



The Concept of Madurese Customary Inheritance from the Perspective of Anthropology and Islamic Law

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Abstract: The Pakaan Dajah Village community in Madura has a tradition of inheritance distribution that deviates from the faraid system of Islamic law. In other words, this village has an inheritance distribution system that does not conform to the distribution of inheritance as outlined in Islamic law. This study examines the implementation of customary inheritance from the perspective of legal anthropology and Islamic law using a juridical-empirical and juridical-sociological approach through qualitative methods. Data were collected through literature studies, interviews, observations, and documentation. The results show that inheritance distribution is carried out in two ways: during the testator's lifetime through a gift or will, and after the testator's death through deliberation and consensus among the heirs. This tradition tends to divide assets equally without distinction of gender, because men and women are considered to have equal value and roles in the family. This tradition is considered fairer and minimizes conflict, and is deeply rooted in society. Contextually, this inheritance practice can be justified because it is in line with the principle of deliberation and consensus in Islam and can be categorized as takharuj in Hanafi jurisprudence, although under certain conditions, the distribution can still be returned to the faroid system.

Keywords: customary inheritance, anthropology, Islamic law

Abstract: Masyarakat Desa Pakaan Dajah di Madura memiliki tradisi pembagian harta warisan yang tidak mengikuti sistem faroid hukum Islam. Dengan kata lain, desa ini memiliki sistem pembagian harta warisan yang tidak sesuai dengan pembagian harta warisan dalam hukum Islam. Penelitian ini mengkaji pelaksanaan pewarisan adat dari perspektif antropologi hukum dan hukum Islam dengan menggunakan pendekatan yuridis-empiris dan yuridis-sosiologis melalui metode kualitatif. Data dikumpulkan melalui studi pustaka, wawancara, observasi, dan dokumentasi. Hasil penelitian menunjukkan bahwa pembagian harta warisan dilakukan dengan dua cara: pada saat pewaris masih hidup melalui hibah atau wasiat, dan setelah pewaris meninggal dunia melalui musyawarah dan mufakat di antara para ahli waris. Tradisi ini cenderung membagi harta secara merata tanpa membedakan jenis kelamin, karena laki-laki dan perempuan dianggap memiliki nilai dan peran yang sama dalam keluarga. Tradisi ini dianggap lebih adil dan meminimalisir konflik, serta berakar kuat dalam masyarakat. Secara kontekstual, praktik pewarisan ini dapat dibenarkan karena sejalan dengan asas musyawarah dan konsensus dalam Islam dan dapat dikategorikan sebagai takharuj dalam fikih Hanafi, meskipun dalam kondisi tertentu, pembagiannya masih dapat dikembalikan kepada sistem faroid.

Keywords: waris adat, antropologi, hukum islam

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Introduction

When someone dies, various legal consequences automatically arise regarding their legal status. One important aspect of concern in this context is the rights and obligations left behind by the deceased, particularly regarding property ownership, debts, and responsibilities to heirs or other interested parties. Therefore, the legal system uses the term "inheritance law," which regulates the mechanism for transferring property rights and settling obligations from the deceased to their heirs (Abrori & Lisdiyono, 2024). Inheritance is a very sensitive topic, especially when discussed continuously within a family or community environment, because it has the potential to cause division and conflict (Triyanto & Wardani, 2023).

Because inheritance is a highly sensitive matter with the potential for disputes, Islam has very detailed and comprehensive rules regarding the transfer of inheritance from the testator to his heirs, known as Islamic inheritance law. These rules not only regulate who is entitled to receive an inheritance but also stipulate the proportions or specific portions that each heir must receive, per Sharia law (Sanaky & Fahmi, 2024). In Islamic jurisprudence, this inheritance law is known as *al-farā'iḍ*, namely a branch of knowledge in Islam which specifically discusses the distribution of inheritance based on the texts of the Qur'an, Hadith, and the consensus of scholars.

Indonesia, as a country based on law, has several inheritance concepts that apply in Indonesia (Riyanto & Arifin, 2024). These concepts are the concept of civil inheritance law, the concept of Islamic inheritance law, and the concept of customary inheritance law (Tanaya, 2023; Azizah et al., 2023). Certain communities determine inheritance distribution proportions based on local customs. One area that still widely applies the customary inheritance system is Madura, specifically in Pakaan Dajah Village, Galis District, Bangkalan. According to information received from the author, many people in the village still practice inheritance distribution using the customary system and pay little attention to Islamic inheritance law. Even though 100% of the population there is Muslim, and there are many religious figures and even Islamic boarding schools (*pesantren*), many residents still use customary inheritance distribution.

Among the forms of inheritance distribution in Pakaan Dajah Village that the author found were: Equal distribution between male and female heirs. Furthermore, the only heirs are the deceased's wife and children. The deceased's father, mother, siblings, grandparents, and uncles are not included. When the mother (the deceased's wife) is still alive, the father's inheritance will not be distributed to his children because, in society, the mother (the deceased's wife) is the person who

replaces the father in caring for and raising the children. Daughters also have the right to occupy the house inherited from their parents.

