

Article

Epistemological Foundations of Islamic Inheritance Law: A Comparative Study of the Hanafi and Ja'fari Schools

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Abstract

This study examines how competing epistemological conceptions of legal authority shape the normative construction of inheritance law in the Hanafi and Ja'fari schools of Islamic jurisprudence. Although comparative studies of Islamic inheritance law have expanded considerably, the epistemological foundations underlying doctrinal divergence between the two traditions remain insufficiently explored. Employing a normative legal method with a conceptual-comparative approach based on authoritative *fiqh* literature, the study demonstrates that differences in heir classification, inheritance distribution, and women's property rights derive from fundamentally different conceptions of legal authority, particularly regarding the status of the Imams' traditions within Ja'fari jurisprudence. Despite these doctrinal divergences, both schools share fundamental normative commitments, including recognition of the Qur'an as the primary legal source, the legal effect of religious difference as an impediment to inheritance, and the requirement of the decedent's death as a prerequisite for succession. By explaining doctrinal divergence through its epistemological foundations rather than merely describing technical differences, this study contributes to comparative *fiqh* scholarship, advances discussions on legal pluralism in Islamic jurisprudence, and provides a conceptual basis for the development of more inclusive Islamic family law.

Keywords

Epistemology, Hanafi school, Islamic inheritance law, Ja'fari school, legal pluralism



Abstrak

Penelitian ini mengkaji bagaimana perbedaan konsepsi epistemologis mengenai sumber dan otoritas hukum membentuk konstruksi normatif hukum waris Islam dalam mazhab Hanafi dan Ja'fari. Meskipun kajian perbandingan hukum waris Islam telah berkembang, landasan epistemologis yang melahirkan perbedaan doktrinal antara kedua mazhab tersebut masih relatif kurang mendapat perhatian. Penelitian ini menggunakan metode penelitian hukum normatif dengan pendekatan konseptual-komparatif melalui studi kepustakaan terhadap sumber-sumber *fiqh* yang otoritatif dari kedua tradisi. Hasil penelitian menunjukkan bahwa perbedaan dalam klasifikasi ahli waris, mekanisme pembagian warisan, dan kedudukan hak perempuan merupakan konsekuensi dari perbedaan mendasar mengenai sumber dan otoritas hukum, khususnya terkait kedudukan tradisi para Imam Ma'sum dalam *fiqh* Ja'fari. Mazhab Hanafi membangun sistem kewarisannya berdasarkan hierarki *ashhabul furudh*, *ashabah*, dan *dzawil arham*, dengan mengakui mekanisme *ta'sib* dan *'awl*, sedangkan mazhab Ja'fari menerapkan sistem *thabaqat* yang menolak *ta'sib* dan *'awl*, membatasi hak istri atas harta tidak bergerak, serta menerapkan *radd* secara proporsional kepada seluruh ahli waris yang berhak. Meskipun demikian, kedua mazhab tetap memiliki landasan normatif yang sama, yaitu mengakui Al-Qur'an sebagai sumber hukum utama, menganggap perbedaan agama sebagai penghalang kewarisan, serta mensyaratkan kematian pewaris sebagai prasyarat terjadinya pewarisan. Dengan menjelaskan perbedaan doktrinal melalui fondasi epistemologisnya, penelitian ini memperkaya kajian *fiqh* komparatif, memperluas diskursus mengenai pluralisme hukum dalam yurisprudensi Islam, serta menyediakan kerangka konseptual bagi pengembangan hukum keluarga Islam yang lebih inklusif.

Kata Kunci

Epistemologi, Hukum Waris Islam, Mazhab Hanafi, Mazhab Ja'fari, Pluralisme Hukum

INTRODUCTION

Differences in Islamic inheritance law remain one of the most enduring manifestations of legal pluralism within Islamic jurisprudence. While all major schools of *fiqh* (*Madhhab*) derive their inheritance doctrines from the Qur'an and the Sunnah, they frequently reach different legal conclusions because they adopt distinct epistemological conceptions regarding the sources and authority of Islamic law. Islamic inheritance law (*fiqh mawaris*), as an integral part of the Islamic legal system, therefore functions not merely as a technical mechanism for the distribution of estates but also as an expression of justice, the balance of rights and obligations, and the protection of family wealth.

