

# THE IMPLEMENTATION SYSTEM FOR THE DISTRIBUTION OF INHERITANCE TO MUSLIM COMMUNITIES IN INDONESIA IN THE PERSPECTIVE OF ISLAMIC LAW

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## ABSTRACT

*Indonesia is a country where the majority of the population is Muslim, and has even become the country with the largest Muslim population. However, the majority of Muslim communities in Indonesia in carrying out Islamic law, especially Islamic inheritance law, are not so many. This is evidenced by the results of research from various academic circles who are concerned about Islamic inheritance law. Many Muslim communities in Indonesia resolve inheritance problems or carry out distribution of inheritance by using the customary law system or by means of peace, deliberation and kinship. However, that does not mean that they do not use Islamic law at all, because they continue to prioritize the values that exist in the Koran and the Sunnah of the Prophet Muhammad, namely by prioritizing the values of justice, deliberation, and in a peaceful way, in order to avoid conflicts in family.*

**Keywords:** Islamic Inheritance, Inheritance, Islamic law, Indonesia.

## INTRODUCTION

The issue of inheritance is very close and cannot be separated from the scope of human life. Because every human being will definitely experience a legal event, if someone dies and leaves property also leaves an heir. Of course, the inheritance or inheritance will be transferred from the heir to the existing heir.

Humans in their journey experience three very important and basic events, namely the event when he was born, the event he was married off, and the event when he died (Perangan, 1997).

Every living thing will certainly die and no one knows when he will die, because the time of death is one that is kept secret by Allah. The existence of a person's death is one of the causes of inheritance law. Such matters concern the procedures for transferring property from the deceased (heir) to the heirs. Inheritance inheritance is a part of the law that cannot be avoided. Meanwhile law is part of the basic and fundamental aspects of Islamic teachings (Munawar-Rachman, 1995).

In the Islamic perspective, inheritance is one part of fiqh (Islamic jurisprudence) or provisions that must be obeyed by Muslims and serve as the basis and guidance in resolving the problem of the inheritance of someone who has died. Allah has determined the provisions

regarding the distribution of assets of people who have died. This is because it concerns property which on the one hand is a human tendency to cause disputes, and on the other hand God does not want humans to eat property that is not their right (Syarifuddin, 2019).

Some Muslims must obey and obey Islamic law which regulates all aspects of human life, both those related to Allah and those related to fellow humans, as well as those related to the universe. Thus, rules for human life were born, such as family law which regulates marriage and inheritance. Inheritance law is a part of family law which plays an important role in community life.

Inheritance issues relate to the rules governing the process of continuing and transferring property and intangible goods from a human to his offspring. So, in this case the inheritance problem is closely related to the problem of wealth.

If there is a legal event, namely the death of a person as well as leaving due to law, namely about how to manage and continue the rights and obligations of a person who died, the settlement of rights and obligations as a result of a legal event due to the death of a person, is regulated by inheritance law. Inheritance can be said to be a set of rules governing the rights and obligations of a person who dies by an heir or other legal entity (Ramulyo, 2004).

Islamic law has put in place the rules of inheritance and laws regarding property as well and as fairly as possible. Islam defines a person's ownership rights to property, both men and women while he is still alive and transfers of property to heirs after he dies.

Based on the author's observations, in terms of dividing the inheritance of the Muslim community, most of them use the musyawarah network and usually the last child gets a greater share of the inheritance compared to other children or relatives, even though the last child is a woman and has siblings who are others are men. In addition, there are many Muslim communities who share inheritance by dividing the inheritance equally between boys and girls.

Based on the background above, the authors are interested in conducting this research further. Why does the distribution of inheritance in Muslim societies still share equally between boys and girls and sometimes girls get more inheritance than boys? And how is this from the point of view of Islamic law? Therefore, the researcher will intend to examine in depth the inheritance law problems that occur in Muslim communities, especially in Indonesia.

The discussion in this study will be formulated as: what is the implementation system for the distribution of inheritance to the Muslim community in Indonesia? How is the law of implementing the distribution of inheritance in Islamic communities in Indonesia from the perspective of Islamic law?

