very important to ensure legal certainty and protection of land rights for the owner. Land titling provides legal certainty regarding ownership and control of land rights. This is important to prevent disputes and conflicts related to land ownership. in the future, as well as providing a solid basis for property transactions and development<sup>62</sup>

Land certificates are formal evidence that protects the landowner's rights from unauthorized actions, such as forgery and fraud related to land ownership. In addition, through land titling, people can gain easy access to financial services, credit, and development programs that require land ownership security. This can improve community welfare and support economic development.<sup>63</sup> Thus, the urgency of land titling is not only related to legal certainty, but also has a significant impact on rights protection and community development.

This is in accordance with what is practiced by Pagelaran villagers who carry out rotating inheritance. They do not immediately distribute land patently or permanently to all heirs, but first rotate it within a period of approximately one year for the cost of making land certificates. Therefore, before being distributed, the heirs have designed the land plot of each heir to get the exact point of the land area to be certified. Land certification is done by them to get legal certainty and avoid family conflicts in the future.

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<sup>62</sup> Dyah Ochterina Susanti, "Urgensi Pendaftaran Tanah (Perspektif Utilities dan Kepastian Hukum)," 2018, 1–21.

<sup>63</sup> Yulies Tuena Masriani, "Pentingnya Kepemilikan Sertifikat Tanah Melalui Pendaftaran Tanah Sebagai Bukti Hak," *Jurnal USM Law Review* 5, no. 1 (2022): 539–52, <https://doi.org/10.33476/ajl.v7i1.331>.

Thus, the collection of fees for land certification carried out by the perpetrators of rotating inheritance in Pagelaran Village is part of the efforts to preserve wealth (*hifz māl*), which is in line with the objectives of *maqāsid al-‘Ammah*. With land certificates, ownership rights to land can be legally protected, so that people can utilize the property clearly and safely. In addition, land certificates are also an effort in the preserve of offspring (*hifdz nasl*) which helps the heirs get a share of inheritance in the form of land clearly and fairly to the next generation, so as to maintain the continuity of land ownership for generations. In addition, the maintenance of descendants to avoid conflicts between families due to the struggle for inherited land due to the absence of legal certainty can be a preventive measure.

### 3. Efforts to maintain family inheritance objects and avoid conflicts

The use of inherited land in rotation in Pagelaran Village occurs due to the fact that the land left by the heir before dying is only limited or less than 2 hectares. So that through deliberations between the heirs, the implementation of the distribution of inheritance in rotation is agreed upon and can then be implemented. This is also due to maintaining the object of inheritance so that it does not fall to others/stay belongs to the scope of one's own family as a form of affection for the testator who for his efforts can obtain the object of inheritance. In addition, the distribution of inheritance property in rotation aims to avoid conflicts that might occur in the future if distributed physically due to the lack of land area. So that with the effort to maintain the object of inheritance by rotating it will create a

harmony and tranquility of family members when in the public sphere. This is in accordance with the objective of *maqāṣid al-‘ammah* in the concept of maintaining honour.

The distribution of inheritance by rotation as mentioned can also be said to be an equal distribution of inheritance, which means that each heir gets the same share of the inheritance regardless of gender, both men and women by making peace according to the agreement between the heirs. This is as mentioned in the Compilation of Islamic Law Article 183 which states that the heirs can agree to make peace in the division of inheritance after each realises their share.<sup>64</sup>

The practice of dividing inheritance property in rotation carried out by residents of Pagelaran Village, Pagelaran Subdistrict can be categorized as a delay in the division of inheritance property. Some inheritance law experts in Indonesia argue that the delay in the division of inheritance can also be called undivided inheritance, deferred inheritance, inheritance in an undivided state. Some understanding of the postponement of inheritance can be concluded that the postponement of inheritance is the division of inherited property which is postponed from the death of the heir until the implementation of the division of inheritance.<sup>65</sup>

The division of inheritance in Islam begins when the heir dies. This is as stated in the Qur'an letter an-Nisa' verses 11, 12, and 176. However, the custom

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<sup>64</sup> “Republik Indonesia Undang-Undang Nomor 1 Tahun 1974 Tentang Perkawinan dan Kompilasi Hukum Islam” (n.d.).

