

## **The *Takharrūj* Method as an Islamic Legal Solution for Customary Inheritance Practices among Muslim Communities in Pakamban Laok, Sumenep, Indonesia**

### **Metode *Takharrūj* sebagai Solusi Hukum Islam terhadap Praktik Pembagian Waris Adat pada Masyarakat Muslim di Pakamban Laok, Sumenep, Indonesia**

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**Abstract:** The division of inheritance that does not comply with Islamic law can instigate family conflicts. This assumption is contradicted by what occurs in Muslim society in Pakamban Laok Village, Sumenep Regency, Indonesia, where they can control conflicts by dividing the inheritance under customary law. This article examines why Muslim communities do not apply Islamic inheritance law and how their inheritance division practices can mitigate family conflicts. The study employs a case study approach with data collected through observation, interviews, and documentation. The study found that education, religiosity, economics, and social factors contribute to why the Muslim community in Pakamban Laok does not divide the inheritance of heirs under Islamic inheritance law. Testators typically divide their inheritance (gifts or *hibah*) to prevent family conflicts before passing away. If the inheritance has not been divided, it is distributed by the heirs, with the shares adjusted by agreement. In some cases, the heirs have invited a local religious

scholar to divide the inheritance according to Islamic law, and some other heirs have opposed the division's results. In Islamic jurisprudence, dividing inheritance to prevent family conflicts is called "*takharrūj*," selling a share in inheritance. The authors argue that the *takharrūj* model can be used as a legal solution for inheritance division practices that are customary and familial.

**Keywords:** Customary Law, Islamic Inheritance Law, Inheritance, Muslim Community, *Takharrūj*.

**Abstrak:** Pembagian harta warisan yang tidak sesuai dengan hukum Islam dapat diindikasikan sebagai pemicu konflik dalam keluarga. Asumsi ini berbanding terbalik dengan yang terjadi pada masyarakat muslim di Desa Pakamban Laok, Kabupaten Sumenep, Indonesia, di mana mereka justru mampu mengendalikan konflik tersebut dengan membagi harta peninggalan sesuai dengan hukum adat. Artikel ini mengkaji faktor-faktor kenapa masyarakat muslim tidak menerapkan hukum waris Islam dan bagaimana praktik pembagian waris mereka untuk meredam konflik dalam keluarga. Studi ini menggunakan pendekatan studi kasus dengan pengumpulan data melalui observasi, wawancara, dan dokumentasi. Penelitian ini menemukan bahwa pendidikan, tingkat religiusitas, ekonomi, dan sosial merupakan faktor-faktor yang menyebabkan masyarakat muslim Pakamban Laok tidak membagi harta peninggalan para pewaris sesuai dengan hukum waris Islam. Untuk mencegah terjadinya konflik dalam keluarga, para pewaris biasanya telah membagi harta peninggalan mereka (hibah) sebelum meninggal dunia. Apabila belum dibagi, maka harta peninggalan para pewaris didistribusikan oleh para ahli waris yang bagian-bagiannya disesuaikan dengan kesepakatan. Meskipun dalam beberapa kasus para ahli waris telah mengundang ulama lokal untuk membagi harta peninggalan tersebut sesuai dengan hukum waris Islam, namun sebagian ahli waris lain menentang hasil pembagiannya. Dalam fikih, praktik pembagian harta warisan untuk mencegah terjadinya konflik dalam keluarga disebut sebagai *takharrūj*. Para penulis berargumentasi bahwa model *takharrūj* ini dapat digunakan sebagai solusi hukum dari praktik pembagian harta warisan secara adat dan kekeluargaan.

**Kata Kunci:** Hukum Adat, Hukum Waris Islam, Harta Warisan, Masyarakat Muslim, *Takharrūj*.

## **A. Introduction**

The customary legal practices in the distribution of inheritance have thus far been perceived as lacking consideration for the principles and values of Islamic inheritance law. These practices are influenced by various factors, including the community's level of education and limited understanding of Islamic inheritance

law.<sup>1</sup> In this context, this article aims to elucidate other factors that can change the situation and enhance the community's understanding and practice of Islamic inheritance law. This aligns with the findings of Zakaria Syafei, which indicate that the community places a high value on general understanding and customary inheritance practices. There exists a positive relationship between community understanding and the distribution of inheritance according to Islamic law.<sup>2</sup>

