

THE DISTRIBUTION OF PARENTAL INHERITANCE PRIOR TO DEATH: A SOCIAL SYSTEMS THEORY PERSPECTIVE ROOTED IN NIKLAS LUHMANN'S FRAMEWORK

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▪ Received: 21-12-2024

▪ Revised: 19-06-2025

▪ Received: 20-06-2025

Abstract

This research is motivated by the culture of distributing parental inheritance to children before their parents die, which is mostly carried out by the people of Kauman Kidul Village, Sidorejo District, Salatiga City. This culture shows a shift in value from the provisions of Islamic inheritance law and the positive law that requires division to be made after the death of the heir. The purpose of this research is to find out the factors behind the occurrence of this practice and understand its meaning as part of the social system of society. This research is a field study with a sociological approach and uses Niklas Luhmann's social system theory as an analysis knife. Data was collected through interviews with three local community leaders who were selected purposively and analyzed with the stages of data reduction, data presentation, and conclusion drawn. The results of the study show that the division of wealth is carried out in a deliberative manner within the family and is often divided equally regardless of gender, although in some cases the eldest child or the unsettled child gets a larger share. This practice is motivated by the desire to avoid family conflicts and accelerate the establishment and independence of children. From the perspective of social system theory, this culture is a form of autopoietic communication of the family that is adaptive to social complexity, and reflects the function of the family in maintaining social harmony and stability.

Keywords: Family Inheritance; Islamic Inheritance Law; Social System; Local Culture; Family Harmony

Abstrak

Penelitian ini dilatarbelakangi oleh budaya pembagian harta warisan orang tua kepada anak-anak sebelum orang tua meninggal dunia, yang banyak dilakukan oleh masyarakat Desa Kauman Kidul, Kecamatan Sidorejo, Kota Salatiga. Budaya ini menunjukkan adanya pergeseran nilai dari ketentuan hukum waris Islam dan hukum positif yang pada dasarnya mensyaratkan pembagian dilakukan setelah pewaris meninggal dunia. Tujuan penelitian ini adalah untuk mengetahui faktor-faktor yang melatarbelakangi praktik tersebut serta memahami maknanya sebagai bagian dari sistem sosial masyarakat. Penelitian ini merupakan studi lapangan dengan pendekatan sosiologis dan menggunakan teori sistem sosial Niklas Luhmann sebagai pisau analisis. Data dikumpulkan melalui wawancara dengan tiga tokoh masyarakat setempat yang dipilih secara purposif dan dianalisis melalui tahapan reduksi data, penyajian

data, serta penarikan kesimpulan. Hasil penelitian menunjukkan bahwa pembagian harta dilakukan melalui musyawarah keluarga dan umumnya dibagi secara merata tanpa membedakan jenis kelamin, meskipun dalam beberapa kasus anak tertua atau anak yang belum mapan mendapat bagian lebih besar. Praktik ini dilatarbelakangi oleh keinginan untuk menghindari konflik keluarga serta mempercepat kemandirian dan keamanan anak. Dari perspektif teori sistem sosial, budaya ini merupakan bentuk komunikasi autopoietik keluarga yang adaptif terhadap kompleksitas sosial, sekaligus mencerminkan fungsi keluarga dalam menjaga harmoni dan stabilitas sosial.

Kata Kunci: *Warisan Keluarga; Hukum Waris Islam; Sistem Sosial; Budaya Lokal; Harmoni Keluarga.*

INTRODUCTION

According to Article 171 of the Compilation of Islamic Law, inheritance is systematically defined as the legal framework governing the transfer of ownership rights from a deceased individual's estate, delineating eligible heirs and prescribing their respective entitlements. More broadly, inheritance encompasses the transmission of material assets from a deceased person to a living beneficiary. It is noteworthy that familial legal rights and obligations are typically non-transferable through inheritance.¹

The distribution of parental assets to offspring can occur through various legal mechanisms, including inheritance, grants, or wills. However, contemporary societal practices reveal significant shifts in traditional values concerning distribution procedures, entitlement, and the allocation of shares.² While Islamic Sharia and positive law stipulate that inheritance distribution should occur posthumously with predetermined shares, actual societal practices often diverge. This divergence stems from perceptions of unfairness regarding prescribed shares or the belief that inheritance allocations do not align with prevailing conditions, leading many to bypass formal inheritance laws for asset transfer.³

