

Reformulation of the Status and Legal Position of Wives in the Concept of Joint Marital Property in the Islamic Inheritance System



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Abstract: *The focus of this research study is Reformulation of the Position of the Treasure of Wife Search. The focus of this study is important because, in national regulations included in the compilation of Islamic law the assets obtained in marriage become common property, so that whenever there is divorce or death each gets a half share. In Law No. 1 of 1974, concerning Marriage, specifically concerning people who are Muslim, it is regulated in the Compilation of Islamic Law (KHI), looking at shared assets as assets produced in marriage. Here it is not questioned whoever looks for it. Marriage is seen as the composition of the Rights and Obligations of husband and wife who each have different duties from each other. In principle, the husband is obliged to seek and provide a living for his family, and the wife is obliged as a housewife, caring for children and so on. On the basis of this composition, the assets acquired in marriage become joint assets. Ironically, in the reality of life in society, many wives work for a living, so it is interesting to study different proportions in the distribution of property, for example divorce. While the law is rigid, each gets half the portion. This composition is the basis of a sense of justice, so the need for reformulation leads to a balance shifting to the wife, that is, the wife has more rights than the assets.*

Keywords : *Reformulation, Wife's Livelihood, Islamic Law.*

I. INTRODUCTION

Islam as a religion and source for science today is experiencing very rapid development. This can be seen from the rise of studies conducted on various aspects of Islam, ranging from the problems of theology, jurisprudence, hadith studies, to the study of how the texts in the Qur'an should be interpreted. Interestingly, the study was not only carried out by individuals. Various institutions established specifically for that also began to show its existence, even large Islamic organizations such as NU and Muhammadiyah participated in these activities, and what needs to be underlined is that the efforts carried out all lead to renewal (tajdid) so that Islam is expected to be able to provide answers to the development of an increasingly advanced era, with certainly not just giving up the basics of Islamic morality itself.

Manuscript published on November 30, 2019.

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Joint assets are explicitly not regulated in the Islamic family system, so legal practices have shown that they tend to be based on custom or customary law in the community (see, Brown, 2003; Cammack & Feener, 2008; Retnowulandari, W. (2007). This is supported by several opinions of legal experts. Vandijk for example argued "all property acquired during marriage is a joint livelihood and by itself becomes a joint asset institution commonly referred to as property". This opinion is almost in line with the opinion of Ter Haar who said that in general the common property is goods obtained by husband and wife during marriage.

On the basis of differences between the initial concept of women's rights in the Qur'an or hadith and the concept of shared assets in the marriage law that causes injustice for women, it is necessary to review the provisions of the joint property in question. As described above, the interest of researchers to conduct studies on this issue in the form of research is based on two things, namely the absence of clear arrangements regarding the definition of shared assets, and the existence of changes in conceptions, perceptions of the position and role of women.

II. RESULT

One characteristic of Islamic law is that there is no separation between the concept of relations between human beings (hablumminannas) and the relationship between humans and the creator (hablumminallah). This characteristic is what Tahir Azhary calls bidimensional, meaning that the scope of its regulation is not limited to the relationship between humans and Allah SWT, but also includes the relationship between humans and humans, objects and the environment.

Thus, for example, Islamic inheritance law, which is part of Islamic law and more specifically as part of the muamallah aspect of civil law, has never been separated from other aspects of Islamic teachings as a whole, the point is to remain aqeedah as the deepest circle of the Shari'a, as described by Tahir Azhary (1992) regarding the relationship between Islam and other worldly sciences. Normatively the regulation of inheritance problems in the Islamic inheritance system is found in the Qur'an and the Hadith of the Prophet Muhammad PBUH.

The inheritance system and the distribution of inheritance as regulated in the Qur'an raises several problems, especially with regard to rights, where there is a difference between the rights of a woman and a man. This is considered by many discriminatory groups.

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Researchers see the problem is that it turns out that Islam places family responsibilities, including in this case those who seek wealth are men, so on the basis of this thought the Qur'an looks fair if those who work, in this case men get a bigger share from women, that is equal to twice. This idea according to Amir Syarifudin is certainly in accordance with the principle of Islamic inheritance law which emphasizes the principle of balanced justice, in addition to the principle of *ijbari* (by itself), bilateral, individual principles and inheritance principles only due to death. Physically it must be admitted that there is a difference between men and women, because men are considered to have strong physical, so in Islam men become the backbone of women, so that in Islam men are expected to give all the needs of the people woman. Quoting Talcot Parsons's thinking as functionalist figure Miqdad Yaljan (2003) saw that the differentiation of roles between men and women in this household has functional meaning in overcoming the possibility of competition between husband and wife in the household, because according to him if this distinction is not regulated, harmony and the harmony of life in marriage and society will be damaged.

III. CONCLUSION

In Islamic law which is responsible for meeting the needs of families and children, including food, shelter, clothing, education, etc., it is the responsibility of a husband. Therefore, there needs to be a re-understanding of the meaning of shared assets. If there is a divorce between the husband and wife who both make a living, the distribution is the property that seeks the wife back to the wife after deducting the fee because the husband has given the wife permission to work, because in principle the backbone of the family is a husband. Whereas, the property seeking a husband is divided proportionally between the parties between husband and wife. Therefore, Law No. 1 of 1974 and the Compilation of Islamic Law (KHI) Article 97, the chapter on wealth in marriage needs to be reformulated again as well.

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