

Tradition, Wisdom and Negotiating Marriage and Inheritance Disputes on Javanese Muslim

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Abstract

This study aims to find a negotiation model in the tradition of Javanese Muslim communities in resolving disputes regarding marriage and inheritance restrictions. When the reality of resolving marriage and inheritance disputes impacts family and community strife, this becomes crucial. The qualitative paradigm was used to construct this research, which included a series of observations and in-depth interviews with the disputed families and focus group discussions with informants in the East Java community. This research discovers three models for resolving the tradition of avoiding marriage and inheritance disputes in Javanese Muslim society with social components in a heterogeneous society. 1) negotiating the traditional cum theology model, 2) negotiating the tradition and law model, and 3) negotiating the traditional wisdom model. Furthermore, when many cultural traditions fade, the growing negotiation model can serve as the foundation for policy for local governments in generating variants of the nation's cultural traditions.

Keywords: Javanese society; marriage law; inheritance law; traditional wisdom

Introduction

The relation between Javanese traditions and the main religion, Islam, has significant consequences for acculturation between Javanese culture and Islamic beliefs. Matchmaking, marriage, divorce, and inheritance distribution are all examples of this reality.¹ The inheritance distribution tradition incorporates living law into people's lives through the social interaction of Islamic law and local traditions.² As a result of the two's debate process, a meeting point, tension, and even a starting point emerged, necessitating talks to respond to the peace process in the conflict of marriage traditions and inheritance partition in Javanese society.³ Negotiations, in particular, served to manage disagreements while identifying solutions. Negotiation is bargaining between two or more parties to reach a mutually advantageous and beneficial solution. Negotiation is a willingness to seek innovative solutions to challenges.⁴

In a different context, Kaplan distinguishes between religious and customary norms based on many assumptions, including the following: First, as a pattern of two things so closely related that the two phrases stem from the same personality source. Second, do not blame each other for existing patterns, which are considered to exist without denying each other.⁵ *Third*, the basic pattern is the source and developing agent of change and, at the same time, an agent of engineer towards cultural patterns so that it becomes clear that there are traditional patterns that permeate religious norms.

The interaction process between Javanese marriage traditions and inheritance and Islamic law becomes intriguing, especially when it appears in prohibitions, creating a paradox and causing challenges for the diverse Indonesian Muslim population. This tradition of preventing marriage is so essential in a society that it is thought that breaking it will result in harm or

¹ B Ter Haar, *Asas-Asas Dan Susunan Hukum Adat* (Jakarta: Pradnya Paramita, 1981); Fitri Rafianti, Arik Dwijayanto, and Azharuddin Mohd Dali, "The Dialectics of Islamic Law and Customary Law on Marriage Concept of Javanese Muslim in Malaysia," *Justicia Islamica: Jurnal Kajian Hukum Dan Sosial* 18, no. 2 (November 19, 2021): 298–317, <https://doi.org/10.21154/justicia.v18i2.3126>.

² Achmad Irwan Hamzani et al., "Considering the Living Law as A Source in National Legal Development," *Jurnal Cita Hukum* 7, no. 2 (August 17, 2019), <https://doi.org/10.15408/jch.v7i2.10951>.

³ Cik Hasan Basri, *Pilar-Pilar Penelitian Hukum Islam Dan Pranata Sosial* (Jakarta: Raja Grafindo Persada, 2004); Ratno Lukito, *Legal Pluralism in Indonesia: Bridging the Unbridgeable* (Routledge, 2012).

⁴ M. Muhsin Jamil, ed., *Mengelola Konflik Membangun Damai (Teori, Strategi Dan Implementasi Resolusi Konflik)* (Semarang: Walisongo Mediation Center, 2007); Ilijana Todorović and Bobby Harges, "Alternative Dispute Resolution in the World of Commercial Disputes," *Journal of Strategic Contracting and Negotiation* 5, no. 4 (December 1, 2021): 214–21, <https://doi.org/10.1177/20555636221074424>.

⁵ David Kaplan, *Teori Budaya* (Yogyakarta: Pustaka Pelajar, 2000).

tragedy, such as economic issues, disease, divorce, death, etc. Attempts to postpone or terminate marriages are frequently used to tackle these concerns.⁶ Meanwhile, according to Islamic law, these bans are also contrary to Islamic teachings. The prohibition of marriage in Islam only occurs due to lineage, breastfeeding, marital relations, and other *syara'* causes.⁷

In the Javanese tradition, there are numerous prohibitions on marriage and inheritance. However, it will be limited in five ways in this study: *first*, the ban of marriage based on *weton* or the calculation of a person's birthday with the *pasaran* in Javanese, such as Monday *Wage*, Tuesday *Pahing*, Wednesday *Legi*, Thursday *Pon*, or Friday *Kliwon*.⁸ *Second*, there is a prohibition against marriage after marriage, specifically the prohibition against marrying a child who is the first child to the third child. *Third* is the restriction of the Golan-Mirah marriage, namely the prohibition owing to discrepancies in the potential bride's residence, one in Golan Village and the other in Mirah Village, Ponorogo. According to Javanese belief, Golan Village and Mirah Village cannot be combined; if one of the villagers marries, catastrophe will befall the bride and husband. *Fourth* is the prohibition of *ngalor-ngulon* marriage, that is, marriage for both candidates who live in the northwest. Fifth, *madep-ngarep* marriage is a conventional prohibition on executing marriages performed by spouses whose residences face each other.⁹

Research on the debate of Islamic law and local traditions has attracted the attention of many researchers in Indonesia. For example, research related to disputes between Islamic law and local customs of the Tengger people regarding marriage. To the ethics and customs of Tengger society, Islamic law cannot avoid conflict and negotiation between the two entities. Even though there were clashes between the two traditions, there were negotiations and compromises in implementing the marriage tradition in the Tenggerese community. The tradition is understood as a tradition that must be preserved and applied. The negotiation between Islamic law and adat is symbolic-substantive, creating a hybrid ritual that combines the two entities¹⁰.

There has also been research into the resolution of inheritance conflicts. For example, in the distribution of inheritance of children born out of wedlock, the people of Kebonan Lumajang tend to employ cultural inheritance,

⁶ Salvi, *interview*, Madiun September 20 2020.

