



CHAPTER IV

FINDINGS AND DISCUSSION

A. Description of The Case

1. Economic and education condition in Village of Geluran

Education is the main requirement to create competent human resources in the future. The education level can affect society condition, including the behavior as well as healthy life. To increase the quality and quantity of education, the program of Sidoarjo Government supplies some facilities in many schools, whether public

or private schools.⁶⁶ The program is also applied to Village of Geluran. The policy obligates education at least nine years to Geluran peoples. So, today many children in Village of Geluran can get education at least nine years or more.

In other hand, economic welfare is related to social education level. The economic condition of Geluran society is good, because many inhabitants of Geluran are interurban migration. Most of them are entrepreneurs and government employees (*PNS*), and other are trader and private employees.

2. Religion condition in Village of Geluran

Religion is life guidelines of mankind. The religion may affect the life behavior as well as Geluran peoples make Islam to be their life guidelines. They provide the facility of worship, like a mosque namely Muhajirin Mosque. The mosque is used as routinized worship place, whether to pray together at five times and Quran read learning. The form of the read Quran read learning is Quran Education Park. The time of learning is Monday until Saturday at afternoon, but Sunday the children may recite Quran in each home.

Besides, there is a *dakwah* building that is used as the place of Quranic exegesis learning weekly. The Quran interpretation learning is taught by ustadz Mashudi who is from other village.⁶⁷

⁶⁶Tim Pelaksana Kelompok Kerja PPSP Kabupaten Sidoarjo, "Program Percepatan Pembangunan Sanitasi Permukiman," *PDF*, (PPSP 2011), p. 52.

⁶⁷Djulaekah, *interview* (Malang, November 23, 2014). Djulaekah is the deceased's wife that is the people of Geluran.

3. The case

The system implemented in Geluran Village, Taman, Sidoarjo is based on bilateral inheritance system. Bilateral system gives same right to obtain the share, either male or female heirs.

Commonly, in Geluran, the heirs obtain his share without differing male and female heirs.⁶⁸ The property is distributed after the deceased passed away. The inheritance distribution uses religious law. Muslim transfer the property by using Islamic law, the ratio of share between male and female is 2 : 1. The properties are tangible and intangible assets which are leaved by deceased, like a land, house, and money.

This research finds a case that eldest son as main holder of the property. The deceased gave the money obtained from house sale (the house in Surabaya) to eldest son before the deceased passed away. Firstly, the eldest son accepted the money for his urgent need to pay earnest money of a house in Geluran.

After he paid off the earnest money, he was intended to return the money to his father. After he collected his income in some months, he wanted to return the money as possible. But, his father refused and gave his money to eldest son, because he was sick and he wants the eldest son to manage his money.

The eldest son obtained the gift (*hibah*), but other sons and daughters did not obtain. The reason is the eldest son has the biggest

⁶⁸Mas'ud, *interview* (January 18, 2015), Mas'ud is the deceased's eldest son that manage the property and is also as treasurer of the inheritance distribution by converting inheritance right into saving and loan form.

responsibility to his parent and brothers, he must manage and bear the daily need of his parent's family, and even when his parent can not work to fulfill the family need. Thus, the eldest son becomes a pillar of his parent's family life.

Therefore, the prosperous of parent is relied on eldest son's life. If eldest son lives prosperously, his parent will also live prosperously. Conversely, if eldest son's life is not prosperous, his parent's life is not prosperous too.

The debt was given to eldest son fully. Actually, he can return it after some months, but his father refused and gave the *hibah* to eldest son. A good intention of the father was received by the eldest son, but he does not immediately accept the money. He was fair and wise in the continuance of the money matters. He saw his last three brothers who were still student. Therefore, he used some of the money to pay their school cost. Thus, there was still any money left that was held by the eldest son.

But, he did not use immediately the money for his benefit, because he also saw the economic condition of his brothers who are poor. Based on the generosity and wisdom, he chose to save the money. So, someday he will lend to his brother when they need the money.

One day, his father's condition was not good. In November of 2010, his father passed away and left a wife and 7 children (3 sons and 4 daughters). He left the garden, farmland and some of money. Some of money left is the money that was held by his eldest son. However, in this

family, the money (*hibah*) was also as objects of inheritance. Based on the justice and to prevent the emergence of envy among heirs (wife, the eldest son and other children), the eldest son also made the money as an object of inheritance.

After paying all costs of the funeral, the eldest son gathered all heirs in the family room of his house to discuss the continuance of the inheritance distribution. Firstly, he provided an option of the inheritance distribution whether be transfered in Islamic law or a collective agreement. If the inheritance distribution would be performed by an agreement, he stated that all heirs should give an opinion whether approve or reject an agreement.

After all heirs agreed to use an agreement, the eldest son explained the way of inheritance distribution as soon. The explanation is that three objects of inheritance consist of farmland, garden, and money. The farmland was located in Regency of Lamongan. The farmland was not distributed, but as an endowment to Islamic school (*madrasah*). But, the agreement of the endowment was only approved by wife, eldest son and fourth child. So, the eldest son replaced the heirs' refusal of endowment with giving 3.5 million rupiah to each heir (five heirs).

They did not approve the agreement because they needed the money to pay their children's education and to renovate their houses. Mas'ud said, "*la yopo, la kabeh adek-adek podo mbutuhno duwek gawe kebutuhane masing-masing, koyok adek ku seng pertama butuh duwek*

gawe biaya anake melbu kuliah, seng liyane ono seng gawe biaya bangun omah".⁶⁹ (My brother and sisters needed the money for their needs, as well as my first sister needed the money for her child's education costs, and the other needed the money for renovating their houses). Therefore, he gave money 3.5 million rupiah to substitute the property (farmland). In the case, the eldest son spent his own money 17.5 million rupiah. He wanted to endow the property because to give the perpetual charity for his father.

