

Analyzing the Maduranese's Traditional Inheritance from al-Tûfi's *Maslahah* Theory

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Abstract: *Analyzing the Maduranese's Traditional Inheritance from al-Tûfi's Maslahah Theory.* This study reveals the tradition of inheritance distribution among the Maduranese community and analyzes it using the *maslahah* of al-Tûfi. Although the entire Maduranese community adheres to Islam, in terms of inheritance distribution, they tend to apply customary inheritance law, only a small portion of which applies Islamic inheritance law (*farâidh*). This research is qualitative research; the data is obtained from interviews, observations, and documentation. This study found that most Maduranese people only give inheritance portion to children's groups, rarely did they include other groups as stipulated in *farâidh* law. Apart from that, the distribution pattern is also different from one region to another. In Sumenep, for instance, the distribution of inheritance prioritizes girls over boys. In Sampang, priority is given to the eldest child, while in Bangkalan it is prioritized for the youngest child. Only in Pamekasan, the distribution of inheritance is distributed to all family members in equal portions. This pattern of distribution that does not comply with the provisions of Islamic inheritance law, when viewed from the perspective of *maslahah* al-Tûfi, is still in line with the principles of Islamic law because it aims to bring good, avoid conflict, as well as to adjust to customary provisions and community development.

Keywords: inheritance distribution, Maduranese tradition, Najm al-Dîn al-Tûfi's theory of *maslahah*

Abstrak: *Analisis tradisi Pembagian Waris Masyarakat Madura dari Perspektif Maslahah al-Tûfi.* Penelitian ini mengungkap tradisi pembagian waris di kalangan masyarakat Madura dan menganalisisnya dengan menggunakan teori *maslahah* al-Tûfi. Meski seluruh Masyarakat Madura menganut agama Islam, namun hal pembagian waris, mereka cenderung untuk menerapkan hukum waris adat, hanya sebagian kecil saja yang menerapkan hukum waris Islam (*farâidh*). Penelitian ini tergolong penelitian kualitatif, yang datanya diperoleh dari hasil wawancara, observasi, dan dokumentasi. Penelitian ini menemukan fakta bahwa kebanyakan masyarakat Madura hanya memberikan bagian warisan kepada kelompok anak, jarang sekali mereka mengikutsertakan kelompok lain sebagaimana ditentukan dalam hukum *farâidh*. Selain daripada itu, pola pembagian yang digunakan di wilayah yang satu dengan wilayah yang lain pun berbeda. Di Sumenep, misalnya, pembagian waris mengutamakan anak perempuan ketimbang anak laki-laki. Di Sampang diutamakan kepada anak tertua, sedangkan di Bangkalan lebih mengutamakan anak bungsu. Hanya di Pamekasan pembagian

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waris dibagikan kepada seluruh anggota keluarga dengan porsi sama. Pola pembagian yang tidak menuruti ketentuan hukum waris Islam ini, jika dilihat dari perspektif *maslahah* al-Tûfi, sebenarnya masih sejalan dengan prinsip hukum Islam, karena bertujuan untuk mendatangkan kebaikan, menghindari konflik, sekaligus untuk menyesuaikan dengan ketentuan adat dan perkembangan masyarakat.

Kata Kunci: pembagian warisan, tradisi masyarakat Madura, teori *maslahah* Najm al-Dîn al-Tûfi

Introduction

Islam has a number of ways related to economic distribution. Among these ways are in the form of orders to spend wealth in the way of Allah, orders to issue zakat, infaq, alms, and so on. The recommendation or even the obligation to carry out orders to spend part of such assets is aimed at encouraging the circulation and distribution of wealth among people, so that the goods and assets do not only stay in one particular place or individual. In the zakat order, for example, it is clear that there is a very high social commitment, which is manifested by the obligation of the rich to set aside part of their wealth for the benefit of the poor.¹

In addition to zakat, infaq, and shadaqah, Islam also has a unique way of distributing wealth through an *ijbâri* (absolute) mechanism in the form of an inheritance system.² Through this mechanism, a person who owns wealth then dies, then his property will automatically transfer ownership to someone else. The mechanism for transferring property is regulated in detail in Islamic inheritance law which includes who is entitled to receive it, how much property is entitled to be received, and how it is distributed.³ This way of dividing inheritance is seen as fulfilling a sense of justice for the heirs because it is determined by the Shari'a following its socio-economic objectives.⁴ Therefore, if the

¹ A. Qodri Azizy, *Pajak Itu Zakat, Uang Allah untuk Kemaslahatan Rakyat* (Bandung: Mizan, 2005), p. 12.