<sup>65</sup> Ahmad Sarwat, *Fiqih Mawaris* (DU Center, n.d.).

of the Muslim community in Indonesia is that the distribution of inheritance varies in time. There is a division starting after the 7th anniversary of the testator, forty days, one hundred days, or even one thousand days. With this time consideration. It is expected that the heirs can gather at the place of the testator to conduct deliberations related to the testator's inheritance<sup>66</sup>

The practice of dividing inheritance property in Pagelaran Village, Pagelaran Subdistrict, does not immediately divide the heir's inheritance but makes the object of inheritance used in rotation as the practice mentioned above. So that in this case the inheritance occurs delayed division therefore the inheritance is still joint property of the heirs. When viewed from the practices carried out by the village community, they have the principle of mutual assistance and the principle of mutual consent in joint ownership in the form of land. This is line with the passage from Q.S al-Maidah ayat 2 dan Q.S an-Nisa ayat 29 sebagai berikut:

وَتَعَاوَنُوا عَلَى الْبِرِّ وَالتَّقْوَىٰ

Meaning: And help you in (doing) virtue and piety (Q.S. Al-Maidah: 2).<sup>67</sup>

يَا أَيُّهَا الَّذِينَ آمَنُوا لَا تَأْكُلُوا أَمْوَالَكُمْ بَيْنَكُمْ بِالْبَاطِلِ إِلَّا أَنْ تَكُونَ تِجَارَةً عَنْ تَرَاضٍ مِّنْكُمْ ۗ

Meaning: O you who believe! Do not eat of your neighbour's wealth by unlawful means, except in mutually agreed trade between you. (An-Nisa 29).<sup>68</sup>

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<sup>66</sup> Syakroni, *Konflik Harta Warisan Akar Permasalahan dan Metode Penyelesaian dalam Perspektif Hukum Islam*.

<sup>67</sup> Al-Maidah. 2

<sup>68</sup> An-Nisa. 29

These two verses show that the principle of helping each other can be a general basis for ownership. joint ownership of inherited property, especially in the form of land and agricultural land. The verse also shows the permissibility of the fellowship of property rights between heirs to undivided inheritance. In addition to the principle of mutual assistance, the principle of voluntariness or pleasure is also needed in the delay of undivided inheritance. The verse shows that the good, useful and legalized property by Allah to be utilized is the property obtained through mutually agreed actions of fellow humans, so that the consequences caused by it are also good.<sup>69</sup>

In addition to being supported by the word of Allah, in this case it is also supported by the legal regulations in force in Indonesia, namely KHI Article 189 which basically discusses the inheritance in the form of agricultural land that is less than two hectares, so that its unity is maintained as before, and utilized for the common benefit of the heirs concerned. However, in the practice of utilizing inherited property in rotation in Pagelaran Village, Pagelaran Subdistrict, the community does not realize the permissibility of this practice as stipulated in the Compilation of Islamic Law Article 189, paragraph 1 and paragraph 2. Conformity between practice and KHI can be seen that the village community does not execute inheritance property in the form of land less than 2 hectares by

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<sup>69</sup> Syakroni, *Konflik Harta Warisan Akar Permasalahan dan Metode Penyelesaian dalam Perspektif Hukum Islam*. 67.

direct distribution, but rather maintains its unity for the benefit of the heirs by rotating in turn by way of deliberation and peace. The heirs have agreed there is no individual division or ownership of the land, so this is not contrary to Islamic law.

Therefore, in substance, the application of inherited property in rotation in Pagelaran Village, Pagelaran Subdistrict is in accordance with the Compilation of Islamic Law Article 189 and also Article 183 which states that the division of inherited property can be justified if the heirs have agreed to make peace after each of them realises their share. So, because the inheritance in the form of land is less than 2 hectares, it makes it difficult for them to divide, which in the end agreed on the practice of utilising the inheritance in rotation in Pagelaran Village. This practice is valid because each heir is voluntary in dividing it and it is done by family or peace according to the agreement of the parties concerned through deliberation.

*Maqāṣid sharī'ah* is the goals to be achieved by the existence of the *sharī'ah* itself. Which among these objectives is oriented to maintain the five main points in Islam, namely protecting religion, protecting the mind, protecting offspring, protecting property, and protecting the soul from all things that can cause *harm*. In the sense that *maqāṣid sharī'ah* aims to bring convenience and reject misfortune in carrying out Islamic law.<sup>70</sup>

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<sup>70</sup> MA Sarwat Ahmat, Lc., *Maqoshid Syari'ah*, 1 ed. (Jakarta Selatan: Rumah Fiqih Publishing, 2019).

Islamic law has regulated the procedure for the distribution of inheritance in great detail and clarity. However, the distribution of such inheritance does not make the heirs get justice because in the context of our country it is very supportive of equality, while in Islamic law. The majority of inheritance laws are patriarchal in concept, with men receiving more than women. Therefore, inheritance is a very sensitive issue, which often leads to quarrels and disputes.

In terms of inheritance distribution, the heirs are people who have a family relationship. So that if in a family there is even the slightest conflict, it can bring *harm*, and the *maqāṣid sharī'ah*. which is the goal of protecting property and offspring is not successfully achieved. In this case, it also makes it easier to open up opportunities for the presence of *harm to* religion, mind, and also the soul.

