

Da'wah Strategies to increase the understanding of Faraidh Science in Society

(Strategi Dakwah untuk meningkatkan pemahaman Ilmu Faraidh di Masyarakat)

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Abstract

This study aims to analyze the implementation and constraints that affect the application of Islamic inheritance law among Muslims. This research is a qualitative research, using the methods of descriptive approach, sociology, normative theology and historical. Research shows that the implementation of Islamic inheritance law is more dominantly done in the family due to various factors. The special portion provided for the heirs is owned by the parents and is in absolute control. The application of the law for the division of property is always done by distributing it to the heirs by family without looking at the provisions of God's law. Problems in the application of Islamic inheritance law include the thickness of customary law and the low understanding of Islamic inheritance law (Ilmu Faraidh). Here the da'wah to teach the Science of Faraidh and various sciences of jurisprudence that began to understand the science of Faraidh became a must done by the community. And there is a need for systematic strengthening of da'wah so that knowledge is understood in a kaffah manner so that the application of maqashid syariah becomes more comprehensive.

Keywords: Da'wah, Faraidh Science, Society, Islamic Inheritance Law

Abstrak

Kajian ini bertujuan untuk menganalisa implementasi dan kendala yang mempengaruhi penerapan hukum waris Islam di kalangan ummat Islam. Penelitian ini merupakan penelitian kualitatif, menggunakan metode pendekatan deskriptif, sosiologi, teologi normatif dan historis. Penelitian menunjukkan bahwa implementasi hukum waris Islam dilakukan lebih dominan dilakukan secara kekeluargaan karena berbagai macam faktor. Bahagian khusus yang disediakan untuk ahli waris dimiliki orang tuanya dan dikuasai secara mutlak. Penerapan hukumnya untuk pembagian harta kalālah dilakukan dengan membagi kepada ahli waris secara kekeluargaan tanpa melihat ketentuan hukum Allah. Problematika dalam penerapan hukum waris Islam di antaranya kentalnya hukum adat dan rendahnya pemahaman hukum

waris Islam (Ilmu Faraidh). Di sini dakwah untuk mengajarkan Ilmu Faraidh dan beragam ilmu fiqh yang mengawali untuk memahami ilmu faraidh menjadi sebuah keharusan yang dilakukan oleh masyarakat. Dan perlunya penguatan dakwah secara sistematis agar keilmuan dipahami secara kaffah agar aplikasi maqashid syariat menjadi lebih komprehensif.

Kata Kunci: Dakwah, Ilmu Faraidh, Masyarakat, Hukum Waris Islam

A. Background

Inheritance law is often ignored by many people. Its existence is necessary but many people hardly care to delve into it. That is why inheritance law is also often referred to as abandoned law. In fact, by most devotees of science though. In everyday issues, people are more interested in studying and discussing other issues of jurisprudence. Moreover, if it has to be compared with other actual issues, such as technology and politics. In this context, the law that is often also called faraidh - this is even said to be not just abandoned, but a law that is a marginalized discipline. If there are several children in a house, the law of inheritance is like a child who is neglected in his own house.

The presence of inheritance law is very important, as it relates to the prospects of a person's wealth status. Instinctively, the desire to take over the wealth of the deceased is certainly the desire of whoever is around. It doesn't matter, whether those around are his descendants or just happen to have proximity. It seems that many do not know, that not everyone who is physically close to the heir has the right to inherit. The opposite is true, not necessarily people who are not physically close should be excluded from the division of inheritance. Because, it can be an everyday person close to the deceased even if it has been many years, not at all a family that has an inherited relationship with the heir.

There are still many more inheritance questions that end up making family strife. Families that were originally compact, because of fighting for an inheritance, eventually had to divorce, quarrel until their children and grandchildren, and it is not even uncommon for bloodshed and broken friendships. They forgot the warning of the Prophet SAW, that the breaker of friendship will not be able to enter heaven. The disputes that became the time bomb can occur, empirically, often due to three things: ignorance of inheritance law, property management, and greed.

Conflicts related to the division of inheritance vary, ranging from ordinary misunderstandings to not accepting the results of the division of inheritance that lead to a lawsuit to the court. In addition to causing grief for those left behind, it is not uncommon for the departure of a beloved family member to forever leave a dispute among the heirs regarding the division of inheritance. Conflicts vary, ranging from common misunderstandings to not

accepting the results of the division of inheritance that lead to a lawsuit in court. Because usually, the matter of inheritance distribution is the business of the clerics and scholars, at least it is the 'job' of Mr. KUA. So why do we who do not have this business use the pretense of learning the science of inheritance?

And the most common reasons in society to decide not to study Faraidh Science are:

1. Disagree with Fatwa Waris
2. Obstructed During the Division of Inheritance
3. Heirs of Polygamy
4. Unmarried Heirs
5. Divorced
6. Wills Greater Than Heirs' Ration
7. Chapter Waris is in the last discussion in the Book of Fiqh
8. Difficult to learn
9. Even if it has been learned, not everyone wants to run
10. Etc.

B. Research Methodology

This study uses a qualitative approach with the approach of Literature review of heirs from an Islamic perspective, while the secondary data is used in the form of data from various literature on heirs policy in Indonesia, journals, and news about the development of heirs. The purpose of a literature review is to obtain a theoretical foundation that can support the solution of the problem being studied, another purpose of this literature review is to get an overview of what others have done before. The literature review contains descriptions of theories, findings, and other research materials obtained from reference materials to be used as a basis for research activities.

C. Discussion and Results

1. Science of Faraidh

Faraid science is one of the most important disciplines in Islam to be studied. By mastering the science of faraidh, then God willing we can prevent disputes in the division of inheritance so that people who learn it God willing will have a high position and get a great reward from God.

