

The Implementation of Inheritance Law in Muslim Communities in the City of Makassar

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Abstract

The rule about the transitional of a deceased person (heir) to his surviving heirs is a subsystem of Islamic inheritance law. Islam as universal teaching teachers and regulates all aspects of human life with the goal of making people enjoy the benefits of life both in the world and hereafter. The tendency of the Muslim community to put forward an agreement in the practice of variation, some who use Islamic inheritance law, some who divide the property to their children but still under their control, some who divide and surrender property to their children during their lifetime, some who share property among members heirs with a compromise path. The purpose of this research is to know the tendency of Muslim community in Makassar City in completing the division of heritage. This study finds that the Makassar Muslim community in the division of inheritance more prioritize the agreement. Islamic Law Compilations are still used as a matter of agreement.

Keyword: *Islamic Law, Islamic Society, Heritage Islamic*

Introduction

The law is a subsystem of the whole Islamic law that regulates the transfer of the property of a person who dies to his surviving heir. The transfer of the property of the dead to Muslims must refer to the teachings of the religion which have been outlined in the Qur'an and the Prophet's hadith, as occurs in other fields, such as prayer, fasting and so on. The obedience of Muslims in this teaching can be used as a benchmark on the level of his faith. If a person acts according to the values taught by the Islamic religion will surely receive the praise and reward from Allah swt, but on the contrary, if he deviates from the command of Allah swt. in this matter of inheritance, then God defames it and threatens to enter in hell.

Allah swt. has set up and set the rules of inheritance in QS al-Nisa 4: 11, 12 and 176. The law of inheritance is one of the laws that have been set in detail in the Qur'an, so

that it becomes an important legal theme in the teachings of Islam. The law of inheritance inherent in the Qur'an has been classified by the mufassir as the verses of *al-muhkamat*. The verses of *al-muhkamat* in the perspective of fikhi's propositions are categorized as *qat'i al-wurud wa al-dilalah* verses or sentences which are clearly defined, firm and definite so that they do not require interpretation and interpretation again.

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On the other hand, Qur'anic verses are also constantly challenging people to use their intellect with various kinds of phrases such as *afala ta'qilun* (do you not think), *afala tatadabbarun* (if you do not reflect), *afala yanzurun* (if they do not see / pay attention), and others. Thus, human reason is given the authority to enrich the vision of the ethics of revelation. while potential revelation confirms the findings of the truth of reason. Intelligence is an active subject in dynamizing the clusters of divine ideas in revelation, while revelation is a mine which can be dug constantly by human reason.

Therefore, the way the verses about inheritance are not only emphasized in their textual but also contextual aspects, not only explicitly but also implicitly in their entirety. Because the vision that brought the Qur'an is represented by text or texts referred to in paragraph charged commands, prohibitions and instructions for a human to human happiness in both worlds.

Related to the verse on inheritance law, there are several attitudes of scholars, Indonesian thinkers and society disagree about the distribution of inheritance two to one (2:1) as stipulated in QS al-Nisa /4: 11. There are groups who want to remain consistent in applying the provisions of two to one (2:1). There are also groups that try to renew by way not only emphasizing the textual aspects but also on the contextual aspects. This group is not only based on the figures set, but the spirit of justice is stored behind that number. So it is not a problem if the formula divides 2:1 is changed. There are also groups that leave or are not in line with the two previous groups, so that this group takes the mechanism of grants to their children evenly and leaves little to the interests of their lives.

Of the three groups or inherited distribution systems, it has been known by the Muslim community in general, so they choose to be more appropriately applied in their respective families.

Although the law of inheritance has been mentioned clearly and the Compilation of Islamic Law (KHI) has regulated inheritance division, but in article 183 KHI still gives way to heirs to make peace in the division of inheritance if each heir aware of its part. The peace in the division of the inheritance is called *takharuj* or *tumahuh*, which is a means of adjustment in the distribution of inheritance because of the agreement of two or more persons to alter legacy outside the provisions of *syara* '(Surasono, 1992) In this case it understood may also be the heir to agree (Ali Darokah, 1998) The concept of

reconciliation as meant in KHI article 183 above is used for the purpose of obtaining mutual benefits.