⁷ See The Compilation of Islamic Law of Indonesia or KHI and Law Number 1 of 1974 concerning Marriage

⁸ Siti Woejan Soemadiyah Noeradyo, *Kitab Primbon Betal Jemur Adamakna Babasa Indonesia* (Solo: Buana Raya, 1994).

⁹ Marno, *interview*, Ponorogo September 21 2020.

¹⁰ Muh Fathon Hasyim, Liliek Channa Aw, and Moh Mufid, "The Walagara Marriage Ritual: The Negotiation between Islamic Law and Custom in Tengger," *Journal of Indonesian Islam* 14, no. 1 (June 1, 2020): 139–62, <https://doi.org/10.15642/JIIS.2020.14.1.139-162>.

essentially inheritance that is compromised between benefit and scientific proof¹¹. Hipni claimed in another study that women in Madurese society are seen not just as passive family members but also as symbols of honor and family continuation¹². This point of view broadens our comprehension of the inheritance verse. As a result, women are treated equally with men in allocating customary inheritance in Madurese society.

Fahmi Fatwa et al., in their study, mentioned that the customary inheritance system of the Cipicung Girang community in Bandung, where the majority of the population is Muslim, has divided men and women equally. Another uniqueness of the system is that the house they live in belongs to the child who last took care of his parents.¹³ Elfia et al., on the other hand, found that the conflict between *custom* and Islamic law caused problems in the distribution of inheritance in Sungai Duo Village, South Solok Regency. In this village, the inheritance is distributed before the heir dies.¹⁴ Furthermore, Mohammad Takdir et al.'s study mentions efforts to control conflict by dividing inheritance based on customary law and not according to Islamic law in Muslim communities in Pakamban Laok Village, Sumenep Regency.¹⁵

The research begins by exploring seven inheritance divisions in Javanese traditions, namely the division of the inheritance of the *Sepikul segendong*, the division of the inheritance of *sigar papat*, peace, *nyusuki*, suspension of inheritance distribution, distribution of the inheritance of adopted children, and the distribution of inheritance equally. The meaning of *sepikul sagendhongan* is one bear, one sling. This expression shows that men get two inheritance shares (*sepikul*, equivalent to two load baskets) while women get one (*sagendhongan*; one carrying only on the back) share. In terms of inheritance distribution based on the *sigar papat* principle, the lineage continues to survive to sustain the necessities

¹¹ 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: Jurnal Hukum & Pranata Sosial* 11, no. 2 (2016): 335–60, <https://doi.org/10.19105/al-lhkam.v11i2.1018>.

¹² Mohammad Hipni, "The Study of Maqashidi Sharia Toward Maduresse Traditional Inheritance by Using System Approach," *AL-IHKAM: Jurnal Hukum & Pranata Sosial* 14, no. 1 (June 30, 2019): 50–71, <https://doi.org/10.19105/al-lhkam.v14i1.2159>.

¹³ Fahmi Fatwa Rosyadi Satria Hamdani et al., "Traditional Law vs. Islamic Law; An Analysis of Muslim Community Awareness in Inheritance Issues," *Al-Abkam* 32, no. 1 (April 28, 2022): 109–30, <https://doi.org/10.21580/ahkam.2022.32.1.11000>.

¹⁴ Elfia Elfia, Surwati Surwati, and Bakhtiar Bakhtiar, "The Struggle of Custom and Sharia: Classic Dilemma of Inheritance Settlement in Javanese and Minangkabau Ethnic Communities in Indonesia," *Al-Istinbath: Jurnal Hukum Islam* 8, no. 1 May (May 16, 2023): 75–94, <https://doi.org/10.29240/jhi.v8i1.5480>.

¹⁵ Mohammad Takdir et al., "The Takharrūj Method as an Islamic Legal Solution for Customary Inheritance Practices among Muslim Communities in Pakamban Laok, Sumenep, Indonesia," *Journal of Islamic Law (JIL)* 4, no. 1 (February 28, 2023): 104–22, <https://doi.org/10.24260/jil.v4i1.1044>.

of married life. This calm discourse will determine the magnitude of each heir's portion. Deliberations typically focus on the property's location, inherited assets' position, and productive capacity. The heirs are all given an equal share according to their rights.

The strength of the Javanese Muslims in adhering to tradition will be the main attraction of this paper. At the same time, some parties uphold the norms of Islamic law and nullify inherited traditions and customs.¹⁶ Negotiation is derived from the word negotiation, which means to bargain. The most popular method of dispute settlement is negotiation. Negotiation is when two parties/representatives with opposing requests (interests) reach a compromise agreement and make concessions to reach a peaceful settlement.¹⁷ Negotiating has become a part of everyday human existence, such as haggling over pricing, salaries, etc. In general, negotiation can be defined as an attempt to resolve a dispute between parties without resorting to the courts to achieve a mutual agreement based on more peaceful and creative cooperation. In the negotiation process, the disputing parties will face each other directly and discuss their problems.¹⁸

More specifically, negotiation theory is used as part of managing conflict. Negotiation is a dialogue between two or more parties to resolve differences of opinion or attitude or to make agreements and solutions of various interests.¹⁹ Two models in the negotiation process are used: the *pre-negotiation-interaction-conclusion* negotiation model and the *pre-negotiation-post-negotiation model*. In contrast to mediation, the parties develop communication during the negotiation process, with no third party acting as a mediator. Negotiation quality relies heavily on the negotiators involved²⁰. However, if an

¹⁶ Ihsan, *interview* Ponorogo September 21 2020.

¹⁷ Temitayo Bello, "Negotiation as a Tool for Dispute Resolution and Conflict Management in a Changing World," SSRN Scholarly Paper (Rochester, NY, July 28, 2017), <https://doi.org/10.2139/ssrn.3010144>; Todd B. Carver and Albert A. Vondra, "Alternative Dispute Resolution: Why It Doesn't Work and Why It Does," *Harvard Business Review*, May 1, 1994, <https://hbr.org/1994/05/alternative-dispute-resolution-why-it-doesnt-work-and-why-it-does>.