Previous studies have examined customary inheritance practices carried out by Muslim communities, but none have discussed the *takharrūj* method (selling a share in inheritance) used to legitimize them. Some scholars have discussed the rejection of Islamic inheritance law and the practice of customary inheritance in Makassar society,<sup>3</sup> Sungai Enau village,<sup>4</sup> Aceh Tengah,<sup>5</sup> and Kudus Regency.<sup>6</sup> Others have studied the acceptance of Islamic law regarding customary inheritance practices in the Nagari Salareh,<sup>7</sup> Saruaso, and Sawah Tengah Village communities.<sup>8</sup> Interestingly, other scholars have found integration and harmonization between Islamic and customary law in inheritance practices among the Bugis Luwu,<sup>9</sup>

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

<sup>2</sup> Zakaria Syafei, "The Public Knowledge and Custom with the Inheritance Division According to Islamic Law," *Asian Social Science* 12, no. 7 (June 21, 2016): 167–77.

<sup>3</sup> Halimah Basri et al., "Inheritance Rights of Women in Makassar Society: A Study of Living Qur'an and Its Implications for Islamic Law," *Samarah: Jurnal Hukum Keluarga dan Hukum Islam* 6, no. 2 (October 3, 2022): 537–55.

<sup>4</sup> Muhammad Lutfi Hakim and Mutmainah Mutmainah, "Inheritance Portion of the Heir of Women Is More Than Men in Islamic Legal Perspective," *Jurnal Mahkamah: Kajian Ilmu Hukum dan Hukum Islam* 6, no. 1 (June 22, 2021): 37–50.

<sup>5</sup> Fauzi Fauzi, "The Concept of Patah Titi: The Problem of Inheritance and Its Solution in Aceh Tengah," *Studia Islamika* 26, no. 1 (April 10, 2019): 33–73.

<sup>6</sup> Abdurrohman Kasdi and Khoiril Anwar, "Inheritance Distribution of Adopted Children in the Perspective of Customary Law and Islamic Law Compilation: Case Study of the Application of Inheritance Law in Kudus," *Al-Ahkam* 29, no. 2 (November 7, 2019): 141.

<sup>7</sup> Elfia et al., "Patterns for Settlement of Puna Inheritance Disputes in the Community of Nagari Salareh Aia from the Perspective of Islamic Law," *AL-IHKAM: Jurnal Hukum & Pranata Sosial* 17, no. 2 (December 31, 2022): 480–505.

<sup>8</sup> Rajab Rajab, Elizamiharti Elizamiharti, and Muslim Muslim, "Islamic Inheritance Law in Saruaso and Sawah Tengah Villages Based on Islamic Principles," *Jurnal Ilmiah Islam Futura* 22, no. 2 (August 4, 2022): 225–43.

<sup>9</sup> Andi Sukmawati Assaad et al., "Gender Equity in Inheritance System: The Collaboration of Islamic and Bugis Luwu Customary Law," *AL-IHKAM: Jurnal Hukum & Pranata Sosial* 17, no. 2 (December 31, 2022): 458–79.

Minangkabau,<sup>10</sup> and Tionghoa Muslim communities in Banjarmasin.<sup>11</sup> This study is unique in that it discusses the *takharrūj* method as a mechanism for legitimizing customary inheritance practices among Muslim communities in Pakamban Laok, Sumenep, Indonesia, a topic that has not been addressed in the existing literature.

In contrast to previous studies, this article discusses the customary practice of dividing inheritance to prevent conflict in Pakamban Laok, Sumenep, Madura, East Java, Indonesia. In Islamic inheritance law, this alternative division is referred to as *takharrūj*. This research is qualitative research with a type of field research. This field research aims to collect data from the location that is the object of the research.<sup>12</sup> This research was carried out in Pakamban Laok in September 2021 by taking data from events in the general public, religious leaders, and community leaders. Three methods are used in collecting research data: observation, interviews, and documentation. The data analysis used in this research on inheritance law is deductive analysis, which is an analysis that applies the general principles of the Qur'an and Hadith to the inheritance law problems in Pakamban Laok to get specific answers.

