

Heritage and its Distribution in Practice in Religious Courts

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ABSTRACT

Trust for wealth, if not implemented properly, can become a source of disharmony in human life in society. Interactions between poor community members can escalate into hostile attitudes and eventually disputes can occur. Islamic sharia has stipulated the rules of inheritance as best as possible with the rules of wealth clearly and fairly. This is because Islam recognizes a person's ownership of property, both male and female, through a path that is justified by the Shari'a, just as Islam recognizes the transfer of something that a person owns during his life to his heirs after death, whether the heirs are male or female, without distinguishing between children and adults. The noble Qur'an has explained the laws of inheritance, the circumstances of each heir with a sufficient explanation, whereby no one among mankind is exempt from the share or limitation of inheritance. For the Qur'an is its basis in determining the law and its part. And very few are set on the basis of Sunnah and Ijma'. And not found in the Shari'a, the laws explained by the Qur'an are as clear and detailed as these inheritance laws. Indeed, Islam's attention to the matter of inheritance is an extraordinary concern, so the noble Qur'an privileges its explanation with the clearest explanation and not vague.

INTRODUCTION

There are at least two functions of wealth, namely to meet the needs of the owner of the property, and to establish fraternal relationships among fellow humans. For people who receive an overflow of wealth, there is an obligation to give a part to others, especially to those who are in great need. In addition to this obligation, there is also the teaching to give gifts to each other, even if they are not in a state of need. In this case, the function of property is as a medium to perpetuate friendship among fellow community members.

Trusting this wealth if not implemented properly will be a source of disharmony in human life in society. Interactions among members of the community that are not good can escalate into hostile attitudes and eventually disputes can occur. Disputes that often arise between community members begin to compete for inheritance. This problem is explained in the words of Allah SWT in Surah At-taghaabun which means: "Indeed, your wealth and your children are only trials (for you), and in the sight of Allah is a great reward". (Q.S. 64:15)

Guidelines for resolving disputes over inheritance have been given by Allah SWT in legal provisions called faraid law. The legal arrangement regarding the distribution of inheritance basically consists of determining a person's status as an heir, inheritance, heirs, and how to divide inheritance.

Disputes can arise because there are parties with bad intentions in fighting for the inheritance. However, it can also occur because of his incomprehensibility in dividing inheritance property fairly according to Islamic inheritance law. Regarding problems like this, not only the citizens of the community in general do not understand, among legal scholars and law practitioners themselves, their level of knowledge is also very varied.

The implementation of Islamic law, including the distribution of inheritance, according to Faraid, has received a strong legal basis with Law Number 7 of 1989 concerning Religious Justice, and Presidential Instruction Number 1 of 1991 concerning the Compilation of Islamic Law. Article 49 of the Law stipulates that the Religious Court has the authority to adjudicate cases of Muslim inheritance. Based on this provision, the case of Muslim inheritance will be tried based on Islamic inheritance law (Faraid).

Faraid's knowledge is sourced from the Qur'an, Al-Hadith and Ijtihad of scholars. The results of the ijthihad of the scholars have been written in many fiqh books, which are the reference of the judges of the Religious Court in deciding cases. The diversity of these fiqh books cannot be separated from the views of each school in determining the laws that are suitable to be applied to solve the problems they face.

Although the Religious Court has been established since 1882, every time it decides a case, the judges do not have the same legal basis. This difference in legal basis is due to the position of Islamic law at that time not yet becoming a positive law in the form of written legislation. The rules of the law are still scattered in various books of fiqh, which often to solve the same case different book references are used.