The second property is a garden located close to the farmland. Today, the garden is still exist and becomes heirs' right. But, the garden has not been distributed because no one has bought it. The garden will be discussed as inheritance object when it is sold and there is any money. Mas'ud said, "*Tegal iki peninggalane bapak seng dorong kebagi, soale dorong ono seng gelem tuku, soale panggone kan ndek deso cilik, akeh wong luwih milih tuku nang jobo. Lek payu, paling yo payu murah, gak larang*". (The garden is a property that has been not transferred, because no one bought and the place is in small village. Because of many peoples choose to buy the land in town. If the garden is sold, it will be cheap). Mas'ud said, "*Lek wes kedol, kabeh adek-adek ambek emak diklompokne maneh, trus diomongne maneh pembagianne yopo*".⁷⁰ (If it is sold, the heirs will be gathered to discuss the inheritance distribution). Thus, the garden will be distributed by an agreement among the heirs. The agreement will be implemented after the garden is sold and can be cashed.

⁶⁹Mas'ud, *interview* (January 18, 2015).

⁷⁰Mas'ud, *interview* (January 18, 2015).

Then, the third property is the money that comes from deceased's gift to his eldest son. The money comes from the house sale minus the tuition costs of three last children. When the three children attended the lecture, the father still lived but his condition was sick. Although their father was unable to work and provided any money, they still required the money for their tuition cost. Because of the education cost is the father's responsibility, the eldest son gave some of the money to them. Thus, the third property is the rest of the money that was held by the eldest son.

After all heirs knew total of the money, they agreed to convert their right to obtain the property (money) into save and loan form. Someday, two daughters (the second child and the last one) loaned the money. The last child needed the money to renovate her house and her son's education cost. But as soon, she returned and her debt was paid off. Meanwhile, the second child loaned the money for her son's college registration fee. But, now the money can not be returned because her economic condition is still not good. Mas'ud said, "*Saiki yo nol, entek, wes ora nyekel blas, kan sampai saiki dorong mbalek, tapi iki ora dadi permasalahan ndek kene, kabeh wes podo ikhlas di seleh karo mbak e kog*".⁷¹ (The money is zero now, I do not hold the money because it has been not returned. But, this situation is not a problem. All heirs have agreed if the money is still loaned by their eldest sister). When the money is zero, Mas'ud gives his money to patch the vacuity of money. He also said, "*Tak selehi duwek ku*

⁷¹Mas'ud, *interview* (January 18, 2015).

disek, tapi digawe itungan duwek iku mau, dadi lek duwek teko adek wes balek kenek gawe ngganteni duwekku mau".⁷² (I lent my money, but it was intended to substitute the property. So, if the property is returned, it will substitute my money). Thus, the statement means that the eldest son's money will be used to substitute the property, if the property is zero.

But, if talk about the continuance of the property, Mas'ud said as follows:

"Lek misale duwek e wes mbalek kabeh, tak klompokne kabeh adek-adek trus di omongne maneh bareng-bareng, tapi masalah e saiki duwek e dorong balek, dan gak mungkin ditagih i, trus yo gawe opo kan jumlahe gak akeh, gawe opo diomongno, kabeh wes podo ngerti dolor-dolor e".⁷³ (If the money is returned, I will gather my brothers to discuss together, but the problem is that the money has been not returned, and may not be billed, then for what, the money is few, and is not matter to be talked, we understood each other).

So, the continuance of the distribution will be continued when the money is returned. Luckily, this family has a closely relationship, so the desire to bill each other is never thought, moreover to pressured each other. Every heir always understands his sister's economic condition.

In other hand, the eldest son obtained the money of home sale before but his sisters and brother did not obtain. Furthermore, the causal factors will be explored in next topic why the eldest son became as a treasurer, namely:

⁷²Mas'ud, *interview* (January 18, 2015).

⁷³Mas'ud, *interview* (January 18, 2015).

4. Causal factors of eldest son becomes a treasurer

a. Internal factors

1) Responsibility aspect

A responsibility is a basis to understand human's character as moral beings. The human should have presumption that they need each other to realize the good life and to support his existence. Then, the responsibility improves a personal level and other one.⁷⁴

Based on the definition, the responsibility is an aspect that must be in the case. This aspect can expedite the inheritance distribution that transferred by converting inheritance right into saving and loan form. If there is not this aspect, the distribution of inheritance will not be able to walk properly.

But, every human has the different quantities of responsibility, a few quantities and a lot of ones. For example, such as a lot of the responsibility quantities that was imposed to the eldest son or the first child in a family.

In the family, the eldest son is a child that has a lot of quantities of responsibility. He does not only held the responsibility for the continuance of his personal family (formed from marriage), but also held the responsibility for the continuance of his father's family when his father was sick or passed away.

⁷⁴http://id.m.wikipedia.org/wiki/Rasa_tanggung_jawab accessed on February 09, 2015.

Moreover, in terms of inheritance distribution, after the deceased passed away, the eldest son has the greatest quantities of responsibility than his brother. He must manage well the performance and the costs of funeral. After the funeral finished, he should gathered all heirs to discuss the inheritance distribution as soon, before there were any problems among heirs. In the case, the eldest son must also arrange an agreement of inheritance distribution to avoid quarrels or discord among heirs. So, after the heirs found the way of inheritance distribution whether used Islamic law or an agreement, the eldest son and the other heirs immediately implemented the inheritance distribution according to the way founded.

In the family, the inheritance distribution was performed by giving the money (property) that was given by father to the eldest son, because his position in the family is a man who has the greatest quantities of responsibility than other heirs. Other heirs agreed to save the money to the eldest son and they can borrow the money when they need. Someday, when the heir borrowed the money, he/she has to return later.

So, the aspect of responsibility is the the eldest son's position as the eldest brother who has great responsibility for the continuance of his father's family. He should be able to manage

well the inheritance distribution to avoid any quarrels or disunities in the family.

2) Economical aspect

An economy word is Greek, "oikos" which means family or household and "nomos" which means the rules, regulations, or laws. The economy is a rule of household or a management of household. The main economic problem is the fact that human always requires unlimited needs, while the tool to fulfill human needs is limited.⁷⁵

Based on the statement, economic aspect can affect the human life. Human is an economic being which always need something to survive his life. In the studied case, the economic aspect can affect the inheritance distribution by converting inheritance right into saving and loan form, especially the eldest son's economic condition as the treasurer.

Luckily, the eldest son is wealthier than other heirs. He works as judge in appellate religious court. His economic condition is better than his brother that most of them are private employees.

