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## ***Fiqh* and Custom Negotiation in Avoiding Inheritance Dispute Tradition among *Mataraman* Society East Java**

**Miftahul Huda**

*Faculty of Sharia, Institut Agama Islam Negeri Ponorogo  
Jl. Puspita Jaya Pintu Jenangan Ponorogo Jawa Timur  
Email: miftahul.huda@iainponorogo.ac.id*

**Niswatul Hidayati**

*Faculty of Sharia, Institut Agama Islam Negeri Ponorogo  
Jl. Puspita Jaya Pintu Jenangan Ponorogo Jawa Timur  
Email: niswa.sasmito@gmail.com*

**Khairil Umami**

*Faculty of Sharia, Institut Agama Islam Negeri Ponorogo  
Jl. Puspita Jaya Pintu Jenangan Ponorogo Jawa Timur  
Email: kuliahberkah@gmail.com*

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### **Abstract:**

This article reveals the negotiation models to avoid inheritance dispute among *Mataraman* society at East Java responding to potentially high number of inheritance dispute cases which often becomes an acute family social problem. Conducting a field research on seven families carrying out inheritance distribution process, this article classifies three models of *Mataraman* society's negotiation in inheritance dispute settlement. They are negotiation using theology *cum* tradition procedure, negotiation using *fiqh cum* tradition, and negotiation using indigenous mainstream wisdom procedure. Among the three, the procedure of *fiqh cum* tradition comes as the mainstream solution because it offers a middle way to settle inheritance disputes for the sake of assets unity and harmonious family relationship. It also becomes a role model for social based negotiation process for settling inheritance distribution in a multicultural society.

Author correspondence email: [miftahul.huda@iainponorogo.ac.id](mailto:miftahul.huda@iainponorogo.ac.id)

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**Keywords:**

Negotiation; *Mataraman*; *Fiqh Mawāriṭh*; Inheritance  
Dispute; Settlement

**Abstrak:**

Artikel ini menggali model negosiasi dalam rangka mencegah sengketa waris pada masyarakat Mataraman Jawa Timur sebagai respon atas tingginya potensi angka sengketa waris yang muncul di masyarakat dan acapkali menjadi problem sosial akut dalam sebuah keluarga. Dengan melakukan riset lapangan terhadap tujuh keluarga yang mengalami proses pembagian waris, artikel ini mengklasifikasi tiga model prosedur dalam proses negosiasi penyelesaian sengketa waris di masyarakat Mataraman. Ketiganya adalah negosiasi dengan prosedur teologi agama cum adat, negosiasi dengan fiqh cum adat, dan negosiasi dengan prosedur kearifan mainstream lokal. Dari ketiga formulasi tersebut, model fiqh cum adat menjadi tawaran sekaligus solusi mainstream karena merupakan jalan tengah penyelesaian sengketa waris di masyarakat demi keutuhan aset dan keharmonisan hubungan keluarga. Kategori tersebut sekaligus menjadi role model atas proses negosiasi dalam penyelesaian sengketa pembagian waris berdimensi sosial dalam masyarakat multikultur.

**Kata Kunci:**

Negosiasi; *Mataraman*; *Fiqh Mawaris*; Sengketa Waris; Penyelesaian

**Introduction**

In Javanese tradition, every life aspect becomes urgent and is well marked with each distinctive feature. It shows specific, unique, as well as significant acculturation between socio-cultural life and Islam as the religion of Javanese majority. This can be seen from the process of childbirth, spouse matchmaking, marriage, divorce, inheritance, *waqf*, until death.<sup>1</sup> One of acculturation portraits is clear from *Mataraman* community living in the West part of East Java

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<sup>1</sup> Ter Haar, *Asas-Asas Dan Susunan Hukum Adat*, ed. Soebakti Poesponoto (Jakarta: Pradnya Paramita, 1983), 188.

province, including Madiun, Ponorogo, Ngawi, Magetan, and Pacitan. The Islamic tradition has been very well acculturated with its people's local tradition.

Relating to this, Woodward mentioned that dialectic between Islam and Java has occurred regeneratively since the entrance of the religion to the land of Java. The relationship between the two has further becomes a new tradition in which any custom connecting them both still has its existence until today. As another consequence, the relationship between the two shows its own distinctive and unique patterns. The main and the most common issue on this is about any habit across some generation with each theoretical importance as a major source of socio-religious either conflict or integrity.<sup>2</sup>

Into some extent, not all Javanese customary practices on socio-religious rituals violate Islamic basic principles. They reflect diversity of opinion among Javanese people. Therefore, it is impossible to determine the exact definition on, for instance, traditional students (*santri*) or the concept and correct interpretation of *Kejawen*. This is partly due to some attempt to clash Javanese values and Islamic teaching on what to do and what not to do as a normal and inevitable dialectic while the concept of syncretism becomes a big debate issue. Nevertheless, there remains a common view among traditional students (*santri*) community which is not quite different from that of Javanese Muslims.<sup>3</sup>

Inheritance distribution, for instance, is included as living law which shows the acculturation. The fusion between local culture and Islamic teaching leads to a meeting point, a point of tension, and even a point of difference that makes negotiation necessary. In this context, negotiation becomes an effort to build peace and harmony in the process of inheritance distribution as it tends to trigger internal social conflict in a family.<sup>4</sup>

In particular, negotiation functions to manage conflict as well as identifying possible solution. It is a process between two or more

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<sup>2</sup> Mark R Woodward, *Islam Jawa Kesalehan Normaif Versus Kebatinan* (Yogyakarta: LKiS, 2004), 326.

<sup>3</sup> Woodward, *Islam Jawa Kesalehan Normaif Versus Kebatinan*.

