

Model of Development of the Owners of Women and Men's Expert in the Law of Islamic Authority



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Abstract: *The basic provisions for the distribution of Islamic inheritance listed in the Qur'an determine the division of 1 compared to 2 for female heirs with men. At first glance, the provision looks discriminatory for people who have not understood the overall provisions in Islamic Heritage Law.*

According to Islamic Inheritance Law, balancing the acquisition of female heirs with men can be done with Grants and Testaments, so that a female heir can obtain the same inheritance with male heirs. This can happen because Grants and Testaments are implemented earlier than the distribution of inheritance, so that this is used by Muslims in Indonesia to solve inheritance problems through Grants or Testaments before the heir dies, by requesting the agreement of all heirs entitled to inherit, without distribution inheritance.

Keywords: *distribution of inheritance, wills and grants.*

I. INTRODUCTION

Conflicts about Islamic inheritance law, especially between traditionalist and modernist groups, are still phenomena that fill Islamic inheritance legal texts, although it can be ascertained that the pro-Shafi Sunni inheritance fiqh doctrine is widely adopted in Indonesian Muslim society. The doctrine even colors and becomes a juridical guide for judges in religious justice institutions (Samardi, 1997). The conflict focused on two things, namely: First, allegations of discrimination in the distribution of inheritance, where the magnitude of the acquisition between men and women in the ratio of 2 to 1 was due to the development of the concept of emancipation in Indonesia which demanded equal rights between men and women in the community modernist. Whereas in traditional societies inheritance according to Islamic law is ingrained and even becomes a culture for indigenous people, so the term "sak pikulan sak gendongan" appears for male heirs and female heirs in Java. This is what needs to be proven that Islamic inheritance law is not a law that is "rigid", cannot adjust to the conditions and development of society.

Research on how Islamic societies in Indonesia carry out inheritance divisions can show legal adabasion of developing social problems. The model of inheritance distribution in Islamic societies is progressive in accordance with the need for a sense of justice in society.

Secondly, conflicts stemming from an understanding of the family system, where Islamic inheritance fiqh is a breakdown of the Shari'a (Qur'an and Hadith) adapted to regional family systems, so that when applied to other societies it must be adapted to a family system that is shared by the community where Jurisprudence is there. That is why the schools of Islam emerged in Islamic Jurisprudence. According to Hazairin (1964), inheritance system can not be separated from the form of kinship, and family forms originating from a system of descent that is also influenced by the form of marriage. In principle, there are three kinds of hereditary systems, namely patrilineal, matrilineal, and parental or bilateral. The patrilineal or matrilineal principle will give birth to family unity called the clan or clan. Whereas the bilateral principle, in some communities such as Java, does not give birth to certain family unity and in others it gives birth to certain family units called tribes / jurai.

New interpretations of Islamic inheritance - which has been a religious doctrine as a classic intellectual inheritance by Hazairin contained in his book Bilateral Inheritance Law According to the Qur'an and Hadith which concludes that the verses of the Qur'an in the field of marriage and inheritance reflect a bilateral forms of family system (Hazairin, 1964). To arrive at this conclusion, Hazairin uses the knowledge of social forms as a helpful frame of reference (Bakar, 1998). Practically, the family system in the community is reviewed and compared with each other, then brought to the Qur'an to determine which form is in accordance with the Qur'an.

Hazairin also explained that there are three inheritance systems in Indonesia, namely, first, the system of individual inheritance, whose inheritance can be divided among the heirs, second, the system of collective inheritance, whose inheritance is inherited by a group of heirs (together) which is a kind of legal entity, whose ownership must not be distributed among heirs and may only be shared with them, and third, the system of mayorate inheritance, which is only the oldest child at the time of death of the heir who is entitled to inherit inheritance or a number of basic assets of a family. Of the three inheritance systems, in the view of Hazairin, the first is in accordance with the Qur'an.

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This system is of the opinion that with the death of the inheritor by itself the property rights over his assets are transferred to his heirs. This system also requires that at the death of the heir, it is known exactly who the heirs are or at least must be known when divided.

From the two conflicts above, this paper will only discuss the first conflict based on research on the inheritance distribution model used to balance the acquisition of inheritance based on Islamic inheritance law in Indonesia. The main idea in the discussion of the problem is how the Islamic community in Indonesia carried out the distribution of inheritance within the framework of balancing the acquisition of inheritance for female heirs with the acquisition of inheritance for male heirs. This issue is indeed not simple because it requires a thorough understanding of Islamic inheritance law and its institutions.

II. PROBLEMS

From the description above, the problem is:

1. How did the Islamic community in Central Java share the inheritance?
2. Is the distribution of inheritance in accordance with Islamic Inheritance Law?

