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THE *TASALUH*, *TANAZUL*, AND *TAKHĀRUJ* MODELS IN THE INHERITANCE PRACTICES OF MADURESE CLERICAL FAMILIES IN MADURA

A. Mufti Khazin¹; Ahmad Musadad²; Tri Pujiati³; Ifa Mutitul Choiroh⁴; Moh. Hatta⁵; Baihaqi⁶

^{1,3,4,5}Universitas Islam Negeri Sunan Ampel Surabaya, Indonesia; ²Universitas Trunojoyo Madura Bangkalan, Indonesia; ⁶Institut Agama Islam Negeri Pontianak, Indonesia

Email: ¹amufti@uinsa.ac.id; ²musadad@trunojoyo.ac.id; ³tri.pujiati@trunojoyo.ac.id; ⁴ifamutitul@uinsa.ac.id; ⁵hattamuhammad644@gmail.com; ⁶baihaqi@iainptk.ac.id

ABSTRACT

This study examines the implementation of *tasālub*, *Tanaẓul*, and *takhāruj* in inheritance settlement within the family of the late *Kiai* Haji AMM in Panaan Village, Palengaan, Pamekasan, Madura. The research addresses a theoretical tension between the textual-mathematical normativity of faraid and socio-cultural realities that prioritize deliberation and familial harmony. Employing a qualitative case study design within a socio-legal framework, the study integrates in-depth interviews, participant observation, inheritance agreement documentation, and analysis of classical Islamic inheritance jurisprudence alongside *maqasid al-shari'ah* theory. The findings demonstrate that faraid remains the acknowledged normative baseline; however, its application is mediated through *tasālub* grounded in mutual consent (*'an tarāḍin*). *Tanaẓul* and *takhāruj* operate as flexible redistributive instruments that are jurisprudentially valid and socially adaptive. From a *maqasid* perspective, the practice safeguards not only *hifẓ al-māl* (protection of property) but also *hifẓ al-'ird* and *hifẓ al-ukhūmah* (protection of dignity and fraternity), thereby fostering substantive justice and preventing intra-family conflict. The study formulates a “Consensual-Religious Inheritance Model of Madura,” integrating textual normativity, moral authority of religious leaders, and relational justice. These findings contribute to strengthening mediation-based inheritance mechanisms within Indonesian Islamic family law and advancing contemporary discourse on living fiqh grounded in local socio-religious wisdom.

Keywords : *Tasalub; Tanazul; Takhāruj; Living Fiqh; Substantive Justice.*

ABSTRAK

Penelitian ini menganalisis praktik *tasālub*, *Tanaẓul*, dan *takhāruj* dalam penyelesaian kewarisan di lingkungan keluarga almarhum *Kiai* Haji AMM di Desa Panaan, Palengaan, Pamekasan, Madura. Studi ini berangkat dari problem teoretis mengenai ketegangan antara normativitas faraid yang bersifat matematis-tekstual dan realitas sosial yang menuntut penyelesaian berbasis musyawarah dan harmoni keluarga. Penelitian ini menggunakan pendekatan kualitatif dengan desain studi kasus dan perspektif socio-legal, memadukan wawancara mendalam, observasi partisipatif, dokumentasi kesepakatan waris, serta analisis literatur fikih *mawāriḥ* dan *maqasid al-shari'ah*. Hasil penelitian menunjukkan bahwa faraid tetap diposisikan sebagai baseline normatif yang disadari oleh seluruh ahli waris, namun implementasinya dimediasi melalui *tasālub* berbasis prinsip *'an tarāḍin*. *Tanaẓul* dan *takhāruj* berfungsi sebagai instrumen redistribusi fleksibel yang sah secara fikih dan adaptif secara sosial. Dalam perspektif *maqasid*, praktik ini tidak hanya menjaga *hifẓ al-māl*, tetapi juga *hifẓ al-'ird* dan *hifẓ al-ukhūmah*, sehingga menghasilkan keadilan substantif dan mencegah konflik keluarga. Penelitian ini merumuskan Model Kewarisan Konsensual-Religius Madura sebagai tipologi konseptual yang mengintegrasikan normativitas teks, otoritas moral *kiai*, dan keadilan relasional. Temuan ini berkontribusi pada penguatan mediasi kewarisan dalam hukum keluarga Islam Indonesia serta pengembangan kajian living fiqh berbasis kearifan lokal.

Kata Kunci : *Tasalub; Tanazul; Takhāruj; Living Fiqh; Keadilan Substantif*

INTRODUCTION

Islamic inheritance law (*fiqh al-mawāris*) occupies a highly fundamental position within the normative construction of the *Shari'ah*. Unlike many other legal provisions that are articulated in general terms in the Qur'an and subsequently elaborated through the Sunnah and juristic reasoning (*ijtihad*), the Qur'anic verses on inheritance are formulated in explicit, detailed, and quantitative proportions. The determination of specific shares, such as one-half, one-quarter, one-eighth, one-third, and one-sixth, for designated heirs reflects a legal character that is definitive (*qat'i*) both in terms of transmission (*qat'i al-wurūd*) and meaning (*qat'i al-dalālah*) (Safitri & Khumaedy, 2024). Consequently, inheritance distribution in Islam is often perceived as a rigid legal domain, closed to modification and to be applied mathematically in order to preserve proportional justice and prevent intra-family disputes. Theologically, *farā'id* is not merely a civil norm governing property allocation; it also functions as a mechanism of wealth distribution imbued with moral, spiritual, and eschatological dimensions (Heriandita, 2025). Compliance with its formula is understood as obedience to divine command, while deviation is frequently associated with transgression of the divine limits (*budūd Allāh*).

However, empirical realities in Indonesia demonstrate that inheritance practices are far more dynamic than this rigid normative framework suggests. In many Muslim communities, inheritance is not always distributed strictly according to the mathematical ratios of *farā'id*. Empirical socio-legal research shows that Islamic inheritance norms often undergo transformation when interacting with local social relations, prompting families to adapt or modify *faraidh* distribution through deliberation (*musyawarah*) to prioritize harmony and substantive justice (Ngazizah & Lutfia, 2025). Families frequently consider economic conditions, contributions to parents during their lifetime, social responsibilities, and post-inheritance needs. This indicates an ongoing dialectic between textual normativity and social context. Studies document practices such as equal division, negotiated agreements, and *ishlah*-based redistribution as mechanisms to achieve fairness beyond fixed Qur'anic shares (Muchtaron, 2024). At this point, inheritance law functions not merely as a numerical formula but as an instrument for maintaining social cohesion and preventing conflict.

