

**Nisah HARON**

## **Istiqamah's Trust**

### I

ANXIETY and restlessness would not leave her in peace. They were making a space for themselves, and this space bore down heavily on her soul. True, this was all God's business. She did not get to plan it perfectly, for perfection is the domain of the Divine One. Here she stayed and was made to wait. There was no other option.

"Be patient. There is still unfinished business."

The voice chimed again, trying to appease her anxiety.

### II

Ahmad Zuhairi returned to his home village under compulsion. He would much rather be at the office. With his mind ruminating on the work he left behind, he drove to the home of his departed parents. His feelings were in chaos. Too many memories rose up and fought for space in his mind since he received the telephone call yesterday.

"Discussion and accord are paramounts of *adat*, of custom. Come back, and let us discuss this together," his uncle, Pak Lang Khamis', words echoed in his mind again.

The face of the girl in a pink hijab rose unbidden before his mind's eyes. Yes, Nur Istiqamah was the future owner of this asset. There was nothing to discuss. Period.

Only the respect and politeness drummed into him by his parents from a young age brought his presence back to this district. He had run out of excuses to evade the return. Ahmad Zuhairi could predict that there was nothing to be accomplished by returning, just as nothing had been accomplished by his presence in past meetings.

That night, the meeting took place.

He tried to seat himself as far away from the group as possible, thinking that he did not have any vested interest in the discussion. His intention was to fulfill the invitation and to respect the resolutions of this discussion.

The elder of the clan, or *Datuk Lembaga*, who holds the title of Dato' Seri Maharaja, had taken his seat at the front patio of the house. His uncle, Pak Lang Khamis had taken the liberty of inviting as many extended family members as he could to the gathering. There were fewer than ten present that night. They were not strangers to him. Some of them grew up with Ahmad Zuhairi when he lived in the village, while others he only met during big gatherings like the one held for the post-Ramadan celebration of Eid-ul-Fitr.

"Are we all here?" asked Datuk Lembaga.

Pak Lang Khamis agreed, "Yes, we can start now, Tuk."

## III

*The ancestral land  
Ownership to the women  
Utility to the men.*

"I can see the beauty in this philosophy about assets."

Ahmad Zuhairi gave a brief smile. "You and your endless love of philosophy."

The office of an old college friend was chosen as the discussion space. This was not the first time that he had been at the firm Badariah & Co.

"What are you worried about? As an heir, you can still use the land and profit from its produce. No one is saying that you can't do that; no one is preventing you from doing so. The land is clearly an *adat* land, an ancestral land. It should pass on to Istiqamah as the next female heir," added Badariah.

"I understand that, but I don't think I can use it."

The lawyer raised her eyebrows, waiting for him to elaborate.

"I was an only child. When my mother died, I had no right to inherit the ancestral land. Instead, that right now belongs to my female cousin, who was my mother's niece and her next female heir. I don't believe that Istiqamah wants to live there, so I can't return to the land as I wish, either to spend the night or to harvest fruit from the orchard," said Ahmad Zuhairi as he reached for the glass of mineral water in front of them.

"Can't I demand that the land be divided according to the concept of *faraid*? Isn't using that inheritance law is much easier and has been stipulated by Islam already?"

It was Badariah's turn to smile, "As sharia stipulates, custom implements. There's some truth in what you said, but it is not as easy as everyone thinks. A lot of people are confused about the division of the ancestral land, and there are those who say that it runs counter to the teachings of Islam."

"If the *faraid* system is crystal clear in Islam, why would sharia, the canonical law based on the Noble Quran and the tradition of the Prophet, provides space for custom. Sharia has already stipulated, why wouldn't the custom implement?" countered Ahmad Zuhairi.

"Because the land in question is not the inheritance that can be divided according to *faraid* in the real sense of the word."

He would not budge, but he calmly replied, "Hmm... you keep confusing me, Badar."