وَمَنْ يَعْصِ اللَّهَ وَرَسُولَهُ وَيَتَعَدَّ حُدُودَهُ يُدْخِلْهُ نَارًا خَالِدًا فِيهَا وَلَهُ عَذَابٌ مُهِينٌ

And whoever disobeys Allah and His Messenger and transgresses His precepts, He will cast him into the Fire of Hell to abide therein, and for him is a humiliating punishment. Q.S. An-Nisa: 14

one person to another or from one race to another race. Something is more general than just wealth, which includes knowledge, glory, and so on.¹

Mawaris is also called faraid, the plural form of the word faraidhlah. This word comes from the word faraid which means the provision, or determine. Faraidh is defined by the scholars farridhiyyun by the word mafrudhah, which is the part whose content has been determined. Therefore, faraidh is used more than the others. The specialization of this term is because God describes it by that name. Thus, the word faraidh or faridhah means the provisions about who includes the heirs who are entitled to inherit, the heirs who are not entitled to receive it, and how many shares they can receive. The above illustration can be understood that the fiqh of inheritance is the science of fiqh that studies who is the heir who is entitled to inherit, who is not entitled to receive, as well as the specific parts he received, and how to calculate it. Al-Syarbini said that "the fiqh of inheritance related to the division of inheritance, knowing the calculation to know the part of the inheritance and the parts that must be received from the inheritance for everyone who is entitled to receive it."²

The word Alfaraidh is a plural form of the word faridhah meaning that which has been determined. It is said to have been determined because the parts in the heirs have been determined. The word Alfaraidh is a plural form of the word faridhah meaning that which has been determined. It is said to have been determined because the parts in the heirs have been determined. Because the word faraidh is used in one of the basic sources of Islamic law, namely sunnah, the word faraidh becomes an Islamic term such as the word shalat, shaum, hajj, and others.

2. Inheritance Arguments

The verses about the heir are in the Qur'an, especially verses 11, 12 and 176 in Surat an-Nisaa '. Allah swt is in such detail in explaining the share of inheritance for each heir, namely from one-half, one-quarter, one-eighth, two-thirds, one-third, one-sixth, and so on as follows with the conditions that may occur.

يُوصِيكُمُ اللَّهُ فِي أَوْلَادِكُمْ لِلذَّكَرِ مِثْلُ حَظِّ الْأُنثَيَيْنِ ۚ فَإِن كُنَّ نِسَاءً فَوْقَ ائْتِنَيْنِ فَلَهُنَّ ثُلُثَا مَا تَرَكَ ۚ وَإِن كَانَتْ وَاحِدَةً فَلَهَا
الْأَنصَفُ ۚ وَلِأَبَوَيْهِ لِكُلِّ وَاحِدٍ مِّنْهُمَا السُّدُسُ مِمَّا تَرَكَ إِن كَانَ لَهُ وَلَدٌ ۚ فَإِن لَّمْ يَكُن لَهُ وَلَدٌ وَوَرِثَتْهُ أَبَوَاهُ فَلِأُمِّهِ الثُّلُثُ ۚ فَإِن كَانَ لَهُ
إِخْوَةٌ فَلِأُمِّهِ السُّدُسُ ۚ مِن بَعْدِ وَصِيَّةٍ يُوصِي بِهَا أَوْ دِينٍ ۚ ءَآبَاؤُكُمْ وَأَبْنَاؤُكُمْ لَا تَدْرُونَ أَيُّهُمْ أَقْرَبُ لَكُمْ نَفَعًا ۚ فَرِيضَةٌ مِّنَ اللَّهِ ۚ إِنَّ
اللَّهَ حَكِيمًا عَلِيمًا كَانَ

Allah has decreed for you concerning (the division of inheritance for) your children. Namely:

¹ Ibnu Al-Manzhur. *Lisaan Al 'Arab*. Cairo: Dâr Al Mashriya li at-Ta'lif, t.Th, juz ke-3, hal. 21-22

² Al-Syarbini. *Mughni al-Muhtaj* juz 3

the share of a son is equal to the share of two daughters; and if the children are all women more than two, then for them two-thirds of the property left; if the daughter is alone, then she gets half the property. And for two parents, for each one-sixth of the estate left, if the deceased has children; if the deceased has no children and he is inherited by his parents (only), then his mother gets a third; if the deceased has several relatives, then his mother gets one-sixth. (The above divisions) after the fulfillment of the will he made or (and) after the payment of his debt. (About) your parents and your children, you do not know which of them is nearer (much) benefit to you. This is a decree from God. Surely Allah is Knowing, Wise. Q. S. An-Nisa: 11

وَلَكُمْ نَصْفُ مَا تَرَكَ أَزْوَاجُكُمْ إِنْ لَمْ يَكُنْ لَهُنَّ وَلَدٌ فَإِنْ كَانَ لَهُنَّ وَلَدٌ فَلَكُمْ الرُّبْعُ مِمَّا تَرَكَنَّ مِنْ بَعْدِ وَصِيَّةٍ يُوصِينَ بِهَا أَوْ دَيْنٍ ۚ وَلَهُنَّ الرُّبْعُ مِمَّا تَرَكَنَّ إِنْ لَمْ يَكُنْ لَكُمْ وَلَدٌ فَإِنْ كَانَ لَكُمْ وَلَدٌ فَلَهُنَّ الثُّلُثُ مِمَّا تَرَكَنَّ مِنْ بَعْدِ وَصِيَّةٍ تُوصُونَ بِهَا أَوْ دَيْنٍ ۗ وَإِنْ كَانَ رَجُلٌ يُورَثُ كَلِّلَةً أَوْ امْرَأَةٌ وَلَهُ أَخٌ أَوْ أُخْتٌ فَلِكُلِّ وَجِدٍ مِّنْهُمَا السُّدُسُ ۚ فَإِنْ كَانُوا أَكْثَرَ مِنْ ذَلِكَ فَهُمْ شُرَكَاءُ فِي الثُّلُثِ ۚ مِنْ بَعْدِ وَصِيَّةٍ يُوصَىٰ بِهَا أَوْ دَيْنٍ غَيْرِ مُضَارٍّ ۚ وَصِيَّةٌ مِنَ اللَّهِ ۗ وَاللَّهُ عَلِيمٌ خَلِيمٌ