This normative framework is reflected in the classical principle of *al-ghunmu bi al-ghurmi*, which holds that entitlement to inheritance is proportional to the legal responsibilities borne by each heir. Yet the practical implementation of this principle varies across schools of *fiqh* because each constructs its legal reasoning upon different epistemological foundations (Ali, Murtaza, Hedvicakova, Jiang, & Naeem, 2022). Among the various schools of Islamic jurisprudence, the Hanafi and Ja'fari traditions provide perhaps the

clearest illustration of how competing conceptions of legal authority shape the development of inheritance doctrine. The Hanafi school, founded by Imam Abu Hanifah al-Nu'man ibn Thabit (80–150 AH), constructs its inheritance rules through *ra'yu* and *qiyas*, producing a hierarchical classification of heirs based on *nasab*, *sabab*, and *wala'*. By contrast, the Ja'fari school, attributed to Imam Ja'far al-Sadiq (83–148 AH) and representing the principal legal tradition of Imamiyyah Shi'a Islam, accords the traditions of the infallible Imams the same legal authority as the Qur'an and the Sunnah (Azwar, Armi, Bakhtiar, & Nasri, 2024). This epistemological divergence gives rise to systematic doctrinal differences, including the operation of *hajb*, the legal status of *ashhabul furudh* and *dzawil arham*, the application of *ta'shib* and *radd*, and a wife's entitlement to immovable property (Baig & Laghari, 2022).

Academic research on Islamic inheritance law has generally developed along three major strands. The first examines inheritance law as part of the reform and codification of Islamic family law, particularly within national legal systems. The second analyses inheritance through the perspective of *maqasid al-shari'ah*, emphasizing its function in protecting wealth (*hifdh al-mal*) and preventing disputes among heirs. The third adopts a comparative perspective, demonstrating that inheritance practices across Muslim jurisdictions are shaped by the dominant *Madhhab* followed in each country, with doctrinal differences extending beyond theology to influence the operation of national family law (Brandhorst et al., 2021; Pakarti & Farid, 2023; Suryantoro, 2020).

Despite these important contributions, existing scholarship exhibits two important limitations. First, comparative studies continue to concentrate predominantly on differences among Sunni schools, particularly Hanafi, Shafi'i, and Maliki traditions (Djawas et al., 2022). Second, studies addressing Sunni-Shi'a inheritance law generally describe doctrinal differences without examining how those differences emerge from competing epistemological conceptions of legal authority. Consequently, the relationship between legal epistemology and the construction of inheritance doctrine remains insufficiently explored, particularly in relation to the Hanafi and Ja'fari schools.

This study advances comparative scholarship on Islamic inheritance law by shifting the focus from descriptive comparisons of doctrinal differences to the epistemological foundations that generate those differences. Rather than treating the Hanafi and Ja'fari schools as two competing sets of inheritance rules, it explains how competing conceptions of legal authority produce coherent differences in heir classification, inheritance distribution, and women's property rights despite their shared reliance on the Qur'an. By tracing doctrinal divergence back to its underlying legal-epistemological assumptions, this study offers an analytical framework for understanding legal pluralism within Islamic inheritance law and contributes to broader discussions on comparative Islamic jurisprudence and contemporary family law reform (Fu & Liu, 2024).

Against this background, this article addresses the following question: How do differences in legal epistemology shape the construction of inheritance

law in the Hanafi and Ja'fari schools, and what implications do these differences have for comparative Islamic family law? Accordingly, this article compares the two schools by examining their legal sources, classifications of heirs, mechanisms of inheritance distribution, and the implications of their epistemological divergence for contemporary Islamic family law.

This research carries particular significance in light of the growing transnational mobility of Muslim families and the legal pluralism this mobility produces. As Muslim communities from different *Madhhab* backgrounds increasingly settle, marry, and pass on assets across borders, jurisdictions that operate dual or overlapping legal systems have witnessed disputes in which the same set of facts produces conflicting inheritance outcomes depending on the sectarian affiliation of the parties involved. Understanding the doctrinal differences between the Hanafi and Ja'fari schools therefore carries implications that extend beyond historical or theological curiosity; it bears directly on comparative Islamic law and the reform of contemporary Islamic family law in plural societies. This study contributes to the literature in two respects. First, it extends comparative *fiqh* scholarship beyond the conventional intra-Sunni focus by demonstrating that doctrinal differences in inheritance law are best understood through competing epistemological conceptions of legal authority. Second, provides a conceptual framework that may inform judicial interpretation, legal practice, and future policy discussions concerning inheritance disputes in legally plural Muslim societies. By linking doctrinal variation to its underlying epistemological foundations, this study seeks to advance contemporary debates on legal pluralism, comparative Islamic jurisprudence, and the development of more inclusive Islamic family law.

RESEARCH METHOD

This study employs the method of normative legal research, namely a scientific approach that regards law as a system of prescriptive and autonomous norms. Within this framework, the law is not examined as an empirical social phenomenon, but rather as a set of rules derived from authoritative texts such as the Qur'an, the hadith, classical *fiqh* texts, and relevant, verified scholarly literature (Ahmed, 2025).

This method was deemed the most appropriate given that the subject matter of this study is doctrinal in nature, namely the norms of inheritance law as formulated and developed by the Hanafi and Ja'fari schools within their respective Islamic scholarly traditions. Consequently, the analysis conducted relies entirely on textual and conceptual legal materials, rather than on field data or empirical evidence. The approach adopted in this study is the conceptual approach, which is a perspective that takes legal concepts, *fiqh* doctrines and the normative constructs of the ulama as the starting point for analysis.