¹⁸ Joni Emirzon, *Alternatif Penyelesaian Sengketa Di Luar Pengadilan (Negosiasi, Mediasi, Konsiliasi Dan Arbitrase)* (Jakarta: Gramedia Pustaka Utama, 2000).

¹⁹ Jamil, *Mengelola Konflik Membangun Damai (Teori, Strategi Dan Implementasi Resolusi Konflik)*; Bello Adesina Temitayo, "Negotiation as a Tool for Dispute Resolution and Conflict Management in a Changing World," *International Journal of Innovative Research and Development* 3, no. 8 (August 28, 2014), http://www.internationaljournalcorner.com/index.php/ijird_ojs/article/view/134955.

²⁰ Brigitta Hauser-Schaublin and David D. Harnish, eds., *Between Harmony and Discrimination: Negotiating Religious Identities within Majority-Minority Relationships in Bali and Lombok* (Netherland: Brill, 2014); Maria Platt, *Marriage, Gender and Islam in Indonesia: Women Negotiating Informal Marriage, Divorce and Desire*, Women in Asia Series 51 (London ; New York: Routledge,

agreement is achieved, the outcomes of the negotiations might be recorded with the court if they are specified in writing and binding on the parties to be carried out in good faith. Negotiations are typically conducted in circumstances that are not overly complicated. A key factor in negotiating is the parties' willingness to sit down and work together to solve the problem. I trust that the desire to get an agreement between the parties has faded so the negotiation will be futile.²¹

In contrast to previous studies, this research offers a differentiated model of dispute resolution based on local wisdom. This study is a socio-legal examination of Islamic civilization's internalization and social interaction process.²² There is a conflict between Islamic law and the local rules that the Javanese have accepted. As a result, the framework used is a process of adaptation and assimilation between rules that can seep into each other or experience problems, giving birth to "a way out/agreement/dialogue" as a reference in behavior, particularly the response and dialogue process regarding the resolution of marital and inheritance disputes, which are used in some references in society.²³

In-depth interviews and literature studies are the data collection techniques used by researchers. This research is qualitative, with primary data collected through intensive interviews with informant families. The emphasis in field data collection was to explore information from 7 families to represent families resolving inheritance disputes and five families related to marriage bans in Javanese Muslim communities in the Mataraman region of East Java.

This study aims to find a negotiation model in the tradition of Javanese Muslim communities in resolving disputes regarding marriage and inheritance restrictions. The urgency of this study is to offer a pattern or model of marriage and inheritance dispute resolution based on local wisdom and with a win-win solution perspective. This research uses a case approach and social negotiation.

Taylor & Francis Group, 2017); Todorović and Harges, "Alternative Dispute Resolution in the World of Commercial Disputes."

²¹ Armunanto Armunanto, "The Inheritance Dispute Settlement In Court," *Jurnal Akta* 8, no. 3 (November 5, 2021): 143–50, <https://doi.org/10.30659/akta.v8i3.17946>; Temitayo, "Negotiation as a Tool for Dispute Resolution and Conflict Management in a Changing World"; Frans Hendra Winata, *Hukum Penyelesaian Sengketa* (Jakarta: Sinar Grafika, 2012).

²² Naomi Creutzfeldt, Marc Mason, and Kirsten McConnachie, eds., *Routledge Handbook of Socio-Legal Theory and Methods*, Routledge Handbooks (London New York: Routledge, Taylor & Francis Group, 2020).

²³ Basri, *Pilar-Pilar Penelitian Hukum Islam Dan Pranata Sosial*.

Discussion

Javanese Muslim Community Negotiations in The Tradition of Inheritance Dispute Resolution

Inheritance law is a legal institution used to regulate property transfer from a deceased person to his heirs. This topic is a discussion in the field of family law²⁴. The main issue is how inheritance is given proportionally, to whom, and how it is given²⁵. Islamic law does not deny that adat can also be used as a source of law because Islamic law is aware that customs have played an essential role in regulating social relations and order among community members. Customs are also domiciled as unwritten laws and are obeyed because they are felt following the legal awareness of the community²⁶. Here are some case studies and inheritance practices in the Javanese Muslim community.

First is the practice of delaying the distribution of inheritance because one of the heirs' spouses is still alive. The inheritance distribution is determined when all parents have died. For example, if the husband dies, then the inheritance will be divided when the wife dies. The inheritance will be suspended first if one of the two (husband or wife) is still alive. This is as conveyed by Muhaimin: “*When the inheritance was distributed to our family, the inheritance was divided after our parents died. Before that, our mother still managed the inheritance when she was alive.*”²⁷

²⁴ M. Faizurriqzi Al-Farisi Ad, Ziada Hilmi Hanifah, and Nurul Kasanah, “Progressivity of Dum-Dum Kupat Inheritance Distribution in Java Community Perspective of Progressive Legal Theory Satjipto Rahardjo (Study in Pehserut Village, Sukomoro District, Nganjuk Regency),” *Budapest International Research and Critics Institute (BIRCI-Journal): Humanities and Social Sciences* 5, no. 1 (January 22, 2022): 1356–67, <https://doi.org/10.33258/birci.v5i1.3739>; Hazairin, *Hukum Kewarisan Bilateral Menurut Al-Qur'an Dan Hadis* (Jakarta: Tintamas, 1982).

²⁵ Ahmad Azhar Basyir, *Hukum Waris Islam* (Yogyakarta: UII Press, 2001); Mark Cammack, “Islamic Inheritance Law in Indonesia: The Influence of Hazairin’s Theory of Bilateral Inheritance,” *Studia Islamika* 10, no. 1 (2003), <https://doi.org/10.15408/sdi.v10i1.639>; Anugrah Reskiani et al., “Reform Methods of Islamic Inheritance Law in Indonesia in Jurisprudence,” *JURIS (Jurnal Ilmiah Syariah)* 21, no. 1 (June 9, 2022): 39–51, <https://doi.org/10.31958/juris.v21i1.5564>.