And for you (husbands) is half of what your wives leave, if they have no children. If your wives have children, then you get a quarter of what they leave behind after fulfilling the will they made or (and) all the debt is paid. The wives get a quarter of the property you leave if you have no children. If you have children, then the wives get one-eighth of what you leave after fulfilling the will you made or (and) after paying your debts. If a person dies, either a man or a woman who leaves no father and no child, but has a brother (mother only) or a sister (mother only), then for each of the two types of brothers is one-sixth treasure. But if the siblings are more than one, then they are allies in the third, after fulfilling the will made by him or after paying the debt without harming (the heirs). It is a law from Allah, and Allah is Knowing, Forbearing. Q. S. An-Nisa: 12

يَسْتَفْتُونَكَ قُلِ اللَّهُ يُفْتِيكُمْ فِي الْكَلَالَةِ ۚ إِنْ امْرُؤٌ هَلَكَ لَيْسَ لَهُ وَلَدٌ وَلَهُ أُخْتٌ فَلَهَا نِصْفُ مَا تَرَكَ ۚ وَهُوَ يَرِثُهَا إِنْ لَمْ يَكُنْ لَهَا وَلَدٌ ۚ وَإِنْ كَانَتَا أُثْنَتَيْنِ فَلَهُمَا الثُّلُثَانِ مِمَّا تَرَكَ ۚ وَإِنْ كَانُوا إِخْوَةً رِّجَالًا وَنِسَاءً فَلِلذَّكَرِ مِثْلُ حَظِّ الْأُنثَيَيْنِ ۗ يُبَيِّنُ اللَّهُ لَكُمْ أَن تَضِلُّوا ۗ وَاللَّهُ بِكُلِّ شَيْءٍ عَلِيمٌ

They ask you for a fatwa (about kalalah). Say: "Allah gives you a decree concerning kalalah (that is): if a man dies, and he has no child and has a sister, then for his sister is half of what he left behind, and his brother inherits (all) (sister), if he has no child, but if the sister is two, then for both of them two-thirds of what the deceased left, and if they are brothers and sisters, then the share a brother is as much as the share of two sisters. Allah makes clear to you (this law) that you may not go astray. And Allah is Aware of all things. QS An-Nisa: 176

In the science of inheritance we find at least some important discussions that we can learn. Among them are as follows: Differences Between Grants, Wills & Heirs, Knowing the Heirs, Knowing the Definite Part of the Heir, Knowing the Terms of the Definite Part of the

Heir, Knowing the Concept of Hijab of Heirs, Practice of Calculating the Division of Property, Inheritance, Aul & Radd Problem, The problem of Umariyatain, the problem of Musytarakah, the problem of Akdariyah, the problem of Munasakhat, and many more are discussed.

The conclusion is very clear, that if the technical details of the division of inheritance are mentioned in such detail in the Qur'an, it means that this is not a simple and playful matter. The provision of inheritance distribution is not just the ijthad of the scholars, nor is it the personal will of the Prophet SAW or his taste to the Arab community. The division of boys and girls into two appeals has nothing to do at all with the old days which still distinguished the ranks of men and women. Because the provision is entirely a direct provision from the Qur'an which is eternal and applies at all times.

3. Priorities and recommendations for learning and teaching the science of faraid:

a. The science of inheritance is 1/3 of the science of religion

Abdullah bin Amr bin al-Ash ra. said that the Prophet sallallaahu ‘alaihi wa sallam said: ((قَالَ الْعِلْمُ ثَلَاثَةٌ وَمَا سِوَى ذَلِكَ فَهُوَ فَضْلٌ آيَةٌ مُحْكَمَةٌ أَوْ سُنَّةٌ قَائِمَةٌ أَوْ فَرِيضَةٌ عَادِلَةٌ))

There are three sciences, other than the three are only additional (secondary), namely the verses of the court (which is clear the provisions), the sunnah of the Prophet. implemented, and faraid knowledge. ” (HR Abu Daud and Ibn Majah in his Sunan no. 2499)

b. Solutions for family conflicts

Ibn Mas'ud ra. said that the Prophet sallallaahu ‘alaihi wa sallam said:

قَالَ رَسُولُ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ : « تَعَلَّمُوا الْقُرْآنَ وَعَلِّمُوهُ النَّاسَ ، وَتَعَلَّمُوا الْفَرَائِضَ وَعَلِّمُوهُ النَّاسَ ، فَإِنِّي أَمْرٌ مَقْبُوضٌ وَإِنَّ الْعِلْمَ سَيُقْبِضُ وَتُظْهَرُ الْفِتَنُ حَتَّى يَخْتَلِفَ الْإِنْتَانُ فِي الْفَرِيضَةِ لَا يَجِدَانِ مَنْ يَقْضِي بِهَا » « هَذَا حَدِيثٌ صَحِيحٌ الْإِسْنَادِ وَلَمْ يُخْرَجْهُ

From Ibn Mas'ud. Said: Rasulullah SAW said: “Study the Qur’an and teach it to the people. And learn the science of faraid and teach it to the people, for I am the one who will be snatched (died), while the science will be raised and slander will appear, so that two people who quarrel about the division of inheritance, they both find no one able to resolve (resolving disputes over the division of inheritance rights) them. ”

(Narrated by Bukhori and Muslim, in the book Mustadrok ‘ala shohihain, No. 8069)

c. Knowledge was first raised from the people of the Prophet Muhammad SAW

Abu Hurairah ra. said that the Prophet sallallaahu ‘alaihi wa sallam said:

عَنْ أَبِي هُرَيْرَةَ قَالَ: قَالَ رَسُولُ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ يَا أَبَا هُرَيْرَةَ تَعَلَّمُوا الْفَرَائِضَ وَعَلِّمُوا فَإِنَّهُ نِصْفُ الْعِلْمِ وَهُوَ يُنْسَى (وَهُوَ أَوَّلُ شَيْءٍ يُنْزَعُ مِنْ أُمَّتِي)

“Learn the science of faraid and teach it to others, because in fact, the science of faraid is half science; it will be forgotten, and it is the first knowledge that will be lifted from my

people.” (HR Ibn Majah, in his Sunan. Chapter: Encouragement to study the science of faraidh, vol: 8, page: 197, no 2710)

4. The Law of Studying Faraidh

In addition to the general command to study religion, apparently we also find a special command where specifically the Prophet SAW ordered us as his people to study the science of inheritance. Although the 5 hour prayer is obligatory and is a pillar of faith, but we have never heard the hadith of the Prophet SAW which essentially commands us to learn the science of prayer.