## IV

Shimah watched her son, bent low to the ground and slashing his machete at the weeds to clear the grounds of orchard. The weeds had started to encroach into the orchard now. She felt blessed that her son was a hard worker. He was not the type to sit still frittering away his final school holiday as he waited for the results of his SPM, the national high school examinations. Last week, he dug a hole and planted a young *langsat* sapling, and yesterday, he dug another hole and planted a young *durian* sapling in the middle of the clearing.

Shimah was not sure if she would get a chance to taste the fruit of her son's efforts. Let her descendants be the ones to harvest and enjoy the fruit. The thing that made her

most proud of her son was his awareness and efforts to till the orchard and to make the most out of their small parcel of land. Today, the young man finished repairing the barbed wire fence encircling the small orchard with his father.

"It is unfortunate that we weren't blessed with a daughter too," said Shimah, as she sipped her cup of coffee, to her husband who just came back from harvesting the tapioca roots from the far edge of the orchard.

"Why do you say that?"

"Well, you know, this land won't come to Zuhari after we passed on. The ancestral land goes to the womenfolk."

The expression on her husband's face remained unchanged. He finished the remainder of his coffee. "You have nieces. Zuhari is like a male swallow—forever remaining nest-less. He is the one who has to leave in search for his fortunes. He will add to the assets at his in-laws place. No matter what, he still has the right to the harvest of the orchard. It is only this piece of land that he can't claim ownership. He can still inherit our other lands"

"I just feel sorry for him because he has been the one who works the land. When we are gone, if none of my nieces wants to live here, it would be difficult for him to come home to this house, dear."

## V

*Ritual betel packed with no seed,  
Waiting for the seed brought in from Melaka;  
Ritual tasting is not for the greed,  
It remains alive for politeness and moral.*

"The interest of many overrides the interest of one person."

Pak Lang Khamis' words slowly percolated in his mind.

"That's the philosophy behind the principle: 'the death of one's child is preferable to the death of the customs.' The saying is too often misunderstood. Its intent is to not ever neglect or push anyone aside. In fact, the intention is very consistent with the teachings of Islam," he added further.

Ahmad Zuhairi was still trying to digest those words although his efforts had not yet fully succeeded.

"But Pak Lang, this is not the first time that I've seen inconsistencies of *adat* with sharia. Besides inheritance, our customs forbid the marriage between maternal cousins. The intra-clan marriage is not forbidden in the sharia law."

The middle-aged man looked at his nephew calmly. He could see the brief flashes of his late sister and brother-in-law in this young man.

"It is true; I've come across too many misunderstanding regarding this matter. When I had the opportunity to correct it, I would. In the methods of the *fiqh*-based interpretation, there is a branch called *'urf* which means custom. Even the Arabs have their own customs, which is why, Islam accepts and endorses local customs as long as they do not create an opposition to the laws of sharia. You have to remember that Islam is not only for the Arabs, so our customs are also acceptable in Islam."

This young man still kept his thoughts to himself. At times, Nur Istiqamah's face kept moving away from him in his mind's eyes.

"Our customs give an advantage to the women because they need protection. The advantage is inheriting the ancestral land because this land had passed in the matrilineal

line for generations. Even though she inherits it from her aunt, it is still legitimate because according to custom, the mother and the aunt share such a close relationship that an aunt is like a woman's own mother." Pak Lang Khamis tried to convince Ahmad Zuhairi.

"And that close kinship prevents the intra-clan marriage, right Pak Lang?"

Ahmad Zuhairi's interjection made Pak Lang Khamis' heart smile wider. It would seem that an understanding is slowly forming.

"That's right. When we are of the same clan, we are siblings. Coming from the same clan means that we share the same matrilineal line. We might share the same maternal grandmother or great grandmother or ancestor. I also saw a television program that said if we marry someone who doesn't share our blood, if God wills it, the children from that union will be very intelligent. That is why, in my mind, there is a very rational reason for the prohibition of intra-clan marriage. The rule did not exist in vain."