An economic condition can affect the implementation of the inheritance distribution. If the eldest son's economic condition is not good, the money will be difficult to be patched by him. Moreover, the eldest son will not be able to return the money if he

⁷⁵<http://id.m.wikipedia.org/wiki/Ekonomi> accessed on February 09, 2015.

borrow. Factually, he gave a few of his money to substitute the money when it is zero. So, if one of the heirs needed to borrow the money when it was zero, the eldest son would take his money to help his brother.

So in the case, the economic condition of treasurer is an important role in the fluency of the inheritance distribution. The eldest son's economic condition can help to substitute the money when is zero. Thus, there will no quarrel or disunity if there is vacuity of the money.

3) Islamic education aspect

Islamic education is an education system that provides a person's ability to lead his life in accordance to the ideal of Islam. *Muslim* who obtains the Islamic education, should be able to live in a peace and prosperous as Islamic values.

Islamic education is an effort to create the child personality in accordance with the teachings of Islam, to think, decide, and act based on the Islamic values. Islamic education is an effort to realize the Islamic function in human social life.

The wealth of religious knowledge may create a person's character. Islamic character can affect the person's good life and behaviour and solve a problem in accordance to the Islamic teachings.

In a family life, a person who has good character is needed to lead the family to avoid any quarrels and commotions. In the case, the inheritance distribution was not performed according to Islamic law teachings, but was based on an agreement of the heirs. The agreement is to convert the inheritance right into saving and loan form, while the eldest son is a treasurer or a holder of the money.

The eldest son has a lot of religion knowledges and educations of Islamic law, after he had studied in some Islamic schools, even he is a judge in Apellate Religious Court. Surely, he understands well to implement the inheritance distribution. He is not egoist and does not prioritize his personal matters. He distributed the money (property) by a wise way, namely by saving and loan form. So, each heir can use much money when he/she needs. He understands the other's conditions that they required much money for school fees and house renovation. Therefore, the way is better when the money could be used together.

The eldest son's good character and knowledge is an example for his brother, so what was done by him is always good looked. Thus, the good character and knowledge becomes their consideration why the eldest son was believed as the holder of the money.

Therefore, he becomes the bonafide man in the family as the treasurer of inheritance. He was considered capable to manage the inheritance distribution because he has greatest quantities of responsibility, economic condition, and religious education than that of other heirs.

b. External factors

1) The family's trust

The heirs' trust became the basic modal to be able to become a treasurer or a manager of the property. Without the trust, the eldest son would not be the manager of the property. The responsibility, good economic condition, and education are internal factors that exist in the eldest son's. All internal factors stand alone and can not be combined with the heirs' truth. The position of the trust is a support in the family relationship.

Istiqomah said, "*Soale kabeh dulur wes podo percoyo karo mas, mas iku dadi sosok teladan, ilmu agama e duwur, sifat e yo apik mesti mentingno kebutuhane adek adek e disek.*"⁷⁶ (Because the others believe him, he is the example, his religious knowledge is great, his character is good that prioritize the others' need.). So, the inheritance distribution was performed based on the agreement that converts the inheritance right into saving and loan form. The inheritance distribution would not be able to walk without the heirs' approval.

⁷⁶Istiqoma, *interview* (Sidoarjo, January 16, 2015). Istiqoma is the deceased's fourth child.

Thus, the agreement came from the heirs' trust. Without the heirs' trust, the eldest son would not become a manager of the money. So, a trust to each other is an important key to perform the inheritance distribution. In the family, the trust becomes the unifying factor to solve any problems, included in the settlement of inheritance problems.

5. The implementation of saving and loan form

Implementation is the realization of an application, or execution of a plan.⁷⁷ The implementation is an action of the planning prepared carefully before. The implementation is usually performed after the planning was fixed.⁷⁸

The statement affirms that the implementation can be performed when there is a fixed thought among related parties. The implementation in the case is the implementation on the conversion the inheritance right into saving and loan form. The implementation is to change the inheritance right becomes saving and loan the property.

Previously, the heirs agreed that the property (money) will be distributed by saving and loan. The agreement was concluded after agreement of the heirs. Then, the eldest son thought about the inheritance distribution. The eldest son is as a manager of the money. So, if one of the heirs wants to take the money, he has to borrow the money. The concept is called loan activity in the case. Whereas, if the heir who was borrowed the

⁷⁷<http://en.wikipedia.org/wiki/Implementation> accessed on May 05, 2015.

⁷⁸<http://el-kawaqi.blogspot.com/2012/12/pengertian-implementasi-menurut-para.html> accessed on February 12, 2015.

money is able to return, he has to give the equal money to the eldest son. Then, the eldest son will save the money. But, the weakness of the distribution is no specific time to limit the return of the money. The heirs are expected to return the money when they are capable. The concept of the distribution is the theory of heirs' agreement after the deceased passed away.

Furthermore, in the practice, the distribution will be described as follows. Oneday, a deceased's daughter borrowed the money to renovate her house and to pay her children's education costs. Laili said, "*Tau pisan, gawe duwek e bapak, tapi es tak balekne. Saiki lek es gak duwek utang maneh. Pas iko tak gawe ngrenovasi omah titik, ambek kebetulan Dafa butuh gawe daftar sekolah.*"⁷⁹ (I loaned once, I used the deceased's money, but I returned. Today, I do not have any debts. The money was used to renovate my house and Dafa's⁸⁰ education costs). Then, she explained that the money was saved by the eldest son.

The fact which was performed by Laili is suitable with the agreement. Thus, the implementation of the inheritance distribution by saving and loan form was performed well. But as soon, another daughter (the second child/the eldest daughter) borrowed the money. The money was used to pay her child's college costs. Surely, she needed much money. Mas'ud said, "*Saiki yo nol, entek, wes ora nyekel blas, kan sampai saiki dorong mbalek, tapi iki ora dadi permasalahan ndek kene, kabeh wes*

⁷⁹Laili, *interview* (Sidoarjo, January 18, 2015). Laili is the deceased's last child.