Within this broader empirical landscape, the inheritance practices of Madurese clerical (*kiai*) families become particularly important to examine. Madurese society is characterized by strong religiosity and a social structure that positions the *kiai* as a central moral and legal authority. In the pesantren-based social order, *kiai* families are often regarded

as ideal models of *Shari'ah* implementation. Theoretically, they possess deep knowledge of *farā'id* and are expected to apply it consistently. However, empirical findings reveal a different reality: inheritance within these families is frequently resolved through deliberation and consensus (*musyawarah*), guided by considerations of *maslahah* rather than strict *faraidh* ratios (Masduki et al., 2025; Suaidi & Hannan, 2024). This creates an important empirical problem: why do religious elites who are highly literate in Islamic inheritance law adopt flexible, negotiated mechanisms instead of rigid textual application?

More specifically, Madurese clerical families represent a distinctive socio-religious formation in which genealogical authority, pesantren-based moral legitimacy, and charismatic religious leadership are simultaneously embedded within inheritance decision-making processes. Unlike ordinary Muslim families, *kiai* households function not only as private kinship units but also as symbolic centers of religious authority that are publicly observed by the surrounding community. This visibility creates normative pressure to demonstrate exemplary adherence to *Shari'ah*, including in inheritance distribution. However, this very expectation produces a paradox: while they are assumed to represent strict fiqh compliance, their actual inheritance practices often reflect negotiated settlements, revealing a gap between perceived doctrinal ideality and lived legal reality.

In contemporary socio-legal contexts, the relevance of studying *tasālub*, *Tanaẓul*, and *takbāruj* becomes increasingly significant due to the growing complexity of family structures, increasing awareness of gender justice, and the rising demand for substantive rather than purely formal equality in inheritance distribution. These mechanisms provide legal and ethical space for reconciling fixed textual prescriptions with changing socio-economic conditions. In particular, they allow inheritance law to respond to issues such as unequal economic capacities among heirs, caregiving burdens disproportionately borne by women, and the need to preserve long-term family cohesion in increasingly fragmented social settings. Thus, rather than being marginal juridical tools, these concepts represent adaptive instruments through which Islamic law negotiates modern distributive realities.

From a gender-justice perspective, the practical implementation of these mechanisms also has significant implications for female heirs. While *farā'id* stipulates differentiated shares between male and female heirs, empirical practices in Madurese clerical families show that women are not merely passive recipients of fixed allocations. Through *tasālub*, *Tanaẓul*, and *takbāruj*, female heirs may either negotiate for more equitable outcomes, voluntarily relinquish shares to maintain family harmony, or receive compensatory arrangements that

better reflect their socio-economic contributions and needs. This indicates that inheritance justice in practice is not exclusively determined by textual ratios, but is also shaped by deliberative agency and negotiated ethics, which can potentially expand or reconfigure distributive outcomes for women within Islamic legal frameworks.

Academically, studies of Islamic inheritance in Indonesia have developed along three main trajectories: (1) normative-doctrinal studies focusing on textual analysis of Qur'anic and Prophetic sources; (2) juridical-positivistic studies examining the implementation of the Compilation of Islamic Law and Religious Court decisions; and (3) legal-anthropological studies that situate inheritance as living law within society. These studies collectively show that inheritance practices are pluralistic, often shaped by negotiation, custom, and welfare considerations (Maimun et al., 2021; Maimun, 2015; Hipni, 2019; Wahyuni & Harisah, 2019; Sopyan et al., 2020; Kaban, 2016; Haries, 2014). On the doctrinal level, scholars have also discussed mechanisms such as *tasālub*, *Tanaẓul*, and *takbāruj* as legitimate forms of post-determination settlement within Islamic law (Khan, 1992; Zuhayli, 2011; Nofitasari, 2024; Bahri et al., 2024).

Nevertheless, a critical gap remains. Existing studies tend to treat *tasālub*, *Tanaẓul*, and *takbāruj* separately, or position them merely as secondary mechanisms applied after *faraidh* calculation. There is limited research that systematically integrates these three concepts as interconnected models of negotiated inheritance within a single socio-legal framework. Moreover, although Madurese inheritance has been widely studied, little attention has been given specifically to clerical families, where doctrinal authority and social legitimacy intersect in complex ways. Previous research has also not sufficiently analyzed how these mechanisms function as structured legal instruments grounded in *fiqh* reasoning rather than as purely pragmatic compromises.

Based on this gap, this study formulates two main research questions: (1) How are *Tasalub*, *Tanaẓul*, and *takbāruj* operationalized in the inheritance practices of Madurese *kiai* families? (2) What normative and socio-legal foundations underpin the use of these mechanisms as models of inheritance distribution? To address these questions, this study focuses on a case study of the family of the late *Kiai* Haji AMM in Panaan Village, Palengaan, Pamekasan. The inheritance distribution was conducted through a family forum facilitated by the widow, allowing negotiation, exchange, and evaluation of asset utility. Although *faraidh* calculations were acknowledged, the final distribution emphasized relative equality and practical considerations such as land location, economic access, prior contributions, and

heirs' needs. This case illustrates how normative rights are maintained while their implementation is mediated through deliberative processes.

In this context, *Tasalub* (amicable settlement), *Tanaʿul* (voluntary relinquishment), and *takhāruj* (withdrawal with compensation) function as key mechanisms. Classical fiqh recognizes these concepts within the framework of *sulh and taṣarruf al-ḥaqq ba'da ta'yīnibi*, affirming their legitimacy across major legal schools (Khan, 1992; Zuhayli, 2011). Furthermore, these mechanisms are supported by Article 183 of the Compilation of Islamic Law, which permits consensual settlement after heirs are aware of their respective shares. Thus, the practices observed in kiai families should be understood not as deviations from *Shari'ah*, but as valid implementations of *islah* and mutual consent (*'an tarāḍin*) (Hallaq, 2009; Hilmi, 2019).