## **B. The Basic Concept of Islamic Inheritance Law**

Etymologically, *mawāriṭh* comes from the plural word "*mīrāth*," which means the inheritance of the deceased, which is passed on to his heirs. The person who dies is called the "*muwarrith*," and those entitled to receive his inheritance can be referred to as heirs (*wāriṭh*). The property left behind (estate) is called *tirkah*. The science that studies inheritance is called '*ilm al-mawāriṭh* or '*ilm al-farā'id*. In terminology, *ilm al-mawāriṭh* is the law that regulates the transfer of ownership

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<sup>10</sup> Sidik Tono et al., "The Harmonious Relationship between Minangkabau Custom and Islam in the Distribution of Inheritance," *Al-Shajarah: Journal of the International Institute of Islamic Thought and Civilization (ISTAC)*, November 29, 2019, 39–55.

<sup>11</sup> Gusti Muzainah and Firqah Annajiyah Mansyuroh, "Integration of Islamic Law and Banjarese Customary Law of Inheritance System Tionghoa Muslim Community in Banjarmasin, South Kalimantan," *Samarah: Jurnal Hukum Keluarga dan Hukum Islam* 6, no. 2 (December 31, 2022): 678–702.

<sup>12</sup> Moh Nazir, *Metode Penelitian* (Bogor: Ghalia Indonesia, 2011), 54.

rights to the inheritance of the heirs by determining who is entitled to become heirs and how much each heir shares (*furūḍ al-muqaddarah*).<sup>13</sup>

The legal principle of inheritance can be viewed from sources of Islamic law as a guide for Muslims in determining the distribution of inheritance and the amount of property that must be distributed to parties called heirs. Several sources and the principles of Islamic law reinforce the importance of the division of inheritance law by the values contained in Islamic teachings. It aims to provide certainty and avoid various problems among Muslims related to the distribution of inheritance. There are several foundations for determining inheritance law, which include the arguments of the Qur'an,<sup>14</sup> hadith, *ijmā'* (consensus) of ulama, *qiyās* (analogical reasoning), and positive laws.

First, the source of the Qur'an. In the Qur'an, many explain the issue of inheritance law, including in the Sūrah al-Nisā' verse 7 means, "*For boys, there is a right to share in the inheritance of their parents and relatives. For girls, there is a right to inherit.*" Second, the source of the hadith. Although the Qur'an has provided a detailed and clear explanation of the law of inheritance, the hadith is also one of the legal references regarding the distribution of inheritance, including the hadith narrated by Bukhari and Muslims. The Prophet Muhammad said, "*Give the inheritance to those entitled. After that, the rest goes to men who are more important (close to their kinship).*"<sup>15</sup> Third, *ijmā'*. It is the agreement of the mujtahid scholars about a sharia legal provision based on the Qur'an and hadith after the death of the Prophet so that it can be used as the basis for determining the law in every problem faced by Muslims.<sup>16</sup>

Although the Qur'an and the Sunnah of the Prophet provide detailed provisions regarding the distribution of inheritance, in some cases, *ijtihad* (independent legal reasoning) is still needed for everything not explained in the Qur'an or the Sunnah of the Prophet. One is regarding the inheritance of a sissy or

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<sup>13</sup> Muhammad Ali Ash-Shabuni, *Pembagian Waris Menurut Islam* (Jakarta: Gema Insani, 2004), 33.

<sup>14</sup> Adelina Zuleiha and Ni Pitu Desenthya, "Islamic Inheritance Law (Faraid) and Its Economic Implications," *Tazkia Islamic Finance and Business Review* 8, no. 1 (2020): 97–118.

<sup>15</sup> Mardani, *Hukum Kewarisan Islam di Indonesia* (Jakarta: Raja Grafindo Persada, 1993), 11.

<sup>16</sup> Ach Rofiq, *Fikih Mawaris* (Jakarta: Raja Grafindo Persada, 1993), 14.

leper child, the inheritance not completely divided to whom the rest is given, the mother's share if only with the father and husband or wife, and so on.<sup>17</sup> The conditions for *mawāriṭh* in the practice of Islamic law are as follows: First, the death of *mawāriṭh*. The heir must die absolutely. So, a person can be called an heir if that person has died. The death of the *muwarrith* can be classified into three parts: death in truth and death by law. Second, the life of the heir, an heir can be said to be entitled to an inheritance if the heir is still alive when the heir dies. The third is the existence of inheritance status. Inheritance status is the bond between the *muwarrith* and the heirs, either by marriage. Several pillars must be fulfilled for an inheritance law to occur. First, there is an heir. An heir is a person who, at the time of death or is declared dead based on a Muslim court decision, leaves heirs and inheritance. Second, heirs. Heirs are people who, at the time of death, have blood relations or marital ties with the heirs, are Muslim, and are not hindered by legal problems from becoming heirs. Third, inheritance is property left by the heir, both in the form of property that belongs to him and his rights.