⁸⁰Dafa is Laili's son

podo ikhlas di seleh karo mbak e kog".⁸¹ (The money is zero now, I do not save the money because the money has not been returned. But it is no a problem, all heirs argues that the money was loaned by her).

The second child can not return the money because she is still poor. The fact describes that there is a contradiction on implementation of the agreement. Although the implementation was not fit well, it does not cause any quarrel or disunity. Because all heirs has been understood with the second child's economic condition. Besides, the total of the money left by deceased was not a lot. The statement is affirmed by the statement of Mas'ud,"...*dan gak mungkin ditagih i, trus yo gawe opo kan jumlahe gak akeh, gawe opo diomongno, kabeh wes podo ngerti dolor-dolor e*".⁸² (...and may not be billed, then what is it for, the money is few, and is not matter to be talked, we understood each other). Thus, they never thought to charge each other because they have good family relationship.

Based on the facts, the implementation of inheritance distribution by saving and loan form has not been performed well according to the agreement. Today the money borrowed has been not returned because the second child's economic condition has been not stabil. But, someday the eldest son will lend his personal money to help another if another heir has an urgent need. So, the implementation of inheritance distribution will be performed well again with the eldest son's help.

⁸¹Mas'ud, *interview* (Sidoarjo, January 18, 2015).

⁸²Mas'ud, *interview* (Sidoarjo, January 18, 2015).

B. The Commentaries of Scholars

Scholar is a specialist in a particular branch of study or a person who is highly educated or has an aptitude for study.⁸³ After obtaining the data of case, the researcher also requires the scholars' opinion. The scholars' opinion is used to know validity of the inheritance distribution by converting the inheritance right into saving and loan form. The scholars also have the important roles in developing of Islamic law based on the condition of society. The Islamic society asks the solution to the scholars if they can not find the good solution of their problem. So, the scholars' opinion is important when there are new cases.

Furthermore, the researcher asks the scholars' opinion about the inheritance distribution. For example, the statement of Ustadzah Lilik is, "*Kalau itu sudah kesepakatan, ya gapapa, berarti mereka kan masing-masing rela.*"⁸⁴ (If the inheritance distribution is the heirs' agreement, the inheritance distribution is allowed that means the heirs argued). She says that the inheritance distribution is allowed if it is the agreement. So, the agreement letter aims to avoid the disunity that brings to the religious court. She says:

*"Tapi, kalau misalkan ada kesepakatan semuanya, harusnya itu ada hitam diatas putih, suatu saat kita kan gk tau kalo ada salah satu ahli waris yg meninggal, kalo gk ada hitam diatas putih, mereka bisa aja mengajukan ke pengadilan agama, mereka bias menuntut, sehingga ya harus ada hitam diatas putih."*⁸⁵ (But, if all heirs have been agreed, the inheritance distribution should have the agreement letter. Someday, we do not know when the heir will passed away. If there is the

⁸³<http://www.oxforddictionaries.com/definition/english/scholar> accessed on May 05, 2015.

⁸⁴Ustadzah Lilik, *interview* (Malang, April 12, 2015).

⁸⁵Ustadzah Lilik, *interview* (Malang, April 12, 2015).

agreement letter, they may propose the case to the religion court. Thus, it should have the agreement letter.)

She says that the agreement should be required the letter of agreement, because they can sue the case if there is problem. So, the inheritance distribution should be required the letter of agreement. Furthermore, Ustadz Musthofa also comments the inheritance distribution as follows:

*“Boleh, untuk menyelamatkan harta. Awalnya seketika orangtuanya meninggal, harus menggunakan ilmu faraid, namun Ilmu faraid itu bisa hapus atau hilang, aturan-aturannya itu bisa terhapus ketika sudah kena ikhlas. Ada saudara yang mampu, ikhlas untuk memberikannya kepada saudara yg tidak mampu, jadi shodaqohnya yang bersangkutan.”*⁸⁶ (It is allowed to save the property. Firstly, when the parent passed away, we should use *ilmu faraid*. But, the rules of *ilmu daraid* can be erased when there is the will. There is rich brother who will give his share to other (poor heir), so there is a charity (*shodaqoh*) for him.)

He says that the inheritance distribution is allowed to save the property. The rules of *ilmu faraid* can be erased when there is the heirs' will. He also affirms that discussion is a recommendation way to solve any problems in household. He says:

*“Yang penting musyawarah sepakat, wa amruhum syuro baynahum, segala permasalahan di rumah tangga apapun, musyawarahkan dengan baik, wa syawirhum fil amri, dan musyawarahkanlah kamu di dalam suatu urusan, itu perintah-perintah kita untuk musyawarah, mufakat itu anjuran asalkan semuanya berniat mencari solusi yang terbaik.”*⁸⁷ (The matter is the discussion, any problems in household should be discussed well, and discuss any affairs. The statements are the commands to discuss, and the agreement is the suggestions as long as all affairs are intended to find the good solution.)

⁸⁶Ustadz Musthofa, *interview* (Malang, April 12, 2015).

⁸⁷Ustadz Musthofa, *interview* (Malang, April 12, 2015).

He says that the matter is the discussion. The agreement is the suggestions to find the good solution. Then, Ustadz Anwar gives his view about the inheritance distribution. He argues the inheritance distribution by his statement, namely:

*“Ya prinsipnya, kalau ada orang meninggal, peninggalannya kan menjadi hak ahli waris. Menurut islam ahli waris itu kan mutlak mendapat sesuai dengan ketentuannya, kalau laki-laki dapat 2 bagian sedangkan perempuan 1. Namun itu tidak mutlak, dalam arti kalau disepakati diantara ahli waris secara kesepakatan, itu boleh, ndak masalah atas dasar kemaslahatan.”*⁸⁸ (Principally after the deceased passed away, the deceased’s property is the right of heirs. Based on Islamic law, the heirs have absolute right to obtain the share of property, male obtains two shares and female obtains one share. But, the rule is not absolute way, if there is an agreement among heirs. The agreement is allowed based on the *maslahah*.)

