

Problems and Obligations in the Division of Children's Inheritance According to Islamic Law

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Abstract:

Islamic law establishes the rules of inheritance in a very organized and just manner. When the right of ownership of property is established for every human being, both men and women in a legal way. The purpose of this article is to find out the problems and obligations in the division of children's inheritance according to Islamic law. In writing this research, the method that the author uses is normative juridical research method with data sources using secondary data. the result of this study is that there are still many people who do not know about Islamic inheritance law, so it is necessary to reflect fair inheritance law, namely by paying attention to the conditions that must be met before the distribution of inheritance in order to achieve happiness and justice. Because the principle of Islamic law is for the benefit of the people or rahmatan lil alamin, which is a mercy to reach consensus and not ally in things that are not pleased by Allah.

Keywords: *Inheritance; Children; Islamic Law*

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Introduction

When examined, the legal objectives based on Islamic law are actually the same as the legal objectives stated by LJ van Apeldoorn. According to him, the law aims to regulate the association of life in peace. Another opinion says, the purpose of law is as something that creates as many benefits as possible and provides legal certainty to one party to another. Basically, humans experience three stages of life namely birth, life, and death. All of these stages bring legal influence and consequences to their environment, especially those close to them. Both close in the sense of lineage and in terms of the environment.

Human life has a limited time. When it reaches the end of life with the arrival of death, human worldly affairs do not necessarily end. Death on the one hand has



indeed ended the worldly affairs of the person who died, but on the other hand the death will also have an impact on the people he left behind. One of these impacts is the distribution of the inheritance of the deceased among the family or often referred to as the distribution of inheritance. Inheritance law in communities with certain areas will be carried out from generation to generation (Bakung 2020).

In Indonesian legal literature, the word "inheritance" or inheritance is often used. The word comes from Arabic, but in practice it is more commonly called "Pusaka". The form of the verb Warastra Yasiru and the masdar word Miras. There are three other masdar according to sasaf science, namely wirsan, wirasatan and irsan. While the word inheritance is a person who gets an inheritance or inheritance (Kuzari 1996)

In modern life, humans are inseparable from problems in fulfilling needs, one of which is family problems, one of which is the problem of inheritance, usually a source of disputes in the family, especially when determining who is entitled and who is not entitled. After that, if you have the right, how many rights do you have? This creates discord and eventually creates a rift in the family. People want to act fairly, others consider it unfair.

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Islamic Shari'at establishes rules of inheritance in a very orderly and fair form. When the property ownership rights are determined for every human being, both men and women in a legal way. Islam also stipulates the right to transfer ownership of a person after death to his heirs and all his family relatives, without differentiating between men and women, big or small.

In the Civil Code, the conditions for inheritance are explained in Articles 836 and 899 of the Civil Code. In Article 836 of the Civil Code it is explained that in order to act as an heir, someone must already exist, when the inheritance falls out. In



Article 889 of the Civil Code it is explained that in order to be able to enjoy something from a will, someone must have existed, when the heir died. In law Number 35 of 2014 concerning Amendments to Law No. 23 concerning Child Protection, precisely in Article 1 paragraph 1 it says that a child is someone who is not yet 18 (eighteen) years old, including children who are still in the womb. In this sense it is closely related to the understanding of children in Law Number 1 of 1974 concerning Marriage.

In the Child Protection Act, in Article 2 it is stated that child protection is all activities to guarantee and protect children and their rights so that they can live, grow, develop, and participate optimally in accordance with human dignity, and receive protection. from violence and discrimination. This means that as minors they are not yet 18 years of age entitled to obtain all facilities that support and support their growth, also contained in Article 28 paragraph 2 point B of the 1945 Constitution.

In the context of Islamic law, the division of inheritance is one of the studies in Islam which in science is specifically discussed in *fiqh mawaris* (Al-Munawir 1997). This is none other than to prevent disputes between family members related to the inheritance of family members who have died.(Basyir 1995)

The scope of study of Islamic law related to inheritance is very broad. This includes people who are entitled to receive inheritance, the parts or amount of inheritance, and many more such as the addition or subtraction of parts of inheritance. People who are entitled to receive inheritance, in the context Islamic law, divided into three groups, namely *dzul faraidh*, *dzul qarabat*, *mawali*. (Muhibbin and Wahid 2022)

Method

In writing this research the method that the writer uses are normative juridical research method with data sources using secondary data. Secondary data is data that the author obtained through library research by collecting it from various kinds of literature and reading materials related to the discussion of this research. The collected data is then processed and in the end a conclusion can be drawn.



