

The Nature of Postponing the Distribution of Inheritance and Its Impact on Kinship Relations: A Case Study of the Sigi District Community

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ABSTRACT

The purpose of this research is to analyze the nature of the suspension of inheritance distribution. This research is empirical research. The results of the study show that: the nature of the suspension of inheritance distribution creates injustice in society because it does more harm than good. Which in the end resulted in the substance of the law not running as expected, the purpose of the law not being achieved, and eliminating the sense of justice so that problems were not created. Because both Islamic inheritance law which refers to the Qur'an, Sunnah, Ijma and KHI, as well as in the Civil Code adhere to the notion that there is no inheritance without division.

Keywords: Division; Treasure; Inheritance; Kinship

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I. INTRODUCTION

The practice of dividing inheritance among the community seems to be based more on customary law and not on Islamic inheritance law for Muslims. The distribution of inheritance is no exception for some of the people who inhabit the Central Sulawesi region.^[1] the majority of the population is Muslim. Whereas in Islam every Muslim is required to submit, obey and obey Islamic law and still refer to the Qur'an and Sunnah, including the implementation of inheritance law.

The implementation of the inheritance law system in Indonesia still recognizes 3 (three) legal systems, namely the European inheritance law system which regulates inheritance for non-Muslim communities or those who are subject to the rules of inheritance law, which are contained in chapters XII to XVIII (articles 830 to with 1130) the Civil Code (KUHPperdata), the customary inheritance law system that applies to indigenous people and the Islamic inheritance law system that applies to groups of people who are Muslim as regulated in the Presidential Instruction of the Republic of Indonesia Number; 1 of 1991 in conjunction with the Decree of the Minister of Religion of the Republic of Indonesia Number: 154 of 1991 concerning the Compilation of Islamic Law (KHI) and its implementation.

Islamic inheritance law applies to Indonesian people who are Muslim, this is regulated in Articles 171-214 of the Indonesian Law Compilation (KHI), namely Islamic law material which is written in 229 articles, and 43 articles concerning inheritance law.

The Compilation of Islamic Law (KHI) was born from a study of fiqh and jurisprudence books which culminated in a workshop held in Jakarta in 1988. As an effort to ensure that the works of Muslim scholars receive legal protection as part of the legislation, although what was obtained was only in the form of Presidential Instruction Number 1 of 1991. The considerations include, among others:

1. Whereas the Indonesian Ulemas at the workshop held in Jakarta from February 2 to 5, 1988 had accepted three drafts of the Compilation of Islamic Law, namely Book I on marriage law, Book II on inheritance law and Book III on endowment law.
2. That the Compilation of Islamic Law referred to in letter a by government agencies and by the people who need it, can be used as a guide in solving problems in this field.
3. That therefore, the compilation of Islamic law referred to in the letter a needs to be disseminated.^[2]

The laws and regulations described in the Qur'an globally are the areas of *ijtihad* so that the application of Islamic law opens up a wider, more epistemological role for *ijtihad* to achieve the goals of Islamic law which upholds the values of justice and the benefit of mankind. . Because in its application the teachings are flexible, accommodate a variety of cultures and can develop themselves according to the changing times.

In the case of the suspension of inheritance distribution in the Compilation of Islamic Law (KHI article 175, it is stated that; the responsibility of the heirs is to carry out the distribution of inheritance after the fulfilment of the rights of the heirs and (KHI article 188) also states that: the heirs both individually and jointly the same person can submit a request to the other heirs to distribute the inheritance. However, if it is not

approved by the other heirs, then they may file a lawsuit through the Religious Court for inheritance distribution.