Reviewing the inheritance law is also related to the factors that a person can inherit the inheritance of heirs and the inhibiting factors. There are several factors a person becomes a rosiest. First, family relationships. This relationship is a blood relationship between the *muwarrith* and the heirs. It means that all heirs, both men and women, small children and adults, and babies still in the womb, also have the right to inherit the property left by the *muwarrith* as long as he has blood ties (kinship). Second is the marital relationship. According to Islamic law or the state, a legal marriage bond between a man and a woman can result in the right to inherit if one dies. Third, the relationship *al-walā'* (religious loyalty). The *al-walā'* factor is an inheritance relationship because someone has freed slaves or through a mutual agreement. For someone who has freed an enslaved person, the inheritance law can occur between the two. If the freed person dies, then the master who freed him gets an inheritance.<sup>18</sup>

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<sup>17</sup> Suryati, *Hukum Waris Islam* (Yogyakarta: CV. Andi Offset, 2017), 15.

<sup>18</sup> Ahmad Rofiq, *Hukum Perdata Islam di Indonesia* (Jakarta: PT. Raja Grafindo, 2013), 315–18.

Several factors prevent a person from obtaining an inheritance by Islamic law. First, commit murder. A person who intentionally kills a *muwarrith* is not entitled to inherit property. Because of the compilation of Islamic law, article 173 states that a person will be prevented from obtaining inheritance if, by a judge's decision, he commits murder or tries to kill or persecute the *muwarrith*. Second, religious differences. Unbelievers are not entitled to inherit property. It is based on the hadith of the Prophet narrated by Imam Bukhari and Muslims, which means "*Muslims have no right to inherit non-Muslims and unbelievers have no right to inherit Muslims.*" Third, the status of slavery. An enslaved person was set as a barrier to obtaining an inheritance because of his status as not knowing legal matters. It follows Allah's word in Sūrah al-Nahl verse 75: "*Allah makes a parable with a slave owned by a slave who cannot act on anything.*"

In Islamic law, heirs are divided into two parts, namely: First, *nasabiyyah* heirs. These heirs are people with kinship ties associated with kinship relations with the deceased. There are 21 overall *nasabiyyah* heirs consisting of 8 groups of women and 13 groups of men. As for the female heirs, including daughters, granddaughters from boys and so on down, mother, grandmother from mother, grandmother from father, siblings of the same age, sisters of one's father, and sisters of one's mother.<sup>19</sup> Meanwhile, the heirs of the male group are based on the order of the group, namely sons, grandsons from boys to the bottom, father, grandfather from the male line, siblings, siblings, father's brother, mother's brother, son of biological brother, son of a half-sister, biological uncle, father's uncle, son of the biological uncle, and son uncle and father.

Second, the heirs of the *sababiyyah*. These heirs are caused by certain bonds, namely because of marriage and freeing enslaved people. The two heirs can get a share of the inheritance if the marriage is valid according to legal provisions and there is evidence of marriage. Likewise, formerly enslaved people must also be based on evidence established by Islamic law. So, in the distribution of inheritance for *sababiyyah*, heirs entitled to receive it are the wife or husband, depending on

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<sup>19</sup> Suhrawardi K Lubis and Komis Simajuntak, *Hukum Waris Islam* (Jakarta: Sinar Grafika, 2008), 82.

who dies. Meanwhile, the enslaved person who gets his inheritance is someone who has set him free.<sup>20</sup>