This study contributes by offering an integrated analytical framework that connects *Tasalub*, *Tanaʿul*, and *takhāruj* as a unified model of negotiated inheritance. Theoretically, it enriches *fiqh al-mawāriṣ* discourse by emphasizing the role of substantive justice and social cohesion. Methodologically, it combines doctrinal analysis with a socio-legal case study approach, presenting inheritance as living *fiqh*. Practically, it provides insights for strengthening mediation-based inheritance settlement and optimizing the implementation of Article 183 of the Compilation of Islamic Law. Ultimately, this study demonstrates that Islamic inheritance law can function as both a normative and adaptive system, capable of bridging textual prescriptions and social realities in contemporary Muslim societies.

RESEARCH METHOD

This research employs a qualitative (Abdussamad, 2021; Benuf & Azhar, 2020; Kusumastuti & Khoiron, 2019) methodology with a socio-legal approach (Busetto, 2020), integrating normative analysis of Islamic law with empirical investigation of inheritance practices within society. Specifically, this study is positioned as a socio-legal research that combines two complementary scopes: (1) normative legal research (doctrinal fiqh analysis) and (2) empirical legal research (field-based socio-legal inquiry). The normative dimension is used to analyze authoritative texts of Islamic inheritance law (*fiqh al-mawāriṣ*), while the empirical dimension is used to examine how these norms are practiced, negotiated, and transformed in lived social reality. The research design adopts a multiple case study model, focusing primarily on the inheritance practices of the family of the late Kiai Haji AMM in Panaan Village, Palengaan, Pamekasan, with limited comparative reference to typologies of

kiai families in other Madurese regions (Bangkalan, Sampang, and Sumenep) in order to strengthen the proposed model construction. Epistemologically, this study combines two dimensions: first, a normative dimension through in-depth examination of the concepts of *tasālub*, *Tanaẓul*, and *takbāruj* in classical and contemporary fiqh literature; and second, an empirical dimension through exploration of inheritance practices as a form of living Islamic law. This approach enables an analysis of the dialectic between the definitive (*qat'i*) character of *farā'id* law and the value-based deliberative mechanisms (*musyawarah*) grounded in *islah* that develop within the Madurese socio-cultural context, as reflected in the practices of *kiai* families. From a methodological classification perspective, this research falls under empirical socio-legal studies with a strong normative doctrinal support, rather than purely normative legal research. The normative component functions as a theoretical framework for evaluating legal validity, while the empirical component serves as the primary source of data for understanding how inheritance law operates in practice.

The research site was purposively selected in Panaan Village, Palengaan District, Pamekasan Regency, as a representation of a religious community characterized by strong *kiai* authority structures. Research subjects included heirs within the *kiai* family, senior family members who functioned as internal mediators, and respected *kiai* figures possessing moral legitimacy in the deliberative process. The researcher was directly present in the field as a human instrument, establishing rapport and trust with informants given the sensitivity of inheritance issues. Data collection techniques comprised: (1) semi-structured in-depth interviews to explore motives, perceptions, and operational mechanisms of *tasālub*, *Tanaẓul*, and *takbāruj* practices; (2) limited participant observation of post-distribution family relational dynamics; (3) document analysis of estate distribution records, written agreements, and family genealogical structures; and (4) library research on classical fiqh texts, *maqasid al-shari'ah* literature, and positive legal regulations, including Article 183 of the Compilation of Islamic Law. Accordingly, the data obtained encompassed narrative, textual, and contextual dimensions simultaneously.

Data analysis proceeded through several systematic stages. First, thematic coding was conducted by classifying field findings into conceptual categories: *tasālub* (amicable settlement), *Tanaẓul* (voluntary relinquishment of rights), and *takbāruj* (withdrawal with compensation). Second, a comparative analysis was undertaken between classical inheritance norms and local practices to assess conformity, deviation, or legal transformation. Third, normative-conceptual analysis was applied to evaluate the validity of these practices based

on the principles of *'an taradin* (mutual consent), *maqasid al-shari'ah*, and Indonesian positive law. Fourth, a model-building process was conducted to formulate the conceptual construction of a "Religious Consensual Inheritance Model of Madurese Kiai Families." To ensure data credibility, the study employed source triangulation, cross-checking among informants, and conceptual verification against fiqh literature and national regulations. Through this approach, the research not only describes empirical phenomena but also produces a theoretically and normatively accountable synthesis. In terms of legal research typology, the normative analysis in this study is limited to doctrinal interpretation (statute and *fiqh*-based analysis), while the empirical component adopts a socio-legal ethnographic orientation focusing on legal behavior, decision-making processes, and social meanings attached to inheritance distribution. This distinction is important to avoid conflating normative validity (what Islamic law prescribes) with empirical reality (how law is actually practiced).

FINDINGS AND DISCUSSION

Findings

The Socio-Religious Structure of Madurese Kiai Families and the Foundations of Inheritance Consensus

The findings of this study demonstrate that *kiai* families in Madura cannot be reduced to ordinary genealogical entities formed solely by blood relations and lineage. Rather, they constitute multilayered and complex socio-religious structures encompassing genealogical, symbolic, and charismatic dimensions simultaneously. The genealogical dimension affirms the continuity of lineage (*nasab*) and the transmission of family traditions across generations, while the symbolic dimension represents the family's position as guardian of pesantren values and the religious identity of the surrounding community. The charismatic dimension, in turn, rests upon moral legitimacy derived from scholarly reputation, social dedication, and the spiritual exemplarity of the *kiai* figure. Accordingly, authority within the family does not stem merely from biological relations, but from a social construction that positions the *kiai* as an ethical and moral reference point. In the context of the family of the late *Kiai* Haji AMM, the *kiai* figure functioned as the center of value orientation and the determinant of the extended family's moral direction. Consequently, every strategic decision, including the distribution of inherited property, was consistently considered within the orbit of religious ethics, legal prudence, and awareness of eschatological responsibility (Madinier, 2011). This structure

renders the *kiai* family not merely a private unit, but a miniature religious community bound by religious norms and symbols.