Similarly, although fasting Ramadan, paying zakat and also going on pilgrimage to the holy land are legally obligatory and part of the pillars of Islam, but the verses or hadiths that command us to study them specifically we never find. In contrast to the issue of faraidh, it turns out that Rasulullah SAW has specifically given a special order to study it and he also obliges us to teach it.

Rasulullah SAW confirmed that faraidh is part of Islam. It has become our habit to translate the word din with religion. So, faraidh is part of Islam. But if we go back to Arabic, then the meaning of the word din is obedience to Allah Ta'ala. So, the meaning of the word "Learn faraidh, because the science of faraidh includes your religion," is because the science of faraidh includes obedience to God. Thus, learning the knowledge of faraidh is not just to add knowledge, but to implement obedience to Allah SWT. So that Muslims who do not want to learn the science of faraidh, are judged by the Prophet SAW not to obey Allah Ta'ala. Because it is not strange if Rasulullah SAW through his words told Muslims to learn the science of faraidh. Because teaching is not possible unless we understand, the law of teaching must come first.

If a person has learned this science and already understands it, but he is not able to teach it to people, then at least he must teach it to his family. At least a husband must teach this science to his children and wife. And a wife must teach this science to her husband and children. Even the division of heirs has been known to man for a long time. The Arab community, before the mission of the Prophet SAW has known the division of heirs. Among the examples, the Arab society only gives heirs to men who have grown up and you can inherit the mantas of his brother's wife.

5. Implementation of Islamic Inheritance Division

The implementation of faraidh, as one of the obligations of Muslims and Muslimat, has been regulated in such a way by Islam. Muslim men and women need to know the rules that have to do with the implementation of faraidh.

Among the rules that have to do with the implementation of faraidh are the rules about the interests of the heirs themselves, the settlement of the rights of Allah Ta'ala, and human rights on inherited property. When a person dies and he leaves the property, then his heirs cannot take the property unless they have settled the rights to the property of the deceased.

a. Rights available to inherited property

There are four rights to inherited property. Everything must be completed one by one, from the estate of the deceased itself. Nawawi mentioned the four rights as follows: first, the cost of caring for his body, then the settlement of his debts, then the execution of his will. The rest is for his heirs. So, the heirs are the rest. After completing the three rights to the above heirs, then the next step is to determine the heirs of the deceased. To set it is necessary to know the things that must be fulfilled in the heirs.

Each heir must fulfill three things, namely; the first has reason to inherit. Second, having the condition of getting an heir, and third, having no barriers to getting an heir.

b. Reasons for Obtaining Heirs

There are four reasons for inheriting, namely: first, relatives, namely family relationships (uterus). Second, marriage is a legal marriage relationship, even if you have never had sexual intercourse. Third, namely the service relationship of giving freedom to slaves. So, the party that gave independence becomes the heir of the party that was given independence. Fourth, Islam. A person who dies and leaves the property, but has no heirs who inherit his property, then I inherit it for me to use to pay the fines that must be paid for the crime and I inherit it (meaning collect it in the Baitulmal). If for no other reason. So that brotherhood, for example, as well as child adoption, for example, does not give rise to heirs to inherit.

To be an heir entitled to receive, one must have an inheritance relationship with the person who died. People who have this inheritance relationship according to Islamic law are due to 3 things, namely because of the relationship of lineage, because of the relationship of marriage, and wala (the third is now no longer there). Many people think that because they feel they have a lineage (have a lineage) then they have to inherit from the person who died. They also took part in the riot of the deceased's inheritance. Only people who have the closest syar'i lineage relationship can be able to inherit the property of the heir. In Islamic inheritance law, there is the concept of hajib mahjub. Based on this concept, an heir can be prevented from inheriting the property of the deceased because other heirs prevent it. Which can prevent this because syar'i is considered closer to the deceased/deceased.

c. Conditions of heirs

The terms of the heir are four as well, that is, first, the heir is deceased. Second, the heir is determined to die legally as if he died based on the decision of the kadi. For example, the kadi determines that the missing person has died. Third, the heir is still alive after the heir dies. Fourth, know the relationship of the heir with the heir through three things, namely, relatives, marriage, and wala'.

d. Barriers to inheritance rights

Among the barriers to inheritance rights are religious differences, slavery, and murder.

Islam places the issue of inheritance as a very important matter whose explanation is recorded in the Qur'an. The problem of inheritance is experienced by everyone. Some of the common paths taken to obtain a portion of the heirs are through courts and family deliberations. Of the two lanes, of course, sitting together to produce an agreement is the path that should take precedence.³

The position of daughters as heirs has been determined in the Qur'an surat An-Nisa (4:11), which means: "Allah has decreed for you (the division of inheritance for) your children, that the share of a son is equal to the share of two girls". The verse explains that Allah SWT set the part of one boy equal to the part of two girls. Thus, if a person leaves a son and two daughters, then in this case the son gets two-thirds and his sister gets one-third of the inheritance.

6. Execution of Inheritance in Indonesia

Discussing Islamic Inheritance Law in Indonesia is the same as other Islamic laws, which can not be separated from the opinion of Islamic jurisprudence schools, namely Hanafiyah, Malikiyah, Syafi'i, and Hanabilah. These four schools were later known as Paham Ahlussunnah. The construction of the thinking of the four schools of thought is very influential on the thinking of Islamic jurists later included in Indonesia in dealing with the development of Islamic law. Because the pattern in the process of ijtihad so far tends to be logic of repetition (thinking that only repeats what already exists) and logic of justification (works that only justify what already exists) and is almost not supported by the logic of discovery (logic that encourages the birth of discoveries) although there was a development of ijtihad which later resulted in various fatwas that differed among the scholars.⁴

³ Uyuni, B., & Adnan, M. (2020). VARIOUS TYPES OF DEBT: MAWARIS FIQH REVIEW. *El-Arbah: Jurnal Ekonomi, Bisnis Dan Perbankan Syariah*, 4(02), 19-36.

⁴ *Problematika hukum kewarisan Islam kontemporer di Indonesia*. Ed. I. Cet. 1. Jakarta: Badan Litbang dan Diklat Kementerian Agama RI.

