



## HUMANISM IN INHERITANCE DISTRIBUTION IN SAMPANG MADURESE CULTURE

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**Abstrak:** Persoalan kritis dalam hukum kewarisan Islam di dunia modern pada umumnya berkisar pada hak dan kedudukan perempuan di hadapan laki-laki. Banyak kalangan menyatakan bahwa hukum kewarisan Islam tradisional yang bersifat ‘patriarkhi’ dan ‘misoginis’, dan bertentangan dengan prinsip kesetaraan gender dan hak asasi manusia. Ada dua permasalahan yang menjadi kajian pokok dalam penelitian ini, yaitu; praktik waris di Sampang Madura dan pandangan humanisme pada waris Sampang Madura. Penelitian ini menggunakan metode kualitatif dengan data yang diperoleh melalui wawancara, observasi dan dokumentasi. Penelitian ini membuktikan adanya kesetaraan kedudukan waris antara laki-laki dan perempuan dalam adat Sampang Madura, dengan penerapan sistem kewarisan adat dan Islam. Hal ini menjadi bukti bahwa masyarakat adat Sampang Madura tidak mendiskreditkan perempuan atau ketidakberpihakan terhadap perempuan. Selain itu, masyarakat Sampang Madura menjunjung nilai humanisme dalam pembagian waris antara laki-laki dan perempuan dengan konsep-konsep *masalah* yang diterapkannya.

**Kata kunci:** humanisme, waris, adat, *masalah*

**Abstract:** Critical issues in Islamic inheritance law in the modern context is mostly related to women's proportion and position compared to men's. Many believe that Islamic traditional inheritance law has patriarchal and misogynist characteristics. Therefore, the system is incompatible with the principle of gender equity and human rights. This paper aims at investigating the practice of inheritance distribution in Sampang Madura, and the humanism perspective of the system. This research relies on a qualitative approach by employing interviews, observation, and documentation. It is found that, in Sampang Madura, men and women have equal position in inheritance. The people of Sampang Madura combine the customary and Islam laws in their inheritance system. This study reveals that Madurese people do not marginalize women and uphold the value of humanism in the inheritance distribution by considering the implementation of *maslahah* principle.

**Keywords:** humanism, inheritance, Islamic inheritance, culture, *maslahah*

## Introduction

Sampang Madura people are known for their Islamic adherence. Many aspects of their lives are influenced by Islamic law and based on Islamic teachings and values. This also applies to inheritance law. There are various methods used in the distribution of inheritance in order to maintain the aspect of *maslahah* in approaching the issues. This *maslahah* becomes the main consideration in the inheritance distribution by also involving the value of humanism. Among Sampang Madurese society, the proportion for women and men does not always 2:1 as is determined by Islamic law. Nevertheless, it is believed that this proportion has a fairness dimension, considering that, in many cases, men hold more responsibility in the family as breadwinners. However, in other cases, this provision may not be applicable, and women need an equal share as men. This is because of society's exposure to current development. (Artijo Alkostar, 1986, p. 35). Moreover, based on Indonesian law, there are three legal systems that can be used in the inheritance, such as civil law, customary law, and Islamic law (Suparman, 2005, p. 12). Such cases and the social changes, however, do not alter nor abolish the basic principle of Islamic inheritance law. (Nadia, 2018, pp. 73-74)

The practice of inheritance division in Sampang Madura is an interesting issue. This is because the people consider the notion of *maslahah* and humanism in its process. The *maslahah*, which is originated from Islamic law, becomes the main consideration for the people in their customary inheritance law. According to Imron Rosyadi, a custom is one of the instruments used in the formulation of Islamic law by Islamic legal scholars (*madhab*). One of the principles in Islamic law is that a law can change due to the change in the custom of the people in certain time and place. In a legal formulation process, the existing customs should be considered in the interpretation of Quran and Hadith of the Prophet, especially that are related to the obligatory terms in certain customs to find their real meaning. (Rosyadi, 2005, pp. 10-11)

Custom becomes one of the instruments in determining Islamic law. This also applies in the inheritance system of the Sampang people in Madura. Therefore, this research attempts to see how the principles of *maslahah* and humanism are used as a reason in the customary based inheritance law.

## Research Method

This research uses qualitative approach by direct contact with the informants. In this case, the researchers see the phenomenon and customs in that society as a whole, unbound from certain variables or hypotheses. This approach enables the researchers to reveal issues around the inheritance distribution in Sampang society and to become more sensitive in looking at the influence of such issues on the people. The objective of this is to obtain more valid and accountable data. The distinction of this research from others is in the notion of *maslahah* and humanism that are used in the customary based inheritance law to create justice among the people. This research was conducted in Sampang Madura in 2019.