Discussion

Definition Of Inheritance

The history that has occurred explains that the problem of inheritance law, especially Islamic inheritance law, has experienced a long and complicated process. This is evidenced by the inheritance that occurred in pre-Islamic times based on the traditions and customs of the Arabs during the Jahiliyya era. There are three causes for the transfer of inheritance, namely; First, due to lineage or kinship or kinship. Second, through adoption or adoption. Third, through an agreement. The development of inheritance law at the beginning of Islam until now is presented in stages (tadarruj) so that Islamic inheritance law can be easily accepted by an established society with its ancestral inheritance system and traditions. The reasons that allowed a person to obtain inheritance in the early days of Islam, namely:

- a) Lineage affinity or family ties or kinship and now, related to this as a reason for a person obtaining inheritance is not limited to adult men but also to women and children.
- b) Adoption (al-tabanni) or adoption; now, adoption and its legal consequences end after the revelation of QS al-Aḥzāb/33:4-5.
- c) Migration from Mecca to Medina; (d) the bonds of brotherhood (al-muakhah) between the Muhajirin and the Ansar.

Etymologically inheritance in Arabic is rooted in the word *al irtsu* , sometimes used to mean *mashdar* and sometimes used to mean *isim maf'ul* (Rahbiy, n.d.). In the complete Indonesian dictionary, inheritance means a person who has the right to receive inheritance from someone who has died (Maulana and Amelia 2010). The meaning of inheritance according to language also means the transfer of something from one person to another or from one people to another. Something that is more general than wealth, including knowledge, glory and so on. ("Hukum Waris Dalam Syariat Islam (Disertai Contoh-Contoh Pembagian Harta Pusaka) Oleh, Muhammad Ali Ashabuni; Editor, H.A.A. Dahlan...[et.al] | Dinas Perpustakaan Dan Arsip Daerah DIY" n.d.)

The word Mawaris is the plural form of the singular mirats which means inheritance. Mawaris is also called *faraidlah*, the plural form of the word faridlah ,



this word comes from the word *faradla* which means provisions or determines. are not entitled to it, and how much part can be received by them (Rofiq 1993). Meanwhile, the definition of inheritance in terminology is the transfer of the property rights of a deceased person to his heirs who are still alive, whether what is left behind is in the form of movable and immovable property or rights according to *syara'* law. Inheritance in *syara'* terms also means a specified portion of the property to be inherited.

Mawaris issues in Islamic law, is one of the most important discussions of *fiqh science*. *Fiqh* experts have studied issues related to inheritance, and wrote books on these issues, and made it a *science of roseis* or *science of faraidh*. People who are good at this science are called *faridh*, *faridhi*, *firridh*. (Ash-Shiddieqy 2010)

It can be emphasized that the notion of *fiqh Mawaris* is *fiqh* which studies about who are the heirs, the parts they receive, who is not included as heirs, and how to solve them. So, from the definition of *fiqh Mawaris* above, it can be explained that the science of inheritance is also known as the science of understanding the division of inheritance, arithmetic which is used to find out the provisions of each person who has the right over the *tirkah* property left by the heir (Mas'ud and Zainal Abidin 2007).

There are many more definitions of inheritance according to some experts on this issue, but the principle is the same. From the description above regarding the definition of inheritance, it can be understood that what is called inheritance or inheritance is the transfer or transfer of wealth left by a person who has died and to be distributed to people who have marital relations, blood relations (offspring) and guardianship with the beneficiary die.