He says that the deceased’s property is the right of heirs. The heirs have right to obtain the property, male obtains two shares and female obtains one share. But, the rule is not absolute way because the agreement is allowed to maintain *maslahah*. He also affirms that the inheritance distribution can maintain *maslahah* because there is an agreement and help among heirs. He says:

*“...daripada nanti dibagi sedikit-sedikit, konsumtif, dan habis, menurut saya lebih bagus ada kesepakatan dimana uangnya bisa disimpan pinjam. Ini malah bisa lebih bermanfaat atau bermaslahah, karena satu ada kesepakatan bersama, yang kedua ada unsur taawud diantara ahli waris...”*⁸⁹ (If the inheritance was distributed one by one, the property would be consumptive and empty. He prefers the agreement to save and

⁸⁸Ustadz Anwar, *interview* (Malang, April 12, 2015).

⁸⁹Ustadz Anwar, *interview* (Malang, April 12, 2015).

loan the property. The property would be useful, because there are the agreement and helps among heirs.)

He prefers the agreement to save and loan the property than the property is distributed one by one. The property would be useful to help among heirs.

Thus, based on their statements, they understand and argue the inheritance distribution by converting inheritance right into saving and loan form. They give the same reason because the inheritance distribution was agreed by the discussion. They argue that the agreement in a discussion is the basic validity of the inheritance distribution.

C. The Reasons of Converting Inheritance Right Into Saving and Loan Form

The reason make the agreement consists of some advantages and disadvantages, as well as the implementation of the inheritance distribution by saving and loan form. Therefore, this topic mentions in detail about the advantages and disadvantages that was caused by the inheritance distribution.

The advantages and disadvantages in the case are:

1. The Advantages
 - a. To help the heir who needs fund

Because of the inheritance distribution, every heir can help the other who can not pay off the needs. The money of inheritance distributed to each heir was not a lot. If the money was distributed by 1

: 1, each heir would obtain few money and could not help the other. This condition is difficult to provide the help the other in the future. Thus, the inheritance distribution by saving and loan form can gather all heirs' share. So, the total of all shares can obtain a lot of money. Istiqomah said, "*Keuntungan e iso mbantu keluarga seng mbutuhno, lek kerugian opo yo fan, sakjane gak ono fan, kabeh podo pengen mbantu dulur e kog fan*".⁹⁰ (The advantage was to help the other who need, but actually the disadvantage was not there, all heirs only wanted to help the other). Laili also said, "*Kerugiane gak ono fan, yo mek untung e, iso mbantu keluarga seng kurang mampu*".⁹¹ (The disadvantage was not there, only the advantage that can help the poor heirs).

Furthermore, if one of the heirs needs much money, he would no borrow fund to the bank. Because of the bank sets interest system in any lends. This rule will worsen heirs' economic condition. In the inheritance distribution by saving and loan form, the heirs can help the other in need and does not set an interest system. Besides, the inheritance distribution has no specific time to limit the return.

b. To prevent the disunity among heirs

No one wants his family destroyed or separated. Everyone wants his family will be one, as same as this family, the purpose on the implementation of the inheritance distribution is to help his in need

⁹⁰Istiqoma, *interview* (Sidoarjo, January 16, 2015).

⁹¹Laili, *interview* (Sidoarjo, January 18, 2015).

brother. Providing a help each other can increase the disunity among them. The inheritance distribution was performed by equality of inheritance right. The inheritance distribution aims to remove the egoistic on the share that causes the quarrel and disunity among heirs. Istiqomah said, "*Selain iso mbantu yg lain, mungkin agar tidak terjadinya perpecahan dan keluarga iso lebih harmonis.*"⁹² (Beside to help the other, it may prevent the disunity and the family can be more harmonious). The statement explains that the inheritance distribution by saving and loan form gives the advantage to prevent the disunity and the family life will be more harmonious.

Furthermore, Mas'ud as the eldest son successfully advised every heir. The advice is about the harmony that must be created in the family, as he said, "*Adek-adek gak tau ngomongno warisan maneh, sakdorong de'ut mbagi warisan, de'ut ngandani adek-adek disek ben podo paham.*"⁹³ (My brother and sisters never talk about the property again, before I transferred the property, I advised my brother and sisters to know each other). Be better for each heir to allow their shares to be collected and their share became collective share. Thus, the inheritance distribution by saving and loan form will maintain the harmonious in the family life. So, there is no disunity or quarrel among the heirs.

⁹²Istiqoma, *interview* (Sidoarjo, January 16, 2015).

⁹³Mas'ud, *interview* (Sidoarjo, January 18, 2015).

c. To create more harmonious family relationship

Harmonious word in Popular Science Dictionary means compatible or suitable.⁹⁴ The family life requires the harmonious life among the other. The statement was affirmed by Istiqomah as the heir, "*Selain iso mbantu, mungkin agar tidak terjadinya perpecahan dan iso lebih harmonis.*"⁹⁵ (Beside to help the other, may be to prevent the disunity and the family can be more harmonious).

If there was not a harmonious in the family, an insult among heirs can not be avoided because of the differences on the share. This situation must be prevented by anyone in the family. The wrong statement if one of heirs considers that the economic condition can humiliate a person.

The inheritance distribution by saving and loan form aims to know the economic condition among heirs. The good understanding on the poor brother or sisters will arise the feeling to help each other. The greatest caring will remove all derogatory or demeaning attitudes to another. Thus, each heir will feel the harmonious life in their family.

2. Disadvantages

a. The eldest son must patch the money when it is zero

Actually, there were no disadvantages that were felt by the heirs in the inheritance distribution by saving and loan form. Disadvantages can only be indicated if anyone rejected the inheritance

⁹⁴Rosnia Wati, *Kamus Lengkap Ilmiah Populer*, (Surabaya: Karya Ilmu, 2005), p. 163.

⁹⁵Istiqoma, *interview* (Sidoarjo, January 16, 2015).

distribution with giving the reason. Istiqomah said, "*Keuntungan e iso mbantu keluarga seng mbutuhno, lek kerugian opo yo fan, sakjane gak ono fan, kabeh podo pengen mbantu dulur e kog fan*".⁹⁶ (The advantage was to help the other who need, but actually the disadvantage was not there, all heirs only wanted to help the other). Laili also said, "*Kerugiane gak ono fan, yo mek untung e, iso mbantu keluarga seng kurang mampu*".⁹⁷ (The disadvantage was not there, only the advantage that can help the poor heirs). Based on their statements, no one mentioned the disadvantages in the inheritance distribution way.