The topic of Madurese customary inheritance law was previously discussed in Erisa Maydina's research entitled *The Existence of Customary Inheritance Law in the Indonesian Legal System* (Althaf, 2023). This study lacks a normative framework, namely, it only discusses customary inheritance law in general and does not focus on the customary inheritance laws of a specific region. Another study by Moh. Wasik, entitled "Madurese Customary Inheritance in Islamic Inheritance from the Maqashid Al-Syari'ah Perspective," is presented (Wasik, 2023). A limitation of this study is that it did not examine the psychology of the customary territory of Madura Island as a whole, which is still very common. Therefore, this study offers a novel legal issue: analyzing Madurese customary inheritance law in Pakaan Dajah Village from an anthropological and Islamic legal perspective.

At first glance, the inheritance distribution practice above is different from the provisions of faraid, which are sourced from the Qur'an, hadith, and others. (Adistyan, 2024) However, this practice has become commonplace and continues to this day. Given this phenomenon, the author is interested in further analyzing the concept of customary inheritance among the Pakaan Dajah Madurese community from an anthropological and Islamic legal perspective. The goal is to provide the general public, especially the Pakaan Dajah Madurese community, with a wealth of knowledge regarding the validity of customary inheritance law as implemented through Islamic law.

Methods

This research uses an empirical juridical research type (Rusli, 2018). This study explores the facts in the field through observations in Pakaan Dajah Village and in-depth interviews with local community leaders. In this study, researchers used two types of data sources: primary and secondary. Primary data was obtained directly from the field through observations and interviews with informants from several community leaders. This was used to capture the empirical reality regarding the tradition of customary inheritance distribution in Pakaan Dajah Village. Meanwhile, secondary data was used to strengthen the theoretical foundation through literature reviews and other relevant sources (Mertokusumo, 2012). This is used to obtain a precise concept regarding the legal status of customary inheritance distribution, from the perspective of anthropology and Islamic inheritance law. As William Halviand argued, anthropology is the science that studies humans and their behavior. Therefore, the behavior of the Pakaan Dajah community regarding their customary inheritance distribution traditions is important to explore (Husain & Afif, 2024). The data collection procedure was carried out using two main methods, namely direct observation in the field to understand social phenomena contextually

and in-depth interviews that were open and flexible to dig up detailed information from informants who played an important role in the practice of this tradition.

Result and Discussion

Result

General Description of Research Location

Pakaan Dajah Village is one of the villages in Galis District, Bangkalan Regency. All residents of Pakaan Dajah Village adhere to one belief, namely Islam. The people of Pakaan Dajah Village are the same as Madurese people in general; they highly uphold morals and ethics, in Madurese language, it is known as *ajhegeh tengka*. Although Madurese people are known to be harsh by others, in essence, Madurese people highly uphold politeness and always try to respect others. In the opinion of the Pakaan Dajah community, if there is someone who is educated, good in religion, devout in worship, and broad in knowledge, but if he does not have good behavior towards society, friends, and neighbors, then he will not be considered a noble person.

The majority of the people of Pakaan Dajah Village still uphold religious education. Many people receive formal education, but only up to high school level. Many others choose to study at Islamic boarding schools (*pesantren*), both on and off Madura Island. The Pakaan Dajah community has diverse livelihoods. Some are farmers, traders, civil servants, casual laborers, carpenters, and some have chosen to migrate outside the region or even abroad.

The Concept of Heirs and Inheritance in the Customary Inheritance Law of the Pakaan Dajah Community

An heir is a deceased person who leaves behind an inheritance. However, according to the Pakaan Dajah community, an heir does not have to be deceased, as stated in an interview with Mr. Muhammad Khalid, a religious figure in Pakaan Dajah Village. According to the Pakaan Dajah community, heirs are those who have a marital relationship if there is wealth generated in the marriage. This was conveyed by Mr. Muhammad Yahya, one of the community leaders of Pakaan Dajah:

"Weri's expert monggu community clothes Degeh nikah bineh ben nak potonah deceased. Karnah tojuen otamanah reng tua alakoh enggi nyareh engonan ben masejahtera odi'eh bineh ben nak potonah. Reng toanah deceased deceased marriage cannot naremah werisan deri anak'eh se tadek omor. Because the Kintok community's" motto is "Tadhek ebbhol nyellok ka cantheng tape canthen se nyellok ka ebbhol". For example, buleh mateh then deddih expert weris marriage with children. Tang reng toah can't deddih weris expert. Bineh jugen kenging weisenah lakenah. Because lakeh nikah ongunah nyareh engonah bineh. Although the heirs will be guardians, the Pakaan degeh nikah community considers the child of the marriage to be the most powerful deddih weris expert. Mun, for example, buleh

nerimah sangkolan soil derih reng seppo. Teros buleh mateh, pas adinah due' anak. Then the gelle' land immediately becomes the child's child."