The Religious Court is an official government institution in the field of law enforcement, especially for people who Islam is an institution that has competence or duty and is obliged to accept, examine, decide, and resolve cases at the first level between people who are Muslim in the fields of marriage, inheritance, wills, grants, waqf, zakat, infaq, alms, and sharia economics (Article 49 of Law No. 7 of 1989, which g has been amended by Law no. 3 of 2006, and the second amendment with Law No. 50 of 2009).^[3]

In addition, inheritance distribution in Indonesia also uses civil inheritance law or what is often called Western inheritance law (*Burgerlijk Wetboek*). The inheritance law applies to non-Muslim communities, including Indonesian citizens of descent, both Chinese and European, whose provisions are regulated in the Civil Code (KUHP).

Characteristics of inheritance law according to civil law (*Burgerlijk Wetboek*) include "the absolute right of the respective heirs to demand the distribution of inheritance from time to time" although it is allowed to suspend the distribution of inheritance for five years and can be extended for another five years. with the consent of the heirs. (Article 1066 of the Civil Code).

As well as Islamic law and civil law, the Indonesian people also apply customary law. Customary law itself is unwritten, only in the form of norms and customs that must be obeyed by certain communities in an area whose implementation varies in each region with certain sanctions for those who violate it. and customary inheritance law is much influenced by the structure of society or kinship.

The inheritance law system that has not been unified and accompanied by the lack of public knowledge about the inheritance distribution system, is the cause of the postponement of the inheritance distribution. If it is seen further that the acceleration of the distribution of inheritance is intended to avoid various problems that will come in the future, such as misappropriation of assets by the management. So that it is not uncommon for inheritance lawsuit cases reported by online media to be increasingly concerning.

Many inheritance cases are not highlighted by the media in many areas in Indonesia, including in the Sigi Regency area where the author conducts research, namely inheritance claims by substitute heirs (grandchildren) which reach the Court with indications of suspension of inheritance distribution for 40 years. and indications of misappropriation by the manager of the inheritance (the only surviving heir) because of which the main heirs (children of the heir) until death cannot enjoy the inheritance as their right. while some other cases only reached the customary institutions in the village and the sub-district customary council.

Some people postpone inheritance because the heirs are still under (*Curatete*) the care and supervision of more mature heirs, some even do not recognize the suspension of inheritance distribution because their assets have been divided before their parents died.

The description of this inheritance case shows that the freedom of choice accompanied by the misunderstanding of the parties involved in the system used in inheritance distribution causes mistakes in acting. Because for the Muslim community there is a choice of a legal system that is recommended to be used, which is described in detail in the Qur'an and Hadith, and for the Indonesian Muslim community the legal rules are clearly stated in the Compilation of Islamic Law (KHI). Likewise for non-Muslim communities, inheritance issues, it is contained in the Civil Code.

In Islamic law, material provisions for people who are left behind by the dead (heirs) have been clearly outlined in the Qur'an and al-Hadith. Whereas in the civil law system, in essence, the issue of the inheritance of the heir is divided according to the wishes of the person concerned, namely the heir makes a will at the time of his life. In other words, the will or desire of the dead is the main thing.

II. Research Methods

This type of research is empirical research, which aims to provide an overview and explanation of the nature of the suspension of inheritance distribution and its impact on kinship relations in the people of Sigi Regency, Central Sulawesi Province.

III. Research Results & Discussion

The Nature of Suspension of Inheritance Distribution

The implementation of suspension of inheritance distribution still often occurs among Muslims and non-Muslims, which often causes conflicts between fellow heirs which in the end can damage family relations, conditions like this make the legal system that has been designed, both in terms of Laws, the Compilation of Islamic Law, as well as those that have been stipulated in the Qur'an and Sunnah, do not work according to the legal purpose of realizing justice and the welfare of families and society in general.

Imam al-Gazali stated that all laws contained in the Qur'an are always intended for the benefit and good of human life. Which concerns the main things, such as protecting the soul, mind, lineage, and religion, as well as in the management of property, and always being consistent in creating benefits for mankind.^[4]

In Indonesia, the struggle for inheritance law is still a reality in legal pluralism. Islamic inheritance law, civil inheritance law (*Burgerlijk Wetboek*), customary inheritance law, and the practice of inheritance law in the court environment seem to form their colour.^[5] Normatively, these legal sub-systems influence the practice of inheritance in Indonesian society. The three subsystems of inheritance law have given ethical offers to several inheritance law problems ranging from the concept of inheritance, reasons for inheriting, heirs, parts of heirs, and methods of distribution and patterns of inheritance dispute settlement.