² Timur Kuran, 'The Islamic Commercial Crisis: Institutional Roots of Economic Underdevelopment in the Middle East', *The Journal of Economic History*, 63.2 (2003), 414–46 <<https://doi.org/10.1017/S0022050703001840>>.

³ Mark Cammack, 'Islamic Inheritance Law in Indonesia: The Influence of Hazairin's Theory of Bilateral Inheritance', *Studia Islamika*, 10.1 (2003) <<https://doi.org/10.15408/sdi.v10i1.639>>.

⁴ Ismail Nawawi Uha, *Isu-Isu Ekonomi Islam, Kompilasi Pemikiran dan Teori Menuju*

division is carried out following clear and detailed provisions, and all heirs understand the socio-economic objectives contained therein, then there will be no problems and disputes regarding inheritance.⁵

The division of inheritance is one of the legal acts that have always been practiced throughout the history of mankind. The laws governing this transfer of ownership are believed to have existed since the beginning of mankind's existence and will continue until the end of time. This is because inheritance law is closely related to human life⁶ and is one of the basic needs (*dharûriyat*).

In Islam, the division of inheritance is called *farâid*.⁷ This law has been formed since the Mecca period, as the forerunner to the birth of inheritance law, until the Medina period, in the form of more perfect and complex legal rules.⁸ In the Mecca period, the new Islamic inheritance rule was in the form of transfer of property with a willing model, as described in Surah al-Baqarah: 180-182. Meanwhile, during the Medina period, the scope of the discussion of inheritance law had begun to develop and be detailed, not only discussing the mechanism for the transfer of rights, as regulated in the Makkiah verses but also detailing who was entitled and not entitled to receive the inherited property. Apart from that, the regulation also indirectly overhauls the previous customary rules that did not give women and children a portion of inheritance object and becomes a reference for the next period to the present.⁹

Islamic inheritance law used today is the law that comes from the understanding of the scholars of the arguments of *Syara'*, namely the

Praktik di Tengah Arus Ekonomi Global, vol 2, (Jakarta: CV. Dwi Putra Pustaka, 2001) p. 1.080.

⁵ Abdul Mannan, *Teori dan Praktek Ekonomi Islam* (Yogyakarta: Dana Bhakti Prima Yasa, 1997), p. 134.

⁶ Galih Mahendratama Putra, Adad Adad, and Gunarto Gunarto, 'Juridical Review On Notarial Testament In The Perspectives Of Islamic Inheritance Law', *Jurnal Akta*, 5.2 (2018), 487-90 <<https://doi.org/10.30659/akta.v5i2.3220>>.

⁷ Nursyamsudin Nursyamsudin, 'Pembagian Harta Waris Sebelum Muwaris Meninggal Dunia Menurut Perspektif Hukum Waris Islam', *Mahkamah: Jurnal Kajian Hukum Islam*, 3.1 (2018), 69-85 (p. 3).

⁸ Maimun, *Pengantar Hukum Kewarisan Islam* (Surabaya: Pustaka Raja, 2016), p. 49.

⁹ Afidah Wahyuni, 'Humanisme Waris dalam Islam', *SALAM: Jurnal Sosial Dan Budaya Syar-i*, 6.1 (2019), p.17.

Qur'an and al-Hadith which are then documented in the form of books of fiqh as circulated among the scholars of mazhab.¹⁰ These books have also become references for judges in religious courts in Indonesia to decide various legal issues, including inheritance disputes.¹¹

The problem is that the inheritance law in the fiqh books written in the past 15 centuries is often unable to answer the various problems of Muslims in the modern era which continues to develop dynamically and complexly.¹² Consequently, confusion often arises in the application of the law because the law is no longer able to provide legal solutions. Responding to this emptiness, some modern jurists have tried to renew the legal life by writing several new books on Islamic heritage, aiming to adapt to current developments. Unfortunately, this effort is still in the embryonic stage and has not moved beyond just translating the previous fiqh which are still dominated by Arab culture. The absence of convergence of pluralism in this inheritance system, especially in the case in Indonesia, has resulted in the emergence of the application of a dual inheritance system whose symptoms are starting to appear in a number of Indonesian Muslim communities.¹³