<sup>4</sup>Cik Hasan Basri, *Pilar-Pilar Penelitian Hukum Islam dan Pranata Sosial* (Jakarta: Rajawali Press, 2004), 116-17.

parties to find mutually beneficial solutions from a common problem involving them all together. It also means willingness to look for creative options in formulating the solution.<sup>5</sup> At least, there found two forms of negotiation, namely the preparatory-interaction-conclusion negotiation model and the pre negotiation-negotiation-post-negotiation model.<sup>6</sup>

In the academic realm, the research on inheritance traditions has been carried out by some scholars. One of which was on the inheritance distribution on children from non-formal marriage among *Kebonan Lumajang* community. It was found that the local people tends to use cultural inheritance procedure.<sup>7</sup>

In another study, Hipni argued that women in Madurese society were considered not only as a passive family member, but also a symbol of honor and family survival.<sup>8</sup> Such a view leads to more comprehensive understanding on the inheritance in which women are put on an equal position with men in the sense of traditional inheritance distribution.

Meanwhile at *Mataraman* society, there are at least seven procedures of inheritance distribution namely *sepikul segendong* (men get two portions while women only get one, almost the same as those in Islamic law), *sigar papat* (divided equally) peace-seeking, *nyusuki* (purchasing inheritance asset from the follow heir), suspension of the distribution, distribution for adopted children and equal distribution.

The deeply-rooted tradition of *Mataraman* people in inheritance distribution is of special interest of this paper. At the same time, some local people strictly uphold the norms of Islamic law while ignoring inherited traditions and customs.<sup>9</sup> Based on it, this paper aims to offer the formulation of settlement in negotiating inheritance potential disputes among *Mataraman* community. It starts with the description

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<sup>5</sup>M Mukhsin Jamil, *Mengelola Konflik Membangun Damai* (Semarang: WMC IAIN Walisongo, 2007), 89.

<sup>6</sup>Jamil, *Mengelola Konflik Membangun Damai*.

<sup>7</sup>Qurrotul Ainiyah, Syarifah Marwiyah, and Sri Lumatus Sa'adah, "Pembagian Waris Etnis Madura Terhadap Anak Luar Nikah Di Dusun Kebonan Kecamatan Yosowilangun Kabupaten Lumajang," *Al-Ihkam* 11, No. 2 (2016): 359.

<sup>8</sup>Muhammad Hipni, "The Study of Maqâshid Syari'ah toward Maduresse Traditional Inheritance by Using System Approach," *Al-Ihkam* 14, No. 1 (2019): 68-69.

<sup>9</sup>Interview with Ihsan, a Ponorogo citizen, November 20, 2019.

of *Mataraman* community, existed negotiation process, procedure(s) for avoiding any potential dispute and the formulation offer.

### Methods

This is an exploratory field research which pays very much attention to phenomena and realities living in the society. In addition to be descriptive, it also portrays data on distribution of Javanese and Islamic traditional inheritance using the theory and relation of culture. Contestation between Islamic values and local custom that *Mataraman* society adheres to has happened.

Kaplan categorizes the relation between religious and customary norms in three following assumption. *First* is a pattern of two closely related things which come from the same source. *Second* is a pattern of two different things which, instead of blaming and ignoring, appreciate each others' existence.<sup>10</sup> *Third* is as a pattern of dynamic relation on the agent of change and agent of social engineering which then leads customary norms permeate into religious ones intertwinedly. The last pattern seems similar with Van den Berg's complex reception theory.<sup>11</sup>

It is furthermore a study of living law among Muslim *Mataraman* community which grows and develops through internalization process and social interaction. Therefore, this reearch uses adaptation and assimilation framework between Islamic values and local norms that can be mutually either pervasive or problematic and thus leading to agreement on how local people are supposed to behave, especially in giving response and running dialogue for avoiding any potential inheritance dispute.<sup>12</sup>

The primary data for this research comes from in-depth interviews result with seven families as representatives of those who passed through this kind of process. Meanwhile, the secondary data is from relevant literature information. The two types of data are then

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<sup>10</sup>David Kaplan, *Teori Budaya*, ed. Landung Simatupang (Yogyakarta: Pustaka Pelajar, 2000), 184.

<sup>11</sup>Kaplan, *Teori Budaya*.

<sup>12</sup>Basri, *Pilar-Pilar Penelitian Hukum Islam dan Pranata Sosial*, 116-17.

analysed through editing, organizing, and research results clustering.<sup>13</sup>

### **The Description of *Mataraman* Society East Java.**

The cultural-based areas in East Java are divided into four regions. *First*, the Madurese culture which is popularly known as the horseshoe region. It refers to those who live in Madura Island or *Pandalungan* area on the North coast of East Java such as Pasuruan, Probolinggo, Bondowoso, and Situbondo Districts. *Second*, the Arek culture which includes Malang, Mojokerto, Sidoarjo, Lamongan, Gresik, and Surabaya. *Third*, the culture of *Wong Kulon* (Javaness language means the West People) which consists of those who live at the South coast areas namely Lumajang and Jember Districts. Besides, people who inhabit around the Bali Strait coast and the Tengger areas are also included in this category. *Fourth*, the *Mataraman* culture, namely the East Javanese who speak Central Java language and dialects, such as Pacitan, Magetan, Madiun, Bojonegoro, Tuban, Nganjuk, Kediri, Blitar, Tulungagung, Trenggalek, and Ponorogo Districts.<sup>14</sup>

In this paper, the author focuses on discussing the western part of *Mataraman* area which includes Pacitan, Madiun, Ponorogo, Magetan, and Ngawi Districts. *Mataraman* itself refers to an area which is still culturally close to the custom and tradition of the Mataram Kingdom based in Yogyakarta and Surakarta. The name of *Mataraman* was given historically because of its close relationship with Mataram Kingdom at that time.

Most of the time, the customs of *Mataraman* people have similarities or at least likeness to people in Yogyakarta and Surakarta. Of the several similarities, the most striking one is in terms of language. The use of Javanese *Kromo* with a smooth intonation, although not as smooth as the indigenous people of Yogyakarta and Surakarta, really supports this. The *Mataraman* area, apart from being identical in terms of culture to *Mataram* kingdom, features unique

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<sup>13</sup>A Michel Huberman Matthew B Miles, *Qualitative Data Analysis* (Jakarta: Universitas Indonesia Press, 1994), 20.