This social structure indeed reflects the presence of internal hierarchy; however, such hierarchy does not manifest in the form of domination or unilateral control over assets and decision-making. They represent stratified socio-religious formations characterized by intertwined genealogical, symbolic, and charismatic dimensions. The genealogical dimension signifies the continuity of lineage and intergenerational transmission of values, as seen in traditional kinship practices that align marriage decisions with the preservation of familial networks and social stability (Thabrani & Kusairi, 2023). The symbolic dimension consolidates the family's position as a custodian of *pesantren* traditions and as a moral reference point for the surrounding society, given the central role *pesantren* and *kiai* play in shaping religious norms and social life across Madurese communities (Pribadi, 2013; Jufri et al., 2025). The charismatic dimension is grounded in religious legitimacy shaped by scholarly authority, spiritual exemplarity, and sustained social engagement, which are central to the social prominence of *kiai* within rural Islamic education networks (Pribadi, 2013). Thus, familial authority is not based exclusively on biological relations but also on moral legitimacy constructed through prolonged religious education, deep social recognition, and consistency of ethical conduct in public life. This accords with studies showing that *kiai* function as key social nodes linking social behavior, religious guidance, and community cohesion (Rohematul & Itaanis, 2025). Within the family of a prominent *kiai*, the *kyai* often serves as the focal axis of value orientation and ethical reference for the extended family, ensuring that every strategic decision, including matters of inheritance, is situated within a framework of religious ethics and communitarian accountability. This configuration positions the *kiai* family not merely as a domestic unit but as a microcosm of extended socio-religious community regulated by shared norms, sacred symbols, and enduring moral traditions.

Although this social structure reveals internal hierarchy, it does not operate through domination or unilateral control over the family's economic resources. The eldest son, Kiai AM, occupies a symbolic position as guardian of trust (*amānah*) and continuity of family values rather than as an absolute controller of inherited assets. His role is moral-representative rather than economically authoritative. Property ownership is understood as a social responsibility embedded within fraternal relationships, not as an exclusive individual right detached from collective obligations. In one interview with Kiai AM, he stated:

“I do not wish property to be regarded as absolute private ownership. Family assets are a family trust. If at any time a sibling faces urgent need, I am obliged to safeguard and assist.”

This statement illustrates that the paradigm of ownership within *kiai* families is collective-functional in nature. Wealth is not positioned as private property devoid of social dimension, but as a trust that entails ethical obligations to preserve familial balance and solidarity. Within this framework, ownership does not stand independently as a right; rather, it is inherently linked to the responsibility of maintaining stability in kinship relations. Property is thus perceived as an instrument for sustaining relationships and reinforcing internal social cohesion, rather than merely as an object of economic distribution divided mathematically without consideration of its broader social implications.

Furthermore, the pesantren culture deeply embedded within the family shapes conflict resolution patterns that are deliberative, participatory, and oriented toward harmony. The tradition of *musyawarah* is not merely a formal procedure but a habitus internalized in everyday family life (Abidin et.al, 2024). *Musyawarah* in this context is operationalized through staged deliberative meetings, beginning with informal intra-sibling discussions, followed by a collective family forum facilitated by senior family members, and culminating in a consensus declaration that is later documented in written form to ensure procedural clarity and prevent future contestation. This staged process demonstrates that deliberation is not spontaneous, but structurally organized and socially regulated. Respect for parents and senior figures is intertwined with the local philosophy of *rampak naong beringin korong*, which emphasizes togetherness under a shared shelter, thereby fostering a strong tendency to avoid formal litigation that might fracture familial bonds. In this perspective, inheritance is not viewed solely as material assets to be divided numerically, but as a trust to be managed with consideration for blessing (*barakah*), moral continuity of the family, and long-term stability (Hallaq, 2009; Menchik, 2016). This perspective demonstrates that the socio-religious structure of *kiai* families functions as both a normative and cultural foundation for the emergence of a religiously grounded consensual inheritance model, in which solidarity, moral responsibility, and relational justice constitute the primary principles guiding every process of wealth distribution (Al Ghazzali, 2000).

Pattern One: Tasāluh as a Deliberative Mechanism (Family Compromise)

Within the empirical configuration of Madurese kiai inheritance practices, *tasāluh* emerges as the foundational and preventive modality of distribution, preceding both *Tanaẓul* and *takbāruj*, and functioning as the collective deliberative matrix through which inheritance is initially structured. In the practices of Madurese kiai families, *tasāluh* is not understood as a mechanism for resolving disputes after conflict has occurred, as is commonly perceived within the context of litigation or formal mediation. On the contrary, *tasāluh* is positioned as a preventive mechanism that precedes potential conflict, even before the numerical provisions of *farā'id* are rigidly applied. Thus, *tasāluh* is not a response to dispute, but rather an initial design of distribution aimed at preventing dispute (Kamali, 2008). It is operationalized through an open deliberative forum that provides space for all heirs to articulate their views, needs, and preferences honestly. This deliberative structure transforms inheritance distribution into a dialogical process rather than a merely calculative procedure. The distribution process does not begin with final mathematical calculations, but with discussions that weigh relationships, needs, and the sustainability of family harmony.

Within this context, the widow of the late *Kiai* Haji AMM played a principal role as facilitator who mediated the deliberative process. However, this leadership was neither authoritarian nor unilateral. She did not impose a final decision without consultation, but instead opened space for questions, corrections, and proposals before agreement was reached. Her authority was moral and moderative rather than determinative. One heir emphasized this dynamic by stating:

“There was no pressure. Everyone spoke honestly. Mother only organized the process, but the decision was still deliberated together.”