(According to the Pakaan Dajah community, the heirs are the wife and children of the deceased, because the main purpose of parents working is to provide for and improve the lives of their wives and children. If the parents are deceased, they cannot be heirs or are not allowed to receive property from their deceased children because the Pakaan Dajah community has a motto: "Tadhek ebbhol nyellok ka cantheng tape canthen se nyellok ka ebbhol". For example, if I die, the heirs will be my children, while my parents are no longer allowed to be heirs. On the other hand, the wife can also receive a share of the property left by her husband, because a husband is obliged to provide for his wife. However, when talking about heirs, the Pakaan Dajah community assumes that the child is the strongest to be the heir. If I receive an inheritance in the form of a plot of land from my parents and then die and leave two children, the land given by my parents is immediately owned by my children.)

The heirs in the Pakaan Dajah community are the descendants of the heir, namely children and husband/wife, if there are none, then the parents, and if there are no parents, then the siblings. As long as there are children, the inheritance falls to the children. In the customs of the Pakaan Dajah community, parents do not ask for a share because they prioritize their descendants. This tradition stems from the Madurese philosophy that says "tadhek jeddhing nyellok ka cantheng" (no aga jeding who takes water from the dipper), meaning that parents are depicted as jeding while children are depicted as dippers, so it should be the dipper that takes water from the jeding, namely the children who take from their parents and not vice versa. The explanation above was stated by Ust. H Qusairi M.Pd, a religious figure in Pakaan Dajah Village, as follows:

"Usually, as it is called expert child marriage ewis, lakeh otabeh bineh. Mon tade' maka reng seppo, mon tade' reng seppo then tantretanah deceased. Reng seppo not mondut werisen karnah bedeh ca'oca' " "tadhek jeddhing nyellok ka cantheng"

(Usually the heirs are the children, husband or wife, if there are none, then the parents, and if there are no parents, then the deceased's siblings. Parents do not take the inheritance because there is an expression "tadhek jeddhing nyellok ka cantheng")

The same sentiment was echoed by Mr. H. Fauzi, the current head of Pakaan Dajah Village. He stated that Madurese, especially those living in Pakaan Dajah Village, believe in a philosophical principle called "tadhek jeddhing nyellok ka cantheng," meaning that no parent should ask for anything from their children. This is because the Madurese spirit has existed for a long time, where parents work hard, strive, and pray for the well-being of their children. As a result, the mindset of

parents in the Pakaan Dajah community is deeply rooted in the children and their descendants. Parents who refuse to ask for a share of their children's inheritance do not mean they are unaware of their rights. They understand this, but they will not ask for it.

"Sataonah Sengkok, Ben Binih's child marriage was expert. Oreng seponah deceased don't ask for werisen. Marriage, karnah bedeh ca'oca' " "tadhek jeddhing nyellok ka cantheng". Monggu Kinto community's heir alakoh nyareh livelihood ontok kaparlona family, enggi bineh ben nak potoh. So it's not appropriate mon selaenah includes batten seppo ben tan tretanah mon gi ngala'ah warisen. Reng seppo mele lok ngalak Baginah for a week faroid, because it's more important when kamapanah nak potonah."

(As far as I know, the heirs in Pakaan Dajah are the children and the wife. The parents of the deceased do not ask for an inheritance. This is because there is a proverb "tadhek jeddhing nyellok ka cantheng". According to the people here, the heir works to earn a living for the benefit of the family, namely his wife and children. So it is not appropriate if anyone other than them, including his parents and siblings, also takes part in the inheritance. The parents prefer not to take their share of the inheritance, because for them, the welfare of their grandchildren is more important.)

This understanding states that, according to some Pakaan Dajah communities, children or their descendants are heirs. This can be seen from the inheritance pattern: if parents give their children land, for example, and they marry and die, their wives/husbands will not receive any part of the land because the land will be passed on to their children/descendants. This is as stated in an interview with Ustadz Baidowi:

"ontok heir, mon lakeh mateh, binih nikah andi' hak olle dunnnyah se idinggelagih. Reng seppo jugen kenging ben anak marry paleng hak. Married child is the priority. Seharoseh mon lakeh-bineh andi' anak ben is wrong sittongah mateh, then ben's son bineh jugen reng tuah marries deddih heir. Tapeh usually oreng toah don't ask, because oreng e kinto' it is more important to want a potonah than se laen."

(For heirs, if a husband dies, his wife has the right to receive a share of the property he left behind. Parents can also, and children have the most rights. Children are the main priority. Supposedly, if a husband or wife has children and one of them dies, the children and the wife will be the heirs as well as the parents. However, parents do not ask for inheritance, because parents in this place prioritize their grandchildren over anyone else.)