²⁶ M. Muslimin, “An Analysis of Local Wisdom Message through Inheritance Media in the East Java Society” (2018 3rd International Conference on Education, Sports, Arts and Management Engineering (ICESAME 2018), Atlantis Press, 2018), 88–90, <https://doi.org/10.2991/amca-18.2018.25>; Erman Rajagukguk, “Legal Pluralism and the Three-Cornered Case Study of Women’s Inheritance Rights Changing in Lombok,” *Legitimacy, Legal Development and Change: Law and Modernization Reconsidered* 213 (2016); Asni Zubair, Hamzah Latif, and Al Furqon Dono Hariyanto, “The Construction of Inheritance Law Reform in Indonesia: Questioning the Transfer of Properties through Wasiat Wājibah to Non-Muslim Heirs,” *Samarah: Jurnal Hukum Keluarga Dan Hukum Islam* 6, no. 1 (June 27, 2022): 176–97, <https://doi.org/10.22373/sjkh.v6i1.12628>.

²⁷ Muhaimin, *interview*, Ponorogo September 20 2020.

When one of the heirs dies, the estate is not distributed directly to the heirs' wives, children, siblings, and parents. The wife owns the property, which will be distributed after her death. In practice, parents die, and a child will get the legacy. If the heir's wife is still alive, the children have not yet received a portion, whether they live independently or with their mother. According to Marzuki, who also employs this inheritance provision:

“Regarding inheritance, the law that is often used here is customary law. A father's inheritance distribution is generally done after all the parents have died. So, as long as the heir's wife is still around, the property belongs to the wife. It is her right.”²⁸

The heir's children and relatives are uncomfortable discussing or debating the topic of his father's (or one of his parents') inheritance while the mother (the heir's wife) is still living. Because of its shape and character as a common property of one relative, the inheritance is not divided and serves as a tying cord for family unity. Furthermore, due to the objective and purpose of still respecting the parents who are still alive and making it a focus for the gathering of divided family members.

Second is the distribution of inheritance equally. This equal distribution of inheritance is based on the fact that the community distributes inheritance equally. They state that they divide their inheritance in a familial manner with equal shares between all heirs. This was conveyed by Saringun as follows:

"In 2017, I distributed my inheritance to my five children, four sons and one daughter." This inheritance distribution was prompted by a request from one of my children. I request consideration from my other children. By mutual agreement, the distribution of this property is a joint property between my husband and us so that I will get the entire estate when he dies. The property is divided equally so there is no future dispute and is written in a stamped statement letter.”²⁹

This fact was also corroborated by Yunita, a housewife who said:

"We are the heirs of our parents, and we are not too worried about the inheritance of our father and mother. Thank God we are four brothers, two men and two women, and we are both content with the division of the inheritance evenly. The inheritance was distributed in 2014 from our fathers, Usman and Sri Muryati. We agree and accept each other's property gifts since we value family peace and do not mind the division.”³⁰

²⁸ Marzuki, *interview*, Madiun 12 August 2020.

²⁹ Saringatun, *interview*, Ponorogo September 21 2020.

³⁰ Yunita, *interview*, Ponorogo August 15 2020.

Each family's inheritance is divided after thoughtful thought to achieve an agreement by splitting the bequest fairly while maintaining the kinship's integrity. Later, the agreement is reached by distributing the inheritance evenly between the male and female heirs. Salam stated the following about the allocation of this inheritance:

“In my family, if someone dies and leaves an inheritance, it will be divided equally among the heirs. It does not distinguish between male or female parts, nor does it distinguish whether the heirs are of the same religion or different from the heirs.”³¹

When questioned if there was a disagreement over inheritance distribution, the informant stated, *"There has never been a disagreement because this type of distribution eliminates disagreements between relatives."*

According to Salam, inheritance distribution depends on the heirs' consent to distribute equally. A family system is used so all heirs agree to be divided equally, with one part going to women and one to men.

The Suwaji family follows the practice of sharing inheritance using an equitable distribution mechanism. Suwaji's father died first while his mother was still alive. Thus, asset distribution is accomplished through grants. The bounty was distributed equitably, with Suwaji and his brothers and sisters receiving the same share. Suwaji's mother strictly controls and distributes this to each of her children. The consideration in dispersing assets through this grant is to minimize future disagreements between fellow heirs.

The third is the practice of dividing inheritance by deliberation. When the heirs take the path of deliberation and peace, the distribution of inheritance like this is allowed in the community with consideration of strong and justifiable reasons. As explained by Samsul below:

"In my family, the distribution of inheritance occurred in 2012." I have two sons and three daughters as siblings. Because the mother was still alive then, we, as heirs, did not consider the partition of inheritance... Yes, I understand; my mother is also elderly. We elected to divide the family's inheritance by deliberation and witnessing by a religious authority or called the local Mr. *Modin*, which the heir and all heirs attended. Then we invited *Modin*, and he did not forget to explain the parts for each heir and then asked for our opinion or consideration. With careful consideration and approval by my brothers and mother, an agreement was made...."³²

³¹ Salam, *interview*, Madiun August 15 2020

³² Samsul, *interview*, Ponorogo September 21 2020.

From Samsul's description, one can draw an illustration that in the Javanese Mataraman society, inheritance is divided by way of deliberation involving the surviving heirs. This distribution runs during society well and peacefully and is implemented after the heir dies.

Fourth, there is customary collective inheritance. This practice is based on customary law, which states that when a citizen dies, the property left by the deceased immediately passes to the next of kin. If a spouse dies, his property immediately passes to his wife and children as the closest family members. Other relatives, such as relatives, parents, uncles, and so on, do not inherit.

According to society, traditional inheritance transfers movable and immovable property from a deceased parent to his family. When the dead do not have a wife, the inheritance rights are transferred to his family. Distributing such inheritance fulfills customary rules and establishes a relationship between family members.³³

When it comes to inheritance distribution following the death of an heir, the Javanese custom adopts the practice of assembling the heirs or some heirs who live close to the heir's house. This is done because some heirs live outside the city, and the heir's wife will divide her husband's inheritance. The following are why society divides inheritance in this manner. *First*, the inheritance left by the husband is entirely controlled by the wife, and the children do not dare to demand the property. *Second*, most children believe that because the mother or (wife of the heir) is the heir's representation, she is the most eligible to share the property. *Third*, in distributing the inheritance, the wife considers the responsibility/service of the heir to himself and the heir while he is still alive. *Fourth*, the child thinks that if he obeys the mother's word (wife of the heir), the relationship between families will be more closely and well entwined. *Fifth*, the issue of the distribution of inheritance is a taboo subject and does not need to be announced to the public.