<sup>14</sup>Nurhasanah Leni, "Demokrasi Dan Budaya Politik Lokal di Jawa Timur," *Jurnal TAPIS* 8, No. 1 (2012): 23-24.

historical note from the fragment of spread and development of Islam. The Islamization in *Mataraman* area occurred after Islam had developed on the Northern coast of Java.<sup>15</sup>

As a consequence, *Mataraman* Islam has its uniqueness in comparison with Islam in other areas. Javanese culture and heterogeneous Islamic teachings in Java are manifested in a dialogue. This is in contrast to Malay culture and Islamic teaching which shows an integrative ones. Accordingly, Islam deals with a variety of challenges and sometimes clash with local traditions. The tensions and conflicts between *Kejawen* (Javanese tradition) and Islam still became a special feature of Islamic evolution in Java, especially in the late 19th century or the colonial period.<sup>16</sup>

Javanese ethnic, meanwhile, is the largest ethnic group in the Southeast Asia. It numbers around forty percent of more than two hundred million Indonesians. As Indonesian population, the majority of Javanese are Muslim numbering more than 85%. However, this large number shows a variety of cultures not only because of enormous diversity in Indonesia itself, but also of the sub-cultural variations among the Javanese themselves.<sup>17</sup> *Matraman*, in this talk, is a part of Javanese Moslems who were under the rule of the Islamic Mataram Kingdom and therefore shows intergrated background among Javanese culture, kingdom and Islam in the social and religious life. It further implies in the whole aspect of its people, including the custom and rule of inheritance distribution.

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<sup>15</sup>A. Jauhar Fuad, "Tlatah dan Tradisi Keagamaan Islam Mataraman," *TRIBAKTI: Jurnal Pemikiran Keislaman* 30, No. 1 (2019): 3-4.

<sup>16</sup>Fuad, "Tlatah Dan Tradisi Keagamaan Islam Mataraman."

<sup>17</sup>Since a long time ago, they, including those who live at the East Java, have an old identification on two major types of religious commitment, namely those who pray (*salat*, in Indonesian) five times a day and those who do not. The first category is called "*putihan*", (derivatively coming from the root word *putih* or white) consisting of those who are purely religious and are marked by practicing five daily prayers in routine. Another category is called "*abangan*", (derivatively coming from the root word *abang* or red) referring to those who only pray when they have time or are only seen as religious people in few occasion, such as in Islamic holiday celebration like Eid while on other days, religion is only attached to their Id Card. See Abdul Chalik, "Islam Mataraman and Its Political Orientation in the History of Elections in Indonesia," *Islamica* 5, No. 2 (2011): 216.

### **The Negotiation Process of *Mataraman* Community in Avoiding Inheritance Dispute**

The law of inheritance regulates the transfer of property from a deceased to his/her heirs. It is under the scope of *mu`āmalah* discussion or family law to be more specific.<sup>18</sup> The main issues of inheritance are on how the property is distributed, to whom it is delivered and how it is transferred.<sup>19</sup> In this context, Islamic jurisprudence of inheritance is deduced from the Qur'anic rule which explores the first and second issues in details. The list of heirs as well as the number of share for each are stated clearly. The recipients consist of children (son and daughter), spouse (husband or wife), parents (mother and father), brothers, and others. The shares, meanwhile, are even mentioned in definite percentage starting from half, one-quarter, one-sixth, one-eighth, two-thirds, to the remainder of the distribution.<sup>20</sup>

Apart of it, Islamic law does not ignore the existence and role of local custom as a source of law because it has played an important part in regulating social relation and creating order in the society for long time. Furthermore, the deeply rooted customs in a society usually have strong cultural power that it is difficult to get changed or replaced. As unwritten law, local people also obey the customs on their legal awareness. In the context of inheritance distribution, *Mataraman* community puts their priority on the principle for enacting justice for the fellow heirs by conducting deliberation in resolving any inheritance problem. Following is the list of resolution procedure that *Mataraman* community usually relies on:

*First* is suspending inheritance distribution when a partner of the deceased (benefactor or those who bequeathed inheritance) is still alive. In Slahung, Ponorogo, for instance, the inheritance distribution takes time when two parents have passed away. If a husband passed away first, the inheritance will be divided after the wife follows him. This means that if one of a couple is alive, the inheritance will still be

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<sup>18</sup>Hazairin, *Hukum Kewarisan Bilateral Menurut Al-Quran Dan Hadis* (Jakarta: Tintamas, 1982), 27.

<sup>19</sup>Ahmad Azhar Basyir, *Hukum Waris Islam* (Yogyakarta: Fakultas Ekonomi UII, 1990), 2.

<sup>20</sup>Amir Syarifuddin, *Hukum Kewarisan Islam* (Jakarta: Prenada Media, 2004), 40-41.



suspended. Relating to this, Muhaimin, a citizen of Slahung, mentioned as follow:

“We distributed the inheritance to the heirs after our father then mother died. Before she died, she still managed the inheritance”<sup>21</sup>

The same thing also happens in Jetis, Ponorogo. A person who died leaving his/her spouse cannot directly inherit any property to his/her heirs before the spouse died. The property automatically belongs to the spouse and will be distributed when she/he passes away. In other word, the heirs, or the children, in this context, will get the inheritance after both parents died. The condition when the children have not received any share also applies whether the living spouse (particularly the wife) live with children or not.

Another citizen, Marzuki, mentioned his experience as follow:

“Regarding inheritance, local people in my village tend to use customary law. Inheritance distribution, mainly that comes from a father, takes place after both parents pass away. Therefore, as long as his wife is still alive, the property belongs to her and becomes her own right.”<sup>22</sup>

Having this first procedure, children, siblings, or other heirs of the deceased usually do not dare to talk about or discuss the inheritance as long as the spouse of the deceased is still alive. Furthermore, this suspension closely relates to the existing form of inheritance and its role as the common property as well as the binding rope of the family unity. Apart from that, this aims to keep respecting the living spouse and making the inheritance, mainly when it is in a property form, as the place for gathering family members.