A conceptual approach is highly relevant to the study of *fiqh muqaranah* (comparative *fiqh*) as it enables researchers to identify the conceptual frameworks underpinning the formation of norms within each *Madhhab* prior to undertaking a systematic comparison. In the context of this research, the

conceptual approach is operationalised by examining the concepts of *ashhabul furudh*, *ashabah*, *hajb*, *dzawil arham*, and *usubah* within each school of thought separately, before bringing them together in a comprehensive and structured comparative analysis.

This approach is also combined with a comparative approach, which serves as a methodological tool for identifying points of similarity (conceptual similarities) and differences (*ikhtilaf*) between the two in an objective and proportionate manner. The sources of legal material in this study are divided into three categories. Firstly, primary legal sources, which include the texts of the Qur'an particularly the verses on inheritance in Surah An-Nisa' authentic hadiths relating to inheritance.

Secondly, secondary legal sources, which include accredited academic journals, contemporary books on Islamic law, and previous research relevant to the topic under study. Thirdly, tertiary legal sources, comprising Islamic legal dictionaries, encyclopaedias of *fiqh*, and glossaries of terms used to clarify technical terminology. The legal materials were collected through systematic library research by identifying, classifying and analysing relevant sources based on their relevance to the topic and their academic authority. All the legal materials collected were then analysed using a prescriptive-comparative analytical technique, which involves assessing the substance of the norms from the perspective of the legal doctrines of each *madhhab*, and then comparing them in pairs (paired comparison) to produce comprehensive and scientific conclusions. The results of the analysis are presented in a descriptive-analytical manner in the form of a structured academic narrative (Hein & Martschin, 2021).

RESULTS AND DISCUSSION

The Normative Construction of Inheritance Law in the Hanafi School of Thought

The Hanafi school of thought is one of the four Sunni schools of thought with the widest geographical influence, spanning South Asia, Central Asia, Turkey and parts of North Africa. In establishing its normative framework for inheritance law, this school of thought relies on three main pillars: the Qur'an, the Sunnah of the Prophet Muhammad (peace be upon him), and *ra'yu* (rational reasoning) and *qiyas* (legal analogy) developed by Imam Abu Hanifah and his students. The primary textual foundation underpinning inheritance law in all Islamic schools of thought, including the Hanafi school, is the word of Allah (SWT) in Surah An-Nisa', verse 11:

يُوصِيكُمُ اللَّهُ فِي أَوْلَادِكُمْ لِلذَّكَرِ مِثْلُ حَظِّ الْأُنثِيَيْنِ

“Allah has prescribed for you the distribution of inheritance amongst your children. That is, a son's share is equal to that of two daughters.” (QS. An-Nisa': 11)

This verse serves as the primary basis for determining the proportions of heirs' shares within the *fiqh* mawaris system in general, including for the

Hanafi school, which uses it as a starting point for establishing the hierarchy and categorisation of heirs. Within the Hanafi school's framework, heirs are classified into three major groups arranged hierarchically. The first group is the *ashhabul furudh*, namely those heirs whose specific shares have been explicitly stipulated in the Qur'an and Sunnah, such as the husband, wife, mother, father, daughter, female grandchild through the male line, full sisters, sisters on the father's side, and sisters on the mother's side.

The shares allocated to them are *nisf* (1/2), *rubu'* (1/4), *tsumun* (1/8), *tsuluts* (1/3), *sudus* (1/6), and *tsuluts al-baqi* (1/3 of the remainder). The second group is the *ashabah*, namely the group of heirs who do not have a specific share, but receive the remainder of the estate after distribution to the *ashhabul furudh*, or receive the entire estate if there are no *ashhabul furudh* at all. The third group is the *dzawil arham*, namely relatives who do not fall into the two previous categories, who, in the Hanafi school of thought, are still recognised as heirs if there are neither *ashabah* nor *ashhabul furudh* to inherit (Issa, 2021).

One of the distinctive features of the Hanafi school that sets it apart from the Shafi'i school lies in its handling of cases involving *hajib* (inheritance barriers). The Hanafi school adopts a more inclusive approach by recognising *dzawil arham* as potential heirs where there are no heirs from the *ashabah* category. Furthermore, regarding murder as a barrier to inheritance (*mawani' al-irats*), the Hanafi school takes a significantly different stance. This school places greater emphasis on formal legal aspects, namely whether the act of murder, under positive *fiqh* law, results in the application of *qisas* or not (Kalanauri, 2022). Consequently, only murders that fulfil the formal criteria for the imposition of *qisas* can constitute a bar to inheritance, whilst murders that do not meet the criteria for *qisas* such as those committed in error (*khata'*) do not automatically deprive the perpetrator of their right to inherit, in the view of some Hanafi scholars.