This paper presents an overview of the implementation of the distribution of inheritance among the Maduranese community as a form of contextualization of Islamic inheritance law with the longstanding tradition of community inheritance. As is known, the majority of Maduranese are Muslim and almost all of them adhere to religious law. So that even in terms of inheritance distribution, the Maduranese community applies a system known as *mekol-nyo'on* which is the adoption of the provisions of Islamic law "*li al-zakari mitslu hadzdzil untsayain*". According to this tradition, the male part

¹⁰ Adelina Zuleika and Ni Putu Desinthya, 'Islamic Inheritance Law (Faraid) and Its Economic Implication', *Tazkia Islamic Finance and Business Review*, 8.1 (2014) <<https://doi.org/10.30993/tifbr.v8i1.64>>.

¹¹ Yayan Sopyan et al, 'Degradation of Customary Inheritance Law in the Sai Batin Lampung Tribe', *AL-'ADALAH*, 17.2 (2020), p. 295.

¹² Akhmad Haries, 'Analisis Tentang Studi Komparatif antara Hukum Kewarisan Islam dan Hukum Kewarisan Adat', *FENOMENA*, 6.2 (2014), p. 223).

¹³ Maria Kaban, 'Penyelesaian Sengketa Waris Tanah Adat pada Masyarakat Adat Karo', *Mimbar Hukum-Fakultas Hukum Universitas Gadjah Mada*, 28.3 (2016), p. 454.

in two parts which are identical with “mekol/carrying the burden” and the female part is one part which is identical with “nyo'on/holding the head”.¹⁴

However, over time, the existence of the *mekol-nyo'on* tradition began to fade and was rarely implemented. The community then switches to an inheritance system that is adapted to the needs and benefits of the family and heirs based on economic considerations, the form of assets, responsibilities, and so on. This transition is out of the provisions of Islamic inheritance law, which has been used as the main standard in Maduranese society. The people, however, do not seem to feel guilty for not following the Islamic provisions, because they believe that what they are doing is still in line with *maqâshid shari'a* (the purposes of Islamic Law, namely achieving *maslahah* (benefit, goodness) and staying away from *mafsadah* (badness/damage).

Research Methods

This research is classified as qualitative descriptive research. Data were collected through interviews with religious leaders, heirs, and the general public who are familiar with the Maduranese inheritance tradition. This interview was conducted in four districts, namely Bangkalan, Sampang, Pamekasan, and Sumenep, to get an idea of how inheritance distribution practices are carried out among the local community.

Madurese Traditional Heritage System

Although it can be said that all Maduranese adheres to Islam, in terms of inheritance distribution, they generally tend to carry out the distribution of inheritance based on customs. This phenomenon has been going on for a long time and has been practiced for generations. Only a few of the population implement an inheritance distribution system based on the provisions of Islamic law (*farâ'idh*).

The Madurese tend to share their inheritance while they are still

¹⁴ Maimun Maimun, ‘The Existence of *Mekol Nyo'on* Formula in Tradition of Inheritance Division in Madura’, *KARSA: Journal of Social and Islamic Culture*, 24.1 (2015), pp. 67–83.

alive, although some are done after the heir dies. This is supported by several reasons:

First, there is a more satisfying feeling for all parties, both heir and heirs, if they share property during their lifetime which in the Maduranese language is termed: *Mompong ghi 'padhâ bâdhâ*. *Second*, to avoid conflicts between siblings regarding the division of inheritance.¹⁵ The division of inheritance as long as the owner of the property is still alive is seen as providing benefits, especially to prevent inheritance disputes, which if entered into the realm of law, is a disgrace to the Maduranese community.¹⁶ *Third*, liven up the spirit of brotherhood and sincerity even though they will get unequal shares. With the heir still alive, the distribution of the inheritance can be carried out by deliberation to achieve the common good in the family. *Fourth*, there are benefits and more concrete justice because it is adapted to the social context and the situation and condition of heirs. *Fifth*, communities do not want it to be too difficult to distribute them because often the assets are not much.