III. RESEARCH RESULTS

In the Qur'an, there are several verses that substantively contain individual system elements. Surat an-Nisâ 'verses 7 and 33 contain the principles for an individual inheritance system, namely the existence of an heir who has the right to a definite part (nashiban mafrudhan); verse 8 deliberately mentions its part; and verses 11, 12, 176 determine the parts for the heir. In the Al Quran, there are also inheritance institutions which are provisions which are permitted to divide the inheritance, namely:

1. Grant Institution
2. Testament Institutions
3. Institution of Faroid (Distribution of inheritance)

The three inheritance institutions have the same legal position according to the Shari'a, even their implementation is determined sequentially based on time, ie the grant can be carried out when the Heir is still alive, and the will is carried out after the inheritance dies before the inheritance distribution, then the inheritance according to Faroidh. But many people see that the inheritance law is only related to Faroidh or the Distribution of Assets, where the provisions have been established which are definite and cannot be changed because they are directly determined by the Qur'an. This is what causes the inheritance law to look "rigid" and cannot be adapted into the development of regional society.

The three institutions above are related to the same thing, namely having to pay attention to the interests of the Expert, should not be done without knowing who is the Heir who has the right to inherit. Therefore, it is necessary to know the basis for inheritance, namely the provision that stipulates that a person becomes an heir from a heir, both living and dead. By knowing who is the heir who has the right to inherit, the Grants and Testaments can be carried out with the approval of the expert, both given to "people who are not heirs" or to "heirs". The agreement relates to the interests of the heirs in

the distribution of inheritance.

To explain further, it is necessary to understand the basis for inheritance and inheritance for the heirs.

A. Basic inheritance

In Compilation of Islamic Law Article 174, explained that the basis of inheritance is:

1. There is a blood / nasab relationship either downward, upward, or horizontal.
2. Good relationship

Thus, several points can be taken regarding who is entitled to inheritance left by the deceased person, namely:

- a. The biological child is either female or male
- b. Father and mother
- c. Wife husband
- d. Then brother or sister, if the Heir does not have children.

B. Part of inheritance

Each heir, has the right to the part that has been determined by law, that is, certain parts and remaining parts. Certain sections are given to the wife / husband, father, mother and daughter if there is no son or sister if there is no brother. While the remaining portion is given to a boy or brother. For more information, certain parts that might be given to heirs include:

1. Those who get $\frac{1}{2}$ part are;
 - a. The wife whose husband died. If the deceased does not have children
 - b. Female child. If he is an only child.
 - c. Granddaughter of a descendant of a son. If it is a single (only) grandchild, and not a daughter or a son.
 - d. Female siblings. The condition is that the brother is alone and does not have another brother. He also has no father or grandfather or descendant (boy or girl)
 - e. A father's sister. The condition is that he does not have a brother (only alone) and does not have siblings. He also does not have a father or grandfather.
2. Heirs who get $\frac{1}{4}$ are;
 - a. The husband left by his wife. The condition is that the wife has children or grandchildren from her male offspring. Grandchildren can be from the flesh or not.
 - b. The wife left by her husband. The condition is that the husband does not have children or grandchildren.
3. The heir who gets $\frac{1}{8}$ is the wife left behind by her husband who has both male and female offspring, whether the child is from his womb or not
4. Heirs who get $\frac{2}{3}$
 - a. Two or more biological children who have no brothers
 - b. Two grandchildren of the offspring of sons and daughters provided that the heir does not have biological children and does not have a brother

- c. Two or more sisters on the condition that the heir does not have children, does not have a father or grandfather, and does not have a brother
 - d. Two women with one father provided they did not have children, fathers, or grandfathers. He did not have a father's brother and had no siblings.
5. Heirs who get 1/3
- a. Mothers who do not have children or grandchildren from the descendants of boys. He does not have two or more siblings or no siblings
 - b. Women and men who are mothers, have no children, father, or grandfather. The number of siblings in this thousand are two or more people.

The inheritance provisions mentioned above are in the Qur'an, so that every follower of Islam is obliged to implement them. This is a problem in the community because the community is also familiar with the provisions of western civil inheritance which sets the same part between men and women, so that there is discrimination in Islamic inheritance law. This opinion is not correct because actually the provisions in the Qur'an are basic provisions that require the existence of a system of obligations within the Islamic family, where the male family is obliged to bear the lives of female family members, so that the male side gets twice the female share . In addition to these provisions there are several provisions that can be used to balance the share of female heirs with male heirs, namely with grant and will institutions. The implementation of the grant and the will that is carried out in advance of the distribution of inheritance "guarantees" the acquisition of the grant and will is not disturbed by the distribution of inheritance, while the heirs who receive the grant and will still have the right to the distribution of inheritance.