Furthermore, the Hanafi school of thought also has a distinctive approach to cases of *munasakhat*, namely situations where an heir dies before the distribution of the estate has been completed. In such circumstances, the Hanafi school stipulates that the share of the deceased heir is not forfeited, but is instead transferred directly to that heir's own heirs, so that the distribution of the estate is carried out in a phased and structured manner in accordance with the applicable hierarchy of kinship (Khunmay & Abannokovya, 2022). This approach demonstrates that the Hanafi school attaches great importance to the principle of the continuity of inheritance rights (*istimrar al-haqq*) as part of its efforts to achieve distributive justice within Muslim families.

Another aspect that specifically distinguishes the Hanafi school is the provision regarding *'aul* (the proportional reduction of all heirs' shares when the total of the *furudh muqaddarah* exceeds one full estate) and *radd* (the proportional return of the remaining estate to the heirs entitled to *furudh*). In cases of *radd*, the Hanafi school consistently returns the remaining estate to all existing *ashhabul furudh*, except for the husband or wife, as their relationship

with the deceased is *sababiyah* (based on marriage) rather than *nasabiyah* (based on blood) (Li, Wehbe, Ahmad, Wang, & Luo, 2023). The provision exempting husband and wife from this radd mechanism is a distinctive feature of the Hanafi school of thought, setting it apart from some of the views of other scholars who define the recipients of radd in a more restrictive manner.

In the case of dzawil arham heirs, the Hanafi school gives priority to these distant relatives to inherit when there are no *ashhabul furudh* or *ashabah* at all, using the method of *al-tanazul* to determine the order of priority amongst them. The Hanafi school divides the dzawil arham into several levels based on the closeness of their kinship to the deceased, such that those who are closer take precedence over those who are more distant. The Hanafi rules governing dzawil arham reflect the comprehensive character of the school's inheritance system, ensuring that no part of the deceased's estate devolves to the public treasury (*Bayt al-Māl*) so long as eligible blood relatives are still available to inherit. This approach reflects the formalistic nature of the Hanafi school, which prioritises legal certainty and formal regularity over subjective moral considerations.

In terms of the distribution of assets, the Hanafi school recognises the principle of proportionality between rights and responsibilities. Men receive a larger share because they bear heavier financial obligations, including the duty to pay the dowry and provide for the family. This is in line with the principle of al-ghunmu bi al-ghurmi rights commensurate with the burdens borne which forms the philosophical basis of the proportional inheritance system in Islam (Limbong, 2025). In its application across various countries, the Hanafi school of thought serves as the primary reference for the codification of family law in countries such as Egypt, Turkey and several South Asian nations, albeit with various adaptive modifications in line with their respective national contexts.

The Normative Construction of Inheritance Law in the Ja'fari School of Thought

The Ja'fari school is the official school of *fiqh* within the Imamiyyah branch of Shia Islam, attributed to Imam Ja'far al-Sadiq (83–148 AH). Unlike the Sunni schools of thought, the Ja'fari school has a distinctive epistemological foundation, as it not only recognises the Qur'an and the Sunnah of the Prophet as primary sources of law, but also regards the hadith and narrations of the Ma'sum Imams—namely the twelve imams believed to be leaders free from sin—as legal references of equal authority. Consequently, *ijtihad* within the Ja'fari school has a broader scope, as it encompasses traditions from the Imams, whom the Shia regard as having inherited the authority to interpret Sharia directly from the Prophet Muhammad (peace be upon him) (Madden & Madden, 2021). The normative basis for inheritance in the Ja'fari school of thought is also grounded in the same verses of the Qur'an as in the Hanafi school, including Surah An-Nisa' verse 12:

وَلَكُمْ نِصْفُ مَا تَرَكَ أَزْوَاجُكُمْ إِن لَّمْ يَكُن لَّهُنَّ وَلَدٌ

“ *And for you (husbands) is half of the estate left by your wives, if they have no children.*” (QS. An-Nisa’: 12)

However, the methods of interpretation and development differ substantially. The Ja’fari school divides heirs into three groups (*thabaqat*) that are also hierarchical in nature, but with a different structure to that of the Hanafi school. The first *thabaqah* consists of parents (*ab* and *umm*) and direct descendants (children and grandchildren). The second *thabaqah* comprises grandparents, as well as full siblings and their descendants. The third *thabaqah* comprises uncles, aunts and their descendants. This system ensures that the group with the closer kinship relationship completely precludes (*mahjub*) the more distant group, so that no two different *thabaqahs* can inherit simultaneously (Roberts, 2018).

One of the most substantial differences between the Ja’fari school and the Sunni schools, including the Hanafi school, lies in the wife’s position regarding the inheritance of immovable property. According to the Ja’fari school, a wife who has no children by the deceased is not entitled to inherit immovable property (*‘iqar*), such as land and buildings, but is only entitled to the monetary value (*qimah*) of her share of the movable property (*manqul*) (Schlette, Caselli, & Pernul, 2021). This provision is not recognised in the Hanafi school of thought or in other Sunni schools, which grant wives full rights to all types of the deceased’s estate. The basis for this Ja’fari provision lies in narrations from the Shia imams which are not found in the corpus of hadith recognised by Sunni circles.

