



The Priority Of Islamic Inheritance Distribution To Heirs In Order To Maintain Problems In The Family

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ABSTRACT

This article aims to describe the implementation of Islamic inheritance law and compare the application of Islamic inheritance law with customary inheritance law in the distribution of inheritance among muslim communities . The method used in analyzing these problems in a normative manner, namely describing the phenomenon of the implementation of the Islamic inheritance division which is currently still ruled out even though it is a priority for umat islam . The next stage is compare the implementation of the division of inheritance by using Islamic law or customary law. The findings stated that some of the residents in the three regions still maintain customary law in the division of inheritance, namely the transfer of inheritance occurs when the heir is still alive (Grant) and the same amount between male and female heirs or at will of the heir however, there are among the residents of the region who still maintain Islamic law in the division of inheritance, namely by dividing it after the Heir Dies.

INTRODUCTION

One form of effort and the answer to the complexity of the problems faced by Muslims today, is to re-actualize the teachings of Islam. Reactualization of Islamic teachings is defined as an effort that is driven by an objective assessment of the existing state of religion and is considered by Muslims to be unsatisfactory. Therefore, intensive excavation is needed for what is believed to be the correct Islamic standards, in order to be guided in adapting to the context of society now that continues to change. This conception implies that the present interpretation of the teachings of Islam comes from an attempt to adapt these teachings to past situations. The interpretation is now felt to have been too heavily squeezed by historical and cultural

burdens. Thus, reactualization means releasing the burdens of history and culture in order to be given a new alternative that is more responsive and contextual (Fikri,2016).

The main assumption of the reactualization of Islamic teachings in question is the issue of reactualization should it starts from the point of view of Islamic law. This is because Islamic law is very influential and effective in shaping the social order and community life of the Muslims. On the other hand, law is very important to understand the character and ethos of a nation. Laws reflect the soul of society much more clearly than any organization. this is true, not only of those laws that developed outside the context of Islamic Society, also against Islamic law. Sharia is the most central core of the teachings of Islam and it is not possible to

understand the culture, history, social and social order of Islam without understanding Sharia (Amir Mu'allim,2001)

Inheritance law according to BW known 2 kinds inheritance, namely inheritance law without a will (abintestato) and testamentary inheritance law (testaments). As in customary law, customary law is used for citizens Native Indonesia, namely the tribes living in Indonesia as well as the nature and legal system are quite diverse, in general, the nature and system of inheritance law custom is divided into 3 namely : patrilineal (according to the line father), matrilineal (maternal line), parental or bilateral (according to the maternal line- father).

Customary inheritance law is the law make lines of provisions against legal system and principles of inheritance law, about inheritance, heirs and heirs, and by the way the inheritance was transferred possession of the owner from the heir to his heir. As for what is meant by the property is the property of the after his death, he inherited the property divided and the state has not been divided. That included in the traditional heritage property is inheritance, marital property, inherited property and the treasure of discovery.

Basically inheritance law used in Indonesia for every citizen Indonesia is :

- a. Customary law applies to Indonesians original where different kinds areas that still have something to do with family nature, namely the nature of the father and maternal nature.
- b. Inheritance rules for Islamic religious law it has a strong influence on native Indonesians in various regions.
- c. The inheritance law of Islam generally treated for people Arab.
- d. Buregerlijk Wetboek Inheritance Law, used for Chinese people.

As explained above, it is necessary to know that the legal regulation of inheritance in Indonesia consists of 3 kinds, Customary Law, Islamic religious law and Wetboek Buregerlijk law (Soepomo,1993).

Currently we see that the problem of inheritance can damage family relationships even to the point of killing each other, it can also be because of economic problems or problems of desire more than the wasan treasure see this phenomenon the author is interested in writing artiekl with the title "priority of Islamic inheritance distribution to heirs in order to keep the problem in the family" this is studied because whatever the circumstances the community is obliged to uphold the Islamic secretariat in the division of inheritance to minimize the problem of inheritance (Warta Ekonomi,2019).