This statement demonstrates that the legitimacy of the decision rested not on hierarchical power, but on collective participation and shared awareness. Accordingly, *tasāluh* operated within an atmosphere of openness that minimized the possibility of coercion or latent dissatisfaction. In this practice, deliberation constituted the core of *tasāluh* and simultaneously the arena for articulating substantive justice. The deliberative mechanism therefore demonstrates that *musyawarah* is not merely consultative, but constitutive of legal validity within the family context, as agreement itself becomes the basis of distributive legitimacy. The distribution of property did not automatically follow the 2:1 ratio between males and females as prescribed in classical *farā'id*, but instead considered various contextual variables, including the economic condition of each heir, the location and type of assets,

accessibility to land or property, and the potential long-term practical benefits. Within this framework, the justice achieved was not merely arithmetic justice confined to numbers, but perceived justice that was emotionally accepted by all parties. As one informant explained:

“If calculated mathematically, it might differ. But if felt, what is most just is what brings benefit to everyone.”

This expression reveals a paradigmatic transformation in understanding inheritance law: *farā'id* remains acknowledged as the normative starting point that defines baseline rights, yet *tasāluh* functions as the implementative instrument that adjusts distribution to the social realities of the family.

Accordingly, *tasāluh* in this context cannot be interpreted as a weakening of law or as a relativization of *Shari'ah* provisions. Rather, it constitutes an actualization of the principle of *'an tarāḍin* (mutual consent), which forms the spirit of Islamic *mu'āmalah* (El Haddad, 2019). The legitimacy of distribution is measured not only by conformity to normative calculations, but also by the level of acceptance, sincerity, and inner peace experienced by the heirs after the decision is made. This model illustrates that Islamic law possesses an ethical dimension that transcends textual formalism (An Na'im, 2008), wherein *maslahah* and family harmony become primary orientations. Thus, *tasāluh* functions as a bridge between the normativity of *farā'id* and the social dynamics of the family, ensuring that inheritance does not become a source of fragmentation but rather an instrument for strengthening kinship bonds.

Pattern Two: *Tanaẓul* as Voluntary Renunciation of Rights

Unlike *tasāluh*, which operates collectively, *Tanaẓul* constitutes an individualized ethical act of voluntary relinquishment of inheritance rights, grounded in moral consciousness and relational responsibility rather than structural obligation. Beyond *tasāluh*, the practices of *Tanaẓul* constitute significant findings in this study, reflecting both flexibility and ethical depth in the inheritance practices of Madurese kiai families. *Tanaẓul* emerged in the form of voluntary relinquishment of inheritance rights by certain heirs without coercion or structural pressure. The widow of the deceased did not claim her one-eighth share as prescribed by *farā'id*, and further transferred part of her personal property to the youngest daughter (Hamzawi, 2023). This act was not merely an administrative decision, but a moral choice imbued with considerations of *ukhuwah* and the continuity of family relations. In her emotional reflection, she stated:

“Wealth can be earned, but if brotherhood is broken it cannot be bought. I choose for my children to remain united.”

This statement affirms that *Tanaẓul* was motivated by the preservation of family harmony and fraternal values, rather than by social pressure or gender subordination. The relinquishment of rights was understood as a conscious sacrifice for collective stability. A similar attitude was demonstrated by the second daughter, who voluntarily declined her share of inherited land on the grounds that her economic condition was already stable. This decision was fully supported by her husband, indicating that the relinquishment occurred within complete rational and spiritual awareness. In this context, *Tanaẓul* does not represent the neglect of rights, but rather the actualization of the principle of tarāḍin (mutual willingness) within family relations.

Kiai AM interpreted the acceptance of transferred rights not as a personal economic gain, but as a social trust that could be returned should family circumstances change. He stated:

“If I accept it, it is not because I need it, but because it is a trust. And a trust can be returned if conditions change.”

This expression demonstrates that the mechanism of *Tanaẓul* forms an internal social security system within the family. Wealth accumulated by one party is not perceived as permanent ownership, but as a collective trust that may be reallocated in the event of future urgent needs. Thus, solidarity and flexibility become dominant values binding inheritance distribution within a framework of shared responsibility.

Pattern Three: *Takhāruj* as Compensatory Exit Settlement

Takhāruj constitutes a structurally distinct mechanism characterized by negotiated exit from inheritance rights accompanied by compensatory exchange, thereby integrating juridical validity with economic rationality. Meanwhile, *takhāruj* was applied in a different situation, namely when the youngest daughter received compensation in the form of a shop owned by her mother due to the limited inherited land assets that could not be physically divided productively. This mechanism prevented the fragmentation of small assets that might otherwise diminish their economic value. One family member explained:

“Rather than dividing a small piece of land unclearly, it is better for one party to focus on it and the others be compensated, so that its benefit is clear.”

This statement reflects strong economic rationality in decision-making. Economically, *takhārij* enhances asset efficiency and prevents waste resulting from unproductive division. From a fiqh perspective, this practice aligns with the concept of *sulh mu'awadlah*, which permits the exchange of property rights with compensation based on voluntary agreement. The integration of economic rationality and *fiqh* legitimacy demonstrates that flexibility does not operate without normative foundation, but remains within the framework of Islamic law. However, *takhārij* also carries a latent structural implication: while it accelerates resolution and prevents fragmentation, it may simultaneously stabilize unequal asset distribution when compensatory valuation does not fully reflect long-term economic potential, thereby requiring careful ethical and deliberative balancing in practice.

Determinants and Implications of Model Selection

The selection among *tasāluh*, *Tanaẓul*, and *takhārij* is shaped by interdependent variables rather than random choice, including asset structure, economic necessity, relational proximity, and the intensity of moral leadership within the family. *Tasāluh* emerges where collective deliberation is prioritized ab initio; *Tanaẓul* arises from individual moral relinquishment; while *takhārij* is employed when asset indivisibility necessitates compensatory restructuring.

The findings show that the selection of *tasāluh*, *Tanaẓul*, or *takhārij* is not random, but determined by several interrelated factors: (1) the structure and type of assets (divisible or non-divisible), (2) the economic condition and needs of heirs, (3) the degree of emotional closeness and commitment to family harmony, and (4) the presence of moral authority figures who facilitate deliberation. *Tasāluh* tends to be chosen when collective agreement is prioritized from the outset; *Tanaẓul* emerges when individual heirs consciously sacrifice their rights; while *takhārij* is applied when economic efficiency and asset preservation require compensatory redistribution.