These three inheritance laws, although the legal rules are different, in principle are the same, namely regulating the transfer of rights to objects by the testator to another person who is the heir of the heir. In the implementation stage, the three inheritance laws stipulate a different system in transferring the rights to objects to their heirs.

Islamic law and civil law *Burgerlijk Wetboek* adhere to the principle of death so that new property can be inherited when the testator has died. On the other hand, customary law adheres to a hereditary system, so that in this law, inheritance can be carried out while the testator is still alive. On the one hand, these three systems have different foundations from one another, but on the other hand, these three legal systems also share a common goal, namely to find universal ethical values in a single 'common thread', namely justice.^[6]

The value of justice in the transfer of the heirs' property to the heirs of these three systems certainly differs depending on one's perspective on the object being assessed. Also because this system is built from the different realities and philosophies of society. Especially in the Islamic inheritance system, it is built based on the doctrine of the teachings of the Qur'an and Sunnah. So that to integrate justice into its practices, it is necessary to have principles and legal studies that serve as a foothold and a reason for opinion in the settlement.

Some of them are the basis for the analysis in terms of deferring the distribution of inheritance in Islam, in addition to the theory that has been reviewed on the previous page, there are also Islamic inheritance principles which are the reinforcement, including the *ijbari* principle, namely the transfer of property applies automatically. By adhering to *ijbari*, the distribution of inheritance is not the will of the heirs, nor is it the will of the heir who is the owner of the property.

The provisions and procedures for the distribution of Islamic inheritance are the provisions of Allah SWT. which must be obeyed because indeed Allah alone will the heirs left by the testator according to His will, because there is no law in Islamic law that is so clearly explained by the Qur'an as this inheritance law. Because inheritance in Islam is the most influential *wasilah* in owning property and transferring it from one person to another.^[8]

The word *ijbar* lexically means coercion, which is to do something against one's own will. In *fiqh munakahat* terminology, the meaning of *wali mujbir* means that the guardian can marry off his daughter against the will of the girl without requiring the consent of the child to be married.^[9]

The explanation of this principle has an important role because it can force open inheritance to be immediately distributed to the rightful heirs, which also means that the distribution of the inheritance must be carried out immediately and must not be delayed based on the understanding of the *ijbari* for the share or the amount given to the heirs, so it is a sin if later the distribution of the inheritance is postponed, while some other heirs require the use of the inheritance.

In the Compilation of Islamic Law, it is emphasized^[10] that the obligation of the heirs on the inheritance of the heir is to divide the inheritance among the entitled heirs after all the rights of the heirs have been fulfilled such as the management of the corpse to the funeral, settlement of debts in the form of treatment as well as completing what is a will. from the heir by the provisions outlined in Islam.

The word obligatory here is an obligation based on the size and level of its implementation, which includes two things, namely: a) mandatory *muhaddad* and b) mandatory *ghairu muhaddad*. Meanwhile, what is meant by obligatory *muhaddad* is obligatory which must be by the levels and also by the provisions such as inheritance, zakat, etc., because the provisions regarding the distribution of inheritance are very clear and detailed in the Qur'an and Hadith. Meanwhile, the obligatory *ghairu muhaddad* is an unspecified obligation, such as providing for the closest relatives.^[11] because by providing for our relatives, it means that we have maintained the right to the continuation of the existence of humanity.

In line with this, Harija Damis initiated the principle of instantaneous distribution, namely that the inheritance of the heir is immediately calculated and distributed to the heirs after the heir dies.^[12] This implies that the inheritance of the heirs should not be left behind for a long time and have not been taken into account and have not been distributed, because it is feared that this will lead to disputes and prolonged conflicts between the heirs.