METHOD

This study employs normative legal methodologies. This study utilizes both primary and secondary legal resources. Through the study of literature, the technique for gathering legal materials is carried out. Normative research methods in which research begins with *das solen* (law on paper) and ends with *das sein* (law in actions). This research is classified as *ke* in normative legal research based on a literature review or a review of merely secondary sources. It is said to be normative because the law is assumed to be an autonomous entity whose enforceability is determined by the law itself and not by external factors. This research methodology employs the Statute and Conceptual approaches. Primer Legal Material, which is authoritative legal material, has authority in the form of laws and regulations relevant to this paper's discussion (Ariman Sitompul, 2022)

RESULTS AND DISCUSSION

The issue of inheritance is usually a source of disagreement in the family, especially related to the provisions regarding who is entitled and who is not entitled and the provisions regarding their respective parts so as not to trigger disputes that can eventually lead to a rupture of family ties referring to the reality that Islamic inheritance law systematically arranges so that whoever is related in the context of rights should act fairly by providing provisions for their respective parts (Darmawan,2014).

Before Islam, the Arabs only gave inheritance to men while women did not get it for those who were adults, kids don't get it anyway. In addition, there are also heirs based on the agreement. So God canceled it all and sent down the word- He said: "Allah has prescribed for you the division of inheritance for your children." The portion of a son is equal to the portion of two daughters; and if there is more than one female, they shall have two-thirds of what is left; if there is only one female, she shall have half treasure. And for two parents, for each one a sixth of what is left, if the deceased has children; and if the deceased has no children, and his parents inherit him, then his mother gets a third; and if the deceased has Brothers, then his mother gets a sixth. After the bequest he has made has been fulfilled, or after his debt has been repaid (Sayid Sabiq,1998).

The important thing is that the pillars of inheritance :

- a. Al-muwarriš (heir), that is, the one who bequeaths and who dies. Whether a person

- dies legally or because of a judge's decision, a person is declared dead based on cause.
- b. Al-mauruś (inheritance), the legacy of the deceased to be inherited after deducting the cost of care of the body, debt, zakat, and after being used to execute a will. The estate is also called miraś, irś, turaś, and tirkah. Map or the right transferred to the heirs of the bequeathed person.
 - c. Al-wariś (heir) is a person who will be inherited who has a relationship with al-muwarriś whether the relationship is due to kinship (lineage) or marriage.

Inheritance law in customary law is always meant a series of regulations regulate the transfer of heritage or inherited property from one generation to another others, both about material and immaterial objects. At the same time shows that the process of inheritance does not have to take place in an atmosphere of death. It means that customary inheritance law also includes the issue of actions regarding the allocation of property things that happen when a person is alive (Bushar Muhammad,2002).

The fact that the contextualization of inheritance law in society, death is not one of the conditions to carry out the transfer of inheritance. The finding as differentiation in the implementation of customary inheritance law with Islamic inheritance law. Transition of property in Islamic inheritance law, when the heir is still alive is called a grant, but gradually the grant was eventually transformed into an inheritance when the heir died.

A grant is a legal act in customary inheritance law, when someone gives a certain part or part of the inheritance to a certain person. With a note that the share does not exceed one third of all his property. A particular person in customary inheritance law is a person who does not belong to the heirs of family members.

Thus, in customary inheritance law, a person can receive inherited property even though he is not an heir according to lineage. However, the application of inheritance law such a custom in relation to the current context, can no longer be found in the midst of people's lives. In Bugis society, there is no longer the fact that other people live together with other family members. The variety of family members in Bugis society, formed or built in small families. In customary law, the family group is called Gezin which consists of father, mother and child.

Of all the laws that exist and apply today in addition to marriage law, inheritance law is part of family law which plays a very important role, even

determining and reflecting the system and form of law in force in society. This is because the law of inheritance is so closely related to the scope of human life that every human being will inevitably experience an event, which is a common legal event called death (M. IdrisRamulyo,1984).

The form of inheritance or heritage according to Islamic law is very different from the form of inheritance according to Western law as regulated in BW and customary inheritance law. Inheritance or inheritance by law Islam is "a number of property and all rights of the deceased in a clean state". This means that the legacy inherited by the heirs is a number of assets and all rights, "after being reduced by payment of the debts of the testator and other payments resulting from the death of sipeninggal heirs (Eman Suparman,2007).