The wisdom of these differences then arose the idea of compiling a set of applicable laws that apply in the Religious Justice environment. With the hope that it can be used as a guideline for law enforcers, so that unity and legal certainty can be achieved. The idea to compile a Compilation of Islamic Law (KHI) was initiated by Bustanul Arifin based on several considerations as follows:

- 1) In order for Islamic law to be enforced in Indonesia, there must be clear laws that can be implemented by law enforcement officials and by the community;
- 2) Non-uniform perception of sharia and has led to the following: Inconsistency in determining what is called Islamic law (maa anzallahu); There is no clarity on how to carry out the sharia (tanfidziya); and The consequence of its abbreviation is the inability to use some of the roads and tools available in the 1945 Constitution, and other laws;
- 3) In the History of Islam, twice in three countries, Islamic law was enacted as state legislation: a) In India during the reign of King An-Rijeb who made and enacted the famous law of Alamfiri; b). In the Ottoman Kingdom of Turkey which is famous by the name of Al-Ahkam Al-Adliyah Magazine; c). Islamic law in 1983 was codified in Subang;
- 4) Starting from the idea of Busthanul Arifin, a project implementation team was formed which was appointed by a Joint Decree (SKB) between the Chief Justice of the Supreme Court of the Republic of Indonesia No. 07/KMA/1985 and No. 25 of 1985, dated March 25, 1985. In carrying out their duties, four paths are taken, namely: a). The study of fiqh books with the help of several teaching staff of the Faculty of Sharia IAIN throughout Indonesia; b). Gathering the opinions of prominent fiqh scholars in the country; c). Compiling jurisprudence collected in the decisions of the Religious Courts throughout Indonesia since the Dutch colonization until this compilation was compiled; d). Conduct a comparative study concerning the implementation and enforcement of Islamic law in Muslim countries, especially neighboring countries whose population is Muslim.

With the compilation of Islamic Law according to Referee Aulawi, it can be expected: a). Fulfilling the principle of balanced benefits and justice contained in Islamic law; b). Overcoming various problems of khilafiyah (differences of opinion) to ensure legal certainty; c). Able to become raw materials and play an active role in the development of national laws.

Islamic sharia has stipulated the rules for inheritance above the best, clearest and fairest rules of wealth. This is because Islam recognizes a person's ownership of property, whether male or female, through a path that is justified by the Shari'a, just as Islam recognizes the transfer of something that a person owns during his life to his heirs after death, whether the heirs are male or female, without distinguishing between children and adults. The noble Qur'an has

explained the laws of inheritance, the circumstances of each heir with a sufficient explanation, where no one among mankind is exempt from the share or limitation of inheritance. The importance of Community Service (PPM) in Kopang village, Central Lombok. The objectives of this PPM activity include:

- a) As a form of implementation of the Tri Dharma of Higher Education
- b) To provide counseling and information to the community and village officials related to heritage and the issue of its distribution in practice at the Religious Court.

Some of the benefits of these activities for the community are:

- a) The community will know how to settle the distribution of heritage in practice at the Religious Court if the distribution cannot be completed through consensus deliberation (mediation).
- b) The community will know how to distribute heritage property fairly in accordance with the provisions of the Qur'an, Al-Hadith and Ijma.
- c) The public will know and understand the importance of the distribution of heritage in accordance with the provisions of the Compilation of Islamic Law regarding the distribution of heirs' inheritance to their heirs who are entitled to a fair distribution.
- d) The community will understand how the process of distributing heritage assets through litigation/at the Religious Court.

IMPLEMENTATION AND METHODS

The methods of activities carried out in this community service program include:

1. The lecture is the delivery of material through the presentation method carried out by the extension team to the participants, so that the participants can know about the counseling material about heritage and the issue of its distribution in practice at the Religious Court. The choice of the lecture method was due to the large number of community/community service participants and the participants did not know how to settle the distribution of heritage in practice at the Religious Court.
2. Discussion and question and answer are by providing opportunities for participants to ask questions and opinions related to the material presented so that it can be input and increase insight into understanding of the material presented by the extension team. In addition, participants can also provide information or experience related to the issue of the distribution of heritage assets in practice at the Religious Court.

The community components that will be the target of this counseling activity are the community as a whole, including; Village Heads, Village Officials, Traditional Leaders, Religious Leaders, Youth Leaders who are members of youth organizations such as youth organizations, community leaders, and other community members. With the involvement of all elements of society in this counseling activity, it is hoped that it can bring benefits, especially

in increasing the understanding and ability of the community in understanding Islamic inheritance law and the issue of its distribution in practice in the Religious Court.