Nur Istiqamah's smile flashed uninvited in his mind. It brought with it a thrumming radiating from his heart. There was, too, a sense of disappointment when all his efforts and difficulties expended on the orchard that he worked at with his late parents would be owned by others. He tried to set both feelings aside—as far as possible away from him.

The interest of many overrode the interest of one person.

## VI

"Women is *Adat Papatih* is a *peti benian*."

A frown furrowed Ahmad Zuhairi's brows.

"A *peti benian* is a chest or a box where you keep your dearest and most valuable treasures. They are the guardian of the assets, not the owner of the assets."

He tried to understand what was being said, one by one. He hoped that the meeting arranged by Badariah could help him unravel the conflict in his chest.

"I think you should meet with Prof. Faqih. He has studied *Adat Papatih* from the perspective of law. Maybe he could help undo your compounding confusion," said Badariah before she gave him the telephone number of the law professor.

"How can you say that they are not the owners of the assets when their names are written in the grant of the land?" asked Ahmad Zuhairi.

Profesor Faqih pushed his spectacles up his nose. "That is a good question. You must first understand the land laws in Malaysia. We adopt the torrens system from Australia. According to this system, all land must have a title deed. This was a trick from the colonial oppressors to enable them to collect taxes. Therefore, whether we wanted to or not, the ancestral land must also have a title deed although the deed is different from the regular title deed."

Ahmad Zuhairi was about to interject, but the professor stopped him with his raised index finger.

"This does not mean that every name on that land grant is the sole and absolute owner of the land. The concept of ancestral land requires that the land belongs to the clan. Therefore, the names on the deed hold the land in trust for their future heirs, regardless of gender. Therefore, that is why women act as *peti benian* or a treasure chest."

"Does this not run counter to the *sharia* law, Professor? In the Islam inheritance law, all inheritance must be divided according to *faraid*, and the men are given the bigger share," asked Ahmad Zuhairi. He could not hold his tongue any longer.

"We have to draw the distinction between the regular inheritance and the ancestral inheritance."

Profesor Faqih rose to reach for an old book that the young man had never seen before. The neat rows of the bookshelves behind him now sported a gaping hole where the thick old book had been.

After he consulted the book, he raised his face and told Ahmad Zuhairi, "When a Muslim dies, there are many things to be taken care of before the faraid division is carried out. First, the funeral expenses. The cost must be taken from the deceased's assets. If an heir uses his money first for the funeral expenses, he has the right to be reimbursed from the deceased's money."

The explanation of the academician in front of him began to pique his' interest.

"Second, all the deceased's debts must be paid out of his own assets."

"And then the remainder shall be distributed according to faraid principles?" guessed Ahmad Zuhairi.

"Not yet. You must first find out if he had left any will, *hibah* or gift, or *waqaf* or donation. If there is, the asset in question is no longer defined as inheritance because it no longer belonged to him. When the deceased can no longer benefits from the asset that he is leaving in a will, as *hibah*, or as *waqaf*, the ownership of the asset is transferred to the beneficiary."

Profesor Faqih paused, letting the facts sink in and understood by the young man.

"Regarding the spouse, if she is alive, she then has a claim on the asset as the matrimonial property. After the matrimonial property is set aside, then and only then will the remainder of the asset be divided among the eligible heirs."

"Is that portion known as *faraid*, Professor?"

"Yes, *faraid*. A lot of people misunderstood and thought that distributing assets according to *faraid* is obligatory. *Faraid* becomes obligatory only when the eligible heirs are demanding their own rightful share according to the principles of the Al Quran. However, if all the heirs are agreeable to a certain way of distribution, they do not have to distribute the assets according to *faraid*."

Once again, Ahmad Zuhairi's brows sported a furrow. "Can you give me an example?"