But, based on the implementation, the inheritance distribution by saving and loan form gave a disadvantage to the eldest son because he must patch the money when it is zero. He is responsible for the continuance of the family. Although, he never said the disadvantages when he was interviewed, the practice of the distribution shows the disadvantage automatically.

b. All heirs have no right to possess the money

Actually, all heirs have the right to possess the property left by deceased. The rule is based on Islamic law that is caused by *al-khalafiyah* (inheritance). A person obtains possession right of the money because he places the deceased's position. Thus, every heir has the right to take the right of deceased's property.

⁹⁶Istiqoma, *interview* (Sidoarjo, January 16, 2015).

⁹⁷Laili, *interview* (Sidoarjo, January 18, 2015).

But, in the implementation of the inheritance distribution by converting inheritance right into saving and loan form, the heirs did not obtain the right to possess the money. They must loan the money when they need. Then, if they have much money oneday, they must return it. Thus, the disadvantage of the inheritance distribution is that the heirs can not possess the money perfectly.

D. *Maslahah* Views On Converting Inheritance Right Into Saving and Loan Form

Hazairin's bilateral system gives the position between male and female no difference in inheritance right. His principal of bilateral system is that a person can reckone his lineages through male or female lines, as well as in inheritance law. His concept has been accommodated in the Compilation of Islamic Law of Indonesia.⁹⁸

Male and female can become deceased and heir, and become representative (*mawali*) to other heir as the regulation in article 174 Compilation of Islamic Law.⁹⁹ His concept was based on the provision of Surah An-Nisa verse 7. Surah An-Nisa verse 7 describes the equality of right between male and female, and the statement on differences of the heirs' share. The provision of the verse is as a basis principle that male and female have the same inheritance right. This statement was affirmed by Islam that women can

⁹⁸Muhibbin and Abdul Wahid, *Hukum Kewarisan Islam Sebagai Pembaruan Hukum Positif di Indonesia*, (Jakarta: Sinar Grafika, 2009), p. 12.

⁹⁹Mukti Arto, *Hukum Waris Bilateral Dalam Kompilasi Hukum Islam*, (Solo: Balqis Queen, 2009), p. 37.

become legal subject in inheritance system.¹⁰⁰ Thus, the Quran gives the inheritance right to every heir to obtain the share.

Regarding to the principle of individual, every heir has the right to obtain his/her share. Therefore, he/she has the right to do anything to her/his share.¹⁰¹ The heir can have the right if he/she fulfills any requirements as follow:

- a) Individual (personal)
- b) Has blood or marriage relation
- c) Islam
- d) There is no bar of inheritance legally
- e) The requirements mentioned must be fulfilled when the deceased passed away.¹⁰²

Based on the statement, the family (in the case studied) has performed the requirements properly. The man and woman heirs got his/her share. Certainly, the requirements of inheritance were fulfilled by the heirs. The heirs have the deceased's blood relationship. Their religion is Islam and there is no bar of inheritance legally. The article 173 Compilation of Islamic Law regulates that the bars of inheritance legally are; (1) a heir kills or tries to kill or tortures the deceased and (2) a heir slanders that the deceased does a crime threatened five years or more ones. In other hand, Islam is also regulates that the bars of inheritance are; (1) the slaver, (2) the murderer, (3) the apostate,

¹⁰⁰Muhibbin and Abdul Wahid, *Hukum Kewarisan Islam Sebagai Pembaruan Hukum Positif di Indonesia*, (Jakarta: Sinar Grafika, 2009), p. 12.

¹⁰¹Mukti Arto, *Hukum Waris Bilateral Dalam Kompilasi Hukum Islam*, (Solo: Balqis Queen, 2009), p. 42.

¹⁰²Mukti Arto, *Hukum Waris*, p. 69.

and (4) the foreigner. The scholars agree that the slave, murderer and apostate are the bars of inheritance. While, the foreigner is still disputed by scholars.¹⁰³

Islamic law mentions the causes why a person has possession right. The one is caused by *al-khalafiyah* (inheritance). A person obtains possession right because he replaces the other's position. The possession right is caused by *Khalafiyah syakhsyan syakhsy (irts)* means that the heir replaces the deceased's position, including his possession right of the property.¹⁰⁴ Thus, every heir has the right to take the right of deceased's property.

However, in the case studied, inheritance right was converted by the right to save and loan the money (property). The heirs have no right to take the money, because the inheritance right was converted by saving and loan form. The heirs who need much money can borrow the money, and return when he has money.

The statement is based on the agreement that was made by all heirs after the deceased passed away. The agreement concluded was not without reason, they considered the advantages and disadvantages of the agreement. *Maslahah* was a key for the approval of the agreement. They were intended to help the poor brothers and sisters. The reason was if the money was distributed, each heir just obtained a few of money. The money was better collected to loan than it was distributed to each heir. So, the money collected can help anyone who requires big cost.

¹⁰³Suparman Usman and Yusuf Somawinata, *Fiqh Mawaris Hukum Kewarisan Islam*, (Jakarta: Gaya Media Pratama, 2008), p. 32.

¹⁰⁴Abdul Ghafur Anshori, *Filsafat Hukum Sejarah, Aliran Dan Pemaknaan*, (Yogyakarta: Gadjah Mada University Press, 2006), p. 135-137.

The agreement was also aimed to avoid the problem of banks' lend. The banks' lend system uses interest¹⁰⁵ on any borrowing. The system can worsen the economic condition of poor heir. So, to provide collective advantages, all heirs approved the agreement.