By looking at the phenomena that exist in society, the fundamental question which is the main problem in this research is How the tendency of Muslim community in Makassar City in completing the division of heritage.

Discussion

The Basic Concept Of Islamic Inheritance

In the Qur'an, the word "inheritance" can be understood from the word ترك as can be seen QS al-Nisa 4: 7. From the word ترك changed in the form of *masdar* to التركة. The word التركة is then used as one of the names of three names known in *fiqh al-mawaris*, namely *al-mawaris*, *al-faraid* and *al-Tirkah*.

The word *altirkah* is a form of *masdar* from the word *taraka* which means leaving. The word can be found in several verses of the Qur'an that contain several meanings, among which:

a. *Leave*, as in Surah al-Baqarah/2: 180

كُتِبَ عَلَيْكُمُ إِذَا حَضَرَ أَحَدَكُمُ الْمَوْتُ إِن تَرَكَ خَيْرًا الْوَصِيَّةَ لِلْوَالِدَيْنِ وَالْأَقْرَبِينَ بِالْمَعْرُوفِ حَقًّا عَلَى الْمُتَّقِينَ

Translation:

Prescribed for you when death approaches [any] one of you if he leaves wealth [is that he should make] a bequest for the parents and near relatives according to what is acceptable - a duty upon the righteous.

b. *Inheritance*, as in Surah al-Nisa/4: 7

لِلرِّجَالِ نَصِيبٌ مِّمَّا تَرَكَ الْوَالِدَانِ وَالْأَقْرَبُونَ وَلِلنِّسَاءِ نَصِيبٌ مِّمَّا تَرَكَ الْوَالِدَانِ وَالْأَقْرَبُونَ وَلِلنِّسَاءِ نَصِيبٌ مِّمَّا تَرَكَ الْوَالِدَانِ وَالْأَقْرَبُونَ مِمَّا قَدَرْتُمْ حَقًّا وَلَا يَجْرِمُ ذَلِكَ الْجَنَاحَ وَلَا يَجْرِمُ ذَلِكَ الْجَنَاحَ وَلَا يَجْرِمُ ذَلِكَ الْجَنَاحَ

Translation:

For men there is a share of the inheritance of their mothers and relatives, and for women there is a share of the inheritance of their mothers and relatives, either small or large according to the predetermined part.

c. *Abandoned/leave*, as in Surah al-Nahl /16: 61

وَلَوْ يُؤَاخِذُ اللَّهُ النَّاسَ بِظُلْمِهِمْ مَا تَرَكَ عَلَيْهَا مِنْ دَابَّةٍ وَلَكِنْ يُؤَخِّرُهُمْ إِلَىٰ أَجَلٍ مُّسَمًّى فَإِذَا جَاءَ أَجْلُهُمْ لَا يَسْتَفِيدُونَ سَاعَةً وَلَا يَسْتَفِيدُونَ

Translation:

If God punishes a man for his tyranny, he will not leave anything on the face of the earth that creeps, but he defers them for a specified term. And when their term has come, they will not remain behind an hour, nor will they precede.

Inheritance Principles

Of inheritance of the law of inheritance which is the law derived from the Qur'an and the hadith of the prophet. which are then developed in detail by the mujtahid clerics (jurisprudents) through the result of their *ijtihad* according to the space and time, the conditions and conditions of their place of worship. The results of the *ijtihad* were then poured into the Islamic Law Compilation (KHI) and clarified in the Technical and Technical Administrative Technical Guidelines (Supreme Court of the Republic of Indonesia, 2014), as follows:

a. *Ijbari*

Word *Ijbari* is compulsory. The element of *ijbari* is seen when the transfer of property from the heir to his heirs is not a single force that can change it by way of entering another person or issuing the rightful person and the beneficiary shall receive the transfer of the inheritance inheritance inheritance to him in accordance with the amount set by Allah swt. or according to agreement outside his own will.