*Second* is distributing inheritance equally for all heirs. This mainly occurs in Babadan, Ponorogo. Local people distribute the inheritance assets equally relying on the principle of kinship and equality among all heirs. Saringatun, for instance, told that she shared

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<sup>21</sup>Interview with Muhaimin, one of villagers in Slahung, Ponorogo on January 2020.

<sup>22</sup>Interview with Marzuki, a teachers and a community leader in the village of Karanggebang, Ponorogo on March 2020.

the inheritance from his deceased husband to his children equally among men and women as follows.

“In 2017, I distributed inheritance for my five children, 4 sons and 1 daughter. One of them asked me to distribute it soon so I decided to do so after asking for consideration and agreement of others. As witnessed by Mr. Sambong, the distribution run well and smoothly. The inheritance itself was the joint property of mine and my husband’s so that after he died, I brought up the entire asset with me. I divided the assets for them equally for the sake of fairness and to avoid any disputes in the future. The distribution is written in a stamped statement.”<sup>23</sup>”

Another case also shares the same story. Yunita, an undergraduate degree holder, a housewife and a civil servant in Ponorogo based vocational school mentioned the following story:

“As the heirs of our parents, Usman, and Sri Muryati, me and my sibling did not worry about the inheritance. We are so grateful for having 4 siblings with 2 boys and another 2 girls who commonly agree to have equal shares of the inheritance. The asset distribution took time in 2014. We agreed and accepted the assets we got because we prioritize peace without questioning further on the distribution.”<sup>24</sup>

The two above cases show that in Babadan, Ponorogo, local people still like to make deliberation in order to reach an agreement for a fair inheritance distribution. They aim it to maintain family integrity and keep a harmonious relationship. Through this procedure, they tend to reach agreement on equal inheritance distribution between male and female heirs based on reliable argument and consideration on the social-economic condition of each.<sup>25</sup>

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<sup>23</sup>Interview with Saringatun, one of villagers in Ngunut, Ponorogo, on March 2020.

<sup>24</sup>Interview with Yunita, one of villagers in Babadan, Ponorogo, on March 2020.

<sup>25</sup>Yunita, “interview”.

The same custom of equal inheritance distribution is also found at Sooko, Ponorogo, in which some of its people choose to solve or avoid inheritance distribution problems by giving equal shares. This is clear from the statement of Salam, a local citizen, as follow:

“In my family, if someone dies and leaves any asset, it will be divided among his/her heirs. We do not differentiate between male and female portions nor do we distinguish whether they believe in the same religion with the benefactor or not.”<sup>26</sup>

Being asked about a dispute regarding the inheritance distribution, the informant responded as follow: “There have never been any disputes because this kind of distribution avoids conflicts within families.”

Salam's statement implied that the custom inheritance distribution in his surrounding is based on the agreement among the heirs. They use a kinship system in which if all heirs agree for equal inheritance distribution, it can directly take place in a one-to-one formation, namely a part for men and another same part for women.

Additionally, the practice of distributing inheritance with an equal sharing system also applies in Magetan. Suwaji, a local villager, explained that he got an inheritance from his parents after Suwaji's father passed away even though his mother was still alive. Therefore, the distribution used the grant (*hibah*) procedure because it took place when his mother was still alive. He and his siblings, both brothers and sisters, got an equal share as authoritatively regulated and determined by her mother.

The procedure for using the grant procedure in this case aims to avoid any future conflict among fellow heirs. This possibly happens in the future as we might often see it in our surroundings. The choice to use this procedure aims to minimize this risk in addition to the consideration that the grant offers a fair share. In this kind of case, the mother has the absolute right to give and distribute her property to Suwaji and his siblings without involving any interference of third parties.

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<sup>26</sup>Interview with Salam, one of the villagers in Sooko, Ponorogo, on April 2020.

*Third* is distributing inheritance through deliberation procedure as it usually happens in Babadan, Ponorogo, from generation to generation. As the previous two procedures, this runs in a peaceful way through common agreement of all heirs based on reliable and strong consideration. Technically, the procedure is told by a villager called Samsul as follow:

“The inheritance distribution in my family occurred in 2012 when my mother and my father were still alive. I have 5 siblings with 2 boys and 3 girls. As the heirs, we had not thought about the inheritance distribution particularly because our parents were still with us. However, in 2014, my mother asked to share the inheritance, perhaps because she thought that she grew older. The distribution took place through deliberation and was witnessed by a religious leader or so-called *modin*. Both benefactors and heirs were also there. The *modin* explained each portion according to Islamic law for the first then asked for our opinion or consideration for each portion. With careful consideration, we reached a peaceful agreement on the distribution as well as the portion. We validate the decision by making a letter of agreement that the whole part signatures it to prevent any possible future dromblem.<sup>27</sup>

This third category shows how the *Mataraman* community bequeaths the inheritance while maintaining kinship values and involving living heirs as well as local authority holders. Practically, this method of inheritance distribution runs peacefully although it is implemented after both benefactors passes away.

*Fourth* is inheritance distribution model as found in Jogorogo, Ngawi, which relies on collective customary inheritance law. When a citizen dies, the asset left behind will automatically turn into his/her immediate family’s ownership. When a husband dies, for instance, his property will automatically belong to his wife and children as the closest family members. Meanwhile, other relative such as siblings, parents, uncles, and so on does not deserve any portion. When a

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<sup>27</sup>Interview with Samsul, one of the villagers in Babadan Ponorogo, on January 2020.

deceased do not have any child or and spouse, the inherited asset can be given to his/her relatives.

Local people of Jogorogo, Ngawi Regency still maintain the traditional value that any inheritance asset, both movable and immovable, is a gift from a deceased to his/her family. Therefore, inheritance distribution according to this local community aims to comply with the existing rules while establishing family relationships among relatives.<sup>28</sup>

The local community usually distributes the inheritance by gathering some of the heirs which are available to come or living nearby because some others might live far away. On this occasion, a spouse of the deceased, mostly a women, will distribute the inheritance left behind by her husband. This procedure comes from the following reasons: *First*, the inheritance of a husband is under full control of a wife that makes the children not dare to beg for these assets. *Second*, most children think that their mother (or wife of a deceased) is the representative of the benefactor that makes her entitled to share the inheritance. *Third*, a wife will really consider the role of service of each of the heirs to her and the benefactor during their lifetime and this will influence the distribution. *Fourth*, the children generally think that if they obey their mother (or wife of the benefactor)'s decision, the family relationship will be closer and more intertwined. *Fifth*, talking about inheritance distribution is taboo so they do not need to tell other people about except those in the inner family circle.<sup>29</sup>

*Fifth* is practicing peace-seeking procedure according to the local customary law of individual inheritance system as found in Jetis community, Ponorogo. It means that the inheritance distribution process can take place among the heirs peacefully. However, the list of heirs is still unclear and confusing as the customary law still has no established standard on it. It is only regulated culturally in unwritten materials.