Although, Quran and hadith in detail regulates the law of inheritance, but *maslahah* is the main factor of the agreement in the family. Based on the concept that was given by Najamuddin Al-Thufi, the main purpose of Islamic law is to provide a protection for *maslahah*.¹⁰⁶ The statement affirms that the human have the right to obtain *maslahah* in their life. Based on Al-Thufi's concept, there are two kinds of right that related to *maslahah*, God's right and human's right. The God's right consists of the matters about worship and beliefs (*aqidah*). The God's right is enshrined in the *nash* that must be obeyed by human. But, the matter of human becomes human's right as well as *muamalah* issues. However, if the *nash* contradicts to human's *maslahah*, the human can refuse it. Thus, human's *maslahah* becomes human's right that should more prioritize than the God's right (*nash*).¹⁰⁷

Based on Thufi's concept, *maslahah* are independent theorem in legal decision. Hence, the *maslahah* does not require supporting theorem, because *maslahah* is only based on the reason opinion only. *Maslahah* just applies to *muamalah* and custom issues. Najamuddin Al-Thufi places the reason higher than Quran and Hadith. According to Tufi, the goal of sharia is *maslahah*, and

¹⁰⁵Interest is a charge for a financial loan, usually a percentage of the amount loaned. Looked to Wirdyaningsih, *BANK dan Asuransi Islam Di Indonesia*, (Jakarta: Kencana, 2005), p. 21.

¹⁰⁶Abdallah M. al-Husayn al-'Amiri, *Dekonstruksi Sumber Hukum Islam Pemikiran Hukum Najm ad-Din Thufi*, (Jakarta: Gaya Media Pratama, 2004), p. 42.

¹⁰⁷Imron Rosyadi, "Pemikiran At-Tufi Tentang Kemaslahatan," *Suhuf*, 1, (Mei, 2013), p. 55.

maslahah can be achieved by the reason. The reason can be used to determine *maslahah* or *mafsadat*, because Quran and Hadith repeatedly push the human to use the reason well. Thus, prioritize and maintain the *maslahah* is the agreement that was desired by sharia. Then, the inheritance distribution by saving and loan form may be justified because the inheritance distribution prioritizes *maslahah*.

The statement is based on at-Thufi's word:

إِنْ تَعَدَّرَ الْجَمْعُ بَيْنَهُمَا قَدِّمْتَ الْمَصْلِحَةَ عَلَى غَيْرِهَا...

“If may not be unified them, so *maslahah* is prioritized than other...”

Besides, Al-Thufi's opinion can be supported by the Prophet's tradition that mentions the agreement or treaty among Muslims is allowed.

The hadith was narrated from 'Amar bin 'Auf, the Prophet said:

الصُّلْحُ جَائِزٌ بَيْنَ الْمُسْلِمِينَ إِلَّا صُلْحًا حَرَّمَ حَلَالًا أَوْ أَحَلَّ حَرَامًا

“The agreement among Muslims was allowed, except the agreement which allows the forbidden or forbids the kosher.”¹⁰⁸

And At-Tirmidzi affirmed:

وَالْمُسْلِمُونَ عَلَى شُرُوطِهِمْ

“And (*muamalah*) Muslims was based on their requirements.”¹⁰⁹

¹⁰⁸Ibnu Majah Abu Abdullah Muhammad bin Yazid al-Quzwaini, *Sunan Ibnu Majah*, (t.t.: Dar Ihya'), p. 788.

¹⁰⁹Muhammad bin Isa bin Surah bin Musa bin ad-Dahhak at-Tirmidzi, *Sunan at-Tirmidzi*, (Ed. 2; Egypt: t.p., 1395), p. 626.

Then, he said that this hadith was *hasan shahih*. Umar said: "Refuse hostility until they reconcile, because adjudicates the case in the court will develop the malice among them."

Furthermore, *fiqh sunnah* provides a solution to end a dispute. *Ash-shulhu* is the agreement that can end the disputes or quarrels. The requirements of *mushalih* (the person who performs the agreement) is a person that his actions can be declared valid legally, is not like crazy, childish, etc. While, the requirements of *mushalih 'anhu* are as follows:

- a. *Mushalih 'anhu* is useful goods.
- b. *Mushalih 'anhu* is included to human's right that can be replaced (*'iwadh*).

Thus, if a man or a family has a problem that causes the disputes, he is allowed to use *ash-shulhu* to solve the problem. But, before use *ash-shulhu*, he must fulfill the requirements of *mushalih* and *mushalih 'anhu* mentioned.

In the case studied, the requirements were fulfilled. The heirs are valid legally as well as in the requirement of *mushalih 'anhu*. *Mushalih 'anhu* (the property) is valuable and useful. The property is the money that can be used by the heirs. Besides, the money is also included to the right that can be transferred. The money is the human's right (inheritance right) that can be moved from the deceased's right to heir's one.

Then, based on the hadith, the agreement is allowed because the agreement aims to avoid the disputes among heirs. Because of the inheritance distribution by saving and loan, they could collect all heirs' share to help the

heirs in need. But, if the shares were distributed one by one to the heirs, the heirs would obtain a few of money.

The inheritance distribution aims to avoid the bad situation that will worsen the economic condition of poor heir because he/she borrows funds to bank. The banks' interest system is applied by all banks. Therefore, there is another way in the distribution of inheritance. The way is an agreement to protect collective *maslahah* as well as the agreement to convert the inheritance right into saving and loan form.

Look at Surah an-Nisa verse 8:

وَإِذَا حَضَرَ الْقِسْمَةَ أُولُو الْقُرْبَىٰ وَالْيَتَامَىٰ وَالْمَسَاكِينُ فَارْزُقُوهُمْ مِنْهُ وَقُولُوا لَهُمْ قَوْلًا مَعْرُوفًا

“If the relatives, orphans or needy are present at the time of the division of an inheritance, give them something out of it, and speak to them kind words.”¹¹⁰

The verse is about a rule of property distribution. When Allah send the verse of inheritance law (for all heirs), a testament is given to the relative (family) that does not obtain the share of property.¹¹¹ The verse is *muhkamah* and can not be *nasakh*. The verse is intended to the testament transfer of the deceased.¹¹²

Regarding to the case studied, the statement affirms that the deceased should give the share (the money) for the heirs who did not obtain a deceased's testament. Although the deceased's statement in the case studied was not performed, there was the word of deceased that give all money to the

¹¹⁰Malik, *The Qur'an in English Translation Complete*, (t.t.: MidEastWeb, 2007), p. 29.

¹¹¹Abu Ja'far Muhammad bin Jarir Ath-Thabari, *Jami' Al Bayan an Ta'wil Ayi Al Qur'an*, translator. Akhmad Affandi, (Jakarta: Pustaka Azzam, 2008), p. 496.