b. *Bilateral*

Basis The basis of bilateral law in Islamic inheritance law means that heritage property turns to her heirs through two directions (both sides).

c. *Individual*

Basis of individual is formed by itself in the basis of inheritance, since every inheritance property that is shared to each of the beneficiaries is certainly owned individually or individually.

d. *Balanced Justice*

Means that there should always be a balance between rights and obligations, among which one obtains the obligation that must be fulfilled.

e. *The heir is the basis of death.*

This principle signals that a person's property can not be transferred to another person (family) by the name of inheritance, either directly or after death, as long as the property owner is still alive.

f. *The direct beneficiary's foundation and the successor base of the successor heirs*

- 1) The immediate heirs are heirs caused by blood ties or the relationship of marriage (KHI article 174 paragraph 1 letter a).
- 2) The successor heirs are the beneficiaries governed in KHI article 185 paragraph 1 being the heirs of the successor / descendant of the heirs mentioned in KHI article 174 paragraph 1 letter a.

g. Blood relations

Basic relationship of blood, ie blood relations due to legal marriage, subhat marriage and upon child confession (basic Islamic fiqh). (Supreme Court of the Republic of Indonesia, 2014) With this foundation, the child born out of wedlock is accommodated.

h. *Wajibah* will

The adoptive father and step father can make a will on their property. When there is no will of the adopted child to the adoptive father or vice versa, then the adoptive father and / or adoption of obligatory will be given by the religious court *ex officio* by 1/3 part of heritage property (KHI section 209).

i. Egalitarian

People who have kinship because of blood relations, but because he embraces religion other than Islam, he gets a mandatory will of a sum of 1/3 part, and should not exceed his equal heirs. (Jurisprudence)

j. Retroactive limited

Islamic Law Compilation (KHI) does not apply retroactively in the sense that inheritance rights have been shared in real time before KHI is imposed, then a family with a replacement heir can not file a lawsuit. However, if the heritage property has not been shared in real terms and the heir died before KHI was born, then KHI itself retroactive.

The Tendency of Muslim Communities in Makassar City in The Distribution of Inheritance

The Makassar city community in the distribution of inheritance is more likely to resolve by deliberation. The tendency of society is influenced by ualma advice.

According to AG. Dr. (HC) H.Sanusi Baco, Lc (2019) best inheritance solution is through deliberation, as he states:

"I see that the knowledgeable person brings his inheritance to the court, being a valuation .. I usually advise people, if still can be resolved in a deliberate, *unpredictable manner*, I'm sorry, agree, because it is *my intention to fight against the courts*. "

Even though he did not elaborate in detail the tendency of society, he saw that society would give a negative assessment of educated people who brought and paraded the legacy in court. To avoid such judgments, they are trying to resolve themselves by using the Islamic inheritance rules or by the way they share their agreements.

According to Dr. H. Hamzah Harun, Lc., MA. (2019) sometimes the *nash* is enforced when it is necessary to see the benefits of each, if there is no agreement of each heirs, then it must be done according to the rules of *nash* and that is the *nash* that becomes the solution.

What has been suggested by H. Hamzah Harun shows that Allah swt. actually want the life and behavior of mankind to always bring and achieve good. To realize that desire, then Allah swt. giving human guidance or rules and the ability to achieve the benefits of life, specialized in the field of inheritance. But if the human ability is difficult to achieve

the benefits, then they are required to use the rules that have been set by Allah and His Apostle in the Qur'an and Hadith.

According to Dr. H. Baharuddin HS., MA (2019)

We are rarely in Sul-Sel, especially in Bugis who make division with rules. It seems, it's been arranged before the parents died. There is some kind of messages, the fact that I see, for example, one who died whether mother or father, that property is not divided, that is to say that if we die, there is still our mother, no need to be questioned. Soon neither child can share it or have it. It means that if the father dies as if the property is mastered by the mother, then vice versa.