Within Islamic jurisprudence, a grant is conceptualized as a voluntary donation intended to seek divine favor. The Compilation of Islamic Law specifies that an individual, aged 21 or older, possessing sound mind and acting without coercion, may donate up to one-third of their

¹ Said Ali Assagaff and Wira Fanciska, "Legal protection for heirs against inheritance that is transferred without the consent of all heirs," *Imanot: Journal of Law & Notary Student Affairs* 1, no. 1 (2021): 279–290.

² Zainal Arifin Haji Munir, "Analysis of Patterns for Inheritance Dispute Settlement in the Tradition of Sasak Community in Lombok," *Mazahib Journal of Islamic Legal Thought* 20, no. 2 (2021): 225–250.

³ Huda binti Nuruddin and Shandoul Ammar Saad al-Hanahri, "Determining Lineage Through Genetic Fingerprinting between Tunisian Positive Law and Islamic Jurisprudence," *Al-Zaytoonah University of Jordan Journal for Legal Studies* 2, no. 2 (2021): 159.

assets to another person or institution, provided the transaction is witnessed by two individuals.⁴ This provision thus permits a competent grantor to transfer a defined portion of their estate as a gift.

In Kauman Kidul Village, the practice of distributing parental assets prior to the parents' demise, with a complete division among children, presents a unique challenge. The community reinterprets "heritage" as property transferred from parents to children, even pre-mortality. This understanding creates a significant disparity between the local practice of asset distribution and the established tenets of Islamic and statutory inheritance laws.

The Kauman Kidul community is characterized by its heterogeneity, notably distinguished by geographical divisions such as the 'kidul embankment' and 'lor embankment'. Insights from local residents suggest that these terms demarcate differences in religious understanding and social conditions. Specifically, the 'lor embankment' community is perceived to possess a more advanced comprehension and adherence to Islamic practices, whereas the 'kidul embankment' community integrates Islamic faith more closely with Javanese cultural patterns.⁵

This phenomenon has been previously investigated by several scholars. Miftahul Huda's research, "Functionalism of Inheritance Distribution Before the Heir Dies in Family Sustainability," explores the importance of accurate inheritance understanding to prevent family disputes.⁶ Similarly, Jainudin's study, "Distribution of Inheritance Property; A Study of the Distribution of Inheritance by Heirs to Heirs Before the Heir Dies in the Bima Community," concludes that pre-death inheritance distribution deviates from Islamic Sharia, even if the eventual share acquisition aligns with Sharia principles.⁷

While these preceding studies predominantly emphasize the Islamic legal perspective, often critiquing pre-death parental inheritance distribution as non-compliant with applicable law, the present study adopts a distinct approach. It seeks to uncover the underlying factors influencing pre-death parental inheritance distribution through the lens of Niklas Luhmann's social system theory. Luhmann's framework is grounded in three core concepts: Autopoiesis,

⁴ Leoni Cah Intan Sesar Sari and Adam Sani, "PPAT's Responsibility for the Making of Grant Deeds That Violate the Provisions of Article 210 of the KHI," *Respublica Law Journal* 23, no. 01 (2023): 87–99.

⁵ Interview with Mr. Yoga Ahmad Qodari

⁶ Muchamad Imron and Miftahul Huda, "Functionalism of Inheritance Distribution Before the Heir Dies in Family Sustainability," *Sakina: Journal of Family Studies* 7, no. 4 (2023): 514–529.

⁷ Jainuddin Jainuddin, "Distribution of Inheritance; A study of the distribution of inheritance by the heirs to the heirs before the heir dies in the Bima community," *SANGAJI: Journal of Sharia and Legal Thought* 4, no. 2 (2020): 298–313.

which posits that social systems autonomously self-reproduce through communication,⁸ thereby perpetually creating and sustaining themselves via member interactions; Contingency, highlighting that there is no singular optimal method for social system regulation, implying that choices are context-dependent; and Function, asserting that each social system serves a specific function that dictates its operational dynamics.⁹ Consequently, this theoretical framework will facilitate an understanding of parental inheritance division as an intricate social process encompassing legal aspects and interpersonal relationships.