In terms of impact, these models collectively strengthen family relations by prioritizing consensus, trust, and solidarity, thereby minimizing potential conflict. At the same time, they redefine distributive justice from a purely mathematical concept into a relational and substantive one, where fairness is measured not only by proportional shares but also by perceived benefit, acceptance, and long-term family cohesion. Thus, the integration of *tasāluh*, *Tanaẓul*, and *takhārij* demonstrates that Islamic inheritance law operates

not only as a rigid normative system, but also as a flexible socio-legal framework capable of realizing justice in lived contexts.

Discussion

Conceptual Reconstruction of *Tasālub*, *Tanazul*, and *Takhāruj* in the Perspective of *Fiqh Mawāriṣ* and *Maqasid al-Shari'ah*

Empirical findings from the inheritance practices of the family of the late Kiai Haji AMM demonstrate that the mechanisms of *tasālub*, *Tanazul*, and *takhāruj* employed therein do not constitute deviations from classical *fiqh mawāriṣ*, but rather contextual articulations that remain within the normative framework of the *Shari'ah*. Theoretically, the provisions of *farā'id* indeed possess a *qat'i* character in determining prescribed shares, particularly as emphasized in Qur'ān Surah al-Nisā' verses 11–12 and 176. These formulations represent definitive affirmations of the individual rights of heirs that cannot be unilaterally disregarded. Nevertheless, within the juristic construction of *fiqh*, the determination of shares does not automatically preclude the possibility of *sulb* (amicable settlement) after each heir's right has been definitively established. Classical jurists distinguish between the stage of *ta'yīn al-haqq* (normative determination of rights) and the stage of *tasarruf fī al-haqq* (management or transfer of rights once fully vested). Accordingly, the numerical allocations of *farā'id* function as the starting point of rights recognition, not as the final and entirely closed point of distribution immune to agreement. The practice of this family indicates that normative rights remain acknowledged and calculated, yet their implementation is mediated through a deliberative forum fulfilling the principle of 'an *tarādīn* (mutual consent), thereby ensuring that distribution proceeds within both *Shari'ah* legitimacy and social harmony.

Within the *fiqh* framework, *tasālub* is deemed valid provided several conditions are satisfied: clarity regarding the object of dispute or agreement, absence of coercion, and absence of ignorance concerning the fundamental rights of each party. The deliberative process conducted in this family demonstrates fulfillment of all these conditions. The *farā'id* shares were first identified and mutually understood, then discussed openly within a participatory family forum, and ultimately documented in written form and jointly signed as a measure of administrative prudence. Thus, the *tasālub* that occurred does not represent neglect of textual provisions, but rather realization of the principle of *sulb* explicitly recognized in *fiqh mu'āmalah* (Bahri et al., 2024). This practice illustrates that inheritance *fiqh* is not as rigid as often assumed in popular discourse, but rather contains implementative

elasticity so long as explicit halal–haram boundaries are not violated and the heirs’ initial rights have been lawfully determined (Sam’un & Fauzan, 2024). However, a persistent limitation in both doctrinal and socio-legal scholarship is that conformity to *Shari’ah* is often asserted in a declarative manner without sufficient analytical interrogation of how such conformity is socially produced, negotiated, and legitimized through interactional processes. In many cases, theoretical frameworks are merely appended to empirical descriptions rather than actively deployed to critically examine the dynamics of authority, consent, and moral reasoning within inheritance practices.

From a legal pluralism perspective, inheritance in Madurese *kiai* families cannot be understood as a monolithic application of Islamic law, but rather as an arena where state law, *fiqh* norms, and local moral expectations interact and are selectively activated through deliberation. Within this plural legal order, *tasālub*, *Tanaẓul*, and *takḥarīj* function as mediating instruments that translate normative plurality into socially acceptable outcomes. Furthermore, from the standpoint of moral economy, inheritance distribution is not merely a technical allocation of property rights but a morally embedded economic practice in which fairness is defined through relational obligations, care, and the preservation of familial solidarity. *Musyawarah* thus operates as a moral regulatory mechanism that prioritizes social equilibrium over strict numerical proportionality.

In addition, within the framework of living Islamic law, *farā’id* is not merely a fixed doctrinal system but a living normative order that is continuously interpreted and reactivated through everyday practice. The *kiai* family becomes a site where legal meaning is not only derived from texts but also generated through lived experience, thereby transforming inheritance law into a dynamic socio-religious practice rather than a static doctrinal formula. *Musyawah* in this context is not procedural symbolism but a substantive mechanism of legal production: it is through deliberation that rights are interpreted, needs are negotiated, and distributive justice is socially constructed. Hence, Islamic inheritance law is revealed not as structurally rigid, but as methodologically flexible through deliberative reasoning embedded in communal ethics.

The *Tanaẓul* undertaken by the widow and the second daughter enriches the ethical dimension of this practice while demonstrating the depth of legal consciousness among its actors. In *fiqh* literature, *Tanaẓul* is understood as a form of *tabarru’*, namely voluntary relinquishment of ownership rights after such rights have become complete (*milke tamm*). Such relinquishment is valid provided the actor possesses legal capacity (*ahlīyyah*), comprehends

the consequences of the act, and acts free from external pressure. The fact that the relinquishments were conducted consciously, witnessed, and fully supported by their respective spouses indicates comprehensive awareness of both legal and social implications. From the perspective of *maqasid al-shari'ah*, this practice not only safeguards *hifz al-māl* (protection of property) in terms of family economic stability, but also strengthens *hifz al-ukhuwwah* and *hifz al-'ird* (protection of fraternity and honor) (Abdulsiddik et al., 2024). Thus, relinquishment of rights is not perceived as detrimental sacrifice, but as a moral investment aimed at preserving long-term family cohesion.