H. Baharuddin statement based on what he experienced and looked at in the community, especially the Bugis tribe, showed that they (children) were very respectful and obedient to the attitudes and behaviors of parents towards them, even though the message was not spoken and written, but because it has become a perpetual understanding among them. Although some of them have had higher education and are well aware of the rules of Islamic heritage. In view of the habit of the bastard made by H. Baharuddin, surely there must be some who understand that if a person dies and leaves the property, his property changes ownership to his heirs, based on the principle of *ijbari* principle in Islamic law of inheritance. But they do not do it, because they prefer the attitude of *tawadhu* and respect the parents rather than claiming the right that there is a rule in the teaching of religion.

Both of the above attitudes (respect for parents and demanding rights) each have the proposition in the religion of religion, so for those who are more inclined to wealth will certainly claim their rights, but those who are more blessed than others will surely pay their bounty and respectful of what parents designate.

The observation results of HM Ruslan (2019) states that inheritance parishes in the community are divided into two, some who use customary or cultural ways that live in certain societies, and some also accomplish their lordship by way of deliberation with consideration of human values, values of togetherness and family values by keeping pace with the rules of Islamic heritage. However, if there is a conflict between the inheritance law and the negative effects that may arise, the rule may be contextualized in order to realize the benefit of the community.

H. Abd. Kadir Saile (2019) is in line with what was stated by H. Baharuddin HS. The general public knows that there is a rule of Islamic heritage especially the division of children 2: 1 by using the term already bugis in Bugis society "*mallempa oroane majjujung makkunraie*", although they are more likely to obey and obey the message of people (*there are nataro tomatoe*) heritage property based on the parents' message or based on the conclusion of the heirs.

Prof. Dr. Hj. Andi Rasdiyanah (2019) sees that people are basically applying the law of Islamic heritage, but in practice the emergence of an affair is an agreement. Because they will have difficulty if you want to apply the exact numbers, eg 2: 1. If a parent has been preparing the property for his children in various forms, there is a residential or garden land, there is a house and so forth. If this property is to be divided according to the rules, then it must be calculated first of course the land area, land value, building value and so on. So they will have trouble sharing it, here is a deal required. Boys, for example, get more

parts of their sisters, but not fit 2: 1. It can be said that the 2: 1 inheritance has been fulfilled.

AG. Dra. H. Muhammad Ahmad (2019) is among the Muslim community of Makassar who does not feel that it is important to complete the division of heritage, so that the heritage property left by its inheritors becomes unclear can even be that heritage property has been mixed up with the property of the heirs who inherited the inheritance that is. Another heir is also no attempt to solve it, just for stories distributed to his children. The stories will then be the seeds of disagreement that leads to the prosecution of the heritage of his parents from his grandfather, what if his parents first died from other heirs.

According to Prof. Dr. H. Arifuddin Ahmad, M.Ag. (2019) shows that in general, the Bugis-Makassar community, the majority of Makassar residents, is still more likely to settle their heritage property by way of grants or deliberations, rather than litigation. They think that litigation requires a great deal, which can be the cost of the case more than the wealth they have earned, and they are even more concerned with the integrity of family relationships. Raising the heritage property in the court meant breaking the integrity and family relationships between them.

To avoid the disagreement among his children, most Bugis-Makassar people took the grant way, by sharing his wealth to his children before he died and separated a little for his needs. The abandoned property is usually agreed upon to the child who nurtures and carries the parents until death.

According to H. Jalaluddin Sanusi (2019), there is a tradition or custom of society that needs to be rectified, because it is not in accordance with the rules of inheritance that is not included or occupied by the heirs as heirs. The inclusion of the heirs of the heir as a heir may be because they do not know and may also because they deliberately do not include it because they assume that the heir has a son. He also reminds him to give a good and clear understanding to heirs who wish to settle his inheritance through way of deliberation. The settlement through a new deliberation can be justified or admitted, if before divesting the heritage property all heirs know and are aware of their respective sections under the Islamic ruling law rules, then they may be allowed to divide their inheritance based on the deliberations. It is necessary to do so in the future there is no one among the heirs who feel regret and feel disadvantaged.