In this regard, Mr. Abdur Rohman, a prominent figure in the Pakaan Dajah community, stated that children are considered the most important heirs. However, this does not mean that other people, such as parents, fathers, mothers, or spouses, are not considered heirs. However, according to the Pakaan Dajah community, the

goal of parents is to earn money and pass it on to their children; thus, the heirs are referred to as children.

"What's more important for potoh? Karnah, monnggu posepponah, nyareh kasab nikah kaanggui nak potonah. Means reng seppo stock aberri'eh napah se ekaandik sauce for nak potonah."

(Why are children more important? Because, according to the elders, earning "kasab" (income) for their children means they will give whatever they have to their children.

In the Pakaan Dajah community, heirs are those entitled to receive inheritance from the first heir, namely children, if there are no children from parents or siblings. As long as there are children, the inheritance passes to them. Parents in the Pakaan Dajah tradition do not ask for a share because they prioritize their offspring. This was conveyed by KH. Iwan Sofwan is the caretaker of the Miftahul Ulum Islamic boarding school. As follows:

"sataonah buleh, oreng kinto' clothes Degeh, reng sepponah mayit not mondut werisennah anak eh. Lerres bedeh ca'oca' ". Pahamah oreng kinto' werisen nikah burunah de' nak potoh benni kase laen. Nikah ibukteagih klaben pemegien sangkolan e odhie mayit. Marriage matters, understand se laabit e kinto society."

(As far as I know, people here wear Dajah clothes, and the heir's parents don't take their child's inheritance. There is indeed a ca'ocak "tadhek jeddhing nyellok ka cantheng". The understanding of people here is that inheritance passes to the descendants and not to others. This is proven by the distribution of the sangkolan during the heir's lifetime. This is an understanding that has long existed in the community here.)

In general, the people of Pakaan Dajah village consider inheritance to be all the possessions left behind by the deceased. However, most of them consider inheritance to be the land left to them by their parents, which they call "sangkolan." This was conveyed by Mr. H. Fauzi, the village head of Pakaan Dajah.

"Se isebbhut werisen nekah dunnyah se edhinggelagih reng seppo se tade' omor. Aropah tana, car, house, jewelry, ben selaenah assets. Deddih, sadejenah dunyah se idhinggelagih reng sepponah se ampon tade' omor marriage esebbut werisen. Coman beghi community Pakaan Degeh edentikeh se isebbut werisen (sangkolan) land marriage."

(What is called inheritance is the property left by deceased parents, in the form of land, cars, houses, jewelry, assets, and so on. So all the property left by deceased parents is called inheritance. However, for the people of Pakaan Dajah village, what is synonymous with inheritance (sangkolan) is land.)

Other movable assets include chickens, ducks, goats, and cows. However, currently, people in Pakaan Dajah village rarely own goats or cows in large numbers because cows are no longer used for plowing rice fields. If anyone does, it's usually

just one or two. Even then, it's usually used to cover the costs of tahlilan (prayer) for seven days. Therefore, assets such as cows are not considered inheritance by the community; for Madurese, inheritance is still land. The reason people in Pakaan Dajah village consider land as inheritance is that it is an eternal asset. This was conveyed by Mr. H. Abdur Rohman, an elder in Pakaan Dajah Village:

Enggi, Werisen married, Enggi Tana. Manabih bedeh sapeh enggi jugen werisen. Coman, bisanah mon imadureh panekah land. Because salaen land samesal sapeh nikah lok banyak. Kadeng coman geduen sitthong. Kadeng's ikagebei wedding costs from going to Matenah to Pettong Arenah. Sehenggeh is more de' katanah. Manabih bedeh treasure se ikolle salastarenanah anikah then saparonah nikah jugen masok gono-gini. Makah se saparonah nikah provisions e dhu'um. Anapah bi' land, because the land of marriage is eternal."

(Yes, inheritance is land. If you have a cow, then the cow is also an inheritance. But on average in Madura it is land, because besides land, like cows, there are not many people who own it, sometimes they only have one, and sometimes it is for funeral expenses for up to 7 days. So it is more about land. For example, if there is wealth obtained after marriage, then half of it is also included in the joint property, and then the other half will then be distributed to what is left behind. Why land, because land is eternal property.)

Inheritance Distribution Practices of the Pakaan Dajah Community

Inheritance distribution in Pakaan Dajah is generally divided into two ways: before the testator dies and after the testator dies. The first method is carried out unilaterally by the testator, meaning the testator, for example, the father, with his considerations, determines that the western portion of the land belongs to person A, the eastern portion to person B, and the house to be occupied by person C. This is done by the testator to prevent disputes and fighting over the inheritance after his death. This explanation was given by Ustadz Muhammad Kholid, a religious figure in Pakaan Dajah Village, as follows:

"kadeng werisen ibegi parappaeh muwaris ghi' odi'. Sareng muwarris dunnyanah ibegi de' heirseh salastarenah metimbangagih. Nikah nikalakoh, makle leggi' tadek atokaran"

(Sometimes the inheritance is given while the muwarris is still alive. The muwarris gives the property to his heirs after considering it. This is done so that there will be no disputes later.)