Another equally important difference is the absence of the concept of *ashabah* in the Ja’fari school of thought. Whilst in the Hanafi school, male relatives on the father’s side (*ashabah*) have priority rights to receive the remainder of the estate, the Ja’fari school does not recognise such a mechanism of *ta’shib*. Any remaining estate after distribution to the *ashhabul furudh* is returned (*radd*) to the remaining heirs on a proportional basis, without prioritising one gender over another as in the *ashabah* mechanism (Terlizzi, Castellani, Taccetti, & Ferrari, 2022). This makes the Ja’fari system more egalitarian in terms of the distribution of the remainder of the estate, although in other respects it continues to recognise distinctions based on lineage and gender.

In the context of implementation at the state level, the Ja’fari school of thought has had its most visible influence in post-1979 Islamic Revolution Iran. Iran’s system of government, based on the concept of *wilayat al-faqih*, has made Ja’fari *fiqh* the primary foundation of all national legislation, including family and inheritance law. The codification of family law in post-revolutionary Iran demonstrates how Ja’fari *fiqh* is operationalised within modern state regulations, whilst simultaneously facing reformist pressures from the women’s movement and demands for gender justice. In addition to differences regarding a wife’s rights over immovable property, the Ja’fari school also has specific provisions concerning *‘aul*.

Unlike the Hanafi school, which accepts the mechanism of *'aul* as a solution when the total share of the *furudh* exceeds the available estate, the Ja'fari school categorically rejects the doctrine of *'aul*. According to Ja'fari scholars, if the total of the prescribed shares (*furudh muqaddarah*) exceeds one, the excess is resolved by reducing the shares of certain parties deemed to have greater flexibility in their provisions, particularly the shares of daughters. This rejection of *'aul* is based on a narration from Imam Ali ibn Abi Talib, who rejected the application of *'aul* by Caliph Umar ibn Khattab a narration whose authority is recognised only by Shia circles (Wardi, 2024).

The Ja'fari school also adopts a distinctive position regarding the inheritance rights of children born out of wedlock (*walad al-zina*). According to the Ja'fari school, a child born out of wedlock not only does not inherit from their biological father, but also does not inherit from their siblings born within a valid marriage. This position is stricter than some views within the Hanafi school, which, under certain conditions, still allows for a legal relationship between a child born out of wedlock and their mother's relatives (Zehi & Sancholi, 2022). These differences reflect the profound influence of the epistemology of the Imamate and the traditions of the Imams in shaping the normative details of Ja'fari *fiqh*, which often have no direct counterpart in the Sunni tradition.

On the other hand, the Ja'fari school has consistently rejected inheritance through *wala' al-mu'aqadah* (contractual guardianship), a mechanism which the Hanafi school still recognises as a basis for inheritance, albeit in a very limited context. This Ja'fari rejection is based on the view that only *wala' al-'itq* (guardianship arising from the manumission of a slave) can constitute a cause of inheritance, whilst *wala' al-mu'aqadah* lacks a valid basis according to the narrations of their imams. This further emphasises that the difference between the two schools of thought is not merely of a technical-legal nature, but is rooted in a fundamental epistemological difference regarding the authority of legal sources. Although the existing legal framework tends to be conservative and patriarchal, there have been a number of partial reforms that reflect the flexibility of Ja'fari *fiqh* in responding to contemporary social dynamics (Baig & Laghari, 2022).

Similarities, Differences and Contemporary Relevance of the Two Schools of Thought

A comparative analysis of the Hanafi and Ja'fari schools of thought in the field of inheritance law has yielded complex and multi-layered findings, encompassing both points of convergence (*tawafuq*) and fundamental differences (*ikhtilaf jauhari*). Understanding these dimensions in a balanced manner is crucial not only for academic purposes, but also for practical applications in resolving inheritance disputes within Muslim communities characterised by a diversity of schools of thought (Brandhorst et al., 2021). In terms of similarities, both schools recognise the Qur'an as the supreme source of norms in determining inheritance law, including recognising the

verses on inheritance in Surah An-Nisa' as the basis for determining the *furudh muqaddarah*. Both schools of thought also agree that a difference in religion (*ikhtilaf al-din*) between the testator and the heirs constitutes an insurmountable barrier to inheritance. Similarly, both stipulate the death of the testator as the primary condition for the inheritance process to take place, unlike customary law, which in some traditions permits the transfer of assets prior to the owner's death (Djawas et al., 2022). The Prophet Muhammad (peace be upon him) said in a hadith narrated by Imam al-Bukhari and Muslim:

أَحِقُّوا الْفَرَائِضَ بِأَهْلِهَا فَمَا بَقِيَ فَهُوَ لِأَوْلَى رَجُلٍ ذَكَرٍ

“Distribute the inheritance to those entitled to it. As for what remains, it is for the closest male relative.” (Narrated by al-Bukhari and Muslim)

This hadith is accepted by the Hanafi school as the basis for the mechanism of *ashabah*, whilst the Ja'fari school accepts this hadith but interprets it differently, rejecting the application of *ta'shib* as commonly understood amongst Sunnis. The most fundamental differences between the two schools can be identified across five main dimensions. Firstly, regarding the epistemology of legal sources: the Hanafi school is limited to the Qur'an, the Sunnah of the Prophet, and *ra'yu/qiyas*, whilst the Ja'fari school adds the narrations of the infallible Imams as an equal source of law. This epistemological difference lies at the root of all the normative divergences between the two schools.