While in Islam such patterns or methods are not prohibited or considered valid. because to find law by way of *ijtihad* is recommended and *ijtihad* itself is a third source of law besides the Qur'an and the Sunnah (al-Hadith) and is a necessity, a need, even becoming "more important and more central" than al-Quran and al-Hadith in the process of finding law. ' This process of *ijtihad* is of course provided that if in the main source of law, the Qur'an and Hadith do not mention or do not regulate, then man is given the freedom to find his law with restrictions should not contradict the main law, or in other words that the result of *ijtihad* it cannot legitimize what is forbidden by religion and forbid what is permitted by religion. The law of inheritance is very closely related to the scope of human life because every human being will inevitably experience a legal event called death. The settlement of rights and obligations as a result of the death of a person is governed by the law of inheritance. For the understanding of inheritance law until now, both Indonesian lawyers and in the literature of Indonesian Law, there is no uniformity of understanding, so the terms for inheritance law are still diverse.

According to Article 49 letter b of Law Number 3 of 2006 concerning Amendments to Law Number 7 of 1989 concerning Religious Courts ("Law 3/2006"): What is meant by "inheritance" is the determination of who becomes the heir, the determination of inheritance, determining the share of each heir, and carrying out the distribution of the inheritance, as well as a court order at the request of a person regarding the determination of who becomes the heir, determining the share of each heir

Legal basis:

1. Law Number 7 of 1989 concerning Religious Courts – bit.ly/UU7_1989 as amended by Law Number 3 of 2006 concerning Amendments to Law Number 7 of 1989 concerning Religious Courts (“Law 3/2006”) – bit.ly/UU3_2006 and amended for the second time by Law Number 50 of 2009 concerning the Second Amendment to Law Number 7 of 1989 concerning Religious Courts – bit.ly/UU50_2009;

2. Presidential Instruction Number 1 of 1991 concerning the Dissemination of the Compilation of Islamic Law ("KHI").⁵

The existence of a choice of law to determine inheritance, whether Islamic law, civil or customary law can cause conflict. Therefore, its application must be flexible. the principle of *an'tarodin* or mutual acceptance. This is where the element of flexibility comes in. This means that even though it is settled in a religious court, the parties may give up the distribution of

⁵ See bit.ly/KompilasiHukumIslam <https://hukumonline.com/berita/baca/lt5fc0735ac764c/hal-hal-yang-perlu-kamu-ketahui-seputar-waris-islam?r=0&p=2&q=Waris&rs=1847&re=2021> accessed in 17 Desember 2021 at 11.25

assets that are not absolute with the distribution of Islamic inheritance. The principle is the agreement of the parties.

Wirjono protjodokoro, uses the term "law of inheritance". Hazairin, used the term "inheritance law" and Soepomo called it "inheritance law". Taking into account the terms put forward by the three Indonesian legal experts above, both regarding the mention of the terms and regarding the understanding of inheritance law itself, the author is more inclined to follow the term and understanding of "inheritance law" as used by Soepomo. He explained that the "law of inheritance" contains regulations governing the process of passing on and passing property and intangible goods from a generation of people to their descendants. Therefore, the term "law of inheritance" contains a meaning that includes "rules" and principles governing the process of transferring property and the rights and obligations of a person who dies.⁶

It seems that the efforts towards the unification of inheritance law in Indonesia are an effort that can be guaranteed to be difficult to realize. Many factors are the cause. One of them, as stated by Mochtar Kusumaatmadja, is that "the field of inheritance law is considered as one of the legal fields that are outside neutral fields such as company law, contract law (commitment), and traffic law (land, water, and air).). Thus, according to Mochtar Kusumaatmadja's criteria for inheritance law, this field includes "the legal field which contains too many obstacles, the existence of cultural, religious and sociological complications). Public".

The definition of Inheritance Law in the Compilation of Islamic Law is stated in Article 171 paragraph (a) which reads: "Inheritance law is the law that regulates the transfer of ownership rights to the inheritance (tirkah) of the heirs, determines who is entitled to become heirs and how much of each. -each." In Indonesia where the law is the main legal method, reforming society by way of law means reforming the law primarily through legislation. Inheritance law as one of the fields of law that is outside the neutral field would be difficult to renew by way of legislation or codification to achieve a legal unification. This is because efforts towards making inheritance laws that are following the needs and awareness of the community will always face difficulties, given the diversity of cultural, religious, social, and customary patterns as well as the family system that lives and develops in Indonesian society.⁷

⁶ Husien, Syarief, dan Akhmad Khisni. Hukum Waris Islam Di Indonesia: Studi Perkembangan Hukum Kewarisan Dalam Kompilasi Hukum Islam Dan Praktek Di Pengadilan Agama. *Jurnal Kita*, Vol. 5 [1] Maret 2018

⁷ *Problematika hukum kewarisan Islam kontemporer di Indonesia...*

As a result of the conditions of society as stated above, the inheritance law that applies in Indonesia today still depends on the law of the heir. What is meant by the law of the heir is "which inheritance law applies to the person who dies". Therefore, if the deceased or the heir belongs to the Indonesian population, then customary inheritance law applies. Meanwhile, if the heir belongs to the European or eastern population group. Chinese foreigners, for them the western inheritance law applies. On the other hand, there are still laws that live in a society based on religious principles, especially Islam. Inheritance law that exists and applies in Indonesia until now is still not a legal unification. Based on the map of inheritance law which is still so pluralistic, as a result, until now the regulation of inheritance issues in Indonesia is still not uniform. The form and legal system of inheritance are closely related to the form of society and the nature of kinship. Meanwhile, the family system in Indonesian society is based on the system of drawing a lineage. About the lineage system, as is well known in Indonesia, in general, at least three types of heredity systems are known. To know and elaborate on the Inheritance Law in Indonesia, of course, first it is necessary to know the form of society and the characteristics of kinship that exist in Indonesia according to the heredity system which is known to be so pluralistic that the inheritance law system in Indonesia is not only a diverse family system but also due to The customs of Indonesian society are also known to be very varied. Therefore, it is not surprising that the existing customary inheritance law system is also diverse and has its style and characteristics under the family system of the existing community. Complementing the pluralistic legal system of customary inheritance caused by the diversity of indigenous peoples in Indonesia, two other legal systems are also quite dominant in co-existence and apply to be present together and apply to communities within the jurisdiction of Indonesia. The last two types of inheritance law systems have different features and characteristics from the traditional inheritance law patterns and characteristics. The inheritance law system in question is Islamic inheritance law which is based on and sourced from the holy Qur'an and western inheritance law inherited from the Dutch East Indies era which is sourced from BW (*burgerlijk wetboek*).⁸