In general, the Maduranese give inheritance only to the core group, namely widows/widowers and biological children, not to other groups.¹⁷ In fact, some people only divide it for children, not including widows or widowers. especially if the inheritance comes from the inheritance of a husband or wife. This is because, for Maduranese, the results of parents' efforts must be passed on to their children, parents will never demand anything from their children even though they live in a state of complete deprivation. In the Maduranese tradition, there is nothing in history that parents inherit the property of their children. So, it is rarely even seen as strange, if there are parents who bring up the problem of their child's inheritance.¹⁸ Therefore, if the deceased has children then all the inheritance will be given to his children while the wife/husband

¹⁵ Afidah Wahyuni and Harisah, 'Humanism Inheritance Distribution in Sampang Madurese Culture', *Ahkam: Jurnal Hukum Islam*, 19, No.2 (2019), p. 222.

¹⁶ H. Rasul, Residents of Pasangrahan Village, Kwanyar Bangkalan, 2020.

¹⁷ Zainulloh, a lecturer of Miftahul Ulum Islamic Boarding School in Panyeppeen Pamekasan and Treasurer of Sampang, Wali Songo Sharia Cooperative, 2020.

¹⁸ Hermanto, a villager of Karang Penang Sampang, 2020.

of the deceased sometimes does not get a share especially if they are no longer able to work. This is because in general, the inheritance is in the form of land/ricefields so that even if they are forced, the results will not be adequate and even may cause harm to them.

The Madurese consider the division of inheritance as part of their old tradition that has been passed down from generation to generation. This assumption makes change difficult. There are three kinds of patterns commonly applied by the Maduranese in determining the share for each heir; *First*, they divide the inheritance equally without distinguishing the gender of the heirs; *Second*, they gave more shares to women than men; *Third*, they give more share to men. These parts do not always use a ratio of 2:1 or vice versa.

In contrast to what is generally applicable, in Madura, the assets distributed to the heirs are generally not in the form of movable objects such as money, jewelry, vehicles, or other valuable objects, but in the form of immovable objects such as rice fields, fields, yardland, houses, buildings, etc. This phenomenon is unique, because among the Madurese people there is an assumption that only immovable property can be called *sengkolan* (inheritance), while movable goods such as money, jewelry, vehicles, or other valuables are not included in the category of inheritance. There is also an inheritance in the form of savings in the bank, especially for the deceased who died at a young age and suddenly. As for treasures in the form of other valuables such as gold, agate, heirlooms, and other valuables, it is almost impossible to find.¹⁹

The movable property is not made as an inheritance because the movable property is seen as having no historical significance, is quickly depleted, and will not last long to the next generation. In the Madurese tradition, inheritance must be transferred to heirs after the owner dies. Consequently, based on this tradition, if a person dies without leaving an inheritance in the form of land or other immovable property, then he is considered leaving no inheritance.

¹⁹ Abdur Rouf, a teacher of the Qur'ran in Karang Penang Sampang, 2020.

Inherited assets (*sengkolan*) are distributed to the heirs and some are not distributed. The assets (*sengkolan*) that are distributed are usually in the form of lands or houses if they are proportional to the number of heirs. If they are not comparable, such as in the form of a house, the property then does not become part of the distributed assets but is used as a center for family gatherings at certain events or as preparation for daughters who will marry.²⁰

Furthermore, in implementing the distribution of inheritance, one community group with another community group has a different tendency. In the Lenteng area of Sumenep Regency, for example, the community members divide inheritance according to a pattern, termed by Ach Faidi as the Pharaoh's pattern,²¹ that prioritizes daughters over sons. This is because girls are seen as someone who will take care of their parents for life. Therefore, many inheritances, especially in the form of houses, are not divided among all descendants but are given only to daughters who are willing to live in the house and will not move.

This tendency to give such a share of inheritance has something to do with local community traditions. According to marriage customs in Sumenep, a Madurese daughter, when married, will welcome her husband into her own home. In other words, the bride will provide her groom a place to live, along with household furniture, also including, if any, agricultural land that they will work together for the benefit of their lives. As a son, after marriage, will join his wife, sometimes even under the same roof with his parents-in-law, he is, therefore, considered as not requiring a lot of wealth from the inheritance.²²

Apart from that, the granting of privileges to girls is also carried out because of the consideration that they will have to bear all the needs of their father or mother's old age, including medical expenses when they are sick, or the cost of holding prayers until the 1,000th day if they

²⁰ Ludfi, a villager of Ketawang Laok, Guluk-Guluk, Sumenep, 2020.