When studied and examined in detail everything that Allah says in the Qur'an and becomes the sunnah of the Prophet, it will be seen that everything that becomes Allah's decree has a certain purpose and will not be in vain. *Maṣlahat* is the main highlight in Islamic law. So, if the written law is irrelevant, Islam with all its vast legal attention pays attention to the *benefits* for its people. *Maṣlahat* is the main substance of *maqāṣid sharī'ah*. and is divided accordingly.

The implementation of the distribution of inheritance property in rotation in Pagelaran Village, Pagelaran Subdistrict in practice is carried out because of the agreement of the heirs to divide the inheritance property in a family manner, namely in rotation between heirs without referring to *farāiḍ* law. If the dispute is



a bad thing, then the best way is peace. If there is a conflict and one of the parties in the division of inheritance If the heirs objected to this rotation, then an agreement could not be reached, which is contrary to *maqāṣid shari'ah*. However, because the heirs have realized their respective shares and then reached a consensus, this is correct in terms of *maqāṣid shari'ah*.

In the use of inheritance property in rotation practiced in Pagelaran Village, the community who is the perpetrator has a goal so that the heirs can utilize the inheritance of parents in the form of land and rice fields can be enjoyed alternately to meet their daily needs. Therefore, the practice of distributing such inheritance arises for the sake of goodness in the family and good relations between brothers and sisters are maintained, as well as the attitude of helping and mutual consent that is used as a guideline for the practice of rotating inheritance utilization by the Pagelaran Village community.

From the explanation and analysis supported by interview data and literature review to legitimise it, the author classifies the form of implementation of the distribution of inheritance property in rotation in Pagelaran Village, Malang Regency into the objectives of Islamic law or what is often referred to as maqasid sharia, namely:

- 1) Preserving of faith is manifested in the form of the heirs' awareness of their respective shares according to Islamic law. However, in order to prioritise a sense of justice, they ensure that the heirs get their rightful share by distributing the inheritance object.

- 2) Preserving of soul is manifested in the form of the involvement of all heirs in deciding the distribution of inheritance objects through deliberation so that good communication is established in order to create a common perception, with this communication creating an attitude of mutual openness, understanding and respect for each other.
- 3) Preserving of wealth means ensuring a fair and equitable distribution of wealth through the legal framework of inheritance. In line with the implementation of the distribution of inheritance in rotation in Pagelaran Village, which was decided by mutual agreement, it makes the use of inheritance assets more targeted, supported by the willingness of the heirs so as to create the desired justice.
- 4) Preserving of mind is realised through the distribution of inheritance property not being divided physically but only taking the benefits so that all family members can feel the results of their parents' hard work so that harmony in the family is achieved. In this context, it emphasises the importance of ensuring that the distribution of inheritance does not only meet material needs, but also pays attention to non-material aspects, such as justice, harmony, and maintenance of relationships between family members.
- 5) Preserving of offspring, which in this case is realised through efforts in certifying inherited land that can guarantee legal certainty of land ownership which is the object of inheritance. In addition, the existence

of land certificates not only protects family assets but also ensures clarity of ownership status of inherited land so as to prevent conflicts over inherited land in the future.

- 6) Preserving of honour is manifested in the form of preventing conflicts in the future due to the lack of inheritance objects, so that the minimal land is maintained by being used in rotation.

Thus, the implementation of inheritance in rotation in Pagelaran Village is appropriate and in line with Jasser Auda's maqasid sharia because it provides values of justice and the welfare of heirs and pays attention to aspects of protection and resilience in the family.

## CHAPTER V

### CLOSING

#### A. Conclusion

The law of inheritance in Indonesia has been summarized and determined by the law of faraidl and the Compilation of Islamic Law. The law of inheritance has also been discussed in detail by Allah by regulating in such a way as to make the process of dividing the inheritance realized fairly for all heirs. However, the matter of inheritance is very crucial, so that in the process it can be a source of happiness but also a source of dispute between families. However, the lives and needs of every human being are not the same, as is the case with the division of inheritance that occurs in Pagelaran Village, Pagelaran Subdistrict, which divides it in rotation. Some of the things that can be concluded from the research on the distribution of inheritance in rotation in Pagelaran Village are as follows:

1. The practice of rotational utilization of inherited property in Pagelaran Village, Pagelaran Subdistrict is one of the alternatives to the division of inherited property carried out by the village community in order to solve inheritance problems, especially on the object of inheritance in the form of land or agricultural land, where they do not divide the inherited land directly but are used in rotation by the heirs by working alternately according to the agreed turn. This is due to the lack of land or land to be divided while the number of heirs is large, therefore the practice is carried out inheritance in rotation by the

village community. In addition, the implementation of inheritance in rotation is also a step towards permanent inheritance distribution, this is done to meet the needs of land certification costs in order to obtain legal certainty for the owner in the future. The implementation of rotating inheritance is also carried out so that the benefits of the land or agricultural land can be taken for the daily food needs of the heir. Regarding the implementation until the cross generation, it depends on the agreement of the heirs, but in general this practice only lasts one generation, this is because some have fulfilled the cost of land certification for all heirs, some have stopped because the heirs have been preoccupied with various other jobs, so that the processing of inherited land becomes neglected and decides to sell the land and end the practice of rotating inheritance.