Secondly, regarding the mechanism of *ashabah*: the Hanafi school recognises and fully applies *ta'shib*, whilst the Ja'fari school rejects the concept of *ashabah* and replaces it with the mechanism of *radd*, which is distributed proportionally amongst all existing heirs, without discrimination on the basis of gender in the distribution of the remaining estate. Thirdly, regarding the wife's position with respect to immovable property: the Hanafi school grants the wife full rights to all types of her husband's estate in accordance with her share, whilst the Ja'fari school restricts the rights of a childless wife solely to the monetary value of movable property, rather than the immovable property itself.

Fourthly, regarding the classification of heirs: the Hanafi school employs three groups (*ashhabul furudh*, *ashabah*, *dzawil arham*) with priority based on the strength of the blood relationship and gender, whilst the Ja'fari school employs three *thabaqat* that are more egalitarian in their internal mechanisms. Fifthly, regarding the disqualification of heirs due to murder: the Hanafi school adopts a formalistic approach, using the applicability of *qisas* as the benchmark, whilst comparative studies indicate that the approach of other schools which can be contrasted with that of the Hanafi school places greater substantive emphasis on the element of intent (*al-'amd*) (Fu & Liu, 2024). In the context of contemporary relevance, the differences between these two schools of thought are not merely a matter of historical academia, but have real implications for the legal life of Muslim communities in various countries.

A study of the Kuwaiti family law system clearly demonstrates how the conflict between the Sunni and Ja'fari schools of thought within a single judicial system can give rise to the phenomenon of 'divided justice', in which court rulings are determined more by the parties' sectarian affiliations than by universal principles of substantive justice. In inheritance cases, differences in *Madhhab* between the deceased and the heirs in countries that adopt a system of dual jurisdiction, such as Kuwait, can result in conflicting judgements regarding legal facts that are objectively similar.

In Indonesia, although the Compilation of Islamic Law (KHI), which was enacted by Presidential Instruction No. 1 of 1991, has sought to unify the plurality of inheritance norms into a single, integrated legal document, in reality the challenges of harmonisation remain very real (Instruksi Presiden Republik Indonesia. "Nomor 1 Tahun 1991 Tentang Penyebarluasan Kompilasi Hukum Islam," 1991). The KHI was drafted with primary reference to the Shafi'i school of thought, as the dominant school in Indonesia, without explicitly accommodating the perspectives of the Hanafi school, let alone the Ja'fari school. This makes the KHI less responsive to the needs of Muslim communities that are not affiliated with the Shafi'i school (Ghozali et al., 2024). Consequently, a comparative understanding of the Hanafi and Ja'fari schools of thought remains relevant as a scholarly reference for the development of a more inclusive system of Islamic inheritance law in Indonesia.

The issue of gender equality in the distribution of inheritance is also a contemporary point of contention that is worth examining from the perspective of both schools of thought. The Hanafi approach, which maintains a 2:1 ratio between men and women on the grounds that men bear greater financial obligations, and the Ja'fari approach, which rejects *ta'shib* but restricts a wife's rights to immovable property, both face pressure from contemporary discourse on gender equality. Contemporary thinkers such as Muhammad Syahrur offer a reinterpretation of inheritance texts using the theory of limits (*nazhariyyat al-hudud*), which views the 2:1 provision as a maximum limit (*hadd al-a'la*) for men and a minimum limit (*hadd al-adna*) for women, rather than as a rigid provision that cannot be adjusted according to context (Issa, 2021). Although this view is controversial and not accepted by traditionalists from both schools of thought, this debate demonstrates that comparative Hanafi-Ja'fari studies cannot be separated from the ever-evolving dynamics of contemporary Islamic legal thought.

The comparative relevance of the two schools of thought is also evident in the implementation of the *wasiat wajibah* (obligatory bequest), which serves as an instrument of modern Islamic inheritance law. Cross-national studies show that countries where the Hanafi school is the primary reference, such as Egypt, utilise the *wasiat wajibah* to accommodate the rights of grandchildren who are precluded (*mahjub*) by their uncles or aunts. Meanwhile, countries that follow Ja'fari *fiqh*, such as Iran, have their own protective mechanism through the *thabaqat* system, which inherently provides a means for grandchildren to

inherit via substitution (*munasakhah*) (Kalanauri, 2022). These differences in mechanism reflect the fact that, although the ultimate aim is the same namely, to ensure that no close relatives are left destitute due to the strict hierarchy of inheritance the approaches taken differ fundamentally, in accordance with the epistemology and methodology of *ijtihad* specific to each school of thought.