Fifth is the practice of peace. The customary law of the Javanese Muslim community applies an individual inheritance system. Thus the inheritance can be distributed among the heirs peacefully. However, the parties entitled to become heirs are vague, and there are no standard provisions because the reference is unwritten customary law. According to Javanese customary law, children are the essential heirs compared to others. However, in practice, the heir's wife is the primary heir after the testator's death. The heirs who are first entitled to inherit are the wife and children of the heir, and both adopted children and biological children. This happens when a couple does not have children, so adopting a child will have the same position as a biological child if he is alone and not with his biological child. If the adopted child is with his biological child, his status is

³³ Marno, *interview*, Ponorogo September 21 2020.

no longer an inheritance. However, a grant from his adoptive parents, and even then, the biological child must agree on the amount of his share. As the following statement from Hasani:

"It is normal for a wife to own her late husband's property in Javanese society. No specific provisions exist for anyone with the right to become an heir. In general, the wife and the heir's biological and adoptive children are the first to be entitled to inherit. This occurs when a couple does not have children and chooses to adopt one. Furthermore, his position is the same as biological children if he is alone and not with biological children."³⁴

Sixth is the practice of *sepikul sagendongan* in Javanese traditional inheritance³⁵. This distribution tradition is carried out by Islamic religious leaders who distribute and/or receive an inheritance following the provisions of the Qur'an, especially Surat An-Nisa verse 11. The distribution of inheritance in this model is based on a two-to-one comparison between boys and girls. Daughter so that, in this case, the son gets two parts while the girl gets only one share.

Seventh is the practice of distributing inheritance *dum dum kupat* or *sigar semongko*.³⁶ There are differences in how Islamic religious leaders distribute and/or receive the inheritance, carried out in a one-to-one ratio between boys and girls. In this case, both boys and girls receive only one share. In this way, the term division is known as *dum dum kupat* or *sigar semongko*³⁷.

The factors that motivate Islamic religious leaders in distributing and/or receiving property through inheritance with a ratio of one share for boys and one part for girls, namely: *First*, there is an agreement between the heirs; *Second*, families are used to dividing equally; *Third*, the other heirs need more; *Fourth*, orders from parents; *Fifth*, fair to all parties; *Sixth*, it does not make a difference and *seventh*, the role of girls is not less significant than the role of boys.

Javanese Muslim Community Negotiations in The Tradition of Marriage Disputes

The Javanese tradition of implementing marriage typically includes extra restrictions, sometimes prohibitions. As a result, explaining the wedding

³⁴ Hasani, *interview*, Madiun September 20 2020.

³⁵ Anggita Vela, "Pembagian Waris Pada Masyarakat Jawa Ditinjau Dari Hukum Islam dan Dampaknya," *As-Salam: Jurnal Studi Hukum Islam & Pendidikan* 4, no. 2 (October 16, 2015): 67–91, <https://doi.org/10.51226/assalam.v4i2.74>.

³⁶ Vela.

³⁷ Ad, Hanifah, and Kasanah, "Progressivity of Dum-Dum Kupat Inheritance Distribution in Java Community Perspective of Progressive Legal Theory Satjipto Rahardjo (Study in Pehserut Village, Sukomoro District, Nganjuk Regency)."

procession becomes more intriguing. Imam Ma'ruf, one of the Village Heads, explained the practice, saying:

"The *weton*, *lusan*, or *ngalor-ngulon* traditions began when several bridal couples did not pay attention to these traditions and, in the end, experienced failures in their marriages and even death. Until one day, community leaders took the initiative to respect Javanese traditions in the marriage procession, intending to avoid evil (refuse). The local community then followed this until it eventually became a tradition..."³⁸

The *lusan* and *weton* or *ngalor-ngulon* traditions are prevailing customs in Javanese society. The custom is enforced as a form of rejection of everything that is not desired. Moreover, concerning being an additional requirement in marriage, it is based that the community understands the traditions carried out from generation to generation. In this regard, Ambar Pamudji revealed:

"The practice consists of a set of Javanese customs that must be followed and implemented." Furthermore, it is legal, and I am following the individuals that led the march... One method to keep it alive is to make the ritual a condition for people who want to marry. I am not sure if it is contradictory or not or if it is related to Islamic law. As far as I know, that custom must be followed."³⁹

Javanese marital rituals such as *madep-ngarep* and *weton*, prevalent in the Javanese Mataraman group, are regarded as having power or as a source of salvation. By making the ritual an additional necessity in marriage, the tradition is believed to continue flourishing and thriving. Supri stated in this regard: "*I do not know anything about the origins of the lusan marriage procession; all I know is that it was carried out previously... The goal is for the family to survive till death do them part.*"⁴⁰

In Supri's opinion, the origin of this tradition is less clear. Furthermore, it must be carried out because it is a culture or tradition. Because in this tradition, it is considered to influence the integrity of the marriage. Meanwhile, Jumangin said:

"The traditional procession of the ban on the marriage of *Golan Mirah*, *Lusan*, the Javanese people of Ponorogo, before getting married, must be taken into account by looking at the impact that occurs. However, I do not know anything because there is no such term in Islamic law. Moreover, my wife's death has nothing to do with it. God has arranged the name of the sustenance of mate and death, so it is not logical if it is

³⁸ Ma'ruf, *interview*, Madiun August 12 2020.

³⁹ Pamudji, *interview*, Ponorogo August 11 2020.

⁴⁰ Supri, *interview*, Madiun August 12 2020.

made a tradition, let alone an additional requirement in marriage. In my opinion, Islamic law does not require it, which is polytheism.”⁴¹

In contrast to the previous two opinions, in this case, the informant rejected the practice because it was considered to have violated the Shari'ah and became polytheistic. So, even though it is a tradition and custom, it does not just have to be implemented. That's how Yabani Adama said.