Meanwhile, the *takhārij* mechanism implemented through compensating the youngest daughter with a shop owned by her mother demonstrates sophisticated fiqh adaptation to the problem of assets physically difficult to divide without diminishing their economic value. Classical literature explains that *takhārij* constitutes a form of *sulb mu'awadab* that is permissible, since each heir, upon the death of the decedent, holds the right to transact or transfer his or her share. In this context, compensation is not merely nominal substitution, but a structural solution to prevent unproductive collective ownership potentially generating latent conflict. As discussed in contemporary studies, *takhārij* serves as a bridge between the fixed textual shares (*farā'id*) and practical consensus among heirs, where one heir relinquishes part or all of their share in exchange for compensation agreed upon by all parties in a peaceful settlement (Bahri et al., 2023; Shesa et al., 2021). From a *maqasid* perspective, this mechanism safeguards *hifz al-māl* by optimizing economic utility and preventing waste due to asset fragmentation. Simultaneously, it functions as a preventive instrument against disputes that might damage honor and familial relationships. Therefore, the flexibility of distribution remains grounded in juristic rationality and the objectives of Islamic law.

Living Fiqh and the Transformation of Kiai Authority in Inheritance Practice

Inheritance practices in Panaan Village illustrate how Islamic law operates as living fiqh, namely law that lives within social consciousness, is practiced in daily interactions, and is shaped by specific cultural contexts without losing its normative reference. In Madurese society characterized by religious patronage, the authority of the kiai possesses strong moral, symbolic, and spiritual dimensions. Interestingly, in this case such authority was not employed to impose the *farā'id* formula rigidly, but to facilitate dialogue, maintain relational balance, and ensure that the resulting agreement remained within the *Shari'ah* framework. The roles of the widow and Kiai AM as moral mediators indicate that family leadership

functioned in a deliberative and persuasive manner rather than authoritarian or coercive. This phenomenon reflects a transformation of authority from legal authority toward moral authority, where community leaders guide interpretive processes rather than dictate fixed verdicts (Nur et al., 2025).

This phenomenon reflects a transformation of authority from legal authority toward moral authority. The kiai does not function as a judge issuing unilateral verdicts, but as a guardian of values who supervises the deliberative process to ensure adherence to principles of justice and mutual consent. Such authority, in fact, strengthens the legitimacy of deliberative outcomes, since decisions are not imposed from above but emerge from active participation of all family members. From a socio-legal perspective, this condition demonstrates integration between normative law and local culture, producing legal practices that are effective, accepted, and sustainable. Law does not appear as rigid text, but as norm ethically negotiated within social space. However, much of the existing analysis tends to remain descriptively affirmative, reproducing the claim that “this practice is in accordance with *Shari’ah*” without interrogating the internal tensions, negotiations, and interpretive work through which such conformity is achieved. As a result, theoretical frameworks are often only superficially attached to empirical findings rather than rigorously mobilized to critically examine how authority, consent, and moral reasoning are constructed in practice. This study addresses this limitation by treating “*living fiqh*” not as a self-evident category of compliance, but as a contested socio-legal process requiring analytical unpacking.

Furthermore, the written documentation of deliberative outcomes indicates that living fiqh in this context is not opposed to legal formality. On the contrary, it integrates religious legitimacy with administrative prudence to ensure certainty and prevent future disputes. Agreements are not based solely on moral trust, but are reinforced through documentation that may serve as reference should divergent perceptions arise subsequently. This confirms that non-litigious resolution is not synonymous with informality or absence of structure, but may possess clear and documented accountability (Mustofa et al., 2025). Accordingly, this family’s inheritance practice reflects a productive dialectic between normative text, the moral authority of the kiai, and the socio-economic needs of the family, while simultaneously demonstrating how Islamic law may operate as living, adaptive, and firmly rooted in its *Shari’ah* foundations.

Substantive Justice versus Legal-Formalism: A Critique of Mathematical Reductionism

One of the significant contributions of this practice lies in its implicit critique of legal-formal reductionism in understanding inheritance justice. In many interpretations, *fara'id* is frequently perceived as a final and rigid mathematical system that is inviolable at every stage of its implementation. The 2:1 ratio between males and females is often regarded as a symbol of textual compliance that must be applied without room for social deliberation. However, the practice of the Kiai AMM family demonstrates that justice is not always identical with numerical fidelity to that ratio. Empirical findings reveal that relatively equal distribution was carried out not as a denial of the text, but based on considerations of utility, distribution of economic access, family responsibilities, and the actual conditions of each heir. Accordingly, there is a shift in orientation from arithmetic justice, emphasizing numerical conformity, toward substantive justice that prioritizes relational balance and social benefit.

Within theories of distributive justice, as developed in legal philosophy and social ethics, justice is not measured solely by mathematical proportionality, but by the correspondence between distribution and the actual needs of recipients. The principle of proportional equity underscores that a just distribution takes into account context, social roles, and varying levels of need among parties. In the framework of *maqasid al-shari'ah*, law fundamentally aims to realize *maslahah* and prevent *mafsadah*. If rigid application of formulaic rules potentially triggers conflict, jealousy, or relational imbalance that undermines family harmony, then *tasalub* may legitimately function as a corrective instrument within *Shari'ah*. Thus, the substantive justice achieved in this practice reflects broader objectives of the *Shari'ah*, namely the protection of property (*hifz al-mal*) alongside the protection of fraternity and honor (*hifz al-'ird wa al-ukhwwah*).

This approach does not negate *fara'id* as the foundational norm; rather, it avoids a narrow interpretation that reduces law to numbers alone. *Fara'id* remains positioned as the initial normative reference that delineates the boundaries of legitimate rights. However, at the implementation stage, law does not terminate at mathematical calculation but progresses toward broader ethical objectives. Family harmony is situated as the *ghayah al-hukm* (ultimate purpose of law), while the numerical allocations of *fara'id* function as a *wasilah* (instrument) to attain that objective. Within this paradigm, Islamic law appears as an adaptive and contextual ethical system without forfeiting its normative foundation. The flexibility that

emerges is not relativism, but an expression of the internal dynamism of fiqh, which indeed provides space for mediation through the principles of *sulh* and *taradīn sulh* and *tarādīn*.

The Model's Contribution to the Development of Indonesian Islamic Family Law

The *Tasālub–Tanazul–Takhāruj* model identified in the inheritance practices of Madurese kiai families bears strategic implications for the development of Islamic family law in Indonesia, both at normative and institutional levels. Normatively, this practice aligns with Article 183 of the Compilation of Islamic Law (KHI), which provides space for heirs to reach amicable settlement after each has recognized his or her respective share. Accordingly, this model is not only valid within classical fiqh but also compatible with national positive law. The integration of textual norms and reconciliation mechanisms within the KHI demonstrates that the Indonesian legal system itself has opened avenues for deliberative approaches grounded in consultation and agreement.