### **C. Why Is Islamic Inheritance Law Not Applied by the Pakamban Laok Muslim Community?**

Even though Muslims in Madurese communities tend to be quite religious, not all use Islamic inheritance law to enforce inheritance laws among the populace. The Muslim community in Pakamban Laok does not adhere to Islamic inheritance law for several reasons. Aspects of economics, society, tradition, and religious understanding cannot be divorced from these issues. First, educational problems. This problem causes the Pakamban community to be less enthusiastic about sending their children to a higher level of education. In addition, coupled with the lazy attitude of the youth after graduating from school, and prefer to look directly for work rather than continue their studies. There are only a few of them who continue to higher education levels. According to the head of SMK (National High School) Al-Imron, the Pakamban community does not yet have a high awareness of the importance of education. The education sector has not become a top priority for the Pakamban Laok community because it emphasizes how their children can work to meet their daily needs.<sup>21</sup>

In Pakamban Laok, only schools manage educational institutions up to the SMK or MA (Islamic High School) level. The lack of educational institutions in the village makes people prefer to send them to other areas because the educational climate is less supportive in supporting their future. The lack of awareness in receiving an education can certainly impact people's knowledge and understanding of legal problems. Suppose the community is less intelligent and sensitive to the problem of inheritance. In that case, it can lead to conflicts between families. Hence, the role of education occupies a strategic position in changing the perspective and understanding of the community so that they pay more attention to the future of their children's education. Educational problems in Pakamban Laok significantly influence how the community views responding to every problem in life, both in the

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<sup>20</sup> Ahmad Ibn Ali Bin Haj, *Fath al-Bari*, 12th ed. (Bairut: Dar al-Fiqh), 10.

<sup>21</sup> Sayyidi, *Interview*, September 6, 2021.



family environment and in society, as it is known that the level of education can impact attitudes in addressing the problems of inheritance law. Suppose the community's knowledge of inheritance law is limited. In that case, they will face difficulties in the distribution of inheritance, which can even lead to conflicts between families.<sup>22</sup>

Second is the religious factor. In regulating people's lives, religion has a significant role as a way of life for everyone in carrying out actions by religious teachings. Understanding religious knowledge occupies a strategic position to provide guidance and the way of truth for the community in carrying out religious teachings and state law. If people's understanding of religion is still shallow, it can impact how to act and behave in everyday life. To overcome this problem, young people must study religious knowledge at Islamic boarding schools, the most representative Islamic educational institution teaching religion and other sciences.

Religion is one of the essential foundations in regulating human life, whether related to human relations, as it is known that the people in Pakamban Laok have strong religious values and are known as religious people in practicing religious rituals. However, some religious issues have not been mastered and practiced correctly in their lives. One of the religious issues still considered challenging to practice according to Islamic law is inheritance disputes, which are essential issues in people's lives.

*"The community does not yet have adequate religious knowledge regarding the distribution of inheritance. I realize that inheritance science is essential for the community because it is not only a guide in the distribution of heritage but also a medium for learning religion properly by Islamic law. Although some already understand the science of inheritance, many people still do not practice it properly because they are unsatisfied with the distribution of the inheritance they receive."*<sup>23</sup>

Third is the economic factor. The people of Pakamban Laok are residents whose primary income is farmers, construction workers, and traders. However, there are a small number of them who become civil servants. The community's economic condition can be categorized as upper-middle economic. The community

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<sup>22</sup> Johan, *Interview*, September 21, 2021.

<sup>23</sup> K. Mufti, *Interview*, September 20, 2021.

can meet its needs well if viewed from the capable economic situation. In other words, their economic level and welfare of life can be said to be in a prosperous society and far from poverty.

Based on the above economic conditions, people with productive assets will certainly leave *tirkah* assets that can be divided among the heirs of the families left behind. When viewed from the economic situation of an established community, the inheritance is very much. It depends on the heirs in distributing the inheritance, whether the distribution is based on the provisions of inheritance science or according to the wishes of the person concerned. Suppose it is distributed according to the will of the heirs and does not use *'ilm al-farā'id*. In that case, family conflicts can arise regarding the distribution of inheritance.

There are two ways that people divide an inheritance. First, the inheritance is distributed directly by his parents during his life (grant) to his heirs with an equal share. It leaves one form of property to be given to the heirs who care for him until he dies. Second, the eldest son distributes the inheritance after the heir dies and gets a will to distribute his inheritance. In this context, the first child often gets the most inheritance among other heirs, whether a girl or a boy.<sup>24</sup>

Four is a social situation. The community's social life is still safe and controlled, although the COVID-19 pandemic has slightly disrupted it. In recent years, community activities are still running generally without a hitch. In other words, there has been no significant conflict or dispute between the communities in Pakamban Laok. Even if there is a conflict between the family and the community, it can be controlled by village officials and religious leaders in Pakamban Laok. It is because the Pakamban Laok people are known as religious people who are obedient in carrying out religious orders and maintaining harmony among residents.