By enacting this, the calculation and distribution of the inheritance in real-time can avoid or even close the conflict between the heirs. which has indirectly fulfilled the elements of Islamic inheritance by giving happiness to family life, perpetuating in the household life of the heirs by carrying out the process of transferring assets correctly and responsibly so that this can also strengthen kinship ties.

Regarding the postponement of the distribution of inheritance, in the course of history, it has been proven that this practice occurred at the time of the Prophet Muhammad, as stated in a hadith narrated from Umm Salamah:

That one day two men came to the Prophet's house. who disputed the issue of inheritance which had been long overdue (abandoned) and had no clear explanation, the Prophet said to them, "Indeed you have come to complain to me, while I am only a human. Maybe some of you are smart and understand about giving information to others. I decide the case only based on the information you give, then whoever among you is cunning to give information, so that I give (punish) some other rights, it means that I have given him a piece of hellfire, the fire will be placed on his neck as a driving force on the Day of Resurrection. ." finished the Prophet said: the two men in the dispute were crying, they said to each other that all his rights were given to his brother. Hearing the statements of the two men, the Prophet said: "Go home and divide the wealth fairly based on deliberation, then let each other justify" (HR. Ahmad).^[13]

Based on this hadith, it is not wrong then that delaying or postponing the distribution of inheritance is not recommended as the Messenger of Allah saw. order the person who has delayed the distribution of the inheritance to immediately distribute it to the rightful heirs. Rasulullah SAW. said: "*Give the inheritance to his heirs.*"^[14]

In another hadith, Rasulullah SAW emphasized again in his words that: "Give inheritance to those (heirs) who are entitled, according to the Book of Allah. After that, the rest is for men (heirs) who are more important (ashobah)."^[15]

Furthermore, the discussion in the field of inheritance in Indonesia is more explicitly stated as contained in Law No. 3 of 2006 concerning amendments to Law No. 7 of 1989 concerning the Religious Courts, it is stated in article 49 letter b, that the provisions in the inheritance field as intended in paragraph (1) letter b, is the determination of who becomes the heirs, the determination of the inheritance, the determination of the share of each heir, and the distribution of the inheritance.^[16]

1. Structure of Heirs

In determining the heirs, there is a difference in concept between the Compilation of Islamic Law (KHI) and the previous inheritance fiqh. In the details of the heirs of Article 174 paragraph (1) letter a, as many as 9 people consisting of the male sex group 5 people and the female sex group 4 people.

a. The male heirs consist of: (1) Father; (2) Boys; (3) Brother; (4) Uncle; (5) Grandpa.

b. The female heirs are: (1) Mother; (2) Daughter; (3) Sister; (4) Grandma.

If the formulation of the heirs is analyzed in Article 174 paragraph (1) letter a, with the formulation of the heirs in the previous inheritance fiqh books, there are significant differences. Where in terms of number, the overall heirs in the previous fiqh books are as many as 25 people,^[17] while the Islamic Law Compilation (KHI) is only 9 people. The difference in the number of experts This inheritance can lead to various interpretations when viewed in terms of number and lineage. Seems like in The Compilation of Islamic Law (KHI) does not distinguish the lineage of grandfather and grandmother from the father's side and the mother's side, and does not distinguish the lineage of both parties (sekandung), one-sided (seyah or seibu). Whereas the previous inheritance fiqh distinguishes the heirs by looking at lineage. numbers are

as follows: The male group is 15 people and the female group is 10 people with the following details:

a. Group of male heirs:

1. Boy
2. Grandsons from boys and below.
3. Father
4. Grandpa upstairs.
5. Siblings.
6. Mother's other father's brother.
7. Brother of another mother's father.
8. Son of a sibling (nephews)
9. Son of the same father (nephew)
10. Uncle.
11. Uncle is like another mother.
12. The son of a biological uncle.
13. The son of an uncle of another father's mother.
14. husband
15. Men who free their slaves or slaves.^[18]

b. female heirs.