²¹ Ach.Faidi, a villager of Dungek Batang-Batang Village, Sumenep, 2020.

²² Rifqi Azhari, Religious Leader of Lenteng Village, Sumenep, 2020.

die.²³ That's why the girls are chosen by their parents to get the original house building (*patobin*) and even land can be added, as long as they are willing to take care of their parents until they die.²⁴

In contrast to the tradition that took place in Sumenep, the people of Sampang tend to give inheritance only to the eldest child (girl or boy). This is because the eldest child is considered capable of carrying the big responsibility of taking care of the needs of his younger siblings when their parents are gone.²⁵ While in Bangkalan, inheritance is given to the youngest child because the youngest child is considered the last child to have a family so that their parents will be cared for by them. The granting of inheritance to the youngest child is carried out on the condition that the youngest child is willing to live forever in his parents' house.²⁶ Meanwhile, in Pamekasan, the inheritance is distributed equally among all family members; because all children are seen as having equal status and rights. The equality of position is also directly proportional to their obligations to their parents, so that if there are obligations of parents that have not been fulfilled, generally in the form of debt, then the burden will be borne by them in equal portions.²⁷ But if one of the heirs is rich, while the other is poor, then the rich sibling will bear it.²⁸

The phenomenon described above clearly shows that the majority of Madurese people no longer carry out *farâidh* (Islamic inheritance law) but have switched to the customary provisions and the needs of the local community. The Madurese people dare to leave *farâidh* because they believe that the issue of inheritance is a human-to-human affair (*mu'amalah*) and not a human-God relationship (*ibadah*/worship).²⁹

²³ Abdul Hamid Kafi, a villager of Karang Cempaka Bluto, Sumenep, 2020.

²⁴ Ludfi,

²⁵ Uzlifatil Jannah, a guardian of the Wali Songo Islamic Boarding School in Sampang, 2020.

²⁶ K. Ahmad Zainal Abidin, Chairman of PCNU and Caretaker of Bangkalan Islamic Boarding School, 2020.

²⁷ Hermanto 2020.

²⁸ M. Dari, a marketing employee of Sampang Wali Songo Sharia Cooperative, 2020.

²⁹ Muhammad Hasan, a Bangkalan City Residents, 2020.

The *Maslahah* Theory of Najm al-Dîn al-Tûfi

Al-Thufi is an expert on fiqh and *ushûl fiqh*³⁰ who lived at the end of the 7th century H/the end of the 13th century AD and died in the early 8th H/early 14th century AD. His full name was Abû al-Rabi' Sulaiman bin 'Abd al-Qâwi bin 'Abd al-Karîm ibn Sa'en. The title al-Thûfi is associated with the name of the village where he was born (Thâfa), which is located in the Sharshar region, near the city of Baghdad.³¹

Al-Tûfi is well-known among *ushûliyyîn* (fiqh scholars), because of his controversial theory regarding the use of the principle of *maslahah* (benefit). Etymologically, the word *mashlahat* comes from the root word *al-shalâh* which means goodness.³² Sometimes this term is identified with *al-istishlâh* which means seeking goodness,³³ or *al-munâsib*, which means things that are suitable, relevant, and appropriate for use.³⁴ The opposite of *al-mashlahat* is *al-mafâsdat* which means something that causes a lot of damage or harm.³⁵

According to al-Tûfi, if there is a contradiction between *maslahat* (benefit) and religious text (al-Qur'an and sunnah) and *ijmâ'* (*Muslim scholars agreement*), then *maslahat* must be prioritized.³⁶ The application of this theory is only for matters related to human to human relations (*mu'âmalah*); While relating to the relationship between humans and God (*ibâdah*/worship), this theory does not apply because knowing whether or not a matter of worship is beneficial is the prerogative of Allah.³⁷ Al-Tûfi argues that in cases in the *mu'âmalah* area, *maslahah* is a source

³⁰ Musthafa Zaid, *Al-Mashlahat fi al-Tasyri' al-Islâmi wa Najm al-Dîn al-Thûfi*, (N.p.: Dâr al-Fikr al-Arabi, n.d.), p. 67.