In a sociological context, the life of the Pakamban Laok community can interact well with fellow citizens. So far, there has been no social conflict between residents that has caught the attention of many people. From the social side, the bonds of brotherhood and kinship between residents are vital because they are supported by regional ties and as fellow Muslims who are obedient in carrying out

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<sup>24</sup> Musfiq, *Interview*, September 22, 2021.

religious orders. On Islamic religious holidays, the Pakamban community is very compact and solid in enlivening religious activities with great solemnity.

Then what about the social conditions between families and communities in inheritance law in Pakamban Laok? Based on the results of interviews with village officials, it was found that there had never been conflicts and disputes between communities in the distribution of inheritance. The inheritance distribution in this village often does not involve witnesses as parties who know first-hand the distribution of inheritance. However, there were no significant conflicts involving families on a large scale because among the factors, what they did was follow the provisions of Islamic law. Another factor is that people do not understand *'ilm al-farā'id* as a guide for every Muslim to determine the distribution of inheritance in family life.<sup>25</sup> It is indeed a dilemma for the community in determining the distribution of inheritance because it is based on their own will and agreement between families.

#### **D. The Practice of Family Inheritance Distribution in the Pakamban Laok Muslim Community**

This section describes the practice of sharing inheritance in the Muslim community in Pakamban Laok. Several cases studied show that the Muslim community does not practice Islamic inheritance law due to various factors mentioned, such as educational factors, lack of understanding of inheritance law, and social and economic factors. Each distribution of inheritance must follow the rules in Islamic inheritance law as a form of obedience in carrying out religious law. According to village data, the Pakamban Laok community is home to about 1,400 people (with the ability to vote), divided into four hamlets: Kacangan Hamlet, which has about 200 voting-eligible residents; Talon Hamlet, which has about 300; Gelis Hamlet has the most significant percentage of 700 voters; and Karang Delem has about 200. Pakamban Laok is one of the villages in the Pragaan District. The people of Pakamban Laok still do not care about education, significantly higher education. Based on interviews with Pakamban Laok, higher education is just a waste of time

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<sup>25</sup> Imam, *Interview*, September 11, 2021.

and materials. In addition, the cost of education to continue to the college level is very expensive, and only financially capable people can continue to the college level.

In the Pakamban Laok village, there is a practice of distributing inheritance that does not follow Islamic law. Some people distribute inheritance only according to their wishes. For them, only their children are entitled to inherit, while other heirs are not entitled to inherit property. With the practice of inheritance, it becomes exciting to study and compare it with practices regulated in Islamic law so that every Muslim has a religious understanding of the practice of dividing an inheritance. This research shows that many people do not understand the practice of Islamic law regarding inheritance issues that occur in the Pakamban Laok.

In overcoming the problem of inheritance distribution, the community is given an understanding and knowledge of inheritance law in Islam. One big problem in Pakamban Laok is that many people do not understand inheritance law as a science that studies how to divide inheritance according to Islamic law. They assume that only children are entitled to receive an inheritance, and there is no right other than children to receive an inheritance. *“People here only understand that inheritance is only given to their children. Apart from their children, they do not share the inheritance. If you do not have children, the property is distributed to the closest people caring for the heirs. The community distributes inheritance according to their wishes without considering the inheritance rights according to Islamic law.”*<sup>26</sup>

In practice, people tend to distribute inheritance according to their own will, not according to the guidance of inheritance science. Although the division of inheritance is considered correct according to themselves and among the families, it accepts it voluntarily. The division has unconsciously deviated from inheritance science. It is because they do not understand the existing legal provisions regarding the distribution of inheritance. When inviting a *kyai* (Islamic teacher) to determine the correct distribution of assets according to Islamic law, sometimes people think the distribution is incorrect. One of the reasons is that it is not following their hopes and desires. However, there are a small number of people who accept according to *kyai's* decision in the distribution of inheritance.<sup>27</sup>

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<sup>26</sup> Johan, *Interview*, September 21, 2021.