“...the origin of these conditions was when there were several wedding couples who did not take into account the *weton* and the ban on the *Golan Mirah*, and in the end, they failed in their marriage and even died until one day there were community leaders who took the initiative to remind the traditions that apply before the wedding procession intending to avoid bad things (reject reinforcements)...”⁴²

Based on the information these informants provided, engaging in a negotiating process that employs a responsive fiqh approach is critical. People's social traditions will not be divorced from the name of customs and culture. This is due to several causes, one of which is the ancestors' legacy, passed down from generation to generation, believed, and applied. Among these are social phenomena relating to marriage, such as the prohibition of marriage and inheritance. The negotiating process becomes a middle ground in finding a solution both parties can accept.

Model of Negotiating Tradition Wisdom: Resolving Marriage Disputes and Inheritance of Javanese Muslim Community

In Javanese society, the actuality of inheritance distribution reveals a profound ancestral legacy. One of these is the *sepikul segendong* custom, which is the distribution of inheritance between sons and daughters distinguished by the languages *sepikul* and *segendong*. By inflating the share of boys over daughters, there is a disparity in the inheritance shared between sons and daughters. This disparity stems from some Mataraman society's belief that sons have more outstanding obligations than daughters.

This *sepikul segendong* custom of splitting inheritance has a point of convergence with the model of inheritance distribution in *fiqh Mawaris* or Islamic law. This means that the proportion of males and women is generally overestimated. Even though it is not specified quantitatively in the *Sepikul Segendong* tradition, as in the *fiqh* of inheritance, which establishes the 2:1 divide between sons and daughters. In essence, inheritance distribution, as practiced by the Javanese Muslim community with the *segendong sepikul*, is a point

⁴¹ Jumangin, *interview*, Ponorogo August 11 2020.

⁴² Adama, *interview*, Ponorogo September 20 2020.

of convergence with inheritance fiqh.⁴³ Islamic religious leaders carry out this division following the provisions of the Qur'an.

Another reality of inheritance distribution is the collective division of inheritance. This arises because of the desire to maintain family assets in one management. Even if the parents or heirs have died, the heir's family hopes the property remains in one family and does not pass to another. Furthermore, there is a notion that it is not good if his parents' inheritance is quickly sold to someone else, causing it to change hands.

Even if one of the heirs is in need, it is returned to the family as heirs with the *nyusuki* model or replaced by buying as much as possible from those in need. This tradition of sharing the inheritance with the collective, or *nyusuki*, is carried out primarily to keep the heir's assets alive and controlled by the family's heirs.

This tradition with the division of collective inheritance in Javanese society cannot be confronted with the jurisprudence of the Mawaris. The difference is between the committee after receiving the inheritance and managing the inheritance only. The tradition of *nyusuki* from one heir to another is an interesting phenomenon in the division of this collective inheritance. *Nyusuki* is defined as an heir who needs money or fresh funds and can only be done with the desire to sell the inheritance. Then, it is enough for the internal family to buy it with the *nyusuki* model or provide immediate funds to other families to purchase the inheritance he receives.

A tradition of inheritance distribution, both collectively and as *sepikul segendong*, demonstrates that the Javanese Muslim community's negotiating process in resolving conflicts is very fluid and may be accepted by all heirs. This approach appears because the heirs' mindset is relatively the same and accepts what their parents have practiced for generations. This demonstrates that adopting the mainstream tradition to settle inheritance disputes appears more acceptable and might serve as a meeting point.

In truth, the concept derived from resolving inheritance disputes is the community's aim to foster harmony among families, particularly the heirs. As a result, the traditional practice of settling inheritance peacefully eliminates disagreements and enhances family relationships as heirs. Harmony is another essential characteristic. If there is much intervention from other individuals in a family, it can exacerbate the problem and impair harmony and closeness. Many lawsuits arise as a result of inheritance disputes that devastate family relationships. As a result, in response to such circumstances, the community

⁴³ Tira Widayarsi and Burhanudin Harahap, "Praktik Pembagian Waris Di Kalangan Pemuka Agama Islam Di Kauman Kabupaten Magetan," *Jurnal Repertorium* 6, no. 1 (January 1, 2019): 13.

establishes a rule that is agreed upon by most levels of society to maintain harmony and harmony between families, so the tradition of peaceful, collective, and inheritance distribution of inheritance for adopted children is justified and should be preserved.

Meanwhile, it demonstrates a common point of settlement in the pattern of resolving marital problems with existing traditional/ancestral wisdom. *Weton* marriage is one of the civilizations that arose due to encounters that predated the ancestors. This interaction constantly occurs, yielding a mutually agreed-upon value. Humans develop the *Weton* tradition through this contact.

This interaction is carried out to preserve the *weton* heritage or to prevent *Golan Mirab* from marrying. Slowly, through the interaction of village elders, they attempted to explain what symbols were raised by the *weton* culture so that people may learn about cultural symbolization indirectly. The symbol of *weton* culture and its calculations can become a new reality and value in society through interaction and learning. An event (reality) is known or understood through experience impacted by language rather than objectively. Reality is comprehended through situational linguistic categories that emerge from social interaction within a social group at a specific moment and location.

Social life is established by the interaction and communication of individuals and groups through symbols, the meaning of which is grasped through the learning process. A person's actions in the interaction process are the consequence of the process of understanding the input, not just a direct response to stimuli from their surroundings or from outside themselves. So symbolic interaction is the product of the learning process, comprehending symbols and modifying their meanings. It is emphasized in the idea of symbolic interactionism that two essential factors mark human life, namely interaction and symbols. Interaction is significant because it shows social life, where people understand each other, respond to each other, and communicate.

In the sociology of law, the law is a set of values, rules, and behavior patterns that revolve around basic human needs.⁴⁴ Meanwhile, Selo Soemardjan focuses more on the plurality of society on "Culture" since it can be a characteristic (typical) of a society⁴⁵. The elements that form the basis for customary law are usually called "*gegevens van het Recht*," including ideal and

⁴⁴ Hilman Syahril Haq, *Pengantar Hukum Adat Indonesia* (Jakarta: Penerbit Lakeisha, 2020); Sugiri Permana, "Implications of Hazairin and Munawir Sjadzali Thoughts In Establishment of Islamic Inheritance In Indonesia," *AHKAM: Jurnal Ilmu Syariah* 18, no. 2 (July 12, 2018), <https://journal.uinjkt.ac.id/index.php/ahkam/article/view/9866>.