## LITERATURE REVIEW

### Definition of Islamic Inheritance Law

Inheritance law is a law that regulates the transfer of ownership rights to the inheritance (tirkah) of the inheritor, determines who has the right to become heirs and how many shares of each (KHI, Article 171 letter a).

In the terminology of fiqh, the meaning of language is usually stated. This is because the word warasa from which the word inheritance is used is used in the Qur'an. In language the word

warasa has several meanings: First, it has the meaning of replacing as mentioned in Surah an-Naml verse 16. Second, it has the meaning of this member, which can be seen in Surah al-Zumar verse 74. Third, it means inheriting in Surah Maryam verse 6. Terminology, inheritance law is the law that regulates the distribution of inheritance, knowing the portions received from the inheritance for each entitled (Rofiq, 2000).

In terms of understanding, the legal dictionary explains that the meaning of law is all the rules and regulations and provisions relating to the life of a society (Sudarsono, 1999). Meanwhile, the definition of Islamic inheritance consists of two syllables, namely “*inheritance*” and “*Islam*”. In terms of meaning, inheritance comes from the word inheritance which means various rules regarding the transfer of property rights of someone who has passed away to their heirs (Saebani, 2009).

Meanwhile, according to the Big Indonesian dictionary, inheritance means people who are entitled to receive inheritance from people who have died. Meanwhile, according to Islamic jurists, among them are:

Ash-Shiddieqy (1973) argues that the law of inheritance is a science by which we can know the person who received the heirloom, the person who did not receive the inheritance, and the level received by each inheritance and how to share it. Meanwhile, according to Salim (2007) argued that the science of faraid is the study of the principles of fiqh and arithmetic related to inheritance and people who are entitled to get it so that each person entitled to a share of the inheritance becomes his right (Rahmawati et al., 2016).

### **Pillars and Terms of Islamic Inheritance**

The pillars of inheritance are: 1) Muwarris (a person who gives an inheritance), namely a corpse which other people have the right to inherit from what is left after death. 2) Inheritance (inheritance recipient), namely the person entitled to inherit for reasons that have been explained, such as kinship, marriage, marriage and so on. 3) Maurus (inherited objects), which is something left by a corpse, such as property, gardens and so on.

There are three requirements for inheritance, namely: (1). The death of the heir, which is meant by the death of the heir, either intrinsically or legally, is that a person has died and is known by his heirs or some of them, or a verdict is determined by a judge against someone whose whereabouts are unknown, for example, a missing person whose condition was no longer known with certainty, so the judge sentenced him to be a person who had died. This must be known with certainty, because no matter what the circumstances are, humans who are still alive are still considered capable of controlling all their assets; (2). The heirs are still alive, which means that the transfer of ownership rights from the heirs must be to the heirs who are still alive according to the law, because people who have died do not have the right to inherit; (3). Knowing the position of the heirs, in this case the position of the heirs must be known for sure, such as husband, wife and so on, so that the divider knows each of the heirs. Because in the law of inheritance the distant distant kinship will distinguish the amount received, it is not enough to just say that a person is the brother of the heir, but it must be explained whether he is a half-brother, father or mother. Each has the right to receive an inheritance because as dzawil furud, some *ashabah*, and some are prevented from obtaining inheritance (mahjub) (Syahdan, 2016).

## Cause Inherit

As we know that Islam was revealed to perfect the previous teachings, both the time of ignorance and the beginning of Islam was revealed. In the time of *Jahiliyyah*, the reasons for inheriting consisted of: Blood ties (al-qarabah), faithful promises (al-hilf wa al-mu'aqadah), and adoption of children (al-tabanni or adoption). So, at the beginning of the third Islam is still carried out, coupled with the migration and brotherhood between the Muhajirin and Anshar (Rofiq, 2000).

After Islam was revealed it was perfect, then what was continued was the first cause, while the second to fifth causes were eliminated. So that the causes of inheriting in Islam are:

### Al-Qarabah

Al-qarabah or blood relationship here undergoes an update, that is, all heirs who have blood relations, both men, women, and children are given the right to receive a share according to the proximity of their kinship. Even babies who are still in their mother's womb have the same rights as adults. However, in this case, the provisions of the heirs who are closer can hinder (veil) the heirs who are far away, in accordance with the provisions of the Qur'an and Sunnah.