<sup>27</sup> K. Mufti, *Interview*, September 20, 2021.

It can be understood that, in general, many people do not understand the distribution of inheritance following the rules of inheritance law, especially those with the right to inherit. Inheritance of the heirs. So, the practice of dividing inheritance in the Pakamban Laok community is done in their way, which is divided equally or according to the wishes of the heirs. In practice, the distribution of inheritance is carried out by all parties in one family who get a share and agree with the distribution of the inheritance given.

According to informant interviews, some of the Pakamban Laok Muslim community did not yet comprehend inheritance law. They follow a family-based procedure for distributing inheritances that have been jointly agreed upon. Additionally, the heirs' inheritance is only given to their offspring. Thus, the Muslim community of Pakamban Laok uses two methods to divide the inheritance. It is first divided by the heirs while they live, a process known as a grant. Second, after the heir has passed away, the oldest child inherits it.

Based on family agreements and approvals among the heirs, community understanding of inheritance law practices used in Muslim groups in the village of Pakamban Laok is derived. Even though this information should be used as guidance, the public still does not comprehend how Islamic law should be applied regarding inheritance distribution. Society favors following family law over Islamic law regarding inheritance distribution. No difference exists in how equally distributed inheritance is between males and girls. The general assumption in society is that boys' and girls' requirements are equal. In other words, to prevent disputes, the successors distribute the inheritance equally.

#### **E. *Takharrūj* as a Solution for Inheritance Distribution**

This section explores the *takharrūj* model as an alternative to inheritance distribution by not following the provisions in Islamic inheritance law. In inheritance distribution, the Muslim community in Pakamban Laok uses the *takharrūj* model as a peaceful and family-friendly inheritance solution. *Takharrūj* is one of the methods in determining the share of rights to heirs, which is carried out not using Islamic inheritance law. However, inheritance rights are distributed to heirs by mutual agreement in the family environment.

Implementing *takharrūj* as a means of resolving the issue of inheritance distribution in Muslim groups in the village of Pakamban Laok is done for some reasons. First, disputes between specialists can be managed to promote siblinghood within families. Second, minimizing major family disputes. Conflict over inheritance will affect family ties and cause discord among the children if unresolved. Third, everyone can benefit from inheritance to build a contented and happy household. The implementation of this *takharrūj* is intended to foster future family unity and prevent strife among all families.

How does Islamic succession law then handle the idea of *takharrūj* to resolve inheritance issues for Muslim communities? Since the idea of *takharrūj* is peace for the heirs, some of them hold off on taking some of their lands at first.<sup>28</sup> The goal of heirs is to release only by providing to other heirs or anyone else based on mutually agreeable factors without coercion. In other words, *takharrūj* can be interpreted as one of the customs of distributing property among relatives according to the idea of family consensus.

Even though the *takharrūj* inheritance distribution system deviates from the Qur'an guidelines and hadith, it can still be justified if the heir consents. It is because the idea of *takharrūj* is founded on the findings of *ijtihad* (independent reasoning) on occasions that took place under the rule of Caliph Ustman bin Affan. Islamic law justifies the *takharrūj* system, which is one way to distribute inheritance among heirs in a kinship-based fashion. Islamic inheritance law's *takharrūj* practice is founded on a *mu'awadah* contract stipulating that each heir accepts the other and does not oppose them.<sup>29</sup>

Implementing *takharrūj* as a means of resolving the issue of inheritance distribution in Muslim groups in the village of Pakamban Laok is done for some reasons. First, disputes between specialists can be managed to promote siblinghood within families. Second, minimizing major family disputes. Conflict over inheritance will affect family ties and cause discord among the children if unresolved. Third,

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<sup>28</sup> Ahmad al-Hasari, *Al-Tariqat wa al-Wasaya wa al-Qadaya al-Muta'liliqat Bihima fi al-Fiqh al-Islami al-Muqaran* (Beirut: Dar al-Fikr., 1992).

<sup>29</sup> Abi Bakar Ahmad bin Husain al-Baihaqi, *Al-Sunan al-Kubra* (Bairut: Dar al-Kutub al-Ilmiyyah, 1999).

everyone can benefit from inheritance to build a contented and happy household. The implementation of this *takharrūj* is intended to foster future family unity and prevent strife among all families.