Regarding the legal basis of inheritance in the Compilation of Islamic Law, in general, it is still guided by Islamic inheritance law which is sourced from the Qur'an and hadith. Very few formulations of the Compilation of Islamic Law are sourced from adjustments to customary law, the formulation of the Compilation of Islamic Law is more directed towards

⁸ Harahap, M. Yahya. 2005. *Hukum Acara Perdata ten tang Gugatan. Persidangan, Penyitaan, Pembuktian, dan Putusan Pengadilan*. Jakarta: Sinar Grafika.

limited adaptation, namely selectively and very carefully. The legal basis for inheritance in the Civil Code is contained in Article 830 to Article 1002 of the Civil Code which essentially is the part I regarding General Provisions (regulated in Article 830 to Article 851): regulating all inheritance of someone who dies, belongs to experts inheritance (Article 833 of the Civil Code), which reads that the heirs, by law, have ownership rights over all goods, all rights and all receivables of the deceased. As for the inheritance according to the Compilation of Islamic Law contained in article 171 paragraph (d) is the property left by the heir in the form of property and rights. The next task is to understand each of the provisions of the inheritance law in regulating the position of both inherited assets, heirs, and heirs, respectively according to customary inheritance law, Islamic inheritance law, and according to western inheritance law sourced from BW. *Burgerlijk Wetboek voor Indonesia*.⁹

The names of joint assets in each region in Indonesia are different, not all of them use the term Gono-Gini. In Acehnese culture, for example, joint property is known as Hareuta Syareukat. This is different from the Bugis and Makassar cultures, which recognize shared assets with the term Cakkara. If in Kalimantan it is called by the name of abstinence. Sundanese culture calls it Guna Kaya. In Bali, his name is Druwe Gabro. The number of various names for this one type of property in almost all regions of Indonesia shows that joint property has existed for a long time. It is not even an exaggeration to say that it existed before the Indonesian government was established. 10 So people think that the assets of Gono-Tkm this month are not sharia products, but traditional products.¹⁰

Also the product of the Civil Code which is a colonial legacy. On the other hand, there is a law known as Islamic Law which legitimizes and affirms the existence of something that has long been denied. The state of contemporary Islamic inheritance law in Indonesia. Ed. I. Cet. 1. Jakarta: Research and Development Agency and Training of the Ministry of Religion of the Republic of Indonesia. It also becomes difficult for Muslims; because in a way, they are; These Muslims must follow the rules of religion properly and also Kaaffah. In all aspects of life, be it marriage or worship. On the other hand, they are Muslims who also have a country where they live and it has become a logical consequence, that citizens must obey state laws.

In addition, in many cases, giving a parent's house to a child is usually tailored to the needs. If there are children who are married, they are usually given a house. While those who are not married, usually still live with their parents and not get a house gift. There is also a

⁹ Husien, Syarief, dan Akhmad Khisni. *Hukum Waris Islam Di Indonesia: Studi Perkembangan Hukum Kewarisan Dalam Kompilasi Hukum Islam Dan Praktek Di Pengadilan Agama. Jurnal Kita*, Vol. 5 [1] Maret 2018

¹⁰ Ash-Shabuni, Muhammad Ali. 1996. *Pembagian Waris Menurut Islam*. Jakarta: Gema Insani Press

division of inheritance that is carried out when the parents are still alive, so in this case, it cannot be categorized as an inheritance.¹¹

Equal Portion

The Medan Religious Court has settled the inheritance case in decision No. 92/Pdt.G/2009/PA-Mdn. In this case, the Plaintiffs are three sons and two daughters from the heir as well as three granddaughters and one grandson, against the Defendants, namely two daughters and one son from the heir. The content of the decision is that boys and girls get an equal share. This is based on a request from a daughter as a Defendant because as long as her parents are sick, she is the one who takes care of and fulfills her parents' needs, while Plaintiff does not care about the fate of her parents.¹²

There are three judges' legal considerations in the PA's decision Number 92/Pdt.G/2009/PA-Mdn. First, according to the *ijtihad* of the panel of judges, in this case, the distribution of inheritance, both in Al-Quran Surah An-Nisa verse 11 and in Article 176 of the Compilation of Islamic Law, is not a fixed price for a provision that cannot be changed at all, especially when the problem is related to a sense of justice itself is one of the legal *illat* (causes that can lead to legal changes). The next legal consideration is regarding the defendant or daughter who cares for and fulfills all the interests of the testator during his life and makes payments for treatment when the heir is sick. For this reason, the panel of judges interprets that the service or service of the heir to the heir is included in the debt of the heir that must be fulfilled.¹³

Quoted from an article in one of the national media, the Head of the Central Jakarta Religious Court, Sirajuddin Saillellah, explained that girls can get the same portion as boys, but this is a casuistry. For example, during the life of the heir (father or mother) daughters sacrifice a lot both materially and morally while sons do not. It is the son who should bear the life of his master. According to him, inheritance law is a *muamalah*, not a *magdoh* worship or worship whose terms and conditions have been determined in Islamic law. So that the law in practice when it gets a certain case can change to uphold the principle of justice.