In fact, according to the Javanese customary law, children are the most important part of the heir compared to others. However practically, it is a wife (or spouse) who absolutely gets entitled to the

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<sup>28</sup>Interview with Marno, a resident of Ngawi, on April 2020.

<sup>29</sup>Marno, "Interview."

first and the most prominent heir. They both (spouse and children, either biological or adopted one) are actually the first who deserve for inheritance asset. When a couple does not have any biological children and then adopts a child, his/her position is the same as the biological one. However, if a couple has both biological and adopted children, the latter will only get a grant from the adoptive parents as long as the biological children give consent on the amount of share. This procedure is clear from what Hasani told as follow:

“It becomes a habit here that a wife gets an inheritance from her late husband’s assets. It also goes the same for other heirs like children either biological or adopted. Culturally, there is no definite provision on the list of heirs. However, again, usually, if a couple does not have any biological child and therefore adopts a child, his/her position is the same as the biological ones.<sup>30</sup>

*Sixth* is practicing *sagendhongan sepikul*<sup>31</sup> procedure as it develops very well in Kauman, Magetan. This involves a religious leader in distributing inheritance assets according to the provisions of the Qur’an, in particular Surah an-Nisa verse 11. The distribution is based on a-two-to-one-ratio between men and women and therefore, men get two parts while women only get one share due to these following factors: *First*, referring to Islamic law teaching; *Second*, considering that the procedure contains complete values of faith and Islam; *Third*, implementing the teachings of *mawāriṭh* fiqh; *Fourth*, obeying Allah's commandment and the *Fifth*; considering that the amount contains high wisdom.<sup>32</sup>

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<sup>30</sup>Interview with Hasani, a community leader in the village of Karanggebang, Ponorogo, on February 2020.

<sup>31</sup>Literally, *sapikul sagendhongan* means one shouldering and one carrying. This expression means that men receive two much more portions (*sapikul*) than women’s share (*sagendhongan*). Shouldering means having two baskets in the arm. One is at the front and another is behind the back. Meanwhile, women-only carry one basket which they put it on their back. The point here is that the share of men is twice bigger than those of women as in the Islamic teaching, namely 2: 1. See Anggita Vela, “Inheritance Distribution in Javanese Society in Terms of Islamic Law and Its Impact,” *As-Salam* 4, No. 2 (2015): 79–80.

<sup>32</sup>Vela.

*Seventh* is practicing *dum dum kupa*t or *sigar semangka*<sup>33</sup> distribution as what occurs in Kauman, Magetan. On the contrary to the previous one, the community using this procedure distributes the asset using a one-to-one ratio between men and women through the role of a religious leader as well. In this case, therefore, both men and women receive one portion for each. As for factors driving the religious leaders in choosing this procedure are: *First*, all heirs agree to share that way; *Second*, the family gets used to doing equal distribution; *Third*, one of the heirs needs much more portions than others; *Fourth*, parents request so *Fifth*, ensure fairness for all parties; *Sixth*, it does not give any difference or discrimination; *Seventh*, the role of women is no less than that of men.<sup>34</sup>

### **Three Procedures of Javanese Negotiation on Inheritance Distribution**

There are at least three procedures of negotiation among *Mataraman* community for distributing inheritance. It consists of the theology *cum* custom procedure, *fiqh cum* custom procedure, and the indigenous custom procedure. The three procedures contain different meanings in maintaining the integrity of family relationships and assets as well as different implications for avoiding inheritance distribution disputes. Following is details on the three:

#### **1. Theology *cum* Custom Procedure**

In *Mataraman* community, particularly at the west part of it, a quite common procedure of inheritance distribution is to share the asset equally for all the heirs no matter what their gender is. Therefore, it applies the same for both sons and daughters or either husband or wife of the descendant. This tradition has been well kept and maintained across generations in dealing with the

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<sup>33</sup>Most of the Javanese family prefer inheritance distribution with the principle of *sigar semangka*. It applies equal distribution to both men and women relying on the assumption that both will respectively build families that require a lot of money. The share aims for covering household basic and initial capital. This system considers it fair for the equal share because both wife and husband contribute to the family economy so that the wife does not fully rely on her husband economically. Instead, she helps to build the economic family as well. Vela.

<sup>34</sup>Vela.

controversy on its lawfulness when confronted with Islamic law or *sharia*.

Practically, one or some of the heirs probably questions and confronts this procedure as it contradicts the 2:1 scheme in *fiqh* rule. The protest might come from worries in breaking a religious rule, doing sinful action to falling into *kāfir* (infidel) as the Qur'an mentions the inheritance shares clearly. Meanwhile, some others may prefer the equal share due to custom and family unity consideration. This will inevitably lead to dispute and anxiety which potentially gets worse by *kāfir* labeling and other ideological problems such as coercion and others.

The relevant story was told by Salam as mentioned in the previous part. Salam's statement shows how the equal share is based on the kinship system. Therefore, this practice becomes a solution to avoid the dispute through a variety of technical procedures. For instance, the nominal of each share varies based on the agreement and the type of property. If the oldest child gets rice fields, the second gets a yard and livestock, the youngest can get a prefab house and so on. It is very rare to find the physical distribution of a single object or to sell it as long as the heirs are still able to take care of the assets. However, if all the heirs live far away or earn money overseas, for instance, it is highly likely that the assets are sold and the money will be equally divided.