## Discussion

Sampang is a region located in  $113^{\circ} 08'$  to  $113^{\circ} 39'$  east latitude and  $06^{\circ} 05'$  to  $07^{\circ} 13'$  south longitude. Sampang is located on the equator, and around 100 KM from Surabaya. Most of the areas are mainland. The regency only has one separated island, namely Mandangin. (Ma'arif, 2015, pp. 25-26). There are 14 districts in the regency such as Sampang, Omben, Camplong, Torjun, Pengarengan, Jrengik, Sresch, Kadungdung, Robatal, Tambelengan, Karang Penang, Ketapang, Banyuates, and Sokobanah. (Data Dokumentasi Dinas Koperasi Sampang 2019)

In terms of the inheritance law, the notion of *maslahah* (public interests) and humanism are used to maintain equality in the division of inheritance for men and women. In this case, there is a need to consider the social situation for further society development, in which every job can be done with skills and creativities and not merely physical power. (Fakih, 1999, p. 50). The term humanism refers to an intellectual attempt to give a meaning to humanity and human involvement in their world. (Saifullah, 2014, p. 142). In the case of inheritance, humanism means upholding humanism values in achieving *maslahah* in the share distribution.

Customary based inheritance law in Sampang upholds the idea that the inheritance should be used and given to those who are really in need. This is in line with Prayudi Kumala's argument, saying that

the inheritance is distributed using Islamic law, or *faraid* (Islamic inheritance law). However, that is not enough, because the share distribution may not appropriate or be considered fair for certain people. Therefore, the distribution system may take another form. For example, a deceased parent left a huge amount of money and it is divided to the heirs according to the provisions in Islamic law or *faraid*. After that, however, those who are rich may take some of their parts to be given to those who are less fortunate, regardless their sex (male or female). In this case, the principle of *faraid* is merely used to calculate the sufficiency of the properties. After the implementation of *faraid*-based calculation, the people can share their parts to their needy relatives as gifts. (Kumala, 2019). In this matter, the inheritance is distributed by considering *maslahah*, which refers to the giving of the inherited properties from a fortunate person to his/her unfortunate relatives.

The inheritance distribution system in Indonesian regions vary. The people of the coastal area of Lampung use Islamic inheritance law and give men higher proportion due to their belief that men are the central figure in a family. (Herlina, 2016, p. 96). Hamim Sultoni's study in Torjun regency shows that the inheritance division does not exist in that society. This is because the deceased parents shared their wealth to their children as gifts. (Sultoni, 2019). If the inheritance exists, then they will use Islamic law by also consider *maslahah*. This is similar to the finding of Kholifah in Pengarengan Regency that the customary law on inheritance implemented in the regency is influenced by Islamic law. The difference lies in the responsibility of male, who is fortunate, to assist their unfortunate relatives. This means that the man should give some of his parts to the needy relatives. In this case, the division of men and women is not always 2:1. (Kholifah, 2019)

Those customary based inheritance distribution practices more or less are similar to the concept of Islam in several ways: in the types of the property, the distribution method, and the consideration of *maslahah* in terms of the benefit of the shares. Another similarity between the concept of Islam and customary laws in Indonesia concerning inheritance is in the definition of *waris* or inheritance. Both agree that *waris* is as the process of property transfer or inherited properties from

the deceased or joint property (in a marriage). Both systems make the offspring or children as the primary heirs.

The differences in the two systems are in the process of the transfer of the property and its relationship with the death of the testator. In Islam, the properties are distributed after the death of the testator. In this, Islamic law regards the principle of balance fairness. Meanwhile, in the customary law, the transfer of property can be done before the testator passes away. The principle used in this practice is the principle of deliberation and consensus. In Islamic law, the order of inheritance recipients is *ashab alfurud*, *'asabah*, and *zawil arham*, while in the customary law the recipients are those who have a family relationship, as is recognized by the law living in certain society. (Haries, 2014, p. 228). Azhar Amrullah Hafidz finds out that in Campong the inheritance distribution more considers *maslahah* than the concept of 2:1 (Hafidz, 2019).