So what is put forward is not the principle of certainty but the principle of justice, according to Surah Al-Maidah verse 8 Allah says that justice is closer to piety. "The legal basis

¹¹ <https://hukumonline.com/berita/baca/lt601d12f89b000/6-masalah-waris-islam-yang-sering-terjadi/> accessed in 17 Desember 2021 at 11.16

¹² <https://hukumonline.com/berita/baca/lt609b77dd45b5d/porsi-waris-laki-laki-dan-perempuan-sama-rata--mungkinkah?r=1&p=2&q=Waris&rs=1847&re=2021> accessed in 17 Desember 2021 at 11.29

¹³ *ibid*

is in the Koran, do justice because justice is closer to piety." So don't generalize that decision (women get the same as men's share) because there are cases where girls sacrifice a lot for parents who have boys. If there is no case, it is divided according to Islamic law," Islamic Inheritance Law in Indonesia.¹⁴

ignorance of inheritance law causes an heir to have a wrong perception. People who are legally ineligible for some reason feel entitled to take control at the will of the deceased's inheritance. Moreover, if the distance between the distribution of property and the death of the testator is very long, for example, it has reached the third or even fourth-degree descent. Meanwhile, the property has already been unilaterally controlled by some families. It should be immediately after the testator dies, this inheritance distribution is carried out. Because one of the principles of Islamic inheritance law is *ijbari*. This principle implies that the transfer of property from the deceased to the heirs applies automatically, without the effort of the deceased or the will of the recipient. That is why the law of inheritance and its provisions apply immediately when the testator dies. After a person is declared dead, at that time it must also be determined whom the heirs are entitled to receive and which assets can be divided as inheritance and which are not. Because regarding how many provisions, the heirs often do not know, so involving local religious leaders (*kiai* or *ustadz*) who understand, is something the heirs need to do.

These community leaders before helping determine who the rightful heirs are and distributing them need to give a spiritual touch to the heirs about the status of the inheritance. What things must be done first and the danger of obtaining an inheritance that is not under the provisions set by Allah. "Whoever disobeys Allah and His Messenger and exceeds the limits of the provisions that have been determined by Allah, then Allah will enter him into eternal hell in it and for him, a painful torment (An Nisak 14)" To give warning to the heirs of warning God needs to be conveyed to the heirs.

It's just that in a society that still upholds the east, the implementation of the above division is not as easy as the theory. There are many reasons why inheritance cannot be easily divided among those who are entitled to it. Ethical and aesthetic norms are also taken into consideration. For this reason, the heirs feel reluctant to mention the slightest division of inheritance. It is considered very unethical if there are heirs who tamper with the property of the deceased in an atmosphere of mourning that includes the entire family of the deceased. However, this should not cause all the heirs to forget that sooner or later the assets of the

¹⁴ *ibid*

deceased will be divided among the rightful heirs. They must be aware that if not, sooner or later the estate of the deceased will have the potential to become a source of dispute and family division. Families who are educated secretly or openly must have the courage to audit the entire estate of the deceased and its development. This is intended to minimize potential problems in the future. This audit is also intended so that the unscrupulous heirs do not act arbitrarily to the inheritance for personal gain.¹⁵

What is often done by heirs, who are both deceitful and greedy, is usually to transfer the inheritance to a third party by selling it without the knowledge of the other heirs. The moment of peace and the residence of the other heirs, he abused to cheat. He forgot the *ijbari* principle that exists in inheritance law, that the heirs and the part of the property entitled to be received are attached at any time. Because it is attached, the inheritance that has been transferred to another party can legally still be taken into account if the other heirs who are harmed dispute it. If there is a dispute in the Religious Courts, the property that has been transferred to another party can still be sued and the person who bought the inheritance is also made a defendant.

The potential problems above are often ignored by our society. They only 'regret' when the problem has become an open dispute in court. Just fighting over the inheritance they have to fight it out in court. Because the assets have multiplied and some have moved to other parties, the disputed space has become widespread and open. Many parties must be involved, energy, money, and thoughts must be drained for the struggle to get the right: "inherited property".

With their respective portions, all the heirs involved in this dispute must share the risk. Moreover, if each party refuses to give in to each other, inheritance disputes in this court often have to last for years. The decisions obtained are often unsatisfactory. Can not satisfy one party or both parties at once. If this happens, the parties must be aware that the court is only limited to examining the files and evidence submitted. This is because it often happens in court, those who feel they are right cannot prove their arguments. Courts only examine what is seen while what happened and what cannot be proven is not the court's job. In such conditions, the judges can only follow the Messenger of Allah, "We only judge the visible while Allah controls the hidden". The parties who feel that they have won will not be able to get their rights immediately. Because, if the loser is not willing to voluntarily hand over the rights to the other party who wins, further court intervention is still needed, which often does not go smoothly.

¹⁵ Uyuni, B., & Adnan, M. (2021). APPLICATION OF ISLAMIC INHERITANCE LAW AMONG MUSLIM SOCIETY. *El-Arbah: Jurnal Ekonomi, Bisnis Dan Perbankan Syariah*, 5(1), 19-32

The illustrations from the experience of cases in society and real stories in the judiciary provide a lesson for us, that in addition to many of our people who do not understand inheritance law, many are not aware of the consequences of eating other people's inheritance rights. In fact, after explaining the provisions regarding the provisions of the share of each heir, in Surah An-Nisak verse 14, Allah has given an ultimatum, that anyone who does not obey and exceeds the limit in terms of inheritance shares will take the share of other heirs with wrong way, it will be entered into hell eternally. Based on this verse, a person's level of compliance in terms of the provisions of this part of the inheritance is also one of the benchmarks for a person's level of faith. Ironically, this inheritance dispute also often involves figures whose religious knowledge is also quite adequate. Such a phenomenon begs the big question: what is wrong with our society? Enlightenment regarding aspects of inheritance law via the taklim assembly, general recitations, and legal counseling may be the time to get the attention of stakeholders

The application of inheritance law in Indonesia can be called easy and difficult. The reason is that the diversity of customs and religions allows different choices for the application of inheritance law. However, inheritance itself is closely related to the distribution of property and money which is arguably sensitive. According to the Deputy Chief Justice of the Supreme Court for Non-Judicial Affairs, Syamsuhadi admitted that the problem of inheritance in practice is quite complicated. As a result, inheritance disputes sometimes have to be resolved until the last legal remedy, namely a judicial review (PK). In essence, the inheritance problem is a civil matter whose lawsuit is based on the request of the parties. Likewise, with the choice of law, you can choose a religious court for Islamic law or choose a district court for inheritance outside Islam or custom.¹⁶

These principles do not make the application of inheritance law complicated. It's just that if two parties want different legal solutions that will cause conflict. An heir who is Muslim, for example, is subject to Islamic law.¹⁷ But on the other hand, other heirs who share the same religion as him can choose customary law. Eating the property that is forbidden is not just eating pork and drinking alcohol, but eating the property of one's brothers and sisters is also something that is forbidden in Islamic law.