Building on this background, this study aims to investigate the legal culture surrounding parental inheritance distribution to children in Kauman Kidul Village. It specifically examines pre-death inheritance distribution as a social phenomenon operating within the family communication system, focusing not solely on formal legal aspects but also on social processes, deliberative structures, community perceptions of justice, and the established patterns and magnitudes of distribution.

METHOD

This field research was conducted in Kauman Kidul Village, Sidorejo District, Salatiga City, employing a sociological approach. The study focused on the residents of Kauman Kidul Village who engage in the practice of distributing inheritance assets before the heir's demise. The primary objective was to understand this practice of pre-death parental inheritance distribution to children and to identify the underlying factors influencing this method within the community.

Data collection primarily involved direct interviews with three key informants, chosen for their extensive knowledge, experience, and strategic insights into heritage asset distribution practices. These informants included Mr. H. Muhammad Mutoharul, Chairman of RW 06 Kauman Kidul, recognized for his leadership in family deliberations; Mr. K.H. Nur Kholis, a religious leader and coach of Islamic religious practice, who provided insights into religious dynamics; and Mr. Yoga Ahmad Qodari, a youth leader offering a critical perspective on the evolving inheritance practices across generations. Informant selection was purposive, based on their direct involvement and ability to articulate the social values underpinning these practices.¹⁰

⁸ Mohammad Zaini, "Squirming System Theory in Reading Educational Phenomena," *EL-BANAT: Journal of Islamic Thought and Education* 7, no. 1 (2017): 96–115.

⁹ Nurhanipah Harahap Hanipah, "The Role of Religion as a Social System of Religious Communities (Niklas Luhman System Theory Study)" (2023). 62-75.

¹⁰ A Huberman, "Qualitative Data Analysis a Methods Sourcebook" (2014). 16

The collected data subsequently underwent a three-stage analysis: data reduction, data display, and conclusion drawing. The data reduction process involved selecting and filtering crucial information from interviews and observations, focusing on the rationales for wealth division, deliberation processes, and the patterns and magnitudes of inheritance allotments. Following this, data display systematically compiled a narrative of the findings, integrating them with Niklas Luhmann's social system theory. The final stage involved drawing conclusions to interpret the social meaning embedded in these wealth distribution practices and to illustrate the relationship between the family social system and its adaptation to religious norms and state laws.

RESULTS AND DISCUSSION

An Historical Examination of the South Caucasus

Kauman Kidul, a village located at the northern periphery of Salatiga City, is primarily inhabited by a populace engaged in agricultural activities and factory employment. Access to water is crucial for its residents, meeting their needs for consumption, daily living, and particularly agriculture. For the agrarian community of Kauman Kidul, harvesting is more than just the technical process of crop collection; it embodies a profound expression of gratitude for agricultural bounty, fostering a deep connection between humans and nature.¹¹ This significance is further underscored by the village's designation as a key food production area, characterized by sustainable rice fields, fertile soil, and ample water resources, all contributing to its prosperity.

Geographically, Kauman Kidul Village shares borders with Pabelan Village to the north, Glawan Village to the east, and Bugel Village to the west. It is approximately 2.9 km from Sidorejo District and 3.0 km from Salatiga City.¹² Furthermore, Kauman Kidul Village holds historical significance as it houses the Plumpungan Inscription—an archaeological artifact measuring 170 cm by 160 cm with a 5-meter circumference, widely regarded as foundational to the establishment of Salatiga City. The village also features the Sitalang tourism park, inaugurated in 2018, which includes culinary attractions. Demographically, the community is religiously diverse, accommodating adherents of five different faiths, with a predominant Muslim population. This religious pluralism is evident in the village's infrastructure and

¹¹ Yonius Koib and Liska Simamora, "Farmers' Perception of the Importance of Agricultural Cooperatives," *Jambura Agribusiness Journal* 3, no. 2 (2022): 56–68.