At the institutional level, this practice may serve as a reference for strengthening mediation functions within the Religious Courts. Religiously guided deliberative settlement facilitated by moral family authority has the potential to reduce the burden of formal litigation, expedite dispute resolution, and preserve family dignity and honor. This model may be adopted as a preventive approach before cases proceed to formal adjudication. At the socio-cultural level, the value of *rampak naong beringin korong*, which undergirds family solidarity, may be positioned as local wisdom compatible with *maqasid al-shari'ah*. This demonstrates that Islamic law does not operate as a normative system detached from local culture, but may harmoniously integrate with community values so long as they do not contradict *Shari'ah* principles.

Conceptually, this model offers a synthesis between textual norms, *maqasid*-based ethics, and non-litigious mechanisms within an integrated framework. *Farā'id* remains respected as the normative reference establishing the limits of rights; *tasālub* serves as a deliberative mechanism ensuring participation and mutual consent; *Tanazul* and *takhāruj* function as flexible redistributive instruments preserving efficiency and harmony; and family cohesion becomes the indicator of legal success. This model illustrates that flexibility in Islamic law does not imply normative weakening, but rather constitutes a strategy for safeguarding the substantive objectives of *Shari'ah* within dynamic and complex social contexts. The inheritance practices of the family of Kiai Haji AMM demonstrate that the dialectic between text and context may generate more substantive and *maṣlahah*-oriented

forms of legal implementation. Islamic law is not understood as a rigid numerical structure isolated from social realities, but as a value-based system aimed simultaneously at protecting property, honor, and fraternity. Within this framework, *tasālub*, *Tanaẓul*, and *takhāruj* are not deviations from *farā'id*, but concrete expressions of *maqasid al-shari'ah* living and functioning within the socio-religious tradition of Madura. This model illustrates that when text is interpreted in conjunction with context, Islamic law may manifest as a just, humane, and functional system that sustains family relationships and broader social stability.

CONCLUSION

This study argues that inheritance practices within the family of the late Kiai Haji AMM in Panaan Village, Palengaan, Pamekasan, articulate a socio-legal configuration in which *tasālub*, *Tanaẓul*, and *takhāruj* operate as interrelated mechanisms of negotiated inheritance while remaining anchored in the normative structure of Islamic inheritance law. Beyond confirming doctrinal compatibility with classical *fiqh*, this study contributes a conceptual clarification that *farā'id* should be understood not as a closed distributive endpoint, but as a normative horizon that acquires practical meaning through social mediation, ethical deliberation, and relational consent. In this sense, inheritance is not merely a matter of fixed arithmetic allocation, but a legal-moral process through which rights are interpreted, adjusted, and actualized within concrete familial contexts. From a jurisprudential perspective, *tasālub* is grounded in the doctrine of *sulb* within *fiqh mu'amalah*, *Tanaẓul* is validated as a form of voluntary relinquishment (*tabarru'*) after the establishment of full legal ownership (milk *tamm*), and *takhāruj* is recognized as a legitimate compensatory exchange of inheritance rights in classical legal discourse. From the standpoint of *maqasid al-shari'ah*, these mechanisms collectively extend the objectives of inheritance law beyond the protection of property (*hifẓ al-māl*) to include the preservation of familial dignity and solidarity (*hifẓ al-'ird and hifẓ al-ukhummah*). This finding refines existing *maqasid*-based readings by demonstrating that the realization of *maslahah* in inheritance practice is not merely doctrinally inferred, but socially negotiated through deliberative authority and intra-family moral reasoning.

From a socio-legal perspective, the study demonstrates that inheritance practices in Madurese clerical families function as living *fiqh*, in which normative doctrine is continuously interpreted through social interaction and moral authority. The authority of the *kiai* operates not as coercive legal power but as ethical mediation that facilitates consensus formation. However, rather than simply affirming that “this practice is in accordance with *Shari'ah*,” this

study shows that such conformity is itself an outcome of interpretive negotiation between textual norms, moral authority, and lived social interests. In this regard, Islamic inheritance law appears less as a rigid computational system and more as a value-driven framework oriented toward social harmony (*ghāyah al-hukm*), where legal validity is inseparable from relational acceptance and collective welfare.

Nevertheless, this study is not without limitations. First, its empirical scope is confined to a single extended clerical family in Madura, which limits the generalizability of the findings across broader socio-religious contexts in Indonesia. Second, the study relies primarily on qualitative ethnographic and interview-based data, which may not fully capture long-term dynamics of inheritance disputes or intergenerational shifts in legal interpretation. Third, the analysis focuses predominantly on successful consensus cases, leaving potential tensions, contestations, or unresolved conflicts within inheritance practices underexplored.

Based on these findings and limitations, this study offers several targeted recommendations. *First*, Religious Courts should not only institutionalize *islah*-based mediation, but also systematically require pre-mediation clarification of *farā'id* entitlements to ensure that negotiated agreements are grounded in informed legal awareness rather than informal compromise alone. *Second*, Islamic educational institutions and pesantren should move beyond purely formulaic teaching of inheritance law by integrating *maqasid al-shari'ah* reasoning and applied *sulh* methodologies into their curricula, particularly through case-based pedagogical models. *Third*, judicial and administrative institutions should develop standardized procedural guidelines for documenting non-litigious inheritance settlements, ensuring both legal certainty and protection against future disputes while preserving the flexibility of customary-religious practice. Ultimately, this study proposes the Madurese Religious-Consensual Inheritance Model as a conceptual contribution to Indonesian Islamic family law. Its theoretical significance lies in repositioning Islamic inheritance law from a static distributive system toward a dynamic socio-legal framework in which normativity, morality, and social agency are co-constitutive. In doing so, it offers a more nuanced understanding of how Islamic law operates as a living system that is simultaneously grounded in *Shari'ah* principles and responsive to evolving social realities.

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