Inheritance Law in Compilation of Islamic Law

The initial idea of forming the Compilation of Islamic Law (hereinafter abbreviated as KHI) actually existed in the 1970s, namely after the issuance of Law No. 14 of 1970, especially regarding the intent of Article 10 paragraph (1). This article mandates that there is a strong position of the Religious Courts in the national system, also has equality with three other courts in Indonesia, it is also determined that organizational, administrative and financial aspects are under the authority of

the Ministry of Religion (now called the Ministry of Religion), while the judicial aspects are under the jurisdiction of the Supreme Court. So the Ministry of Religion and the Supreme Court feel it is important to prepare their respective tasks, especially regarding procedural law and law the material. Particularly with regard to the material law, it is planned to produce a legal guidebook that is unique in nature, that is, there is a single legal guideline that is uniform for all Religious Courts, and codificative, namely a legal guideline that is written in nature, and one formal law book, namely the KHI (Maylissabet 2019).

KHI as a formal law book that is unified and codified is very necessary and immediate in nature, bearing in mind that in the past there was no uniformity in decisions between the Religious Courts. Judges always differ in opinion in drawing conclusions even in the same case. This fact occurs almost evenly in every problem. With this fact, the principle of legal certainty is not well realized.

The Compilation of Islamic Law finally appeared in the form of a Presidential Instruction in 1991. There were many reforms in KHI. Various reforms were made so that all problems in Islam could find a solution. Forms of renewal in the Compilation of Islamic Law in Indonesia that did not previously exist, such as taklik divorce (article 45), arrangements for joint property/gono-gini (articles 85-97), substitute heirs (plaatsvervulling) for orphans (art. 185), obligatory wills for children and adoptive parents (article 209) as well as grant assets that are considered as inheritance (article 221), can be used as examples as well as the application of this integrated approach to Islamic and social law. The Compilation of Islamic Law has determined the share of each heir in Chapter III starting from Article 176 to Article 191. These articles regulate the size of the inheritance share for the heirs in detail.

In Islamic law, the heirs who are entitled to receive inheritance are twenty-five people, with details of fifteen people from the male side and ten from the female side (Kasim 2009).

- a. The heirs from the male side are sons, sons' grandsons, fathers, grandfathers, siblings, father's brothers, mother's brothers, brothers' sons. biological male, paternal brothers' sons, paternal uncle, paternal uncle, paternal uncle's sons, paternal uncle's sons, husband and man who has freed slaves

- b. The heirs from the women's side are daughters, granddaughters of sons, mothers, paternal grandmothers, maternal grandmothers, biological sisters, paternal sisters, mother-sisters, wives, and women who have freed slaves.

Of the fifteen male heirs, if they jointly become heirs, only three heirs will continue to receive the share, namely: son, father and husband. Meanwhile, from the women's side, if they jointly become heirs, only five heirs will continue to receive inheritance, namely, daughters, granddaughters of sons, mother, siblings and wife. And if all the heirs, both male and female, are gathered, only five people are entitled to receive the inheritance, namely husband/wife, son, daughter, father and mother.

According to Islamic inheritance law, the size of each relative's share of inheritance is based on their degree of kinship. Therefore, the more powerful relatives get a bigger share. In fact, not all relatives will receive inheritance, because the rights owned by some relatives will arise if there are certain relatives. This has been clearly regulated in the Koran and as-Sunnah.

In Islamic inheritance law, before the inheritance is distributed, the inheritance is issued first which has been used for maintenance/burial expenses, paying off the debts of the heir, and carrying out the will made by the heir.

Things that Obstruct Inheritance

The Islamic scholars, including the Shafi'i and Hanafi schools, agree that there are three things that hinder inheritance, namely differences in religion, killing and slavery. Regarding the issue of differences in religion, the scholars of the schools also agree that non-Muslims cannot inherit Muslims. Next, we will explain matters related to barriers to inheritance, including:

- a) Non-Muslims (non-believers)

In this regard, there is no mutual inheritance between Muslims and non-Muslims, Muslims only give inheritance to Muslims. Scholars of the Shafi'i school say that Muslims and infidels do not inherit this from each other in line with other schools of thought. However, some of the Hanafi schools of thought argue that Muslims may inherit the assets of their apostate relatives and vice versa. The most common view is that which states that Muslims and infidels

do not inherit from each other and vice versa between infidels and Muslims, while Jews and Christians can inherit from each other, because both are infidels, this is in line with the views of the Shafi'i and Hanafi schools. Because of Killing Hanafiyah's opinion that murder can invalidate inheritance rights are all types of murder that are unlawful and must pay expiation, while the Shafi'i school says that murder in all its ways and kinds remains an infringement of inheritance rights, even if it only gives false testimony in carrying out the stoning sentence, or even just confirming the testimony of other witnesses in qishas punishment or death penalty.

b) Slavery

A person who has the status of a slave does not have the right to inherit even from his own siblings, because everything that is owned by a slave directly becomes the property of his parents, be it a pure slave or a slave who has the status of being free when his parents die. Slaves are nullifiers of the right to inherit and be inherited, because they do not have property rights.