Islamic communities in urban areas understand this very well, so inheritance problems are more often solved by grants or wills to heirs, so that each male and female heirs get a balanced portion as the value that develops in the community. Such models of inheritance distribution are often not recognized as a solution to the sense of justice of the Islamic community, so it is necessary to examine whether such a division is still "shar'i" in accordance with Islamic law. Provisions regarding Grants and Testaments contained in the Compilation of Islamic Law need to be understood as a model of Islamic inheritance legal solutions in adaptation into regional family systems.

IV. RESEARCH RESULT

The results of research in the Central Java-Indonesia region which were randomly examined found the fact that traditional Islamic societies, namely in rural areas near the pesantren, did the distribution according to the provisions of Faroid, namely one part for the daughter of the daughter and two parts for boys or sepikul a bag. Basically they realize with full confidence that that is the correct provision according to Religion.

Whereas in modernist societies in urban areas with characters better understanding Islamic inheritance law, they are aware of the development of a sense of justice for the cost needs of boys and girls mainly also due to the large number of

women who work as family financial support, so most of them do distribution assets before they die through a grant or will to each heir in accordance with the agreement, so that after the heir dies they already know their respective parts in accordance with the will when the heir is still alive. This Distribution of Testaments / Grants consumes all inheritance, thus the Distribution of inheritance by Faroid cannot be carried out because no property is shared. The division through the Grant / Wasiat institution is more comfortable and the heir is not worried that there will be a dispute over inheritance. When they were still alive, they gathered their children and other families who were entitled to inherit according to the provisions of Faroid. Then stated that he wanted to share the property he owned which would later be inherited, and most of the heirs agreed and gave suggestions on what they wanted. Then then a will was given to each heir, where all the assets were divided up according to the agreement. The property will be the right of each after heir dies.

Is the distribution of inheritance with a will and grant in accordance with Islamic law? This can be examined in the Compilation of Islamic Law Book II concerning Inheritance Law. There are several provisions regarding Testamentary institutions as follows:

Article 195

1. A will is carried out verbally in the presence of two witnesses, or written in front of two witnesses, or before a Notary.
2. A will is only permitted as many as one third of the inheritance unless all heirs agree.
3. Testaments to heirs apply if agreed to by all heirs.
4. Statement of agreement in paragraphs (2) and (3) of this article is made verbally in the presence of two witnesses or written before two witnesses before a Notary.

Based on the provisions of Article 195 Paragraph (1) Compilation of Islamic Law, Testaments can be made orally or in writing. This provision is carried out by Islamic communities in urban areas, where the Heir invites all heirs to discuss the distribution of inheritance through a will and invite other nuclear families as witnesses. This has fulfilled the formal requirements of the will. Then in the provisions of Paragraphs (2) and (3) Testaments are only permitted as many as one third of the inheritance unless all the heirs agree, then the distribution of all assets through the will becomes valid because all the heirs approve it. This shows that the distribution of all inheritance through a will is in accordance with Islamic provisions and does not deviate from Islamic inheritance law.

Likewise with the Grants used to divide the inheritance, the following provisions apply:

1. Article 211 Grants and parents to their children can be calculated as inheritance.
2. Article 212 Grants cannot be withdrawn, except for granting parents to their children.
3. Article 213 Grants given to the grantor in the condition of illness that is close to death, must be approved by the heirs.

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The distribution of inheritance assets as above is a model carried out by the community that understands that Islamic inheritance law has an adabective institution towards the needs and development of modern society. The model has the following characteristics:

1. Only can be applied if the community understands the whole system of Islamic inheritance law where there are 3 legal institutions namely: Wasiat, Hibah and Faroidh, because the provisions regarding inheritance are provisions of Islamic Teachings that must be believed and carried out as worship.
2. The model is applied if the development of society requires equal rights between women and men as a result of women's emancipation, with characteristics of many women who work to support their husbands' income.
3. The model cannot be applied if the heir dies first before leaving a will or grant.

V. CONCLUSION

Based on the description above it can be concluded that in fact Islamic inheritance law is not "rigid" but is adaptive in accordance with the development of thought and value in society. Then it needs to be understood that in Islamic Heritage Law there are 3 institutions for the distribution of inheritance, each of which can be carried out according to needs.

The model of the distribution of inheritance through Grants and Testaments includes the distribution of property with Islamic inheritance law, not a division that deviates from Islamic inheritance law. The implementation of Grants and Testaments must be in accordance with the provisions of Islamic inheritance law.

The model above needs to be socialized through various scientific and social media so that the Indonesian people understand Islamic inheritance law.

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