The second most common practice is to suspend the distribution as long as a spouse of the descendant is still alive. This aims to respect the spouse and to avoid any dispute in inheritance distribution as well as to keep the family's property in good condition. Another reason closely relates to the Javanese value on the a husband-wife relationship, particularly on the ownership of joint property. Therefore, when one of them passes away, the common property is not directly distributed as an inheritance to the heirs. On the other hand, the heirs of the descendant might have some need to fulfill using the joint property of their parents.

Among others, this can be found in Jetis, Ponorogo, as told by a villager called *Mesiran*. He told the experience when his family suspended inheritance distribution after his father died and had



just made it after his mother had gone afterward.<sup>35</sup> For maintaining this tradition, as mentioned by Mr. Badowi, the heirs usually do not dare to talk about the inheritance, or so-called *pusoko*, as long as the spouse of a defendant is still with them. He himself also urged that the inheritance should be well distributed after the death of the spouse for maintaining the local tradition as well as avoiding possible conflict seed to grow.<sup>36</sup>

Although this practice is problematic and likely leading to any conflict as some heirs might prefer direct distribution while others might think otherwise, it is proven as a negotiation method to lower the tension. Moreover, the heirs potentially dispute each other in getting the highest amount of inheritance which naturally creates tension. In most the cases, internal negotiation does not work well for settling this so that the suspension can take place as an alternative.

The dispute settlement practices from those two contexts show the fusion between theology and custom tradition. The 2:1 scheme as mentioned clearly in the Qur'an was interpreted contextually according to the real condition of heirs, so that a rich son, for instance, does not get 2 if his sister is not economically well established. Meanwhile, the custom consideration in maintaining harmonious relationship, equal fairness and deliberation habit can also be well reached using this practice.

As for the second negotiation technique, the suspension works well both for respecting parents and avoiding conflict among heirs as taught in religious teaching and local custom. Suspension enables heirs and the living parent to make deliberation and deep consideration to decide fair inheritance distribution for the sake of goodness of the whole parties.

## 2. *Fiqh cum Custom Procedure*

The provision of *fiqh* inheritance in the Qur'an is among the detailed subjects of Islamic law. The Qur'an mentions the number as well as those who deserve it very clearly, including the different portion of men and women with a 2:1 ratio. In the perspective of

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<sup>35</sup>Interview with Mesiran, one villagers in Kambeng Ponorogo, on February 2020.

<sup>36</sup>Interview with Badowi, a secretary of the village of Karanggebang, Ponorogo, on March 2020.

*uṣūl fiqh*, the Qur'anic inheritance text is under the category of *qaṭ'ī al-dalālah* (the divine definite argumentation) in which clarity of the text is undeniable and agreed among *'uṣūliyyīn* (*'uṣūl fiqh* or jurisprudence basic expert).<sup>37</sup> However, many views, interpretations and alternative insights are emerging due to consideration of the present reality in which the text will be applied in.

Mas'udi, for example, said that instead of merely textual and rigid, *qaṭ'ī* concept is actually inherent and universal. He defines it as the core of universal Islamic teachings such as justice and providing *maṣlahah* (benefit) for people's welfare. Therefore in the inheritance distribution, the most important thing is not to rely on mathematical distribution, but rather to emphasize fair division and availability of benefits for those who deserve it.<sup>38</sup>

In the same tone, Sadjali argued the necessity to reinterpret the Qur'anic text on inheritance distribution considering that *sabab nuzūl* (the cause of revelation) of the inheritance verse is different from the context of this present era. He assumed that the verses were revealed in a patriarchal society in the midst of unequal relationships between men and women which puts women as complementary and even subordinate positions compared to men.

He further argued that at that time, Islam actually brought up the social revolution spirit in turning the inheritance portion of women who previously had no right at all into getting one share. However, at present time, the context and situation show different phenomenon in which men and women respectively have the same opportunity in both public and domestic sphere that makes a social distinction between the two disappears.<sup>39</sup>

In the *Mataraman* traditional practice of inheritance distribution, identification of *aṣḥāb al-furūd* or those who deserve the inheritance as well as the details of each share or so-called *furūd al-muqaddarah* is made prior to any effort to settle inheritance dispute. This is considered important because the initial problem of inheritance

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<sup>37</sup>Abdul Wahab Khalaf, *Ilm 'Uṣūl Al Fiqh* (Beirut: Dar al Mu'arrarafah, n.d.), 35.

<sup>38</sup>Masdar Farid Mas'udi, *Agama Keadilan Risalah Zakat (Pajak) dalam Islam* (Jakarta: P3M, 1991), 17-19.

<sup>39</sup>Munawir Sadjali, *Ijtihad Kemanusiaan* (Jakarta: Paramadina, 1997), 67-71.

distribution usually comes from these two things; those who deserve it and the portion of each.

Pratice of avoiding dispute through peace-seeking effort, for example, actually relies on *fiqh* inheritance rules. Along with its element and variation, this type of settlement procedure is literally unique although at glance, it contradicts the strict division portion on *farā'id* or inheritance *fiqh* distribution. Local people at Babadan, Ponorogo, as a case example, give no different portion between men and women as mentioned in both the Qur'an and Islamic Law Compilation. Furthermore, they do not have any definite list of those who deserve for inheritance because it will be later determined when the inheritance asset is ready to share, namely after the death of both parents, on the agreement of their children.

Marzuki, a local villager, furtherly mentioned that because the distribution takes place after both parents die, a living parent might grant gift to any child as a common gift instead of a inheritance. Therefore, when the distribution period comes, the child also gets another share as the inheritance portion of his/her own. This later division, according to him, is based on peace-seeking effort considering the role of each child in serving their parents during their lifetime.<sup>40</sup> It is clear, therefore, about three compulsory elements to fulfill in the peace-seeking distribution procedure.

The first is the heirs' awareness to accept that the rule of *faraid* or inheritance *fiqh* might change dramatically because of accountable consideration. Each heir's portion might either decrease and increase so that everyone is required to accept the agreement willingly.