RESULT DAN DISCUSSION

A. Distribution of Inheritance According to Islamic Law

According to the Compilation of Islamic Law (KHI) there is a difference between Heritage and Inheritance. Article 171d formulates that heritage is property left by the heirs, both in the form of property that belongs to them and their rights. Meanwhile, Article 171e provides a definition of inheritance, namely inherited property plus part of common property, after being used for the needs of the heirs during illness until death, the cost of managing the body (*tajhiz*), paying debts and giving to relatives. In other words, the inheritance is all the property left dead by the heir who is still in a gross state, while the inheritance is already in a net state.

A marriage bond based on Islamic law, gives rise to marital property, which is all property obtained during marriage. This marital property becomes the joint property of the husband and wife, even if only the husband works. In Article 1f of the KHI, it is determined that property in marriage or *shirkah* is property that is obtained either individually or together as husband and wife during the marriage bond and hereinafter referred to as joint property, regardless of whether it is registered in anyone's name. Thus, if anyone wants to enter into an agreement regarding the position of property in marriage, according to Article 47 paragraph 2 of the KHI, the agreement can include the mixing of personal property and the separation of each other's search property as long as it does not contradict Islamic law.

Thus, there are three types of property in marriage, namely a. Husband's Personal Property or Husband's Inherited Property; b. Wife's Personal Property or Wife's Property; c. Matrimonial property or joint property, belonging to husband and wife.

Article 86 paragraph 1 of the KHI stipulates that there is basically no mixture between the husband's property and the wife's property due to marriage. The right to this inheritance is affirmed in Article 86 paragraph 2 of the KHI, which stipulates that the wife's property remains the wife's right and is fully controlled by her, as well as the husband's property remains the husband's right and is fully controlled by her.

Regarding this inheritance, the Compilation of Islamic Law further regulates in Article 87 paragraph 1, that the inheritance of each husband and wife and the property obtained from each as a gift or inheritance are under the control of each as long as the parties do not specify otherwise in the marriage agreement. To complement this, the next verse emphasizes that the husband or wife has the full right to perform legal acts on their respective property in the form of grants, gifts, *shodaqah* or others.

In addition to the right to inherited property, the husband or wife is entitled to half of the marital property or joint property, in the event of divorce. Article 97 stipulates that widows or widowers who divorce each are entitled to one-half of

the common property as long as it is not otherwise specified in the marriage agreement. In relation to the distribution of inheritance, Article 96 paragraph 1 of the KHI also stipulates that in the event of a death divorce, half of the joint property becomes the right of the spouse who lives longer.

B. Heritage and Determination of Its Distribution

What is called Heritage Property is the inheritance that will be distributed to the heirs. Or in other words, Heritage Property is property as a whole that can be seen to have a relationship of ownership with the deceased. Then it is reduced by family debts, separated and determined by the husband's (deceased) property and wife's property and finally this husband's property is reduced by debts and wills.

In order to obtain certainty of the amount of inheritance in a net or net state, it is necessary to reduce the burdens contained in the property, including: 1. Expenses for the needs of the heirs during illness; 2. The cost of handling the body; 3. Debt payment; 4. Gifts for relatives.

The cost for the heir's needs during illness varies greatly. There are heirs who before passing away suffered from severe illness, so they needed intensive care. It may be that the cost for that purpose is very large, and can be taken into account in determining the amount of inheritance.

Likewise, the cost of handling the body will differ from case to case. There are heirs who before passing away need to be treated for a long time in hospitals abroad. If he dies at the foreign hospital, of course, the management or repatriation of the body to Indonesia requires a lot of money. All costs incurred can be taken into account in ensuring the value of the inheritance.

Juridically, heirs' debts must be paid only to the inheritance of the heirs. The rest of the heirs' debts are only the moral obligation of the heirs to pay them off. Article 175 paragraph 2 of the KHI emphasizes that the responsibility of the heirs for debts or obligations of the heirs is only limited to the amount or value of their inheritance.