Ustad Muhammad Kholid's statement above was reinforced by H. Fauzi, the head of Pakaan Dajah village. According to him, sometimes the heirs ask the heirs, such as their fathers, to immediately determine the heirs' shares, so that if the heir dies, there is no need to debate it anymore.

"Kaden se akarep nikah heir heir se adesak muwaris kangui nentowagih begien-begiennah Ahli werisseh, mareh clearly leggik"

(Sometimes the one who takes the initiative is the heir who urges the muwarris to determine the heirs' shares so that it will be clear later.)

Researchers sought information on the background of heirs who took the initiative to encourage their surviving parents to immediately divide their inheritance. According to Mr. Mat Luwi, a Pakaan Dajah elder, one of the factors that encouraged heirs to take the initiative to ask their parents to divide their inheritance during their lifetime was the circumstances of some of the heirs who were not doing well. For example, there was once an eldest sibling in the family who liked to gamble and even do drugs, causing him to sell and spend a lot of the family's assets. Realizing this, the eldest sibling suggested to his father that the inheritance be distributed immediately because he was worried that he would spend the family's assets. And also in the opposite case, where one of the heirs spent a lot of the family's assets, the other heirs urged the father to immediately divide his inheritance so that his children all received a share and not be wasted by just one heir.

"saoningah buleh, e kintok, bedeh due. Firstly, bedek tretan waktowaan likes ajudi ben drugs, until often ajuel artanah ayah'eh. Nyadareh nikah, tretan waktowaan nikah adesak ayah'eh sopajeh arta werisen nikah duli ibeghi kabeter epatadek. Semerdue', bedeh salah sittongah Ahli weris se often matadek artanah family, teros weris expert se laen adesak ayah'eh mare quickly megghi werisenah kabeter capok tadek"

(As far as I know, there were two incidents here. First, there was an older brother who liked gambling and drugs, so he often sold his father's property. Realizing this, the older brother urged his father to distribute the inheritance immediately because he was worried it would be used up. Second, there was one of the heirs who often spent the family property, so the other heirs urged their father to distribute the inheritance immediately because he was worried it would run out.

According to Ust. H. Qusairi, M.Pd, a religious figure and academic from Pakaan Dajah village, in dividing assets while the testator is still alive, known as sangkolan, the heirs are usually gathered together, and then the testator distributes the portions of the assets to their families. In this case, the testator has usually thought about it himself or has discussed it with relatives of equal standing or those considered wise. Thus, the portion conveyed by the testator is final, and there is no deliberation. However, sometimes not all heirs are named for their share, for example, if a child is married, then only he is given a share, while the other siblings have not been given a share, as it is said that it is not yet time.

"delem abegi sangkolan, usually muwaris makompol kalurganah, teros mentionagih begiennah sangkolandek Ahli weriseh. Usually marry karebeh Ahli weris dhibi', otabeh salastarenah arembek sareng lebelenah se saderejet otabeh se evalu wise. Delem mentions sangkolan tadek musyaweroh ben final. Tapeh kadeng sangkolan ibegih ka anak'eh se la anikah, while anak eh se ghitak akabin gitak bektonah."

(In dividing the sangkolan, usually the heir gathers his family and then names the portion of the sangkolan to the heirs. Usually this is based on the heir's initiative, or after discussion with relatives of equal standing or those who are considered wise. In naming the sangkolan, there is no deliberation, and it is final. However, sometimes the sangkolan is only given to his child who is married, while his other children are not, because it is not the right time.)

According to Mr. H. Abd Hadi, a village official in Pakaan Dajah Village, there are two ways to distribute the sangkolan while the heir is still alive. The first method is by gift. This means the sangkolan is given to the heirs while they are still alive, and they then control it. The second method is by will. This means the heir instructs their family or a trusted person that a certain piece of land be given to one of the heirs upon their death. With this method, the sangkolan can only be controlled upon the heir's death.

"bedeh due' cara delem megi sangkolan sabelum matenah deceased. First, kalaben cara hibeh. Then sangkolan langsung can be ikaandik Ahli weris se olle begien. Mer due', kalaben williat. Then the heir kenging ngaandik mun muweris la mateh"

(There are two ways to distribute the sangkolan before the testator dies. First, by way of a gift. Then the sangkolan can be directly controlled by the heir who receives a portion. Second, by way of a will. Then the heir can only control it if the testator dies.)