⁴⁵ I. Gede A. B. Wiranata, *Hukum Adat Indonesia Perkembangan dari Masa ke Masa* (Bandung: Citra Aditya Bakti, 2005).

fundamental elements.⁴⁶ The ideal elements are a feeling of morality, a sense of justice, and human proportion. Morality is a human desire to live with a pure heart. The sense of human justice is derived from the fact that no individual or group feels offended by the acts or desires of other groups. Humans, the natural environment, and culture are examples of actual elements. Humans are constantly influenced by personal factors as well as their social environment. The natural environment is an environment that exists apart from the social environment and can impact human life. Culture is the consequence of human creation in social life, manifesting itself in work, taste, and creativity.

Conclusion

The negotiating formulation in Javanese society's tradition of resolving marriage and inheritance conflicts is classified into three types: negotiating in the formulation of theology *cum* custom and incompatibility and dissonance between the parties in the family. This is due to the emergence of different feelings. After all, they are labeled as not following religious law according to fiqh because they are considered more committed to tradition than existing religious rules. b) negotiating in the formulation of fiqh *cum* custom, which creates a relationship of closeness and flexibility in responding to customs or marriage traditions and the division of Javanese inheritance to be an alternative settlement pattern. c) negotiating over the construction of traditional wisdom/mainstream traditions. Negotiating the tradition of settling Javanese weddings and inheritance conflicts can be settled in this fashion by reverting to the wisdom and diversity of customs. The upshot of this statement is that it gives birth to the fiqh paradigm *cum* adat mainstream as a point of view on resolving inheritance disputes in society for the integrity of assets and family relations. This research contributes to finding models and patterns of settlement of marital and inheritance disputes based on local wisdom that are win-win solutions and does not explicitly correlate or support significant theories such as the *receptie* theory of Snouck Hurgronje. This means that the paradigm used by the community in resolving disputes in principle has relevance to Islamic law, which is based on a peaceful win-win solution approach.

References

- Ad, M. Faizurrizqi Al-Farisi, Ziada Hilmi Hanifah, and Nurul Kasanah. "Progressivity of Dum-Dum Kupat Inheritance Distribution in Java Community Perspective of Progressive Legal Theory Satjipto Rahardjo (Study in Pehserut Village, Sukomoro District, Nganjuk Regency)." *Budapest International Research and Critics Institute (BIRCI-Journal): Humanities*

⁴⁶ J. F. Holleman, *Van Vollenhoven on Indonesian Adat Law*, 1981, <https://link.springer.com/book/10.1007/978-90-247-6174-6>.

- and Social Sciences* 5, no. 1 (January 22, 2022): 1356–67. <https://doi.org/10.33258/birci.v5i1.3739>.
- Ainiyah, Qurrotul, Syarifah Marwiyah, and Sri Lumatus Sa`adah. “Pembagian Waris Etnis Madura terhadap Anak Luar Nikah di Dusun Kebonan Kecamatan Yosowilangun Kabupaten Lumajang.” *AL-IHKAM: Jurnal Hukum & Pranata Sosial* 11, no. 2 (2016): 335–60. <https://doi.org/10.19105/al-lhkam.v11i2.1018>.
- Armunanto, Armunanto. “The Inheritance Dispute Settlement In Court.” *Jurnal Akta* 8, no. 3 (November 5, 2021): 143–50. <https://doi.org/10.30659/akta.v8i3.17946>.
- Basri, Cik Hasan. *Pilar-Pilar Penelitian Hukum Islam Dan Pranata Sosial*. Jakarta: Raja Grafindo Persada, 2004.
- Basyir, Ahmad Azhar. *Hukum Waris Islam*. Yogyakarta: UII Press, 2001.
- Bello, Temitayo. “Negotiation as a Tool for Dispute Resolution and Conflict Management in a Changing World.” SSRN Scholarly Paper. Rochester, NY, July 28, 2017. <https://doi.org/10.2139/ssrn.3010144>.
- Cammack, Mark. “Islamic Inheritance Law in Indonesia: The Influence of Hazairin’s Theory of Bilateral Inheritance.” *Studia Islamika* 10, no. 1 (2003). <https://doi.org/10.15408/sdi.v10i1.639>.
- Carver, Todd B., and Albert A. Vondra. “Alternative Dispute Resolution: Why It Doesn’t Work and Why It Does.” *Harvard Business Review*, May 1, 1994. <https://hbr.org/1994/05/alternative-dispute-resolution-why-it-doesnt-work-and-why-it-does>.
- Creutzfeldt, Naomi, Marc Mason, and Kirsten McConnachie, eds. *Routledge Handbook of Socio-Legal Theory and Methods*. Routledge Handbooks. London, New York: Routledge, Taylor & Francis Group, 2020.
- Elfia, Elfia, Surwati Surwati, and Bakhtiar Bakhtiar. “The Struggle of Custom and Sharia: Classic Dilemma of Inheritance Settlement in Javanese and Minangkabau Ethnic Communities in Indonesia.” *Al-Istinbath: Jurnal Hukum Islam* 8, no. 1 May (May 16, 2023): 75–94. <https://doi.org/10.29240/jhi.v8i1.5480>.
- Emirzon, Joni. *Alternatif Penyelesaian Sengketa Di Luar Pengadilan (Negosiasi, Mediasi, Konsultasi Dan Arbitrase)*. Jakarta: Gramedia Pustaka Utama, 2000.
- Haar, B Ter. *Asas-Asas Dan Susunan Hukum Adat*. Jakarta: Pradnya Paramita, 1981.
- Hamdani, Fahmi Fatwa Rosyadi Satria, Suci Pebrianti, Liza Dzulhijjah, and Hudzaifah Muhammad Maricar. “Traditional Law vs. Islamic Law; An