There are three methods of *takharrūj* usually applied. Firstly, *takharrūj* occurs between two heirs. Using this technique, an heir only performs *takharrūj* for another legitimate heir; for instance, heir A forgoes receiving his portion of the inheritance and gives it to the other heir in exchange for a clearly defined consideration. Second, heir A performs *takharrūj* to exclude himself from his inheritance portion in exchange for a specific payment from the inheritance of other legitimate heirs. For instance, he might give the other legitimate heirs his entire portion of another inheritance in exchange for a house from the inheritance. Third, legitimate heirs to an estate voluntarily compensate an heir who *takharrūj* (withdraws) in property other than the original inheritance. They could each receive an equal payout, payments based on their *'ilm al-farā'id* respective, or payments at a set rate. The portion of the heir who performs the *takharrūj* will then be split between them equally, according to *'ilm al-farā'id*, or based on the amount of each person's contribution to the payment.<sup>30</sup>

Adopting the *takharrūj* inheritance distribution plan is done to establish justice and peace in the inheritance distribution process. The following describes how justice and peace ideals resolve family disputes.<sup>31</sup> First and foremost, a noble aim in leading this life is to practice Islamic teachings on the principle of peace. Second, upholding religious teachings and suppressing injustice is the foundation for establishing harmony. Third, every application of the law must be grounded in pursuing peace without provoking strife in society, particularly in the home. Dividing inheritance is one of the problems that must be overcome, even though it does not use inheritance law in its application. However, many factors sometimes influence Muslim communities to give up their rights to their own families for justice and peace.

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<sup>30</sup> Ahmad Kamil Khudari, *Al-Mawarith al-Islamiyyah* (Kairo: al-Majlis al-A'la li al-Shu'un al-Islamiyyah, 1962).

<sup>31</sup> Yazid Ahmad et al., "Flexibility of Takharrūj Principle in Solving the Inheritance Issues," *International Journal of Civil Engineering and Technology (IJCIET)* 08, no. 11 (2017): 867–78.

In the Muslim community of Pakamban Laok, inheritance is divided among the descendants in a spirit of harmony or kinship. According to Article 183 of the Compilation of Islamic Law, "*Heirs can resolve to make peace in the distribution of inherited assets after each has extracted his share,*" this practice is permissible. To put it another way, it is acceptable to divide the inheritance equally if the procedure was previously conducted by Islamic law and approved by all parties involved in their respective divisions.<sup>32</sup> The sincerity and consent of the person entitled to receive it are the arguments put forth by scholars to support the concept of *takharrūj*. According to this assertion, the use of *takharrūj* to distribute inheritance can be justified if each heir is ready and sincere to divide it among the family with everyone's consent. If any of the heirs waived or abandoned their claims to the property so that it could be distributed to other heirs, that would be wrong.

## **F. Conclusion**

The research results above show that in the issue of inheritance distribution, the Pakamban people still do not understand the correct way of distribution according to the rules of *'ilm al-farā'id* and who has the right to inherit their inheritance. Meanwhile, in dividing the inheritance, the community only uses its method, which is divided equally or according to the wishes of each heir (descendant). In other words, the distribution of inheritance is determined according to the agreement of each family. If viewed from the perspective of Islamic law, the practice of inheritance law carried out by the Pakamban Laok community is still far from the provisions of *'ilm al-farā'id*. It is due to their lack of knowledge of the science of inheritance, which is regulated in the teachings of Islam.

For several causes, Muslim communities in the Pakamban Laok use *takharrūj* to address the problem of inheritance distribution. First, professional disagreements can be resolved to encourage siblinghood within households. Secondly, avoiding significant family conflicts. If inheritance disputes are not settled, they will damage family relationships and lead to strife among the offspring. Third,

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<sup>32</sup> Abdul Haris Naim and Ahmad Safi'i, "Analisis Implementasi Pasal 183 KHI tentang Pembagian Harta Waris di Desa Pasuruhan Kidul Kecamatan Jati Kabupaten Kudus," *YUDISIA: Jurnal Pemikiran Hukum dan Hukum Islam* 12, no. 2 (December 31, 2021): 187.



everyone can use inheritance to create a joyful and contented family. The *takharrūj* method promotes future family harmony and avoids conflict between families.

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