"It's like this: If a man dies and leaves behind a wife, a son, and a daughter, and let's say that he has three pieces of land. According to *faraid*, the wife is only entitled to one eighth of the total of the assets. The remainders are to be divided between the son and daughter at a ratio of 2:1. The son will get a bigger share based on his responsibility of taking care of a widowed mother and an unmarried sister. However, they can unanimously decide that each of them shall get a piece of land, on the condition that none of the three are disputing the division. An agreement must be obtained beforehand."

His confusion was beginning to unravel and clear up in his mind.

"The ancestral land," added Profesor Faqih, "is not a part of the inheritance referred to before. It is a piece of land set in trust by the women of the preceding generation for the women of the subsequent generation. You have to remember that this land is not owned by the woman as an individual. The ancestral land is owned by her clan and it can be used by her kinsmen and kinswomen."

Ahmad Zuhairi's interjection died off.

"That is the beauty of *Adat Perpatih* in guiding the lives of the members of its society. It protects the dignity of the women so they don't have to live in poverty with no place to go. In fact, when the West was still figuring out how to emancipate women in the voices of Germaine Greer and Eleanor Roosevelt, *Adat Perpatih* had earlier given those rights in line with the Islamic law."

The Professor's explanation provided him with more room to think. He then looked straight at the man in front of him. There had never been anyone who could explain this matter to him in such a simple manner without giving him a massive headache.

"But why hasn't anyone explained this to others outside our own community? This custom has always been accused of going against the Islamic law because it gives the advantage to the women and thus inconsistent with His covenants?"

"I see it as a communication problem. When people are ignorant and lack understanding but refuse to ask for clarification . . . I think you can complete the sentence for me, now, can't you?"

Ahmad Zuhairi chose not to reply.

"I know what has always been the point of dispute from the male heirs. They want to see their names recorded on this land. Only then will they find peace. In fact, even without their names recorded on the deed, they have undeniable right as the male heirs to use the land. Would you like to hear a story?"

The young man before him nodded.

"There was a case involving ancestral land. When the names of the female siblings were added to the deed, the male siblings pulled a dirty trick. The male heirs may not sell the land because the land was not in their names. Furthermore, there is a proverb which states: 'if you rent out ancestral land, it won't stay leased, and if you sell it, it won't stay bought.'"

Ahmad Zuhairi shifted in his seat. He could discern something extraordinary would occur in the story.

"So, he did not sell the land terms of changing the name on the deed because that would be impossible. What he did was to sell the earth--truckloads of earth from that land—so much so that there was a massive hole in the ground on that land."

Ahmad Zuhairi's eyes grew bigger as he listened to that extraordinary story he had never heard before. "Can an heir go to that extent?"

Profesor Faqih smiled, "Upon questioning, he used the excuse of using the land. He did not sell the ownership; he just truly and completely used the land for his personal interest. It was all the same to him whether using the land by taking the harvest of the orchard or by selling the earth by the truckloads."

"That is an interesting theory. What happened in the end?"

"When I first heard of the case, I was still studying. I was visiting one of the clan elders at the time. Unfortunately, I did not get to hear the decision after that. However, what I'm trying to say is this: the menfolk are welcome to utilize the ancestral land even though his name is not in the deed. He can still take in the harvest or stay on the house built on the ancestral land."

"With the condition that there is a female heir living in the house, correct?" added Ahmad Zuhairi.

"Yes. That is the best way."

Suddenly, Nur Istiqamah face in her pink headscarf flashed in front of his eyes.

## VII

She was the treasure chest.

She was also the future *ibu soko*, the term that denoted a future mother with a voice and a vote to elect the leaders of her village, her district, her region, and her state.

She was the main pillar for all the kin and heirs of this family and this clan. She had a huge responsibility resting on her shoulders. If the base of the pillar was invaded by

woodworms, the main pillar could never stand to support the house of *Perpatih* for her community. Let there be thousands of tongues wagging at horridness of this institution. Ahmad Zuhairi now understood that although he could not inherit his mother's property, he had his own responsibility.

Nur Istiqamah's heart needed protection.