The second division concerns the distribution of inheritance assets after the testator's death. In this case, before the testator's death, no discussion regarding the distribution of the inheritance was held with his heirs. After his death, the inheritance was distributed some time later. In Pakaan Dajah, the distribution of inheritance after the testator's death was carried out by the family through deliberation and consensus, not based on faraid. Consequently, daughters may receive an equal share to sons, and sometimes even a larger share. This explanation was given by Ustadz Muhammad Kholid, a religious figure in Pakaan Dajah Village, as follows:

"Usually, dunnyah werisen werisen nikah iwerisagih mun muwaris la mateh. Can saos anak binek andik hak se padeh atabeh lebbi tembeng anak lakek. Because the

system of dispensing werisen nikah interferes with deliberation and consensus, lok adesar faroid."

(In general, property is inherited after the muwarris dies. Daughters may have the same rights or even more than sons because the inheritance distribution system here is based on deliberation and consensus, not based on faroid.)

From the explanation above, it is known that the distribution carried out while the testator is still alive, according to the Pakaan Dajah community, is also called inheritance distribution, better known as isatihan. This is different from the term of Islamic jurisprudence, which is more precisely called a grant if it can be controlled before the testator dies, or is called a will if the property can only be controlled after the testator dies. Meanwhile, the distribution carried out after the testator dies is called inheritance distribution, both according to Islam, custom, and state law.

Discussion

Distribution of Customary Inheritance Property in Pakaan Dajah Village: An Anthropological Perspective

Customary law in Indonesia, as explained in the Principles of Customary Law (an introduction), is non-statutory or unwritten law, so its understanding relies not only on reason but also on the sensitivity of a legal expert. The background to the formation of the customary inheritance system is influenced by community traditions, family systems, and local values that function to regulate the inheritance of property and ensure the continuity of families and communities. (Fardayana & Ambarwati, 2024) Until now, Indonesia does not have a national inheritance law that is binding on all citizens, so the inheritance system still operates within three different legal frameworks, namely civil inheritance law contained in the Burgerlijk Wetboek (BW), (Akbar et al., 2022) inheritance laws based on religion, such as Islamic law, and customary inheritance laws based on local community customs.

a. Customary inheritance in Pakaan Dajah

In Pakaan Dajah Village, as is common in Madura, the community uses a customary inheritance system that has been passed down from generation to generation, as found through interviews and field observations by researchers, because it is considered capable of maintaining social harmony and is passed down from generation to generation as a form of preserving local cultural values; local people consider that customary inheritance law is fairer and more flexible than faroid inheritance law (Susanto et al., 2024). Because it can be adapted to the social conditions and economic needs of the family, and is easier to understand and apply, while faroid law is seen as rigid because it is written and cannot be changed.

In the distribution of inheritance in Pakaan Dajah Village, community leaders such as the village head, elders, and religious leaders are not directly involved because inheritance is considered an internal family matter, except in cases of disputes that require external intervention. In such situations, they act as mediators and facilitators to reach a fair and peaceful solution, by ensuring that the distribution of inheritance is per customary law and upholding the principles of deliberation and consensus to maintain family harmony (Susanto et al., 2024). Meanwhile, the faroid system is sometimes used as a reference simply to find out the comparison of inheritance portions according to Islam, without being used as a binding basis for division, because society still maintains the customary system as the main method in dividing inheritance (Abduh, 2024).

However, according to KH. Iwan Sofwan, the head of the Raudlatul Ulum Islamic boarding school and known as a faroid expert, still deeply desires to implement the faroid system of inheritance distribution in the Pakaan Dajah community. He believes that Islamic law regarding inheritance consists of rules directly from Allah, expressed in the Quran (Adistyan, 2024). There's a clear expression of "fatal mafrudho," meaning that in the distribution of inheritance, there are portions that have been determined and required by God. By distributing according to custom, this is a visible departure from the fatal mafrudho that God has determined (putu Yuliana kemalasari, 2023). Of course, this isn't easy, considering that this traditional practice has been around for a long time. And something that has been around for a long time is considered true. Anyone who wants to change it, even to improve it and lead it to the truth, is considered to be committing heresy because they are changing a long-standing tradition (Susanto et al., 2024).

The aforementioned concerns were echoed by Ustad Muhammad Kholid, a religious figure in Pakaan Dajah Village. According to him, inheritance is related to a person's assets and rights. Therefore, if sharia provisions are not followed, those entitled to a share could end up not receiving it, and those who are not entitled to it could end up receiving it (Farhansyah & Irawan, 2023). Secondly, it could be that someone who deserves a lot ends up getting little, and conversely, someone who should receive a small portion ends up getting a large portion. Islam forbids taking another person's rights or property without mutual consent (CAESAR, 2019). Meanwhile, in practice, people may not sue because they don't know they have rights. Or, those who receive a share may not complain because they don't realize their share is greater than they received. And those who receive a large share may not feel that their share is as it should be and that they are taking someone else's rights. (Zami, 2019)

- b. The inheritance objects are only land, the sangkolan cannot be sold, and the Pamolean house.