- Analysis of Muslim Community Awareness in Inheritance Issues.” *Al-Ahkam* 32, no. 1 (April 28, 2022): 109–30. <https://doi.org/10.21580/ahkam.2022.32.1.11000>.
- Hamzani, Achmad Irwan, Havis Aravik, Mukhidin Mukhidin, and Eddy Praptono. “Considering the Living Law as A Source in National Legal Development.” *Jurnal Cita Hukum* 7, no. 2 (August 17, 2019). <https://doi.org/10.15408/jch.v7i2.10951>.
- Haq, Hilman Syahrial. *Pengantar Hukum Adat Indonesia*. Jakarta: Penerbit Lakeisha, 2020.
- Hasyim, Muh Fathoni, Liliek Channa Aw, and Moh Mufid. “The Walagara Marriage Ritual: The Negotiation between Islamic Law and Custom in Tengger.” *Journal of Indonesian Islam* 14, no. 1 (June 1, 2020): 139–62. <https://doi.org/10.15642/JIIS.2020.14.1.139-162>.
- Hauser-Schaublin, Brigitta, and David D. Harnish, eds. *Between Harmony and Discrimination: Negotiating Religious Identities within Majority-Minority Relationships in Bali and Lombok*. Netherland: Brill, 2014.
- Hazairin. *Hukum Kewarisan Bilateral Menurut Al-Qur’an Dan Hadis*. Jakarta: Tintamas, 1982.
- Hipni, Mohammad. “The Study of Maqashidi Sharia Toward Maduresse Traditional Inheritance by Using System Approach.” *AL-IHKAM: Jurnal Hukum & Pranata Sosial* 14, no. 1 (June 30, 2019): 50–71. <https://doi.org/10.19105/al-lhkam.v14i1.2159>.
- Holleman, J. F. *Van Vollenhoven on Indonesian Adat Law*, 1981. <https://link.springer.com/book/10.1007/978-90-247-6174-6>.
- Jamil, M. Muhsin, ed. *Mengelola Konflik Membangun Damai (Teori, Strategi Dan Implementasi Resolusi Konflik)*. Semarang: Walisongo Mediation Center, 2007.
- Kaplan, David. *Teori Budaya*. Yogyakarta: Pustaka Pelajar, 2000.
- Lukito, Ratno. *Legal Pluralism in Indonesia: Bridging the Unbridgeable*. Routledge, 2012.
- Muslimin, M. “An Analysis of Local Wisdom Message through Inheritance Media in the East Java Society,” 88–90. Atlantis Press, 2018. <https://doi.org/10.2991/amca-18.2018.25>.
- Noeradyo, Siti Woejan Soemadiyah. *Kitab Primbon Betal Jemur Adamakna Babasa Indonesia*. Solo: Buana Raya, 1994.
- Permana, Sugiri. “Implications of Hazairin and Munawir Sjadzali Thoughts In Establishment of Islamic Inheritance In Indonesia.” *AHKAM : Jurnal*

- Ilmu Syariah* 18, no. 2 (July 12, 2018).
<https://journal.uinjkt.ac.id/index.php/ahkam/article/view/9866>.
- Platt, Maria. *Marriage, Gender, and Islam in Indonesia: Women Negotiating Informal Marriage, Divorce and Desire*. Women in Asia Series 51. London ; New York: Routledge, Taylor & Francis Group, 2017.
- Rafianti, Fitri, Arik Dwijayanto, and Azharuddin Mohd Dali. "The Dialectics of Islamic Law and Customary Law on Marriage Concept of Javanese Muslim in Malaysia." *Justicia Islamica: Jurnal Kajian Hukum Dan Sosial* 18, no. 2 (November 19, 2021): 298–317.
<https://doi.org/10.21154/justicia.v18i2.3126>.
- Rajagukguk, Erman. "Legal Pluralism and the Three-Cornered Case Study of Women's Inheritance Rights Changing in Lombok." *Legitimacy, Legal Development, and Change: Law and Modernization Reconsidered* 213 (2016).
- Reskiani, Anugrah, Dian Furqani Tenrilawa, Aminuddin Aminuddin, and Rahman Subha. "Reform Methods of Islamic Inheritance Law in Indonesia in Jurisprudence." *JURIS (Jurnal Ilmiah Syariah)* 21, no. 1 (June 9, 2022): 39–51. <https://doi.org/10.31958/juris.v21i1.5564>.
- Takdir, Mohammad, Fajrul Munir, Ali Ludhfi, Muliyanzah Muliyanzah, and Zainol Muttaqin. "The Takharrūj Method as an Islamic Legal Solution for Customary Inheritance Practices among Muslim Communities in Pakamban Laok, Sumenep, Indonesia." *Journal of Islamic Law (JIL)* 4, no. 1 (February 28, 2023): 104–22. <https://doi.org/10.24260/jil.v4i1.1044>.
- Temitayo, Bello Adesina. "Negotiation as a Tool for Dispute Resolution and Conflict Management in a Changing World." *International Journal of Innovative Research and Development* 3, no. 8 (August 28, 2014).
http://www.internationaljournalcorner.com/index.php/ijird_ojs/article/view/134955.
- Todorović, Ilijana, and Bobby Harges. "Alternative Dispute Resolution in the World of Commercial Disputes." *Journal of Strategic Contracting and Negotiation* 5, no. 4 (December 1, 2021): 214–21.
<https://doi.org/10.1177/20555636221074424>.
- Vela, Anggita. "Pembagian Waris Pada Masyarakat Jawa Ditinjau Dari Hukum Islam dan Dampaknya." *As-Salam: Jurnal Studi Hukum Islam & Pendidikan* 4, no. 2 (October 16, 2015): 67–91.
<https://doi.org/10.51226/assalam.v4i2.74>.
- Widyasari, Tira, and Burhanudin Harahap. "Praktik Pembagian Waris Di Kalangan Pemuka Agama Islam Di Kauman Kabupaten Magetan." *Jurnal Repertorium* 6, no. 1 (January 1, 2019): 13.
- Winata, Frans Hendra. *Hukum Penyelesaian Sengketa*. Jakarta: Sinar Grafika, 2012.

Wiranata, I. Gede A. B. *Hukum Adat Indonesia Perkembangan dari Masa ke Masa*. Bandung: Citra Aditya Bakti, 2005.

Zubair, Asni, Hamzah Latif, and Al Furqon Dono Hariyanto. "The Construction of Inheritance Law Reform in Indonesia: Questioning the Transfer of Properties through Wasiat Wājibah to Non-Muslim Heirs." *Samarah: Jurnal Hukum Keluarga Dan Hukum Islam* 6, no. 1 (June 27, 2022): 176–97. <https://doi.org/10.22373/sjhc.v6i1.12628>.