The kinship system used in Islamic inheritance law is a bilateral or parental kinship system. Namely, the determination of the relationship between relatives is connected to the paternal and maternal lines. Although it is recognized, that the income of women is half of that of men. Because seeing the condition of women previously being treated discriminatively, the difference in the nominal share that women receive does not reduce the mission of justice aimed at Islam itself.

### Al-Musaharah (Marital Relationship)

A lawful marriage between a man and a woman causes a relationship to be inherited, when one of them dies. To find out the existence of the marriage, can only be proven through the marriage act issued by the Registrar of Marriages.

Included in the marriage bond is when the wife is divorced raj'i by her husband during the period of iddah. The reason is that the woman who is in the waiting period (iddah roj'i) her husband is the most entitled to refer to her, therefore her status is considered still tied to her husband's marriage. For example, a husband divorces his wife who is still menstruating normally, a month later he dies, so the wife is still entitled to receive the inheritance (Rofiq, 2000).

### Al-Wala' (Free My Slaves)

Al-Wala' is a relationship of inheritance because someone frees my slaves, or through an agreement to help. Men are called mu'tiq and women are called mu'tiqah. Its share is 1/6 of the property left by the heir.

In the Compilation of Islamic Law (Kompilasi Hukum Islam/KHI), these three reasons are not discussed or included, on the grounds that in today's life, especially in Indonesia, slavery is

no longer recognized. Therefore, the causes of inheritance according to the compilation of Islamic law only consist of two things, namely the causes of blood relations and the causes of marital relations (KHI, Article 174 paragraph (1)).

### Loss of Inheritance Rights

Inheritance barriers are actions that can invalidate a person's right to inherit because of a cause or condition of inheritance. However, for some reason they cannot receive inheritance rights. The reasons for the heirs to lose their right to inherit are as follows (Muhibbin & Wahid, 2009):

**Slavery:** Since the beginning, Islam wanted slavery to be abolished, but in reality, slavery was evenly distributed and difficult to eradicate. Therefore, slavery has a place in the discussion of Islamic law. In the Koran, it has been described that a slave is incapable of taking care of property rights in any way. The Word of Allah in Surah an-Nahl verse 75: *“Allah has made the parable of a slave who cannot do anything”*

The status of a slave cannot be heir, because he is seen as not talking about managing property and has broken family ties with his relatives. Some even view the boy as his status as his master's property. He could not inherit his inheritance, because he himself and all his property belonged to his master.

**Murder:** Islamic jurists agree that the act of murder committed by the heirs against their heirs is a barrier for them to inherit the property of the heirs of the murdered heirs. Basically, the hadith of the Prophet SAW:

*“Whoever kills a victim, he cannot inherit it, even though the victim does not have heirs other than himself and if the victim is his father or child then there is no inheritance right for the killer”.*

Another hadith states, *“There is no right for murderers to inherit one bit.”* This murder is alluded to in Article 173 of the Compilation of Islamic Law.

**Different Religions:** Religious differences become a barrier to inheriting between heirs and heirs. The basis of the law of different religions *mawani'ul iris* is the hadith of the Prophet SAW:

*“A Muslim cannot inherit the assets of an infidel and an infidel cannot inherit a Muslim's property (mutafaqun alaih)”*

While in the compilation of Islamic law does not explicitly offend the religious differences between the heirs and their heirs. The compilation only asserts that the heirs are Muslims at the time of the death of the heir (KHI, Article 171 letter c).

Then what is meant by different religions here is between Muslims and non-Muslims. Differences in non-Islamic religions, for example between Christians and Buddhists, are not included in the meaning of different religions in Islamic inheritance (Rofiq, 2000).

Apart from being based on the aforementioned hadith, Rasulullah SAW also practiced inheritance sharing, that religious differences cause them to not be able to inherit each other. When Abu Talib died, Rasulullah SAW distributed inheritance to 'Uqail and Talib who were not

yet Muslim, while Ali and Ja'far who had converted to Islam were not given by Rasulullah SAW from the inheritance of Abu Talib who was their father. This shows that different religions are a barrier to be able to inherit (Rofiq, 2000).