The context of legal pluralism developing in Indonesia lends a unique dimension to the relevance of this comparative study of the Hanafi and Ja'fari schools. The fact that inheritance law in Indonesia remains pluralistic to this day, with at least three legal systems coexisting namely Islamic law, customary law and Western civil law requires legal stakeholders to have a broad and in-depth understanding of the various existing normative traditions. Knowledge of the Hanafi and Ja'fari schools of thought is not merely of an academic or comparative nature; rather, it has the potential to offer an alternative perspective in the context of the reform and modernisation of Islamic inheritance law in Indonesia, which is currently still dominated by the Shafi'i school of thought through the KHI.

From the perspective of substantive justice, a comparison between the two schools of thought also opens up scope for productive critical reflection. The Ja'fari school, which rejects *ta'shib* and applies *radd* proportionally to all heirs including women essentially results in a more equitable distribution amongst the heirs under certain circumstances, particularly when there are no male heirs from the *ashabah* line. Conversely, the Hanafi system, with its robust *ta'shib* mechanism, ensures that assets do not leave the immediate family circle, although in some cases this results in female relatives receiving a smaller share than they would be entitled to under the principle of substantive justice. An understanding of this dialectic between formal justice and substantive justice is highly relevant for religious courts in Indonesia when handling inheritance cases involving unusual configurations of heirs (Madden & Madden, 2021).

Finally, this study also emphasises the importance of comprehensive education in Islamic law amongst Indonesia's Muslim community. As found in various studies, the public's limited understanding of Islamic inheritance norms is one of the main factors triggering conflicts over the distribution of an estate. When people have only a partial and superficial understanding of a single school of thought, the potential for disputes increases. On the contrary, a comprehensive understanding of the various perspectives of the schools of thought, including the Hanafi and Ja'fari schools, can actually broaden people's horizons in the search for solutions that are the fairest and most in line with Islamic values as a whole, rather than merely following a single school of thought blindly without understanding the substance and rationale behind it (Ghozali et al., 2024).

From a broader perspective, this comparative study of the Hanafi and Ja'fari schools of thought emphasises that the differences in inheritance law are not merely the result of political disputes between Sunnis and Shia, but rather the outcome of a methodological and consistent process of *ijtihad* within the framework of each scholarly tradition (Issa, 2021). A thorough understanding

of these methodological differences is vital for legal practitioners, academics and policymakers working within the context of a pluralistic Muslim society, so that inheritance disputes can be resolved through an approach that is fairer, more comprehensive and grounded in a sound scholarly understanding.

CONCLUSION

This study demonstrates that the differences between the Hanafi and Ja'fari schools of inheritance law are rooted in fundamentally different epistemological conceptions regarding the sources and authority of Islamic law. These competing foundations shape the classification of heirs, mechanisms of inheritance distribution, and the legal position of women, producing two coherent yet distinct systems of inheritance. The findings therefore confirm that doctrinal differences between the two schools are not merely technical variations but systematic consequences of their respective methodologies of legal reasoning. By tracing doctrinal divergence back to its epistemological foundations, this study extends comparative *fiqh* scholarship beyond conventional descriptive comparisons and provides a framework for understanding legal pluralism in Islamic inheritance law. These findings are increasingly relevant as transnational Muslim mobility and legally plural jurisdictions create inheritance disputes that cannot be adequately understood through a single-*madhhab* perspective. Accordingly, this study contributes to contemporary discussions on comparative Islamic jurisprudence and the development of more inclusive approaches to Islamic family law. As a normative-doctrinal study, this research is limited to the analysis of authoritative legal texts and does not examine the judicial application of Hanafi and Ja'fari inheritance doctrines in contemporary practice. Future studies should therefore investigate how courts and legal institutions in plural Muslim societies accommodate cross-*madhhab* inheritance disputes and how comparative doctrinal insights may inform future developments in Islamic family law.

REFERENCES

- Ahmed, H. (2025). Islamic normative legal theory: Framework and applications. *Journal of Law and Religion*, 40(1), 28–58. <https://doi.org/10.1017/jlr.2025.10056>
- Ali, S., Murtaza, G., Hedvicakova, M., Jiang, J., & Naeem, M. (2022). Intellectual capital and financial performance: A comparative study. *Frontiers in Psychology*, 13, Article 967820.
- Azwar, Z., Armi, M. I., Bakhtiar, A., & Nasri, A. L. (2024). Child filiation and its implications on maintenance and inheritance rights: A comparative study of regulations and judicial practices in Indonesia, Malaysia, and Turkey. *Jurnal Ilmiah [Nama Jurnal Belum Lengkap]*, 5(1), 62–85.
- Baig, K., & Laghari, A. R. (2022). An analysis of the legal system: A comparative study in the context of Pakistan and the UK. *Bulletin of Business and Economics*, 13(1), 378–384.
- Brandhorst, R., Baldassar, L., & Wilding, R. (2021). The need for a 'migration turn' in aged care policy: A comparative study of Australian and German