Grants to relatives, either in the form of grants or wills, are limited to a maximum of one third. Article 195 paragraph 2 of the KHI stipulates that a will is only allowed to be a maximum of one-third of the inheritance, unless all the heirs agree. Likewise, the limit on the amount of grants. Article 210 paragraph 1 of the KHI stipulates that a person who has been at least 21 years old, has good sense and without coercion can donate up to one-third of his property to another person or institution in the presence of two witnesses to be owned.

Dividing inheritance will be easy to do if the property is already in the form of money, so it is easy to distribute it to the heirs according to their respective shares. However, it almost always happens in the distribution of inheritance, inheritance that will be divided in the form of houses, land, vehicles and so on, even in the form of one or several companies.

In order to ensure fairness in the distribution of inheritance, the following methods can be taken. Each inheritance in the form of a building or land can be valued at an estimate. Thus, the entire inheritance will be known to the amount of its nominal value. Based on the overall value of the inheritance, it is then divided according to the rights of each heir, for example, there is an heir whose share is

two hundred million, even though he occupies a house worth three hundred million, thus he must pay to the other heirs one hundred million. On the other hand, if he occupies a house that costs a hundred million, then he is still entitled to a hundred million.

C. Heirs

There are three conditions for becoming an heir specified in Article 171c of the KHI, namely; 1. Persons who have a blood or marital relationship with the heirs; 2. Practicing Islam; 3. Not hindered by the law to become an heir.

The first requirement is to place a son or woman, father, mother and widow or widower as heirs. The provisions regarding this matter are formulated in Article 174 paragraph 2 of the KHI which states that if all heirs exist, then those who are entitled to inheritance only; children, fathers, mothers, widows and widowers.

The second requirement is Muslim heirs. So if there are heirs who change religions, then they will lose their rights as heirs. This can create an impression of injustice in Islamic inheritance law. For example, some of his biological children have changed religions, while his other siblings remain Muslim according to their parents' religion. At the time of the distribution of inheritance, the injustice will be felt. All of his siblings received the inheritance while he who converted received nothing. In fact, according to Islamic teachings, there is no compulsion in religion.

In order to implement a just Islamic inheritance law, the Supreme Court has issued Jurisprudence No. 51.K/AG/1999 dated September 29, 1999, which in principle ruled that biological children who have converted to religion receive a compulsory will. This decision does not mean that it is contrary to Islamic law, because the child is not designated as an heir. As a person who is close to the heir, it is fair if he gets a share of his parents' inheritance through a compulsory will.

If there are heirs who have converted later in order to obtain the status of legal heirs, they declare to convert to Islam again, then the truth of their statement needs to be examined. In this case, Article 172 of the KHI, provides guidelines that heirs are considered Muslims if they are known from their identity cards or confessions or practices or testimonies, while for newborns or immature children, they are religious according to their father or their environment.

Apart from changing religions, according to Article 173 of the KHI, a person is prevented from becoming an heir if by the decision of the Judge who has permanent legal force, is punished for; a. Blamed for killing or attempting to kill or severely mistreating the heir; b. Blamed for defamation by filing a complaint that the heir has committed a crime that is threatened with a sentence of 5 years in prison or a heavier sentence.

In the Compilation of Islamic Law, it can be known that there are three types of heirs, namely; a. Dzawil Furud; b. Ashobah; c. Mawali. The heirs of dzawil furud are mentioned in Article 192 of the KHI. The word dzawil furud means to have a part. In other words, they are heirs whose share has been determined in the Shari'ah, including the father, mother, daughter, widow or widower.

Boys are not included in the heirs of dzawil furud, but are included in the second category of heirs, namely the heirs of ashobah which in the Compilation of Islamic Law is mentioned by Article 193. This heir gets a share of the remaining

inheritance, after the share of the heirs of dzawil furud is taken into account. The heirs of the ashobah consist of no less than 19 kinds, but the ones that often occur are; a boy or a girl with a boy; Grandson or granddaughter with grandson; Father; Grandfather; Biological brother or sister with biological brother; Half-brother or half-sister with half-brother.

The third type of heir is the mawali or successor heir. The Compilation of Islamic Law stipulates in Article 185: 1) An heir who dies before the heir, then his position can be replaced by his son, except for those mentioned in Article 173; 2). The share of the successor heirs shall not exceed the share of the heirs equivalent to the one being replaced.