¹² Linda Sariasih, Iwan Rudiarto, and Ferry Hermawan, "Economic, Social and Environmental Sustainability in Community-Based Tourism Development in Kauman Kidul Village, Salatiga City," in *Proceedings of the Unars National Seminar*, vol. 2, 2023, 193–204.

numerous religious facilities, contributing to a strong ethos of tolerance and mutual respect among its inhabitants.¹³

Ante-mortem Parental Inheritance Distribution

Every system of property inheritance is underpinned by distinct principles of inheritance law, grants, and wills. The distribution of parental inheritance is typically influenced by the prevailing kinship system and, more fundamentally, by dominant social structures. The system governing property distribution within a community is intrinsically linked to family dynamics, as both inheritance and grants represent the intergenerational transfer of assets.

Field research in Kauman Kidul Village revealed that the community practices pre-mortem inheritance distribution to their children through a deliberative process led by the parents. This deliberation primarily involves discussing and agreeing upon the division of property before the parents' demise. This deliberative principle directly manifests Javanese cultural values, which prioritize harmony and equilibrium in communal life.¹⁴ Historically, this long-standing principle has remained an integral component of society, perceived as suitable and aligned with community expectations. Its primary objective is to mitigate potential issues, such as disputes or conflicts, that might arise concerning inheritance.

However, the observed practices in Kauman Kidul Village, Sidorejo District, Salatiga City, demonstrate inconsistencies when examined against both Islamic law and the positive law enforced in Indonesia. Both legal frameworks typically stipulate that inheritance is conferred after the decedent's death, and for grants, a maximum limit of one-third of the total property is generally applicable.¹⁵ Despite these legal provisions, understanding the underlying motivations for these community practices remains a crucial aspect requiring analysis.

The method of parental inheritance distribution in Kauman Kidul Village suggests a complex interplay of internal factors, leading to diverse behavioral patterns.¹⁶ Among the factors identified as encouraging pre-mortem parental inheritance distribution are the existence of an autonomous social system within the family, social differentiation influencing subsystem decisions, and decision-making processes shaped by the complexity of family information.

¹³ Aditya Vertiana Putra, "Video Production of the Origin of Plumpungan Batik: From Stone to a Batik Typical of Salatiga City" (Communication Study Program FISKOM-UKSW, 2014). 34-35

¹⁴ Kodrat Eko Putro Setiawan, Maguti: A Study of Javanese Cultural Symbolism (Eduvision, 2019). 56

¹⁵ Rahul Vishkar, "Grants that are canceled due to exceeding one-third of assets (Study of the Syar'iyah Court Decision Number 18/Pdt. G/2018/Ms. TTN)," *Journal of Academic Media (JMA)* 2, no. 1 (2024).

¹⁶ Muhammad Hasan, Dahlia Haliah Ma'u, and Muallimin Mochammad Sahid, "Inheritance Property Distribution Models Among the Muslim Community of Borneo-Nusantara," *Al-'Is* 21, no. 1 (2024): 175–198.

Familial Communication Patterns Regarding Ante-Mortem Parental Inheritance Distribution in Kauman Kidul Village

Past conflicts arising from inheritance divisions have fostered an acute awareness within families regarding the detrimental impact of such disputes on intergenerational relationships. Consequently, the primary motivation for residents of Kauman Kidul Village to distribute parental inheritance pre-mortem is the proactive mitigation of these potential familial disputes. This preemptive strategy involves the equitable distribution of assets to all offspring prior to the parents' demise, irrespective of gender.¹⁷

This practice is substantiated by informant accounts. Mr. H. Muhammad Mutoharul explained that pre-mortem distribution is intended to avert future conflicts and misconceptions, citing instances where ambiguities in post-mortem inheritance allocation led to disagreements among siblings. The objective, he stated, is to ensure mutual acceptance among children regarding their parents' distribution decisions.¹⁸

Similarly, Mr. K.H Nur Kholis observed that while Islamic sharia typically dictates post-mortem inheritance, the pre-mortem grant practice in Kauman Kidul is prevalent, often rooted in ancestral customs. He personally adhered to this method, emphasizing deliberative distribution among his children and encouraging their sincere acceptance, implying that deference would lead to greater blessings.¹⁹

. These practices are deeply rooted in the community's past traumatic experiences, where inheritance-related conflicts severely strained family ties. This history motivates current generations to prevent similar disunity, as the community recognizes that such disputes yield no benefits and instead inflict significant harm on their children. Therefore, prioritizing harmonious family relations underpins their efforts to proactively avert potential sources of conflict.²⁰