1. Girls.

2. Daughter of sons (grandchildren).
3. Mother.
4. Grandmother from father.
5. Mother's grandmother
6. Siblings.
7. Another sister of another mother's age.
8. Sister of another mother's father.
9. Wife.
10. The woman who freed the slaves.^[19]

Article 181 does not specifically regulate heirs such as Article 171 and Article 174 but can provide an understanding of the details of the heirs of a sister from a line of descent whose understanding is still general, becoming special. Article 174 paragraph (1) letter a. Regarding the understanding of sibling's heirs, there are still different interpretations, some say that they are of the same family, father and mother. With article 181, the interpretation becomes clear after it is understood that this article regulates the heirs of siblings, both male and female through the mother's line (seibu). Meanwhile, Article 182 provides an understanding of the details of the heirs of a sister from the mother-father line (sekandung), the father-only line (seayah), and the seibu line.

Meanwhile, for the heirs of brothers, uncles, grandmothers, the regulations are not found in detail in the explanation of the position and size of the sections in the articles in the Compilation of Islamic Law (KHI). Therefore, the author concludes that the details of the heir structure in detail remain as stated above, which is the same as the details of most experts in previous inheritance fiqh books. However, in understanding the formulation of heirs in Article 174 paragraph (1) letter a, it is the same as the formulation of heirs proposed by Ibn Rushd in his book *Bidayatul Al-Mujatahid*, as follows:

1. The male heirs are: a) son, (*al-ibn*) b) grandson, (*ibn 'l-ibn*) to the bottom, c) father (*al-ab*), d) grandfather (*al-jadd*) to the top, e) brother (*al-akh*), f) son of a brother (*ibn'l-akh*), to the bottom, g) uncle (*al-'amm*), h) son of uncle (*ibnu'l'amm*), i) husband (*az-zauj*), j) master who has given pleasure (*maula'n-ni'mah*).

2. The heirs of the female line are: a) daughter (*al-ibnah*), b) daughter from son (ibnatu 'l-ibn) to the bottom, c) mother (*al-umm*), d) grandmother (*al-jaddah*) to the top, e) sister (*al-ukht*), f) wife (*az-zaujah*), g) former female master (*al-maulah*).^[20]

According to Ibn Rushd's details of heirs above, it can be understood that "brothers of the same mother, father and mother become one. Siblings and the same father become one. Siblings, mother and father become one. The paternal and maternal lines become one. So what is detailed by Ibn Rushd in outline, is not like that in describing the position and share of your heirs in his explanations. i.e. still breaking down the brothers into siblings, the same father, and the mother so that the number remains three. Brother's children are still broken down to siblings and fathers so that the number remains two. Uncles are still broken down into siblings and fathers so that the number remains two. Sisters are still broken down into women of the same mother, father, and mother so that the number remains three. A grandmother is still broken down into paternal grandmother and maternal grandmother so that the number remains two.

The essence of the discussion on the structure of heirs above is in Article 171 letter (c) Compilation of Islamic Law (KHI), which means that heirs are people who at the time of the inheritance of the deceased have a blood relationship or marriage with the heir, are Muslim and are not hindered by law. to become heirs^[21]

Article 174 of the Compilation of Islamic Law (KHI) paragraph (1) explains the groups of heirs are as follows:

1. According to the blood relationship: a) The male group consists of: a father, son, brothers, uncles, and grandfathers. b) The women group consists of a mother, daughter, sister and grandmother.
2. According to the marital relationship, consists of widower/husband and widow/wife.

Furthermore, in paragraph 2 it is explained that if all the heirs are present, only children, father, mother, widow/wife or widower/husband are entitled to inherit.^[22] So that if classified, these heirs will be divided into several groups, namely: (1). main heirs, (2) core heirs, (3) complete heirs, (4) substitute heirs and (5) heirs who get a mandatory will. This classification relates to their position towards the heir and other heirs

IV. Conclusion

The nature of the suspension of inheritance distribution among the community has failed in achieving legal goals in realizing justice and welfare of families and communities and not creating the benefit of the people.