Things to Do Before Distribution of Inheritance

There are several rights related to the distribution of inheritance that must be fulfilled in an orderly manner, so that if the first or second right consumes all the inheritance then it will no longer move to other rights (Muhibbin and Wahid 2022). Before the inheritance is distributed, first, as the main thing from the inheritance, rights must be taken which are immediately issued for the following interests:

a) *Tajhiz* (cost of organizing the funeral)

Tajhiz is everything that is needed by someone who has passed away from his death to his burial. Among these needs include the cost of washing, shrouding, burying, and everything else needed until it is placed in the last place. As for the amount of the fee, it should not be too big, nor too little, but it should be carried out in a reasonable manner. According to Imam Ahmad, the cost of this treatment must take precedence over debt. While Hanafi and Syafi'i, debt repayment must take precedence, because if the debt is not repaid first, the corpse is like being mortgaged (Burhan 2006)

b) Debt Settlement Costs

If someone who left a debt to another person has not been paid, then the debt should have been repaid from his inheritance, before the property was

distributed. As for obligations towards Allah that have not yet been fulfilled, such as issuing zakat, going on pilgrimage, paying *kafarah*, and so on, they are also called debts, because the obligation to fulfill these rights is not as a reward for an achievement one has ever received, but as a recovery of an obligation. demanded while still alive. The debt can be divided into two, namely, *dainullah* (debt to Allah) and *dainul'ibad* (debt to others). According to some Shafi'i groups, *dainullah* must take precedence over others, while Hanafi scholars state that *dainullah* is not obligated to be paid unless there is a will before the heir dies.

c) Fulfillment of Testament

A will is the act of someone handing over their property rights to another person, which takes effect when the person handing them over dies. If a person dies, during his lifetime he bequeaths some of his assets to a body or other person, then it must be carried out before his inheritance is divided by his heirs. Some Hanafi groups state that it is permissible to bequeath all assets if there are no heirs at all. In contrast to Syafi'i, according to him, if simati does not have a will, then part of his property will still be taken for the will.

The Existence of the Position of Children's Inheritance Rights According to Islamic Law

The existence of the status of children's inheritance rights can be seen from kinship, husband-wife relations, and power (*alwala*). Kinship or essential lineage, the Imam calls it *ai-Rahim*, then what is meant is essential kinship. Namely every relationship whose cause is birth. This includes branches the branch (descendant) of *simayit* and their origins are also descendants of the origins of *mayyit*. Whether the inheritance is only with a share, such as the mother or with a share and *ashabah*, such as a father or brother, or because of the womb, such as *zawil arhaam*, for example, maternal uncle, Inheritance due to lineage includes the following:

- a. Children and their children, both boys and girls.
- b. Fathers and their fathers are also mothers, meaning mothers and mothers and mothers and fathers
- c. Brothers and sisters,
- d. Uncles and their sons only.



From the descriptions above, it is required that there be or fulfill the conditions of inheritance, namely:

- 1) Leaving someone (heir) both essentially and legally (eg considered dead);
- 2) There are heirs who are actually alive when the heir dies;
- 3) All heirs are known with certainty, including the number of shares of each.

Child Inheritance Section

Islamic inheritance law is a law that regulates everything related to the transfer of rights and obligations over a person's assets after he dies to his heirs (Ali, Islam, and Agama 1997).