According to Rorong, in customary inheritance law, inheritance in the form of property consists of livelihood assets – namely assets obtained during marriage – and borne assets, namely assets obtained before marriage or derived from inheritance; a married couple can separate livelihood assets if they do not have children, but if they already have children, the assets will be mixed (Dominikus, 2015). In Pakaan Dajah Village, as explained by H. Fauzi as the village head, the community generally understands inheritance as all the property left by a deceased person, but in practice, they more identify inheritance with land called "sangkolan," because land is considered eternal and difficult to obtain, in contrast to other assets such as motorbikes or cows which are considered easier to obtain. As for movable assets such as chickens, cows, or goats, by the Pakaan Dajah community are not considered inherited assets, so usually these assets are used to finance tahlilan or left and cared for by the person who becomes the heir's successor who lives in the heir's house which in Madurese terms is called gegenten (substitute).

c. Heirs are only descendants.

In Pakaan Dajah Village, there are only two paths to inheritance: descent and marriage. The testator's parents are not considered heirs. This contrasts sharply with the faroid system, where parents are considered permanent heirs, meaning they cannot be displaced by other heirs. In Pakaan Dajah society, parents do not request a share of the inheritance, prioritizing their offspring. The heir through marriage is the husband or wife, who is the child's father or mother (Abrori & Lisdiyono, 2024). In the Pakaan Dajah community, the husband or wife is not positioned as an heir and therefore does not receive a special share of the inheritance. If the husband dies, the wife is allowed to live in the husband's house (the heir) and take care of it as long as she does not remarry. The house does not have inheritance status for the wife, as evidenced by the house not being able to be sold. However, if one day the wife remarries, the wife is not allowed to occupy the house and must even move out with her new husband unless her child is still small and needs her care, then she is allowed to stay in the house until the child is older. This also applies to a husband who lives in his wife's house. If his wife dies, he can still live in the house, but if he remarries, he must leave the house (AR et al., 2023).

Based on the explanation above, according to researchers, there is only one path to inheritance in Pakaan Dajah Village: the hereditary path, through children. Meanwhile, neither husband nor wife receives an inheritance; they merely use and manage it for the benefit of the family. The wife only manages it. This is reinforced by the Pakaan Dajah community's habit of refusing to share their father's inheritance if their mother is still around. For them, the mother is the successor to the father. Therefore, the mother's presence is like the father's

continued presence, so the inheritance doesn't need to be shared and is better managed by the mother, with the proceeds also benefiting the family (Sanjaya & Putranto, 2023). However, if the couple does not have children, then it is interpreted. If the land left behind by the testator is the result of the testator's efforts and not an inheritance, then the land will be inherited by the surviving partner (husband/wife). If the land left by the testator is the result of an inheritance, then the land cannot be inherited by the surviving spouse, but will return to the testator's relatives (Fitri & Syawali, 2024)

d. Inheritance share rate

As explained above, the Pakaan Dajah community divides inheritance in two ways: while the testator is still alive and after their death. In the first method, when the testator is still alive, the method used is a gift or will. The portion of the inheritance is determined by the testator according to their wishes and calculations. In this case, the portion of the inheritance is not based on gender. Therefore, the testator may give a daughter a larger portion than a son. Similarly, a child with good morals may receive a larger portion than a child who misbehaves. A child who cares for the testator may receive a larger portion (Perwira & Nugraheni, 2024).

Distribution of Customary Inheritance Assets in Pakaan Dajah Village: Islamic Law Perspective

Inheritance in Islam is the law governing the transfer of a deceased person's property to their heirs. Islamic inheritance law has specific rules outlined in the Quran and Sunnah, aimed at ensuring a fair distribution of property by the interests of the heirs. (Putra, 2023) The Quran contains verses that regulate heirs, inheritance, and the distribution of property, including verse 7 in Surah An-Nisa.

لِّلرِّجَالِ نَصِيبٌ مِّمَّا تَرَكَ الْوَالِدَانِ وَالْأَقْرَبُونَ وَلِلنِّسَاءِ نَصِيبٌ مِّمَّا تَرَكَ الْوَالِدَانِ وَالْأَقْرَبُونَ وَلِلنِّسَاءِ نَصِيبٌ مِّمَّا تَرَكَ الْوَالِدَانِ وَالْأَقْرَبُونَ مِمَّا قَرُوءًا

For men, there is a right to a share of the inheritance of their parents and relatives, and for women, there is a right to a share (also) of the inheritance of their parents and relatives, whether it is little or much, according to the portion that has been determined..