The conceptual framework of autopoiesis offers insight into the family as a dynamic, evolving system capable of self-regulation and internal challenge resolution. Within this framework, the family functions as a communication system, establishing autonomous internal patterns that include distinct linguistic codes, norms, values, and shared meaning-making

¹⁷ Ulfiani Rahman et al., "Men and Women in The Distribution of Inheritance in Mandar, West Sulawesi, Indonesia," *Samarah: Journal of Family Law and Islamic Law* 6, no. 1 (2022): 156–175.

¹⁸ Interview with Mr. H. M. Mutoharul Fatah

¹⁹ Interview with Mr. K.H Nur Kholis

²⁰ Naskur Bilalu et al., "Reevaluating Inheritance Distribution in Indonesia: The Role of Hibah as a Preventive Measure," *Al-Istinbath: Journal of Islamic Law* 10, no. 1 (2025): 378–406.

processes.²¹ Luhmann's theory of autopoiesis further posits that inter-familial communication transcends mere information transfer, serving as a constitutive process for shaping a collective reality. Continuous interactions enable Kauman Kidul families to construct and sustain their unique symbolic environment, highlighting the diversity in how messages are interpreted and influencing the dynamics of their communication. Luhmann's work underscores the imperative to understand how social systems endure and adapt to environmental pressures, with autopoiesis providing a robust conceptual lens for analyzing the family's capacity, as a communication system, to navigate conflicts, role transitions, and internal crises.²²

In summation, the pre-mortem inheritance distribution practiced by the Kauman Kidul Village community serves a fundamental purpose, grounded in their commitment to maintaining familial cohesion and preventing future conflict, achieved through deliberative communication among family members. Applying autopoiesis to inter-familial communication offers a holistic understanding of this practice, portraying the family as a living, self-generating system capable of managing its internal communications.²³ This perspective enriches the understanding of Kauman Kidul society regarding the family's function as a complex and sustainable communication system, acknowledging that while Luhmann's framework illuminates inherent uncertainty and diversity within social dynamics, it does not offer definitive answers.

Functional Differentiation and Ante-Mortem Parental Inheritance Distribution in Kauman Kidul Village

The community of Kauman Kidul Village, while acknowledging the significance of norms and legal principles derived from religious doctrine and state law, often adopts a more pragmatic perspective, adapting to dynamic social shifts within their community. This leads to local approaches to inheritance distribution that stand in contrast to prevailing Islamic and Indonesian legal frameworks. Nonetheless, the community perceives this method as aligning with objectives and functions that offer greater benefits.

Niklas Luhmann conceptualized modernity through the lens of differentiation, which posits that societal functions become increasingly organized over time. He articulated that social

²¹ Catur Saptaning Wilujeng and Tatag Handaka, *Health Communication: An Introduction* (Universitas Brawijaya Press, 2017). 87

²² Noveri Faikar Urfan, "'All-Autopoiesis' The Fading of the Role of Mass Media in the View of Niklas Luhmann's System Theory," *NUSANTARA: Journal of Social Sciences* 10, no. 3 (2023): 1105–1115.

²³ Geraldo Valentino Rotty and Roxanne Akil, "The Application of Niklas Luhmann's Understanding of Autopoiesis in Communication Between Families," *Journal of Communication and Social Media Science (JKOMDIS)* 3, no. 3 (2023): 778–784.

systems evolve by transforming societal complexity from a disorganized to an organized state via differentiation, or the establishment of distinct elements within society.²⁴ From this viewpoint, modernization signifies a transition from a stratified society, characterized by hierarchical social layers, to a functionally differentiated one. In such modern societies, distinct systems like economics, law, and politics operate based on their inherent internal logics, implying that no single system unilaterally controls or supersedes another.²⁵

A primary impetus for the residents of Kauman Kidul Village to distribute parental inheritance prior to death is the economic status of their children following marriage. Many children encounter financial hardship due to factors such as unstable employment, insufficient income to meet family needs, and escalating property values.