There are heirs who are specifically determined in the Qur'an and directly by Allah in the Qur'an and by the Prophet in his hadiths, there are also those who are determined through Ijtihad by expanding the wording contained in legal texts and there are also those who are understood from general instructions from the Qur'an and or the hadith of the Prophet. This means that heirs who have inheritance rights from someone who has died, whether caused through a hereditary relationship (dzunnasabi), periparity relationship (asshihru), or guardianship relationship, can be grouped into two groups, namely (1) heirs whose inheritance rights contain certainty, based on ittifaq by scholars and scholars of Islamic law, and (2) groups whose inheritance rights are still disputed (ikhtilâf) by scholars and scholars of Islamic law (Usman and Somawinata 1997). When viewed in terms of the parts they receive, heirs can be divided into:

- 1) Ashâb al-furûdh heirs, namely heirs who receive the size of the portion determined in the Qur'an, such as $\frac{1}{2}$, $\frac{1}{4}$, $\frac{1}{8}$, $\frac{1}{3}$, $\frac{1}{6}$ and $\frac{2}{3}$.
- 2) The heirs of 'ashabah, namely the heirs whose portion they receive is the remainder after the inheritance is distributed to the heirs of ashâb al-furûdh.
- 3) Zawi al-arham heirs, namely heirs who actually have blood relations, but according to the provisions of the Qur'an are not entitled to receive inheritance.

If the heirs are seen from a distance, the kinship relationship is close, so that those who are close are more entitled to receive an inheritance than those who are far away, they can be divided into:



1. Hajib heirs, namely heirs who are near who can block heirs who are far away, or because of their lineage which causes it to block other heirs.
2. Mahjûb heirs, namely distant heirs who are hindered by heirs who are close in kinship. These heirs can receive inheritance, if there is no obstruction

Meanwhile, the share of children in inheritance rights between men and women uses the concept of "lidzdzakari mislu hadziil unsayaini", meaning that the portion of male children is more than that of female children, which is twice as much. Allah SWT has made the share of sons double that of girls, because the responsibilities of sons are more than those of daughters, such as providing for himself, his children, his wife, and relatives who are under his care. Meanwhile, daughters this is not the case. In fact, Islam has glorified women's rights, namely by giving her a share in inheritance. In fact, during the Jahiliyya period, women did not get inheritance rights.

So the proof of a servant's Islam can be seen from the extent of his obedience in carrying out Islamic law. Allah SWT has called on believing servants to carry out Islamic law in total. follow the steps of the devil. Indeed, the devil is a real enemy for you. (Surah al-Baqarah: 208)

Child Inheritance Problems

In Islamic inheritance there are several problems that prevent a child from obtaining inheritance from his parents, including:

a) Illegitimate child

Children resulting from adultery are children born as a result of sexual intercourse outside of marriage which is legal according to religious provisions, and is a finger (crime). Children resulting from adultery only have lineage, inheritance, and subsistence relations with their mother and their mother's family. The absence of lineage connection between illegitimate children and their biological fathers means that these children cannot inherit from their fathers. This is because lineage is one of the factors in inheritance. Mutual inheritance is meant to also include inheriting from closest relatives such as brothers, uncles, and so on. Similarly, the father's family cannot inherit from the child. According to the Malikiyah and Syafi'iyah scholars, the reason for the abolition of inheritance rights for an



adulterous child from his father is because of the separation lineage, unless there is an acknowledgment of lineage from the father that the child is not a child of adultery. As for a li'an child, he can be related to his mother's husband as long as there is acknowledgment from the mother's husband, even though this acknowledgment is not in accordance with his heart (Rofiq 1993)

b) Adopted children

The Compilation of Islamic Law (KHI) stipulates that between adopted children and adoptive parents a mutually bequest relationship is built. In Article 209 paragraph (1) and paragraph (2) it reads: (1) The inheritance of adopted children is divided based on Articles 176 to 193 mentioned above, while adoptive parents who do not receive the obligatory bequest are given a maximum of 1/2 of the obligatory will. 3 of his adopted son's inheritance. (2) Adoptive children who do not receive a will are given a mandatory will of up to 1/3 of the inheritance of their adoptive parents. According to the above article, the inheritance of an adopted child or adoptive parent must be divided according to the rules, namely distributed to people who have blood ties (relatives) who are the heirs.