³¹ *Ibid.*

³² Ibn Manzhûr al-Afriqî al-Mishrî, *Lisân al-'Arab*, vol. 2, (Beirut: Li al-Thibâ'ah wa al-Nasyr, 1955), p. 517.

³³ Muḥammad Murtadha al-Zubaidi, *Tâj al-'Urus*, 2nd ed, (Mesir: Mathba'ah al-Khairiyyah al Munsya'ah Bijmaliyyah, 1306 H.), p. 18

³⁴ Judah Hilal, "Al-Istihâsân wa al-Mashlahat al-Mursalâh" in Majlis al-'Alâ li al-Ri'âyah al-Funûn al-Ijtimâ'iyah, *Ushû' al-Fiqh al-Islâmi*, (Egypt: Lajnah al-Qânûn wa al-'Ulûm al-Siyâsah, 1330 H.)

³⁵ Al-Fairuzzabadi, *Al-Qâmûs al-Mubîth*, (Bairut: Dâr al-Fikr, n.d.), p. 277.

³⁶ *Ibid.*

³⁷ *Ibid.* 119

of law that stands alone and is stronger than *Nass* (religious texts) and *ijmâ'*. This is because the determination of *mashlahah* is the authority of human thinking and does not have to require *naqlî* (religious texts) instructions, considering that those who feel and experience it directly are humans. Therefore, in this area, *Nass* can be annulled as long as it is contrary to rational benefit.³⁸

Al-Tûfi's controversial theory based solely on reason (*ra'y*) without referring to texts and/or *ijmâ'* has made the ulama' *ushûl* consider him as a figure of a radical and liberal Hanâbilah cleric, some even accused him of being a follower of Shia Rafidhah.³⁹ Apart from the negative assumption of its founder, the *maslahah* theory still can be used to analyze various *mu'âmalah* cases, including, in this case, the practice of inheritance division of the Madurese community to determine its legal position concerning the implementation of Islamic law.

Analysis from the Perspective of *Maslahah*

Four points can be used as objects of analysis concerning the inheritance practice of the Maduranese community, namely: the matter of determining the heirs, the form of inheritance, the portion of the distribution, and the time of distribution.

1. Determination of heirs

Determination of heirs in the Maduranese tradition is limited to *furû'* (branch) of heirs, namely for nuclear family groups (children and widows/widowers), and does not extend to relative heirs, either upward, sideways, or downwards. This tradition, when compared with the provisions of Islamic inheritance law, clearly shows a difference.⁴⁰ According to the provisions of the Qur'an and hadith, as described in the QS. al-Nisa': 11-12, the heirs include the nuclear family and close relatives who have blood relations with the heirs, such as wife/husband

³⁸ *Ibid.*

³⁹ *Ibid.*, p. 78

⁴⁰ Kiki Adnan Muzaki, Asep Saepudin Jahar, and Muhammad Amin Suma, 'Reform of the Law of Inheritance in Turkey and Tunisia', *al-'Adalah*, 17.2 (2020), 249–68 (pp. 249–51).

and children along with their offspring, both male and female; father and mother and all the ancestors and above; and relatives to the side, uncles and aunts and their sons. The classification of heirs in the Qur'an has even been followed by their respective portions, along with certain situations that may prevent them from receiving an inheritance.⁴¹ The question now is, how to reconcile the difference between tradition and the provisions of the Shari'a? This is where the role of *maslahah* theory as an independent source of law is tested.

The main reason why the Madurese does not give inheritance to heirs other than children is to maximize the benefits of inheritance to children because they have more severe needs and responsibilities towards the family than other groups of heirs.⁴² Apart from that, the main purpose of parents working hard to collect wealth is solely for the benefit of the welfare of their children and wives. Because the ultimate goal of parents' business is for their children, it is only natural that they then limit the group of heirs to the internal nuclear family and not extend it to outside relatives. Strictly speaking, the purpose of the restriction is solely for the good and benefit of the offspring and this is in line with the command of the Qur'an in Surah al-Nisa': 9 which forbids parents from allowing their offspring to live in poverty and weakness. Thus, there are similarities between the objectives of the Shari'ah and the traditions developed by the Madurese in the process of inheritance distribution; The similarity in question is that both shari'a and tradition aim to benefit of the heirs while avoiding the emergence of poverty and misery.