The second is a common understanding that the formulation to adjust each portion with the main aim for peace-seeking procedure has nothing to do with expiring *farā'id* concept or impression that it provides no justice and benefit for all. This alternative does not replace the divine and definite concept of inheritance distribution as mentioned in the Qur'an.

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<sup>40</sup>Interview with Marzuki, one of villagers in Karanggebang Ponorogo, on February 2020.

The third is the existence of mutual sincerity, acceptance and pleasure among the heirs for sharing the inheritance through this procedure. This is important to avoid any further legal claim, conflict, dissatisfaction, even family disintegrate after inheritance distribution takes place and has become a collective agreement. It automatically makes this point as the main essence in the legacy of peace-seeking distribution procedure according to its main role for seeking mutual good and benefit.<sup>41</sup>

The three above elements make it clear on the synergy and meeting point between inheritance *fiqh* on one hand and the traditions of society on the others in which both sides have points of relevance and mutual support. Inheritance *fiqh* serves as the basic principle, while implementation takes form from local tradition and value. Another common case of traditional inheritance dispute settlement is the portion for adopted children. This is interesting because according to *fiqh* rule, when there found any *mahjūb* or the main heir(s) who prevent another heir candidate to get the inheritance, adopted children will get no share. This particularly happens when benefactors have no biological child then adopted a child whom they treated him/her like their own child.

Most of the time, the adopted child gives a big contribution and takes care of the benefactors as well as replacing their roles when they get old. Therefore, local people consider it necessary to provide the child inheritance portion from his/her adopted parents. However, as an adopted child, the portion she/he deserves is not the same as biological one and is within certain limits

Moreover, the Indonesian traditional inheritance jurisprudence has a concept of an obligatory message (*waṣīyah wājibah*), a compulsory portion for those outside the family lineage or out of the heirship standard channels. The maximum amount of this portion is no more than one-third of the benefactor's total assets that will be distributed to the heirs. This concept seems very relevant for settling (potential) dispute resolution by allocating it

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<sup>41</sup>Sugiri Permana, "Implications Munawir Sadjali and Hazairin Thoughts in Establishment of Islamic Inheritance in Indonesia," *AHKAM* 18, no. 2 (2018): 392.

for the adopted child's share. This procedure will keep him/her from getting inheritance assets from the adopted parents. Again, an effort like this shows the existence of a strong relationship and connecting point between inheritance *fiqh* and the local traditions of *Mataraman*.

Both peace-seeking and portion for adopted children procedures show a variety of how inheritance *fiqh* takes form in the real life. Both also require preconditions to avoid any unexpected condition such as violations of the basic rules. In the former procedure, for example, it is necessary to know a respective portion of each heir according to *fiqh* before deciding the real distribution of inheritance with peace-seeking procedure. Meanwhile, for the latter case, the maximum limit, one third, requires exact application so that the portion for an adopted child does not exceed it. The negotiation between *fiqh* rule and customary tradition among *Mataraman* community indicates serious efforts to give mutual benefit for the whole parties. *Fiqh* itself gives space for tradition in addressing living problems of society through the concept of '*urf*' in order to create common benefit (*maṣlahah*) for all. This puts '*urf*' as the most realistic concept to integrate in exploring the law of customs within the framework of Islamic law objectives, namely benefit (*maṣlahah*).

### 3. The Indigenous Mainstream Wisdom Procedure

The tradition of inheritance distribution among *Mataraman* community strongly shows Javanese customs, such as in *sepikul segendong* procedure. This is mainly based on the common view of *Mataraman* people which puts much more responsibility for men in the future than those of women, particularly in the economic aspect. Literally, men are future husbands in which they need to afford some kinds of funding for family, such as dowry, family support, living cost (*nafkah*) and so on while women do not do so.

This local procedure shares the basic concept with the mainstream inheritance distribution model in Islamic *mawāriṭh* (inheritance) jurisprudence as also mentioned in the Qur'an. However, *sepikul segendong* concept does not show mathematical details by mentioning the number of 2 and 1. It only accentuates the men's portion exceeds the women using the analogy of

carrying things on two arms for men and on the back for women. Apart from it, both the local concept and Islamic rule show the spirit of equality according to the economic responsibility of each.

Among others, this practice can be found in Magetan in which local people prefer to distribute the inheritance using the procedure of *sapikul sagendhongan*.<sup>42</sup> Usually, it takes place by engaging a religious leader who distributes the asset. The distribution is mainly based on the provision as mentioned at the Qur'an, especially QS. al-Nisa' 4: 11 containing literal share using two to one ratio between men and women.

Another procedure is the collective distribution of inheritance. This aims to maintain the existence of family assets under one management. All the heirs have a common purpose to keep the family asset in their inner and collective circle eventhough both parents have passed away. They prefer this procedure in order the asset remains safe and does not turn its ownership to other people outside family circle. Local people assume that it is not good to immediately turn the ownership of inheritance assets to other people out of the family line.

Just in case one of the heirs really needs to sell the asset for fulfilling an urgent financial need, for instance, other heirs will try hard not to sell it to people outside their circle by making a purchase on their own or ordering fellow heirs to do that. They will likely use *nyusuki* procedure in which one of heirs will make a purchase of the asset so that it still returns to family members instead of being other people's assets.

This solely aims to maintain the existence of the family asset to make it still under the control of the heirs or the family. Additionally, this is believed as an effort to maintain the honor of family by not hurriedly selling the inheritance asset. *Mataraman* community thinks it not good to immediately sell inheritance assets right after the distribution even though each heir has their own right on the asset.

Meanwhile, the portion of share of each heir is under the control and decision of a living spouse, usually a wife, after the death of

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<sup>42</sup>Tira Widayarsi, *Praktik Pembagian Waris di Kalangan Pemuka Agama Islam di Kauman Kabupaten Magetan* (Surakarta: Pascasarjana UNS, 2017), 10.

her husband as told by Budi, a villager of Magetan Regency.<sup>43</sup> He told that in his surrounding, the wife usually determines the portions of each heir as the inheritance her husband left behind was of her right, including the portion for each man and woman.