According to Imam Nawawi Banten, who adheres to the Shafi'i school of thought in his Maroh Labid interpretation, the verse above shows that inheritance is given to male and female heirs (Susanto et al., 2024). Whether the assets are small or large, even inheritances in the form of assets that are identical to men, such as war equipment, must also be distributed to all male and female heirs (Sanaky & Fahmi, 2024). Meanwhile, what is meant by the words "nasiban mafrudho," according to Imam Nawawi Banten, is a predetermined portion that must be handed over to the heirs. So it cannot be reduced. Syekh Sya'rowi, in his

interpretation, understands the verse "nasiban mafrudho" with the difardhukan part. According to him, there are two elements, namely faridh, namely the one who makes fardhukan, and mafrudh alaih, namely the one who is fardhukan. Faridh, in this case, is Allah SWT (Fardayana & Ambarwati, 2024). Thus, the parts of the faroid that have been stipulated in the Qur'an are fardhu, namely the obligatory law determined by Allah SWT. The provisions regarding the portion of the heirs' share in the Qur'an are found in an-Nisa verses 11 and 12, which regulate the distribution of inheritance levels (Mallo et al., 2023).

From the explanation above, according to Islamic law, in this case, represented by the opinion of Imam Nawawi Banten, who follows the Shafi'i school of thought, the distribution of inheritance using the faroid system is something that is qot'i and is obligatory and mandatory. Nasiban mafrudho in inheritance is certain parts that have been determined in Islamic law that must be given to certain heirs, and cannot be disturbed. These parts, also known as the sharia portion, have a definite portion in Islamic law, such as half ($\frac{1}{2}$), a quarter ($\frac{1}{4}$), one-eighth ($\frac{1}{8}$), and one-sixth ($\frac{1}{6}$) (Abrori & Lisdiyono, 2024)

Thus, according to researchers, when viewed from the text of the verse, the distribution of inheritance using a customary system that is not based on faroid is a practice that contradicts the verse and is not permitted. The following are things that do not comply with the provisions of faroid in customary inheritance in Pakaan Dajah:

- 1) Inheritance is not calculated by faroid or even by deliberation
- 2) There is equality between male and female heirs
- 3) Not all of the heir's assets are counted as inheritance
- 4) Heirs are only descendants, namely the children of the testator and also the husband/wife of the testator, and do not include the parents and siblings of the testator.

The people of Pakaan Dajah Village uphold the principle of deliberation and consensus. In customary inheritance, the principle of deliberation and consensus means that inheritance is divided through deliberation among the heirs, led by the most senior heir. Any agreement on the distribution of inheritance must be made sincerely and honestly, conveyed through kind words, and derived from the conscience of each heir. This is not considered a violation of Islamic law, as Madurese people use other methods, including deliberation, which are also part of Islamic law (Simanjuntak et al., 2024). To reach a consistent agreement on the good, deliberation uses an egalitarian, democratic, and open approach. This is especially true for inheritance issues that have the potential to damage fraternal relationships, as it is human nature to favor wealth (Abduh, 2024)

Thus, the customary inheritance method in Pakaan Dajah Village can be categorized as takharuj, where the distribution of inheritance is carried out using

deliberation and consensus (Fardayana & Ambarwati, 2024). The discussion in this case includes who the heirs are and their respective portions. This discussion is conducted in a flexible and non-monotonous manner, allowing for equal distribution of inheritance portions or an excess, depending on the circumstances, without the heirs knowing their portion in advance. Regarding the portion of inheritance that is not by the text of the Qur'an, Daud Ali stated that, based on the normative doctrine of Islamic inheritance, the ratio between men and women in inheritance is 2:1 and will remain so until the end of time. Considering that the verses related to inheritance provisions are qat'i (fixed) and ijbari (forced), the consequences of these verses indicate that there should be no room for ijtihad in Islamic inheritance.

Conclusion

The implementation of customary inheritance law in Pakaan Dajah Village is carried out in two ways: while the testator is still alive and after the testator passes away. Inheritance distribution during life is carried out through a gift or will with a portion determined unilaterally by the testator, either at the testator's initiative or at the request of the heirs. Meanwhile, if the testator has passed away, inheritance distribution is carried out through family deliberation to reach a mutual agreement according to customary law. This is done because it is considered fairer and can minimize conflict within the family. Inheritance in this context is identical to land because of its eternal nature and high value compared to other assets. The customary inheritance system applied is a combination of individual, collective, and mayoral systems, where only children are considered heirs, while the testator's parents do not receive a share, and the testator's husband or wife only plays a role as manager and is allowed to live in the inherited house until they remarry.

The results of this study are expected to provide understanding to the general public, especially the Madurese, that inheritance distribution under Islamic law is qat'i (literal) in nature. This is as stated by the scholars mentioned above. Therefore, the portion of inheritance distribution under Islamic inheritance law is the fairest, according to Islamic law. Therefore, all members of the public should be aware of these Islamic inheritance law rules and be willing to accept the distribution without causing conflict with fellow heirs.

This research is certainly far from perfect. There are still many legal issues that have not been researched and developed regarding customary inheritance law from an Islamic perspective. Therefore, the researcher strongly encourages future researchers to develop and refine this issue. Furthermore, the researcher is open to all forms of input, both criticism and suggestions, from readers to create better articles that benefit the wider community.

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