This particular research finds out that the inheritance is distributed earlier before the death of testator, in the case that the heirs need financial supports. In the Javanese culture, the inheritance distribution consists of two methods: 1) *sigar semangka* (1:1) in the case where the heirs have a good financial condition. 2) If the heirs are considered unfortunate, then the distribution uses the principle of *segendong sepikul* (1:2) (Sudaryanto, 2010, pp. 50-51). Arif Wahyudi maintains that the inheritance is distributed before the death of the testator by seeing the need of the heirs. In such a case, the male heirs obtain *pangan* (food), while the female heirs obtain *pakon*. This means that men gain matters that can be used for economic activities, such as farms, etc. The women, on the other hand, gain a house because parents tend to prefer staying with their daughters to spend the rest of their lifetime. If the parents have not distributed the inheritance due to the financial capability of the heirs, then, the properties will be divided according to the customary law. In this case, those who are considered less fortunate will obtain more. (Wahyudi, 2019)

Among the Sampang society, the use deliberation and consensus principles in the inheritance distribution results in positive impacts because the method can hamper disputes among family members.

Islamic law methods of inheritance distribution possess the value of gender equality and fairness. Men and women have equal rights to their

parents' properties. The division of 2:1 is due to men's greater financial responsibility in a family. (Bachtar, 2012, p. 40) The use of this 2:1 division is common among society, regardless of their educational, social, and economic background, and their understanding of the law. Therefore, the most important factor to be considered in the inheritance cases in the fulfilment of *maslahah*, even if women and men should have equal shares.

According to Rumzah, the distribution of inheritance depends on the economic condition of the heirs. However, if a dispute occurs during the process, then the method used refers to Islamic law (Rumzah, 2019). The use of customary law is allowable in Islam as long as the methods do not violate the basic principle of Islamic law.

Customs can also be used as the source of reason in *ijtihad* (reasoning). This is to ensure that the law is in accordance with the need of society. Faiz Zainuddin posits that the concept of *'urf* (custom) among the four Islamic legal schools (*madhab*) can be used as a legal reason. Therefore, legal products of these *madhabs* have been influenced by particular condition and situation where the law was formulated. (Zainuddin, 2018, p. 156). *'Urf* can be used as one source of Islamic law as long as it continuously kept and agreed upon by the society, and there should not be a stipulation from the Quran that contradicts or against the *'urf*. Another thing is that the *'urf* cannot alter and neglect the *nass* (Divine decree) (Zainuddin F. , 2015, p. 405).

The practice of customary based inheritance distribution can also be found in Karang Penang as is in the study of Zainullah. Zainullah finds out the inheritance distribution has not always referred to the provision of 2:1 as in Islamic law. In many cases, the people rely on the deliberation and consensus of the family members. Usually, the shares depend on the economic conditions of the heirs. The less fortunate heirs will obtain more compared to the fortunate ones. This is done for the sake of family goodness. The method will return to the provision of 1:2 if none of any problem occurs. The tradition of consensus-based inheritance distribution has existed since a long time ago. Even the current generation may not realize when this tradition was started to be implemented. (Zainulloh, 2019,). However, people still maintain the traditions for public interests, as the system may prevent disputes among family members.

It can be seen that the customary based inheritance distribution pays attention to the value of humanism without neglecting the values of *maslahah*. As is explained by Ahya Ulumuddin, in Sampang, the inheritance is divided by giving priority to the oldest child. This is because the oldest child has a higher responsibility regardless the gender, male or female. Therefore, a greater amount of inheritance is given to the oldest. However, if, for example, other siblings are less fortunate than the oldest, the oldest should help them. This is considering that the oldest child is the leader in the family (Ulumuddin, 2019).

Walim Walim illustrates that the Islamic inheritance method can be seen from different perspectives: from its legal objects or the properties subjected to civil law provisions; and from its scope as a part of *fiqh muamalah* (Islamic jurisprudence of transaction and human relationship). With this framework, the study on Islamic inheritance becomes more open, and *ijtihad* or legal reasoning on various inheritance cases becomes feasible. As a result, Islamic inheritance law can be more adaptable to the dynamical changes in the society. (Walim, 2017, pp. 52-53)

## Conclusion

This research concludes that the inheritance system in Sampang Madura gives priority to the *maslahah* or public goods. Because of this, the division for men and women does not always 1:2, as is determined by Islamic law. Moreover, the system also considers the value of humanism by considering human natures and the socio-economic position of men and women. This means that the system considers the interests of humanity. Therefore, it is not uncommon to find that women in Sampang Madura obtain more shares compared to men.

However, the practice in Sampang Madura does not imply that Islamic inheritance law is less humane. Such differences are more due to the living traditions in the society, its culture, social structure, and the desire to uphold public interests or *maslahah*.

In practice, the inheritance distribution of Sampang Madurese people consists of two methods: 1) using deliberation and consensus among family members by considering the economic conditions of the heirs. In this case, the less fortunate heirs gain more shares. 2) The



oldest child gains more share compared to others because the oldest is the leaders. The oldest requires to be responsible and share his or her portion to other siblings who are less fortunate.

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