D. Inheritance Verses

The talk about the verses of inheritance is only about the main verses that directly relate to the distribution of inheritance or inheritance. It is stated on two levels: the first is about the inheritance verses and the things that are regulated in them, and the second is about the legal line in the inheritance verses.

The verses of inheritance and the things regulated in it, namely:

1. Q.IV. : 7 Regulating the affirmation that men and women can inherit and affirm by the same designation in the form of for men there is a part of the inheritance of what their parents left and aqrabun, and for women there is a part of the inheritance of what their parents left and aqrabun.
2. Q.IV. : 7 Regulating the affirmation that men and women can inherit and affirm by the same designation in the form of for men there is a part of the inheritance of what their parents left and aqrabun, and for women there is a part of the inheritance of what their parents left and aqrabun.
3. Q.IV : 12 Réglementer l'acquisition des veufs selon deux lignes juridiques, en ce qui concerne les testaments et les dettes. L'acquisition de veuves avec deux lignes juridiques, la question des testaments et des dettes et l'acquisition de frères dans le cas de la kalalah avec deux lignes juridiques, la question des testaments et des dettes.
4. Q.IV :33 Regulating the marriage of a person who receives inheritance from his parents, regarding the inheritance of a person who receives inheritance from his aqrabun, regarding the marriage of a person who receives inheritance from the agreement of the tolan, and the order that the division of the portion be carried out.
5. Q.IV :176 Explain the meaning of kalalah, and regulate the acquisition of brothers in terms of kalalah.

The inheritance of an Heir who is a Muslim, the distribution of the inheritance must use Islamic inheritance law (Faraid). This can be studied in the Qur'an, surah Al-Maidah verses 44, 45 and 47 and in Surah An-Nisa' verse 14. The obligation to carry out the distribution of inheritance from Muslim heirs as clearly stipulated in the Qur'an, was further emphasized by the Prophet Muhammad PBUH in his words which means "Divide the inheritance to the heirs according to the Book (Al-Qur'an)". (H.R. Muslim and Abu Dawud).

CONCLUSION

Inheritance consists of inherited property plus part of common property, after being used for the needs of the heir during illness until death, funeral expenses, debt payments and gifts to relatives. Or the inheritance consists of property left dead by the heir who is still in the gross state while the inheritance is already in the net state. In KHI, there are three types of heirs, namely: dzawil furud, ashobah, mawali. The heirs of dzawil furudh are mentioned in Article 192 of the KHI. The heirs of the ashobah consist of no less than 19 kinds. Meanwhile, the heirs of the mawali or the heirs of the substitute have provisions in Article 185 of the KHI. In Surah An-Nisa verse 7, verse 11, verse 12 and verse 176 it is explained about the part of the heirs of ashabul furudh.

The distribution of inheritance according to faraidh science is regulated in Undang_undang Number 7 of 1989 jo. Law Number 3 of 2006 jo. Law Number 50 of 2009 concerning Religious Courts and Presidential Instruction Number 1 of 1991 concerning the Compilation of Islamic Law. In Article 49 of the Law, it is explained that the Religious Court has the authority to adjudicate cases of Muslim inheritance and is tried based on Islamic law. The community in Berinding Kopang village, Central Lombok, mostly resolves inheritance disputes through family deliberation or family mediation and the peacemaker or mediator, the village head, the teacher or ustaz and the kiyai who master the science of faraidh. If no agreement is reached, the community will file a lawsuit with the Religious Court.

RECOMMENDATIONS

The settlement of inheritance disputes should be resolved through peace, namely non-litigation with family mediation assisted by a third party as a mediator, both village heads, ustaz, teachers and kiyai who understand Islamic inheritance law. Because it is best to make a decision through a litigation institution, there are parties who feel that they win and lose or win lose solutions. The best and more barokah is to be resolved through family mediation, because the decision is made based on the results of the agreement of the parties so that it is a win-win solution (no party wins and loses). To avoid prolonged conflicts, efforts to resolve disputes through litigation through the Religious Court are used as a last resort (*ultimum remedium*) to resolve the dispute.

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