^[1]Zainudin Ali, t.th, Research conducted on the Kaili Community in the Central Sulawesi Region. Significance of Drafting Inheritance Law Bill in Indonesia (Philosophical, Juridical, Sociological and Historical), h. 40

- [2] Ministry of Religion, 1995/1996, Law No. 1/1974 on Marriage and Law No. 7/1989 on Religious Courts supplemented by Presidential Instruction No. 1/1991 Compilation of Islamic Law, Directorate of Religious Courts Development Directorate General Islamic Religious Institutional Development (Jakarta: Religious Law Extension Project), h, 309- 310.
- [3] Supreme Court, 2006, Law of the Republic of Indonesia No. 3 of 2006 concerning Amendments to Law no. 7 of 1989 concerning Religious Courts, (Jakarta: Directorate General of the Religious Courts Agency), p. 20
- [4] Imam al-Qazali, t.th. *al-Mustashfa min 'Ilm al-Usul*. (Beirut: Daarul Pole Scientific). See also Ida Suhaida et al, Function and Purpose of Inheritance According to the Qur'an. Journal of Islamic Discourse Volume 7 Number 2, August 2019, p. 342
- [5] Islamic Law, Western Civil Law (BW) and Customary Law are a legal system, while Islamic inheritance law, BW inheritance law and customary inheritance law are a sub-system of law
- [6] Edgar Bodenheimer, 1996, Jurisprudence (Cambridge University), h. 437
- [7] Qur'an Surah An-Nisa verse 12
- [8] TM Hasbi Ash-Shiddieqy, 2001. Fiqh Mawaris, (Cet. III. Semarang: PT Pustaka Rizki Putra), p. 7
- [9] Sayyid Sabiq, 2006, Fiqh al - Sunnah, trans. Nor Hasanuddin, et al., Fiqh Sunnah, (Cet. I; Jakarta: Pen Pundi Aksara), p. 18
- [10] Article 175 Compilation of Islamic Law
- [11] Detiknews.com. 21 September 2020. "The Meaning of Mandatory, Sunnah, Makruh, Permissible, and Haram in Islam"
- [12] Harija Damis, Loc.Cit, p.28
- [13] Ismail al-Kahlani, t.th, Subulus Salam, (Bandung: Dahlan), pp. 121
- [14] *Ma'mur Daud, 1993, Translation of Hadith Saheh Muslim, Volume III. Cet.III. (Jakarta: Widjaya) p. 195*
- [15] An-Nawawi, 1971, *Syarah Shoheh Muslim*, (Cairo: Matba'ah al-Misriyah), p. 114
- [16] Fence, Association of Legislation in Indonesia (Medan: Perdana Publishing, 2010), p. 117
- [17] Muchamad Ali Ash Shabuni, t.th, Inheritance Law (Surabaya: Mutiara Ilmu), pp. 38-39, see: Ahmad Azhar Basyir, 1995, Islamic Inheritance Law (cet. X: Yogyakarta: Publisher of the Faculty of Economics, Indonesian Islamic University, Condong Chess, Depok, Sleman), pp.24-25. see A. Hassan, 1986, Faraid (cet. XI; Surabaya, Pustaka Progressif), p. 26-28
- [18] M.Abdul Goni, t.th, Ikhtisar Faraid (t.tp: Darul Ulum Press), p.19
- [19] *Ibid*,
- [20] Ibn Rushd, 1990, *Bidayatul Al-Mujtahid*, translated by MAAbdurrahman and A. Haris Abdullah under the title Bidayatu'l Mujtahid, (cet. I; Semarang Asy-Syifa').
- [21] Directorate of Religious Court Development. Director General of Islamic Religious Institutional Development, Ministry of Religion. Compilation of Islamic Law in Indonesia (Jakarta: 1991 1992), p. 89
- [22] *Ibid*, h. 91-92