What the AG stated. H. Jalaluddin Sanusi is in line with what the mediators and judges are practicing in the Religious Courts, as Dra. Hj. Nadira Basir, SH., MH. (2019) one of the judges at the same time as a mediator:

Every case of inheritance belongs to the Religious Court of Makassar, we always take the lead in arbitration or mediation. we are working to provide a comprehensive understanding of the subject of the two parties involved in the pursuit of peace between the two parties. Of course, what we try to do is work and there is something that does not work and there are some who are reconciled at the trial.

In the event of a peaceful settlement between the litigants, they would have the privilege of dividing their heritage property in their own way, after which it was reported to the mediator to make a written statement of peace signed by the litigant party. The

declaration of the peace may be presented in advance of the trial or may also be included in the verdict upon the request of the litigant and punish both parties in order to comply with the agreed peace agreements.

According to Drs. Muh. Arief Musi, SH, (2019) one of the Makassar Religious Court judges stated that;

The courts today have assumed that the best verdict is the verdict of peace.

The verdict born of the Religious Court from the mediation effort is the best way to reach an agreement or compromise, even if the compromise is reached in a non-law manner and beyond the nash of the Qur'an and the Prophet's hadith.

However, if the decision of the peace dispute through a court judge if not implemented implies execution. If the court ruling has been lawful and has no legal remedies committed by the losing party and refuses to execute the decision, the Religious Court executes direct execution or execution by selling the disputed property with the auctioneer's office. The proceeds of the sale are then distributed by the court to the heirs.

Accordingly, the Religious Courts in resolving the case of inheritance more emphasize on peaceful settlement, in accordance with article 183 KHI. Peace efforts are done not only at the mediation stage, but if the case reaches a stage of the trial then the judge continues to actively seek as much as possible to reconcile. The form of peace was handed over to both parties to agree on it.

Thus the completion of a courtesy matter filed in a religious court will allow the creation of two options for settlement: *First*, the completion of inheritance matters only at the mediation level or not at the conference table. *Second*, the solution of inheritance by court decision.

From the above description shows that religious leaders, law practitioners and societies are more concerned with the completion of the inheritance division based on the consensus agreement. Thus, existing inheritance rules need to be added to the articles, specifically to regulate the legacy mechanisms by means of deliberation. The rules are necessary to prevent deliberate decisions because of the significant influence of a person involved in decision making.

The mechanism of inheritance distribution by means of deliberation is as follows:

1. Assignment / Presence of heirs according to law
2. Legacy property is displayed in front of heirs transparently
3. Explanation of the part of each heirs according to law
- 4 Offer to the beneficiary of the distribution mechanism to be used.
5. The outcome of the contract is signed by heirs and witnesses.

Point 1 above which many people abandoned, especially the heirs of the parent group of the heirs. The parent of the heirs of the deceased is not included in the heirs because of his wife or husband and children. In fact, in KHI article 174 verse 1.a clearly stated that father and mother as heirs based on blood relation, even in verse 2 article 174 more asserted that although all heirs there, then entitled to inheritance only: child, father, mother, widows and widowers.

His highest value in the completion of a heritage case is the creation of inheritance with agreement, compromise, good, peaceful and harmonious among heirs. This is a solution through non litigation, as well as if a court decision reinforces the result of a heir agreement. and if a court decision becomes the basis of completion of inheritance, then settlement through a litigation line.

Conclusion

The Muslim community of Makassar tends to put forward an agreement to keep the Islamic Law Compilation as a consideration in resolving the distribution of heritage, whether the division of inheritance is determined by the heirs themselves by means of deliberation or the determination of the division of property by the parents with their children as well as the determination the division of property and its submission made by his own parents during his life.

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