## Islamic Inheritance System

The essence of Islamic inheritance in the Qur'an is the process of exercising the rights of the heirs to their heirs by dividing the inheritance through procedures prescribed by nash or more specifically can be noted that if a person has died, then who is the nearest heir and how much received by each heir (Ali, 1995)

In the division of heirs there must be and it is known the death of the heir in essence or according to law. The division of inheritance (*tirkah*) is not possible, so that the heir is clearly dead, or the judge has decreed his death. This is what is meant by death legally, when the judge determines his death based on the evidence, and then it is possible to distribute his estate to the heirs (Ash-Shabuni, 1995).

The system of inheritance in Islam is divided into three types, namely (Rahmawati et al., 2016):

1. Individual inheritance system, that is, the inheritance is divided among the heirs individually. The meaning is that an heir is entitled to inherit property from the heirs according to their respective parts in accordance with the provisions of Islamic law.
2. The collective system, that is, the inheritance is inherited by a group of heirs in the form of an inheritance as a unit. The collective inheritance system is usually required when the inheritance property to be shared complicates its implementation and tends to result in losses for the heirs, so the property can still be owned as a common property. This is in accordance with the Compilation of Islamic Law (KHI) in article 189.
3. The majority inheritance system, that is, the eldest child has the sole right to inherit more heirlooms than other heirs. This usually happens because the oldest child is a surrogate parent. This means that the eldest child must be responsible for all members of his family so that he has the right to determine the inheritance of the heir.

## Division of Islamic Inheritance

The implementation of the division of Islamic inheritance is of course inseparable from the three main elements, namely: heirs, heirs who will receive the property, as well as property left and the provisions of the division that will be received by the heirs.

**Heir:** The heir is a person who dies, and his heirs are entitled to inherit their inheritance. The death of an heir, either essentially or according to law, is someone who has died and is known by all of his heirs or part of them or a verdict determined by a judge against someone whose whereabouts are unknown. An example of a missing person whose condition was no longer known with certainty, so the judge sentenced him to be a person who had died (Saebani, 2009).

**Heirs:** The heir is a person who is entitled to a share of the inheritance. According to Hazairin (1982), as a whole the Qur'an wants a bilateral society. According to him, the diversity of family laws in society is human *ikhtilaf* in interpreting the Qur'an. Hazairin (1982) emphasized that both patrilineal and matrilineal societies are a process towards a bilateral society. There are three groups of heirs according to the bilateral community (Hazairin). They

can be seen from the legal line, namely dzul faraidh, dzul qarabah, and mawali (Rahmawati et al., 2016).

Meanwhile, according to Asy-Syafi'i (2006), who knows being patrilineal, recognizes the existence of ashab al-furudh, asabah, and dzawi al-arham (Rofiq, 2002).

1. Ashab al-furudh, namely the heirs who receive a large portion that has been determined in the Qur'an, such as 1/2, 1/3, 1/6.
2. Asabah, namely the heirs whose share they receive is the remainder after the inheritance has been distributed to the heirs of ashab al-furudh.
3. Dzawi al-arham, namely heirs who are actually related by blood, but according to the provisions of the Koran, are not entitled to receive a share of inheritance, for example grandchildren and daughters from the line of daughters.

There are differences in the concept of Islamic inheritance law in basing the lineage between Asy-Syafi'i (1990, 2006) & Hazairin (1982), namely:

1. Syafi'i traced the lineage to the men without looking at their respective roles in the family, while Hazairin positioned parallel between men and women, depending on the magnitude of their role in the family.
2. Can be seen from the classification of heirs in obtaining part of the inheritance property. Syafi'i (patrilineal) heritage, recognizing the existence of dzul faraidh, ashabah, and dzul arham. While the inheritance of Hazairin (bilateral), dzul faraidh, dzul qarabat, and mawali.

## DISCUSSION

### Inheritance Distribution System in Muslim Communities

In Indonesia, where the majority of the population is Muslim, besides that, it also does not rule out other beliefs and religions, people in Indonesia have a form of kinship with different kinds of hereditary systems. Hereditary system has long been before the entry of Hinduism, Islam and Christianity. The different hereditary systems have an effect on the implementation system of customary law inheritance.