The basis of why inheritance must be studied and implemented:

¹⁶ Husien, Syarief, dan Akhmad Khisni. Hukum Waris Islam Di Indonesia: Studi Perkembangan Hukum Kewarisan Dalam Kompilasi Hukum Islam Dan Praktek Di Pengadilan Agama. *Jurnal Kita*, Vol. 5 [1] Maret 2018

¹⁷ Adnan, M., & Uyuni, B. (2021). Maqashid Sharia in Millennial Da'wah. *SALAM: Jurnal Sosial dan Budaya Syar-i*, 8(5), 1483-1498.

وَلَا تَأْكُلُوا أَمْوَالَكُمْ بَيْنَكُمْ بِالْبُطْلِ وَتُدْخُلُوا بِهَا إِلَى الْحُكَّامِ لِتَأْكُلُوا فَرِيقًا مِّنْ أَمْوَالِ النَّاسِ بِالْإِثْمِ وَأَنْتُمْ تَعْلَمُونَ

And do not devour one another's wealth unjustly, and bring it to the judge, so that you may devour some of the wealth of others sinfully, while you find out. Q. S. Al-Baqarah: 188.

يَا أَيُّهَا الَّذِينَ ءَامَنُوا لَا تَأْكُلُوا أَمْوَالَكُمْ بَيْنَكُمْ بِالْبُطْلِ إِلَّا أَنْ تَكُونَ تِجَارَةً عَنْ تَرَاضٍ مِّنْكُمْ ۚ وَلَا تَقْتُلُوا أَنْفُسَكُمْ ۚ إِنَّ اللَّهَ كَانَ بِكُمْ رَحِيمًا

O ye who believe! Devour not one another's wealth in vain, save by trade between you. And do not kill yourselves; surely Allah is Most Merciful to you. Q. S. AN-Nisa: 29

The verse is usually referred to as the prohibition of acts of corruption, theft, or committing acts of tyranny by extorting the property of the poor. The prohibition is more precise when the inheritance distribution meeting and all agree to violate what Allah SWT has set.

إِنَّ الَّذِينَ يَأْكُلُونَ أَمْوَالَ الْيَتَامَىٰ ظُلْمًا إِنَّمَا يَأْكُلُونَ فِي بُطُونِهِمْ نَارًا ۖ وَسَيَصْلَوْنَ سَعِيرًا

Lo! Those who devour the wealth of orphans unjustly, they will swallow fire in their bellies, and they will enter the Blazing Fire. Q. S. An-Nisa: 10

c. Avoiding Family Breakup

No more learning the science of inheritance by the Islamic generation turned out to have a very big impact. One of them is the emergence of family breakdown. Because when the parents die, the children who do not know the science of inheritance are fighting over the property because the parameters they use are different from each other. Some children want to apply the customary version of inheritance law, others want the western version and some want to use Islamic law. And usually, the last agreement is reached that the three laws are then mixed in such a way that it becomes a newly legal product, namely fabricated law. In more subtle language, such a model is called a compilation of Islamic law.

If their parents had taught and educated them since childhood with the science of Islamic heritage, surely the family split would not have occurred. Because it is appropriate for Muslim children who grow up with Islamic education, they are also brought up with religious sciences that teach how to divide the inheritance per the provisions of Allah SWT.

Of the various cases of family division on the issue of inheritance, generally, the main cause is the ignorance of family members from the science of Islamic inheritance law. The way to avoid family breakups that may not happen today is to prepare our children, especially the younger generation, with the knowledge of inheritance law. So from the beginning, they already have guidelines for supplies when they grow up.

D. Conclusion

Because of the importance of faraid science, scholars pay close attention to this science, so they often spend some of their time studying, teaching, writing the rules of faraid science, and composing several books on faraid. They did this because of the advice of the Prophet SAW above.

Umar bin Khattab has said:

(تعلموا الفرائض فانها من دينكم, وإذا لهوتم فلهو بالرمي وإذا تحدثتم فتحدثوا بالفرائض)

"Learn the science of faraid, because it is actually part of your religion." Then the Commander of the Faithful said again, "If you are playing, play with one throw. And if you speak, speak with the science of faraid," (narrated by Al-Baihaqi in his Sunan, vol: 6, p. 209)

In addition to Rasulullah SAW ordering us to study the science of inheritance, Caliph Umar bin Al-Khattab radhiyallahuanhu also specifically ordered Muslims to study the science of inheritance. He even mentioned that we must study the science of inheritance as we study the Qur'an Al-Kariem.

"Learn the science of faraidh as you study the Qur'an". (Narrated by Ad-Daruquthuny and Al-Hakim)

We see many Muslims who specifically learn to read the Qur'an. There are so many methods to master how to spell the Quran. In our country, so many special Al-Quran pesantren were established, there are even colleges specially for Al-Quran sciences. Abu Musa al-Ash'ari ra. said, "The parable of the person who reads the Qur'an and does not speak (cleverly) in the science of faraid, is like a coat that does not cover the head." strives to be able to provide convenience for the community in dealing with various legal issues, one of which is the heirs. Through this cooperation with Cariustadz.id, it is hoped that the obstacles experienced by the community concerned with the heirs can be resolved.

In the future, the community does not need to feel confused when having to face the problem of inheritance, only by using the Islamic Inheritance Calculator, the community can already know the calculation of inheritance property in accordance with Islamic law in force in Indonesia. It's just that the inheritance calculator is a dead object that cannot solve social problems that arise due to inheritance problems that occur in society. Of course, this science still needs to be studied comprehensively and presented among Muslim families in order to prevent the various effects of their ignorance of the science. And there are many requirements to be able to understand the science of inheritance, that is, to study other sciences of jurisprudence comprehensively (kaffah) so that its completion can satisfy all parties.

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