¹¹²Ath-Thabari, *Jami' Al Bayan*, p. 500.

eldest son. But, the eldest son want the money to be used together (his sisters and brothers). Because of there are poor heirs who did not obtain the money. Thus, based on the verse, the money can be used to all heirs.

Next to Surah an-Nisa verse 9:

وَلْيَخْشَ الَّذِينَ لَوْ تَرَكَوْا مِنْ خَلْفِهِمْ ذُرِّيَّةً ضِعَافًا خَافُوا عَلَيْهِمْ فَلْيَتَّقُوا اللَّهَ وَلْيَقُولُوا قَوْلًا سَدِيدًا

Let those (*disposing of a property*) have the same fear in their minds as they would have for their own if they were to leave a helpless family behind: they should, therefore, fear Allah and speak for justice.¹¹³

The verse is as advice to maintain the deceased's property for his children and the advice to not leave them in a bad (economic condition), weak, and incapable to do transaction.¹¹⁴

The statement affirms that the deceased may not leave his children in bad economic condition. The deceased should give his property to the heirs. The verse commands that the deceased does not leave the heirs in bad economic condition. Thus, the *maslahah* of heirs' life can be maintained.

Need to remember, *maslahah* is the main purpose of Sharia as like as what was said by Al-Syatibi:

هَذِهِ الشَّرِيعَةُ... وَضِعَتْ لِتَحْقِيقِ مَقَاصِدِ الشَّارِعِ فِي قِيَامِ مَصَالِحِهِمْ فِي الدُّنْيَا وَالْآخِرَةِ

“Actually sharia is intended to establish human's welfare in the world and the hereafter.”

¹¹³Malik, *The Qur'an in English Translation Complete*, (t.t.: MidEastWeb, 2007), p. 29.

¹¹⁴Abu Ja'far Muhammad bin Jarir Ath-Thabari, *Jami' Al Bayan an Ta'wil Ayi Al Qur'an*, translator. Akhmad Affandi, (Jakarta: Pustaka Azzam, 2008), p. 513.

The Syatibi's concept mentions that the purpose of sharia is the human's welfare (*maslahah*). He stated that no rule is created by Allah which does not have a purpose. Because of *maslahah* is a benefit related to human needs.

The necessity for human's life is used to determine the goodness and badness (*maslahah* and *mafsadat*) of something and becomes the main goal of law enforcement. Human's demands are stratified, according to al-Syatibi there are three categories, namely: *dharuriyat* (primary need), *hajiyyat* (secondary need), and *tahsiniyah* (tertiary need). Before al-Syatibi era, al-Juwaini also had the same view that affirmed three kinds of the purposes of *shariah* as follow. The first, *dharuriyat* is the primary need. If the primary need is lost, we will provide the the misery on the world, the loss of favor, and the punishment in the hereafter. The second, *hajiyyat* is secondary need that to bring ease and avoid difficulty. The third, *tahsiniyat* is tertiary need that makes human looked beautiful, noble, and good character.

The goal of sharia is *maslahah*. Thus, the agreement of the inheritance distribution by saving and loan form that maintains *maslahah* is also the goal of sharia. Based on Al-Syatibi's and Al-Juwaini's concept, the agreement among the heirs is included to an effort to create *maslahah*. Because of the agreement, the heirs can choose or decide the solution that can give advantages to all heirs.

The heirs can make a deal to provide advantages. If the inheritance distribution applied the Islamic law of inheritance, might cause the disunity

among heirs. Because of Islamic Law of inheritance uses the share comparison between male and female 2 : 1. So, to provide fairly division of the money, the heirs used the share comparison 1 : 1. The inheritance distribution by saving and loan aims to fulfill the heirs' needs.

In the family, there are some poor heirs. Some heirs are difficult to pay her children's school costs and to renovate her house. To reach the goal of sharia, the heirs should maintain the secondary need (*hajiyyat*) that eliminate the difficulty and bring the ease. Based on the Al-Syatibi's and Al-Juwaini's concept, the secondary need (*hajiyyat*) is a requirement that must be fulfilled to realize the goal of sharia.

Thus, the view of *maslahah* on the agreement of the inheritance distribution is as a way to realize the goal of sharia. The agreement is a main key to form a *maslahah* that accordance to the goal of sharia. Meanwhile, the inheritance term is one of scopes of *muamalah* activities. According to At-Thufi, *muamalah* is included to the human's right that can be founded the *maslahah*. Furthermore, human's *maslahah* should be more prioritized than the God's right as well as the agreement to convert the inheritance right into saving and loan form. The statement is the result of *maslahah* view to eliminate the disunity and aims to prioritize *maslahah* for the heirs. The inheritance distribution can help the poor heirs in need and can eliminate the difficulty.

As the basis of positive law which has legal power, Compilation of Islamic Law supports the case in the article 183 and 189. Article 183 mentions

that heirs may agree to peace in a distribution of inheritance, after each of them aware to the share. Thus, the agreement has a doctrinal foothold in Islamic law system in Indonesia that to solve the inheritance problem.

Moreover, the most important requirement that must be fulfilled is the agreement and the heirs' will. The heirs can also abort his inheritance right to get the property and gives the property to other. Conversely, when the heirs do not approve to distribute the inheritance by an agreement, the heirs can use the Islamic Law of inheritance or use the civil law of Indonesia.

In addition, Article 189 verse (1) explains that a land (property) can be maintained and used together. While, in the verse (2), the land can be bought by one or more heirs and the money can be given to the poor heirs. Based on this article, the inheritance distribution by converting inheritance right into saving and loan form can be implemented because the inheritance distribution aims to gather the money and used as heirs' benefit. The most important is the property can be used together. Thus, the inheritance distribution by converting inheritance right into saving and loan form can help heirs in need.

While, an agreement on distributing the inheritance can be supported by the consideration of heirs' economic condition. The agreement is expected to help the poor heirs. Another reason is the heirs' consideration that one of them was more responsible to the property management. Thus, the agreement to give him more share than the other's one is logical as long as the other approve the agreement.