Theoretically, the hereditary system can be classified into three features, including: First, the patrilineal system, which is a hereditary system drawn according to the line of the father, where the male position is more prominent than the position in inheritance, such as in (Gayo, Batak, Nias, Lampung, Buru, Seram, Nusa Tenggara and Papua). Second, the matrilineal system is a hereditary system drawn according to the mother's line, where the position of women is more prominent than the position of men in inheritance, as in Minangkabau, Enggano, and Timor. The third is the parental or bilateral system, namely the system of descent drawn according to the parental line, or according to the two-sided line (bapak-ibu) where the position of men and women is not differentiated in inheritance; usually this system occurs in the Aceh, Sumatra region. East, Riau, Java, Kalimantan, Sulawesi and others (Syahdan, 2016).

However, according to the customary inheritance system, there are three inheritance systems known, namely the first, the individual inheritance system which is the inheritance system where the heirs inherit individually, as in Batak, Java, Sulawesi and others. Both systems are collective inheritance, where the heirs collectively or together inherit the property that can not be divided for their ownership to each heir example in Minangkabau. The third is the

majority inheritance system. The majority of boys, that is, if the eldest son at the time of the heir dies or the eldest son or descendant is a sole heir, as in Lampung. While the majority of women, that is, when the eldest daughter when the heir dies, is the sole heir, for example in the Semendo land community (Soekanto, 2002).

Based on some literature and also experts, argue that what is meant by the law of inheritance is the rules regarding the process of transfer of property of a person whether he is alive or has died to be passed on to his relatives or descendants. In the Indonesian Muslim community, most of them say that the legacy system used is most of the legacy system that still applies according to the customs and traditions of the people in their respective regions.

In the practice of distributing inheritance to Muslim communities in Indonesia, basically it follows the customary distribution system that exists in each area. However, the majority is almost no difference. Where inheritance cannot be separated from the three pokok that must exist, namely: the heir who will receive the inheritance, the inheritance that will be shared with the heirs and the provisions of the portion that will be received by each heir. This can usually be done when the inheritor is still alive and it can also be done when the heir dies.

The distribution of inheritance property to the Muslim community in Indonesia, the majority still uses the inheritance system in a peaceful way, deliberation and family, and there are also those who use the collective way as the community reaches. However, in the Minangkau community, the collective system is not because the property left is difficult to share, but in the Minangkabau community, the collective is responsible for maintaining heritage items, such as ordinary houses as a place to live with family (KHI, Article 189).

Whereas in the Javanese Muslim community, which in fact uses a bilateral kinship system, they share inheritance by means of kinship, peace, and deliberation or it can be said that they still use Javanese customary law. As the results of online interviews by researchers with people in Rembang, Kudus, and Kendal districts, the majority of them said that the distribution was using the customary system. Because the traditional inheritance system of Javanese society is considered more practical, simple and easy (Online interview with Ahmad Syaiku)

Slightly different from the results of an interview with Sarwo Edy, he said that the division of inheritance property uses the Islamic inheritance law system, which is like men getting two parts from women. This is usually done to the Muslim community of students, meaning those who are completely obedient to the rules in the Qur'an and the Hadith of the Prophet. Meanwhile, the Muslim community is not santri or ordinary Muslim communities who still use customary law, such as by deliberation, peace is something by mutual agreement. Furthermore, Sarwo Edy said that in his family he distributed by means of a grant, in which the inheritance was distributed to the heirs before the parents died in order to avoid conflicts that might arise that were unwanted (Online interview with Sarwo Edy).

Most of the people who live in rural areas have their inheritance in the form of rice fields, yards or moor, and can also be in the form of livestock. In terms of the division of this inheritance, usually some of those who are Muslim are very strong or Islamic, santri writers usually divide by means of Islamic inheritance, namely boys get 2 times the share of women, and also usually done by deliberation within the family. However, the problem is when the legacy is in the form of rice fields or yards. It is also difficult if it is divided precisely according to each section. Therefore, most people divide by Islamic law but also prioritize deliberation within the



family, so that the respective parts are sometimes not exactly the same as specified in Islamic inheritance law. However, Indonesian-style Islamic law has been included in the Compilation of Islamic Law on other ways of distributing inheritance by prioritizing Maslahah in the family (KHI, Article 183)

### **The Law of Implementing the Distribution of Inheritance to Islamic communities in Indonesia in the Perspective of Islamic Law**

According to some people, the implementation of the distribution of inheritance assets according to the Muslim community is against Allah's law, because it is not guided by Allah's law in making decisions in the distribution of inheritance assets. The distribution of inheritance from the heir is considered neglected in the view of inheritance law in Islamic law. However, if it is examined in depth it turns out that Islamic law also accepts other legal norms that have grown and developed as customary norms and customs of society. And the custom clearly brings benefit to the people, as well as harmony in people's lives, as long as these norms do not contradict Islamic law itself (Megawati, 2016).