The above phenomenon, when associated with the proposition of Syara' (al-Qur'an and al-Hadith) through the perspective of *maslahah* of al-Tûfi, shows that there is conformity. In which case, both the traditions practiced by the Madurese community and the commands in Surah al-Nisa': 9 both have the same goal, namely to provide welfare guarantees to the next generation. Thus it can be concluded that the

⁴¹ Wahbah al-Zuhaili, vol. 8, p. 250.

⁴² H. Harisah and Zainulloh, 'Praktik Distribusi Zakat Konsumtif Tradisional di Karang Penang Sampang', *Ulûmuna: Jurnal Studi Keislaman*, Vol. 5 No. 2 (2019), p. 131.

tradition of the Madurese community which gives a portion of the property to the children only, in al-Tûfi's perspective, does not conflict with Syara' law because it functions as *takhsîs* (specialization) or *bayân* (explanatory) to the provisions of inheritance. in the Qur'an and al-Hadith.

2. Form of inheritance

Wahbah Zuhaylî explained that inheritance is everything left by the heirs that can be legally transferred to their heirs.⁴³ The word inheritance in Arabic means everything referred to as *al-tirkah* (relics), or *al-irth* (inheritance that is ready to be distributed), or *al-mirâth* (inheritance that has been received), both in the form of goods and rights of the heir that can be transferred to their heirs.⁴⁴ This understanding is different from what is understood by the Maduranese, which limits the form of inheritance (*sengkolan*) to only include goods in the form of land, buildings, rice fields or other fixed/immovable objects.

The Madurese tradition viewing inheritance (*sangkolan*) as immovable property is an attempt to narrow the scope of the definition of inheritance (*tirkah*) from what is generally understood by scholars'. Efforts to narrow this scope, if examined from the point of view of the Qur'an, are actually not contradictory. This is because the Qur'an itself does not explicitly specify the form of property to be distributed. The word “*ma*” in Surah al-Nisa': 7, *الْوَالِدَانِ الْأَقْرَبُونَ*, is *isim mausûl* which means everything. This understanding is reinforced by the word “*ma*” in the next verse (the treasure is a little or a lot). the above verse fragment does not specifically determine which form of property should be distributed. It only explains whatever form of goods left by parents or close relatives, whether in large or small quantities, is still part of the property that must be transferred to the heirs as a consequence of the death of the owner.

The efforts to limit *tirkah* only to certain durable goods, such as

⁴³ Amir Syarifuddin, *Hukum Kewarisan Islam* (Jakarta: Kencana, 2004), p. 206.

⁴⁴ Wahbah al-Zuhaili, *Juz. 8*, p. 249.

land and buildings, in the Madurese tradition have something to do with efforts to pass on the benefits of objects that are passed down from one generation to the next. If the inheritance is in the form of assets that are easily extinct, then the mission of economic equality will stop at one point, and cannot be preserved for the next generation. With inheritance in the form of buildings, land, rice fields, and fields, heirs can use them without losing their physical property. This is believed not to happen if the asset is in the form of gold, cars, or other types of movable goods.

Likewise, property in the form of a house is generally not divided, or if it is divided it is only reserved for certain heirs willing to live with their parents until their parents die. This is aimed at maintaining family integrity, strengthening ties of friendship and brotherhood between siblings, as well as can be used as a family gathering place at certain times. The Madurese way of thinking which emphasizes the benefit aspect is in line with al-Tûfi's view because seeking benefit in the context of the integrity of relations between brothers is something accepted by everybody. Based on the considerations above, the limitation of inheritance to the immovable object only can still be justified by Islamic law because it has a benefit goal and is in line with the concept of *maslahah* of al-Tûfi.

3. Inheritance portion

As previously explained, in determining the portion for the heirs the Madurese community follows a pattern according to local traditions. The communities in Lenteng area of Sumenep Regency, for example, tend to prioritize daughters over sons. This is because, according to marriage customs in Sumenep, a Madurese daughter, when married, will provide her groom a place to live, including, if any, agricultural land that they will work together for the benefit of their lives. The people of Sampang, on the other hand, tend to give inheritance only to the eldest child (girl or boy) as he/she will be responsible to care for his/her younger siblings. In contrast, the people of Bangkalan prioritize the inheritance to the youngest child as the youngest child is considered

the last child to have a family so that their parents will be cared for by them. Meanwhile, in Pamekasan, the inheritance is distributed equally among all family members; because all children are seen as having equal status and rights. Very few of them divide it according to the provisions of *farâidh* (Islamic inheritance law).