However, he stressed that the portion that each heir gets usually depends on how each heir plays the roles and services for the benefactors when they were alive. An heir who lives in the same house as the benefactor, for instance, certainly has a bigger responsibility in caring for, helping, or bearing all the needs so that he/she deserves to receive much more shares than others even though she is a woman.

Unlike the others, the collective inheritance sharing procedure can actually neither be confronted nor integrated with Islamic jurisprudence of *mawāriṭh*. What really makes it different is the commitment after receiving the share of inheritance as well as its management. *Nyusuki* tradition from one heir to another is an interesting phenomenon within this collective inheritance procedure. It occurs when an heir needs urgent money or funds then thinks about selling the inheritance. In this condition, other family members who respectively gets the inheritance is supposed to purchase it using *nyusuki* model or providing an immediate fund to cover the urgent need he/he's needs to fulfill soon.

In short, the existence of both *sepikul segendong* and collective inheritance distribution procedures shows that negotiation process in avoiding dispute among *Mataraman* community is very flexible that all heirs can likely accept it. Generally, they have a common understanding of the paradigm and background beyond the procedure so that they likely accept what has been practiced from generation to generation with no complaint. The procedure automatically becomes a common ground as well as mainstream tradition in settling any inheritance dispute.

### ***Fiqh cum* Custom Procedure; An Alternative Offer in the Avoiding Inheritance Dispute**

As the religion of grace for the universe (*rahmah li al-'alamīn*), Islam accepts local culture and customs as long as they do not

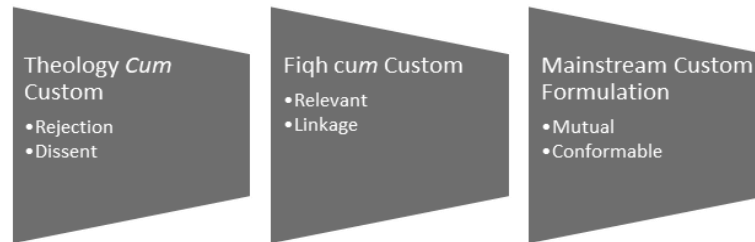
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<sup>43</sup>Interview with Budi, one of villagers in Magetan, on January, 2020.

contradict its basic teaching. This is mainly valid for any customs which has settled, been well implemented and perceived in the society as something they have to obey. Therefore, both customs and culture can be a foundation for Islamic law which recognizes their power in any legal interpretation.<sup>44</sup> The relationship between Islamic law and tradition is very close<sup>45</sup> and mutually supportive, particularly in the law of inheritance in Indonesian contemporary societies.

In Islamic teaching, the rule of inheritance distribution can at least be found in the Qur'an and *Sunnah* of the Prophet. It is among the core teachings of sharia with detailed provision and condition in addition to power in governing Moslem's life. However, practically, each society has different patterns in implementing the spirit of the distribution. In this context, how *Mataraman* community negotiates religious teaching and local customs in inheritance distribution portrays interesting and important phenomenon as clear from the following figure:

Figur 1. Inheritance Dispute Resolution Scheme Among *Mataraman* Community, East Java.



<sup>44</sup>This is in line with one of the basic rules of Islamic jurisprudence namely *العادة محكمة* which means that customs can become law. See Abdul Karim Zaidan, *Al Wajiz fi Syarhi Al-Qawa'id Al-Fiqhiyyah fi Asy-Syari'ah Allslamiyyah*, trans. Muhyiddin Mas Rida (Jakarta: Al-Kautsar, 2008), 133.

<sup>45</sup>Islamic law does not accept all of the traditions, including those which have become custom in society. The requirement for this acceptance is as follows: *First*, the tradition is logical, making any sense and relevant to human common sense so that it excludes any immoral action. *Second*, the actions or repeated or have become ingrained in people's behavior. *Third*, it does not bring any fatality or damage and is in line with the spirit to create a prosperous soul and healthy common sense. *Fourth*, the act does not contradict with the provisions of the text, both the Koran and the *Sunnah*. Abdul Mudjib, *Kaidah-Kaidah Ilmu Fiqh (Al-Qowa'idul Fiqhiyyah)* (Jakarta: Kalam Mulia, 2001), 45.



The three procedures show many values and moral teaching which play an important role to create harmony in family relationships. This is because the philosophy of any procedure for avoiding inheritance disputes is nothing but the willingness to create harmony among family members, especially the heirs. The traditional practice of dispute settlement using peace-seeking procedure, for example, prevents misunderstandings among one another and strengthens harmonious family relationships especially at the context of each procedure's implication on the welfare of the family economy.<sup>46</sup>

Among others, *fiqh cum* custom procedure is the most possible alternative to choose. This is partly because too much intervention from people outside the family lineage will likely worsen the problem and reduce harmony as well as intimacy in a family. Many cases show how bad management of inheritance distribution leads to family conflict. In this context, *Mataraman* community maintains family unity by making a set of rules that most of its people agree upon such as through the procedure of peace-seeking, collective distribution, as well as providing a portion for the adopted children while justifying and preserving them well.

### Conclusion

There are three models of negotiation formulation in avoiding inheritance distribution dispute in the *Mataraman* community, namely: a) theology *cum* custom procedure which will typically lead to mismatch and further disagreement among family members. This is due to the potential insecure feelings because being labeled as a deviant of religious law, specifically on the inheritance *fiqh* system in which they prioritize customary law better than religious rules. b) *fiqh cum* custom procedure which likely creates a close relationship among family members as well as flexibility in responding to the local custom or tradition on inheritance distribution. This model therefore becomes an alternative pattern of the settlement procedure. c) indigenous mainstream wisdom procedure which practically leads to

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<sup>46</sup>Dian Berkah and Tjiptohadi Sawarjuwono, "Inheritance Wealth Distribution Model and Its Implication to Economy," *Humanities & Social Sciences Reviews* 17, no. 3 (2019): 01-10.

dispute settlement using Javanese traditional value. This model allows local tradition to solve the dispute by returning to indigenous wisdom and cultural diversity. However, it does not directly engage religious teaching although the negotiation process usually runs smoothly because engaging parties have a common aim for the sake of assets integrity and harmonious family relations.

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