Whereas in the principle of ushul fiqh it is stated “*al-Adatu Muhakkamatun*” that custom is a legal basis, to borrow the language of ushul fiqh, a habit that occurs repeatedly in society and causes benefits called *urf*, while the word *urf* is similar to the word *ma'ruf*, which means good. Another word that means *urf* is 'adat, which means habit. Sociologically, in society, an action that occurs repeatedly and is considered good. Although sometimes it differs from standard legal provisions, such as buying and selling with an indent, buying and selling pivot in general (Kully's law) is not justified, because it includes buying and selling of goods where there is no (*bai 'al-ma'dum*). However, because this habit occurs repeatedly and neither party is injured, it is considered a legal provision (Rofiq, 2002).

The division of inheritance with the customary system as a peaceful way is not a double attitude, but in accordance with the translation of the Qur'an (Surat al-Nisa 'verse 128, surat al-Anfal verse 1, surat al-Hujurat verses 9-10). In addition, peaceful means allow efforts to reduce economic disparities between one heir and another, because economic disparities between families can trigger conflict between them.

Regarding the distribution of inheritance in a peaceful manner, this can be learned from the wise words of Umar ibn al-Khaththab ra. One time giving advice to the Muslims: “*Ruddu al-qadla' baina zawi al-arham hatta yasthalibu fa inna fasl al-khitab yuris al-dagain*”, meaning: “*return the settlement of matters between the families, so that they can make peace, because in fact the settlement with the court decision causes a bad feeling*” (Rofiq, 2002).

In the distribution of inheritance in Islamic communities in Indonesia, the majority uses or resolves in a kinship (custom) manner, then it is different from the distribution of inheritance in Islamic law according to the calculation of *fara'id* science, but this is allowed because it is in accordance with the purpose of forming Islamic law, namely creating benefit *ummat* based on the Koran and Sunnah.

## CONCLUSION

Based on the findings in the research field, it can be concluded in general, that the system of implementing the distribution of inheritance in Islamic communities in Indonesia generally still uses the traditional inheritance system and is combined with renewal by incorporating the values of Islamic law. They share much of the inheritance by dividing sons and daughters equally.

In addition, there are also people who give or transfer their assets while the heir is still alive, in order to avoid something that is not desirable, such as fighting or fighting over inheritance. Usually, they do this on behalf of the way of giving, because the grant is seen as not against Islamic law, but instead becomes an order of Islamic law itself. However, in the division of inheritance property to the Muslim community in Indonesia, there are still those who really use the inheritance system according to Islamic inheritance law. Where boys get 2 times the share of girls, this is done in order to carry out Islamic law and carry out orders in the Qur'an and the Sunnah of the Prophet SAW, and in order to uphold justice according to their respective portions and capacities.

In the view of Islamic law, those who still use inheritance with the customary system, namely by means of peace, deliberation and kinship according to some Islamic law experts are not prohibited. Because they do not contradict the norms or rules of Islamic law itself, namely Islamic law is built in the framework of the benefit of the ummah. However, there are some who think that carrying out the distribution of inheritance that does not use Islamic law in this case is not in accordance with the provisions of the science of fara'id is considered a sin. According to the author's opinion, even though the Muslim community uses the customary law system as long as it is in the corridor of Islamic law it is permissible, namely in order to achieve harmony and peace in the family and avoid division.

In order to enforce Islamic law for the Muslim community and also increase awareness in the application of the Islamic inheritance system, it is necessary for community leaders, scholars and Muslim academics to extend counseling on Islamic inheritance law. And for those who use their respective customary law so as not to deviate from the values contained in the Qur'an and the Sunnah of the Prophet SAW, it is justice, peace and family that achieve the benefits of the Muslim ummah in Indonesia.

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