Based on this rule, the child's parents or adopted child will not obtain inheritance rights, because they are not heirs. In the Compilation of Islamic Law, adoptive parents are immediately deemed to have left a will (and therefore are named a will obligatory) with a maximum of 1/3 of the assets left for their adopted children, or vice versa for adopted children for their adoptive parents, where the assets are in the system the division that before carrying out the distribution of inheritance to the heirs, the obligatory will must be fulfilled first ("Arpani (Hakim Pengadilan Agama Bontang), Makalah Wasiat Wajibah Dan Penerapannya (Analisis Pasal 209 Kompilasi Hukum Islam, Diakses Dari Website Www.Pta-Samarinda.Com. Tgl 9 Januari 2023.,” n.d.)

c) Child kills

A murderer does not inherit from the person he killed. Rasulullah SAW said "The one who kills does not inherit anything from the one he killed" (HR Nasai). Who hastens to get something before the time, then he does not get his share. There

are differences among the fuqaha regarding the determination of the type of murder. (Ajib 2019)

- 1) The Hanafi school of thought determines that killings that can invalidate inheritance rights are all types of killings that must pay expiation.
- 2) The Maliki School is of the opinion that only intentional or premeditated murder can invalidate inheritance rights.
- 3) The Shafi'i school says that murder in all its ways and kinds remains an invalid of inheritance rights, even if it only gives false testimony in carrying out stoning, or even just confirming the testimony of other witnesses in carrying out qishash or death sentences in general.
- 4) The Hambali school is of the opinion that murder which is declared as invalidating inheritance rights is any type of murder that requires the perpetrator to be qishash, pay diyat, or pay expiation. In addition, it is not classified as an invalid of inheritance rights.

d) Apostate son

Hanafiyah, Malikiyah, Syafi'iyah and Hanabilah scholars agree that religious differences between heirs and heirs become a barrier to receiving inheritance. A Muslim cannot inherit an infidel, and conversely an infidel cannot inherit a Muslim, either because of blood relations (qarabah) or marriage (husband and wife). Meaning: "From Usama bin Zaid, in fact the Prophet SAW., Said: Muslims do not inherit infidels, and infidels do not inherit Muslims" (Muttafaq 'alaih). Some scholars are of the opinion that apostasy is an invalidation of the right to inherit, namely someone who has left Islam. Based on the consensus of the scholars, apostasy is included in the category of religious differences so that an apostate cannot inherit a Muslim. As for the inheritance rights of someone whose relatives are apostates, there are differences of opinion. Jumhur fuqaha (Malikiyah, Syafi'iyah, and Hanabilah are valid) are of the opinion that Muslims cannot inherit property from apostates because Muslims do not inherit it from infidels, and apostates are classified as infidels.



From this explanation it is clear that an apostate child is erased from the heirs of his Muslim parents and vice versa, so the principle of Islamic personality is very important in Islamic inheritance so that it does not mix up what is right and wrong (Saebani and Djaliel 2015)

Conclusion

Based on the explanation above, it can be concluded as follows, Etymologically, inheritance in Arabic is rooted in the word *al irtsu*, sometimes it is used to mean *mashdar* and sometimes it is used to mean *isim maf'ul*. In the complete Indonesian dictionary, inheritance means a person who has the right to receive inheritance from someone who has died. The meaning of inheritance according to language also means the transfer of something from one person to another or from one people to another. Something that is more general than wealth, including knowledge, glory and so on.

There are several rights related to the distribution of inheritance that must be fulfilled in an orderly manner, so that if the first or second right consumes all the inheritance then it will no longer move to other rights. Before the inheritance is distributed, first, as the main thing from the inheritance, rights must be taken that are immediately issued for the interests, namely *Tajhiz* (organization costs for the body), Debt Settlement Fees and fulfillment of wills. In Islamic inheritance there are several problems that prevent a child from getting inherited from his parents, including illegitimate children, adopted children, murdered children and apostate children.

Recommendation

To be able to reflect fair inheritance law, namely by paying attention to the Conditions that must be fulfilled before the distribution of inheritance in order to achieve happiness and justice. Because the principle of Islamic law is for the benefit of the people or *rahmatan lil alamin*, namely the grace to reach consensus and not ally in things that are not pleased by God.

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