According to Mr. Yoga Ahmad Qodari, a former resident of Batur Kauman Kidul hamlet, the elders in his family distributed inheritance without rigid adherence to Islamic inheritance law, particularly regarding the stipulation that males receive twice the share of females. He observed that while the majority of Kauman Kidul villagers are Muslim, their comprehension of Islamic law is not always extensive. He further detailed that property is typically distributed before the parents' demise and allocated equally among family members. However, in practice, if a married child faces economic instability, parents frequently provide property to support their marital continuity. Additionally, the eldest child often receives a larger portion, as local custom dictates they typically remain in the family home or care for the parents.²⁶

In light of these circumstances, individuals feel compelled to promptly transfer their assets to their children. Such assets commonly include land or rice fields that can be managed by the children.²⁷ In certain instances, wealth transfers may also involve gold, vehicles, or other valuables. This pre-mortem distribution of inheritance is considered more effective and functional for their relatives, facilitating a more rapid transfer of property ownership and assisting children in navigating domestic life challenges. This act of giving is also interpreted as an expression of parental affection.

Beyond economic considerations, the Kauman Kidul Village community's practice of pre-mortem inheritance distribution is founded on a desire to preserve familial relationships. Parents

²⁴ Thohir Yuli Kusmanto and Misbah Zulfa Elizabeth, "Social Structure and System at the Level of Discourse and Praxis," *JSW: Journal of Sociology Walisongo* 2, no. 1 (2018): 39–50.

²⁵ Ahmad Muttaqin, "The Existence of Religion in the Era of Globalization," *COMMUNICATION: Journal of Da'wah and Communication* 8, no. 1 (2014): 41–59.

²⁶ Interview with Mr. Yoga Ahmad Qodari

²⁷ Tarmizi Tarmizi et al., "Inheritance Distribution and Conflict Resolution in Bone Regency: Upholding Women's Rights and Islamic Law Objectives," *De Jure: Journal of Law and Sharia* 16, no. 2 (2024): 255–277.

aim to ensure that all their assets will remain under their children's control. This concern arises from the understanding that traditional inheritance methods would necessitate dividing property with other legal heirs, who, under inheritance law, extend beyond direct descendants to include siblings, uncles, mothers, grandparents, and others. Consequently, distributing parental inheritance to children before death is intended to safeguard all assets within the children's control, thereby preventing distribution to third parties.

For Luhmann, functional differentiation simultaneously represents a shift in dominance from a normative mode to a cognitive mode in responding to expectations and disappointments. This transformation, within the context of differentiation, implies not merely a simple change but a reordering of modern norms specific to societal structure and an encouragement of public knowledge. Thus, based on information gathered from various Kauman Kidul Village community members, it is evident that their actions are driven by objectives such as fostering independence, stability, and welfare for their children. The community firmly believes that pre-mortem parental inheritance distribution effectively fulfills the function of inheritance as a support system for the subsequent generation of the family.

CONCLUSION

Based on research and analysis grounded in Niklas Luhmann's social system theory, the practice of pre-mortem inheritance distribution among families in Kauman Kidul Village can be interpreted as a form of social communication occurring within the family system, which functions as one of society's subsystems. From an autopoietic perspective, the family in Kauman Kidul operates as a self-referential social system capable of generating its own internal decisions through ongoing communicative interactions. The family deliberations between parents and children regarding the extent and form of wealth distribution illustrate this autopoietic mechanism, demonstrating the family's adaptive and responsive character shaped by accumulated social experiences. The notion of contingency explains that the decision to distribute inheritance before death does not necessarily represent a deviation from religious or legal norms; rather, it embodies a socially contextualized choice driven by pragmatic motives—such as preserving familial harmony, fostering children's financial independence, and avoiding internal disputes. As a social system, this practice serves as a means of social stabilization and continuity within the family structure. It not only facilitates the transfer of property ownership but also reinforces community values such as harmony, customary justice, and the family's central role in ensuring collective welfare. Thus, the pre-mortem inheritance distribution in

Kauman Kidul can be understood as a functional manifestation of the family's social system operating within its particular cultural and social environment. These practices transcend individual decisions or isolated traditions, representing a systemic adaptation that demonstrates how society manages complexity and uncertainty through meaningful communicative processes.

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