Still, the interest of the many overrode the interest of an individual. He has heard this phrase many times from many different sources. Badariah also added to it in Latin—*Salus populi est suprema lex*.

"Let the welfare of the people be the supreme law," Profesor Faqih translated the Latin phrase.

"We both have our own responsibility, Istiqamah," he continued with the words that were stuck at his throat when he faced his mother's niece. He felt strange seeing her, but still, he needed to unravel the chaos in himself.

Outside Pak Lang's house, the rain fell in torrents.

"I'm not all that hungry for this tiny piece of land, but the land, the village, and the orchards are more than physical assets to me. They are imbued with precious memories that I can never describe," his words stopped there. He was unsure how to continue.

Pause.

"I'm trying to understand, and I'm learning to respect. There are feelings that need to be expressed. There is this feeling of connection to something that is personal and physical in nature, isn't there?" the soft voice articulated, coming from the woman who always comported herself well in the discussion.

Ahmad Zuhairi bowed his head, unable to deny the truth in her words.

"I believe that all of this are careful planning of God. There surely are reasons why we come from the same clan. Every human being were born with responsibility. I believe that I have found parts of my responsibility," added Nur Istiqamah further.

Sometimes, Ahmad Zuhairi was pierced by the light from the eyes of this woman who was two years younger than he was. There was a love that could never be realized in vows. The newly-emerged feeling must be quickly pruned and in its place, a much stronger bond must be cultivated. Without a doubt, the young man was in awe of Nur Istiqamah's trust. The wealth of her soul accepted the fact that it was never meant to be even when her eyes and heart had whispered of the same intention.

"Please look after the land. If you need any help, please let me know. I'll come back to do what is needed," said Ahmad Zuhairi.

"Don't worry. You can come home anytime you want. I only inherited a piece of land, but you inherited every memory with your parents, *Mak Ngah* and *Pak Ngah*. You grew up there."

"But you know that I can't really return there if there's no female heir living there."

"If it's true that I'm the *peti benian*, I have long given you the permission to use that land. How much really can you take of it? We both live and work far away from here. Anytime you long for the village, please drop by. *Pak Lang* is still here."

Ahmad Zuhairi turned his gaze at the front yard carpeted with bright green lawn. The rain had slowed down to a light drizzle. His mind felt as refreshed as the green abundance of the world singing in grateful praises.

"Insya-Allah, I have long applied for a transfer here. I want to come back and teach at my own village. I hope that God removes obstacles from my path and makes my affairs easier."

Nur Istiqamah smiled. Ahmad Zuhairi smiled in return. It would be easier for him to take care of the affairs and responsibilities to protect the interest and welfare of his younger cousin while keeping the memories of his parents if he lived in his home village. *Pak Lang*

Khamis stepped toward the four parallel wooden steps from the front yard while *Mak Lang* emerged from the back of the house carrying four cups of hot coffee with a plate of plain cream crackers squares.

## VIII

The business at the Land Office did not take too long. Every one of the heirs was briefed on their rights and responsibilities before appearing before the Land Administrative Officer.

Anxiety and restlessness had passed. This space brought lightness to her soul. It was true that all this was God's business. Shimah did not get to plan it perfectly, for perfection is the domain of the Divine One. She did not have to stay and wait anymore. The road was cleared of obstacles, and the journey could now be resumed.

She longed for and missed his only son who was reciting the *Yasin* verses at her and her husband's graves. However, the child had now understood. At the appointed time, they shall meet again.

"Let's go home."

That voice came again, this time softly and bringing with it a definite sense of peace.

*Translated from the Malay by Anisah Kasim*

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### Translator's Note:

The Malay form of address for aunts and uncles are formed of two elements—the first element is *Mak/Pak* or Mother/Father, and the second one is the birth order: *Long* for firstborn, *Ngah* for second-born, *Lang* for third-born. For example: Ahmad Zuhairi's uncle, *Pak Lang* Khamis, is literally translated as Khamis, the Third Father.