With regard to the people giving a bigger portion to girls or equal, this pattern of division is contrasted to the provisions in Islamic inheritance law stipulated in the Qur'an, Sunnah, and Ijma', which determine that the male's portion must be twice of the female's. The question now is whether such a distribution pattern is still in the corridor of Islamic law or not?⁴⁵ If the answer is negative, then the tradition of the Madurese community in giving their rights to heirs is contrary to the provisions of Islamic inheritance law. If the answer is positive, however, a strong argument is needed to show that the practice is still within the corridor of Islamic law.

Seen from the cultural factors that live in society, the distribution ratio applied by the Madurese community which rules out the predetermined portion (*furûdul muqaddara*) of Islamic inheritance law, is justifiable. In the Madurese community tradition, the determination of the portion for the heirs is carried out employing deliberation, as well as by adjustment to the traditions and real economic conditions of the heirs. Their allegiance to daughters, which was manifested in the form of giving greater division, was purely influenced by local tradition. According to the Maduranese tradition, a Madurese daughter, when married, will provide her husband a place to live including, if any, agricultural land to support their lives. Besides, the daughter is also responsible to care for her parents until they die. Considering the fact that the female heirs carry the burden heavier than the male, it is reasonable if the Madurese give a larger portion of the inheritance to their daughters than to the sons as such responsibilities are not on their shoulders. In short, the determination of a larger portion for the female heirs in the Madurese society is intended to help ease the

⁴⁵ Afidah Wahyuni and Harisah, p. 226.

burden on female heirs as well as to fulfill the custom demands that they have held for generations.

The above explanation clearly shows that Madurese society has implemented the *maslahah* approach in determining the inheritance portion. Such an attitude, when viewed from the perspective of *maslahah* al-Tûfi, is relevant to the concept of *maslahah*, namely trying the best to achieve good and avoid evil. Considering the issue of inheritance is included in the category of inter-human relationship (*mu'âmalah*), prioritizing benefit over the *Nass* provisions is permissible because it refers to the principle of *maslahah*. This argument supports that the inheritance practices carried out by the Madurese community can be seen as still within the corridor of Islamic law and obtains normative justification.

4. Time of distribution

The distribution of inheritance among the Madurese is generally done when the heir is still alive, although some are done after the heir dies. The division of inheritance during the life of the heir is carried out because of considerations of the benefit of both the heirs and the heirs themselves. The main reason for the division of inheritance while the testator is still alive is to prevent disputes between family members triggered by inheritance problems, considering that the decision and distribution are made directly by the owner of the property. The disputes, if entered into the realm of law, are a disgrace to the Maduranese community. With the heir still alive, the distribution of the inheritance can be carried out by deliberation to achieve the common good in the family. Apart from these reasons, there are also other reasons related to the time of distribution, namely the interests of the heirs themselves. If the heir distributes his/her property before he/she dies then he/she can hope that his/her life in old age will be guaranteed, and cared for by the children.

Viewed from the perspective of Islamic inheritance law, the practice of inheritance distribution carried out while the heir is still alive or after death does not deviate from religious provisions at all. Because

when the gift is made while the heir is still alive then the act can be categorized as *hibah* (granting), and this act is not prohibited in Islam. On the other hand, if it is done after the heir dies, then such practice is included in the category of inheritance distribution, and even that action is also permissible.

Conclusion

The experience of daily life has given a strong impetus to the Madurese community to rationalize their inheritance distribution system so that they no longer rigidly adhere to Islamic provisions, but have made innovations by considering the direct impacts that may arise on people's lives, either positive or negative. This is shown by several indicators, starting from the determination of heirs, the form of inherited assets, the portion that will be received, by the heirs to the time of distribution. Even though these practices are completely different from the provisions outlined in Islamic inheritance law, they can still be seen as within the corridor of Islamic shari'a, because they are supported by the principles of *syara'*, especially when using the concept of *maslahah* al-Tûfi. Indeed, Islamic law does open up space for *ijtihad* and gives authority to the human mind to determine which is good (*mashlahah*) and which is bad (*mafsadah*), especially in the study of *mu'amalah*, to make Islamic law adaptive to the demands of the ever-changing times.

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