- migration policies and their impact on migrant aged care. *Journal of Ethnic and Migration Studies*, 47(1), 249–266.
- Djawas, M., Hasballah, K., Devy, S., Kadir, M. A., & Abda, Y. (2022). The construction of Islamic inheritance law: A comparative study of the Islamic jurisprudence and the Compilation of Islamic Law. *JURIS (Jurnal Ilmiah Syariah)*, 21(2), 207–219.
- Fu, L., & Liu, L. (2024). What are the differences? A comparative study of generative artificial intelligence translation and human translation of scientific texts. *Humanities and Social Sciences Communications*, 11(1), 1–12.
- Ghozali, M., Firdaus, M. I., ad Saleh, M. A. M., & Musa, Z. M. (2024). A comparative study of the inheritance rights of adopted children in Indonesia and Malaysia. *Malaysian Journal of Syariah and Law*, 12(3), 726–738.
- Hein, E., & Martschin, J. (2021). Demand and growth regimes in finance-dominated capitalism and the role of the macroeconomic policy regime: A post-Keynesian comparative study on France, Germany, Italy and Spain before and after the Great Financial Crisis and the Great Recession. *Review of Evolutionary Political Economy*, 2(2), 1–25. <https://doi.org/10.1007/s43253-021-00044-5>
- Instruksi Presiden Republik Indonesia. (1991). *Instruksi Presiden Nomor 1 Tahun 1991 tentang Penyebarluasan Kompilasi Hukum Islam*. Diambil dari <https://peraturan.bpk.go.id/Details/293351/inpres-no-1-tahun-1991>
- Issa, M. A. (2021). The legal and jurisprudential foundation of the state's right to inheritance—an analytical study in Iraqi law, comparative law, and in light of Islamic Sharia and contemporary scholars' opinions. *European Scholar Journal*, 6(1), 6–26.
- Kalanauri, M. Z. I. (2022). *Islamic inheritance: Law, logic, and legacy in Sharia jurisprudence*. [Kota Terbit: Penerbit].
- Khunmay, D., & Abannokovya, S. (2022). Conflicts occurring due to the application of different legal inheritance systems in Indonesia. *Jurnal Ilmu Hukum [Nama Jurnal Belum Lengkap]*, 30(2), 214–227.
- Li, Y., Wehbe, R. M., Ahmad, F. S., Wang, H., & Luo, Y. (2023). A comparative study of pretrained language models for long clinical text. *Journal of the American Medical Informatics Association*, 30(2), 340–347.
- Limbong, R. (2025). A legal perspective on inheritance of joint property: A comparative analysis of various legal systems. *Legal Frontier*, 1(1), 11–18.
- Madden, M., & Madden, M. (2021). Stating it simply: A comparative study of the quantitative readability of apex court decisions from Australia, Canada, South Africa, the United Kingdom, and the United States. *Journal of Judicial Studies [Nama Jurnal Belum Lengkap]*, 23(2), 1–20.
- Pakarti, A. M. H., & Farid, D. (2023). Implementasi hukum waris dalam Islam: Studi komparatif tentang praktek waris di negara-negara Muslim. *El-Ahli: Jurnal Hukum Keluarga Islam*, 4(2), 37–62. <https://doi.org/10.56874/el-ahli.v4i2.1267>

- Roberts, R. E. (2018). Measuring the socio-economic impact of forced evictions and illegal demolition: A comparative study between displaced and existing informal settlements. *The Social Science Journal*, 55(4), 1–15.
- Schlette, D., Caselli, M., & Pernul, G. (2021). A comparative study on cyber threat intelligence: The security incident response perspective. *IEEE Communications Surveys & Tutorials*, 23(4), 2525–2556.
- Suryantoro, D. D. (2020). Tinjauan hukum islam terhadap pembagian harta warisan. *AtTurost: Journal of Islamic Studies*, 7(2), 201–215. <https://doi.org/10.52491/at.v7i2.12>
- Terlizzi, V., Castellani, C., Taccetti, G., & Ferrari, B. (2022). Dornase alfa in cystic fibrosis: Indications, comparative studies and effects on lung clearance index. *Italian Journal of Pediatrics*, 48, 1–7. <https://doi.org/10.1186/s13052-022-01331-5>
- Wardi, U. (2024). Comparative analysis of Islamic family law and customary law in the settlement of inheritance disputes in Indonesia. *Hakamain Journal*, 3(1), 13–25. <https://doi.org/10.57255/hakamain.v3i1.330>
- Zehi, V. B. S., & Sancholi, Z. (2022). Jurisprudential analysis of surrogacy from the perspective of the five Islamic schools of thought and Islamic law. *Journal of Islamic Law* [Nama Jurnal Belum Lengkap], 4(2), 1–10.