2. *Maqāṣid sharī'ah*. is a goal of the enactment of an Islamic law, as well as the existence of inheritance *sharī'ah* which aims to provide a sense of justice and welfare for the heirs. In addition, the Shari'ah requires convenience in it, so that the practice of rotating inheritance utilization has eliminated the difficulty in its distribution because the amount of land is minimal while the number of heirs is large. The fulfillment of the objectives of Sharia in the practice of rotating inheritance lies in the guarantee of fair distribution of inheritance property due to mutual agreement between the heirs so that the objectives of Sharia are fulfilled. In addition, efforts to protect offspring or *hifz nasl* are also realized through efforts to certify inherited land that can guarantee legal

certainty of ownership of the land concerned, so as to prevent the heirs from conflicts over inherited land in the future.

3. *Maqāṣid sharī'ah* is a goal of the enactment of an Islamic law, as well as the existence of inheritance sharia which aims to provide a sense of justice and welfare for the heirs. In addition, the *sharī'ah* requires convenience in it, so that the practice of rotating inheritance utilisation has eliminated the difficulty in its distribution because the amount of land is minimal while the number of heirs is large. The fulfilment of the *sharī'ah* objectives in the practice of rotating inheritance lies in the guarantee of fair distribution of inheritance property due to mutual agreement between the heirs. Through the analysis of Jasser Auda's *Maqāṣid sharī'ah* perspective on the distribution of inheritance in rotation in Pagelaran Village, Pagelaran District, Malang Regency is in accordance with the objectives of Islamic law and includes the main objectives of Maqasid 'Al-'Ammah, namely preserving of faith, preserving of souls, preserving of wealth, preserving of mind, preserving of offspring, and preserving of honour.

## **B. Suggestion**

In relation to this study, researchers only conducted research in the Pagelaran Village area, so the information obtained was limited. However, the actual scope can be even wider, for example, the scale of the sub-district area. For this reason, it is hoped that future research can conduct research in a wider forum to add more information. In addition, the analysis using maqasid sharia, the author only relates it to things that the

author thinks are important, not to all aspects that the author gets analysed so that the essence of the substance is not reached in detail, this happens because of the author's limited time. A little advice from the author to those who are or will conduct research on similar inheritance distribution processes so that they can analyse it more specifically in all aspects of the information received through research in the field.

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## APPENDIXES

### A. Documentation of Interview



*Gambar 1 Wawancara kepada Bapak Ahmad*



*Gambar 2 Wawancara kepada Ibu Sumkyah*



*Gambar 3 Wawancara kepada Ibu Sumarni*



*Gambar 4 Wawancara kepada Ibu Ngatemi*













*Gambar 5 Wawancara kepada Ibu Karsini*

## **B. List of Question to Ask the Interviewer**

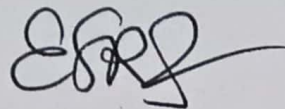
1. What is the background to the implementation of the distribution of inheritance in rotation?
2. What is the early history of rotational inheritance distribution?
3. How much land is used as the object of rotating inheritance?
4. Which heirs are entitled to receive rotating inheritance shares?
5. Up to what stage (how many generations) does the implementation of rotating inheritance take place?
6. What is the procedure for managing rotating inheritance?
7. How long is the implementation of rotating inheritance for each heir?
8. What kind of plants are planted on the object of inheritance?
9. What if one of the heirs cannot carry out the management of the land that is his turn?
10. What is the purpose of carrying out the division of inheritance in rotation?

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Pagelaran Village, Pagelaran District, Malang Regency)

No	Day / Date	Consultation	Signature
1.	Tuesday, 24 October 2023	Improvement of thesis title, background and statement of problem.	
2.	Friday, 03 Nonember 2023	Improvement of the thesis title	
3.	Monday, 13 November 2023	Revised background, added previous research & added outline	
4.	Friday, 17 November 2023	Approval thesis proposal	
5.	Monday, 26 February 2024	Revision of Proposal Session Results	
6.	Monday, 04 March 2024	Consultation Chapter II	
7.	Thursday, 07 March 2024	Consultation Chapter III & IV	
8.	Wednesday, 13 March 2024	Revision Chapter III & IV	
9.	Wednesday, 03 April 2024	Revision Abstract and Translation Consultation to English	
10.	Thursday, 04 April 2024	Thesis ACC	

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