Basically the law of inheritance in Islam applies to all Muslims around the world. However, the character of an Islamic State and life in that country or region have different influences on inheritance law, this is due to several factors, including:

- a. Although Islam has basically set the legal basis in the Qur'an, there is a clear understanding of the nature of the Prophet (peace and blessings of Allaah be upon him). However, in terms of practical implementation there are problems that are contained in the Qur'an and have not been explained by the Prophet, so that the law becomes open.
- b. That the science of law including Islamic law, where inheritance law is in it, is classified as a social science and not an exact science. Therefore, inheritance law places the possibility of differences of opinion among the jurists themselves, especially regarding verses that allow for more interpretations than that.

Inheritance law according to BW applies the principle: "when a person dies, then immediately all rights and obligations pass to his heirs". The rights and obligations referred to, which pass to the heirs adalam include the scope of property or just rights and obligations which can be judged by money.

Characteristics of Western civil inheritance law or BW include: the right absolute of the respective heirs to at any time demand division of inheritance. This means that if an heir demands division of property in court, then the claim is, can not be rejected by other heirs. This is based on the provisions of Article 1066 BW as follows(A. Pitlo,1979):

- a. Someone who has the right to a portion of the legacy can not be forced to let the legacy

property in the state is not divided among the existing heirs.

- b. Distribution of heritage property can always be prosecuted even though there's a treaty that prohibits that.
- c. Agreement on the suspension of the division of heritage dpat just done just some specific time.
- d. The division suspension agreement is only binding for five year, but can be renewed if still desired by the parties

In the civil code in Indonesia there are two ways in order to obtain the inheritance, namely

- a. As heir under the provisions of the Act (ab intestato)
- b. Because a person is appointed in a will (testamentair)

Article 834 BW reveals that an heir has the right to demand everything including inheritance to be handed over to him, based on his rights as an heir. The owner of the right is referred to as similar to the right of an object owner.

The right to sue the heir is only limited to someone who controls an inheritance with the intention of owning it. So, this prosecution cannot be made against the execution of a will (executeur testamentair), a curator of an unmanaged estate and a tenant of an inherited object (Ibrahim Hosen,tt).

Heirs according to the laws and regulations, namely the wife or husband who is abandoned and the legal or illegitimate family of the testator. Heirs according to legal regulations or heirs ab intesto based on blood relations there are how many groups as follows (Surini Ahlan Sjarif dan Nurul Elmiyah,tt):

- a. The first group is families in a straight line down, includes children and their descendants and husband and / or wife abandoned/who lived the longest. The husband or wife who lives the longest recognized as heirs in 1935, while the previous husband/wife they don't inherit from each other. Part of the first group that includes family members in a straight line down, namely children and their descendants, widows and / or the one who is left behind, the one who is left behind, the one who is left behind, the one who is left behind equal parts. Therefore, if there are four children and a widow each of them was entitled to a fifth of the inheritance. When one of the children has died ahead of the heir but has five children, namely grandchildren perwaris, then part of the child one-fifth is divided among his sons who took his place his father

who had died (in the inheritance law system called BW plaatsvervulling and in the Islamic inheritance law system called the successor heirs and in customary inheritance law called pasembei heirs) so that each- each grandchild gets one-fifth of the share. It is different if a father died and left heirs consisting of a son and three grandchildren, then the rights of grandchildren hindered daari children (children close their children to to be an heir.)

- b. The second group is families in a straight line up, includes parents and siblings, both men and women, as well as his descendants. For parents there are special rules that guarantee that their share will not be less than a quarter of the inheritance, even if they become heirs together with the heir brother. Therefore when there are three brothers who become members of warris together with father and mother, then the father and mother will each get a quarter part of the entire estate, while half of the estate will inherited by three brothers each one-sixth of the share.

If the mother or father of one of them has died, the one who lives the longest will get the following: Half of the estate, if he bequeaths jointly with a brother, whether male or female, is equal; one-third of the estate, if he bequeaths jointly with two brothers of the testator and one-fourth of the estate, if he bequeaths jointly with three or more brothers of the testator.

CONCLUSION

Islamic law has laid down the rules of inheritance and the law regarding property with the best and most just. Because Islam stipulates a person's right to property, both men and women, such as the transfer of property to his heirs after he dies. In Islamic law the distribution of inheritance will be divided after the net of the management of the body, debt, zakat and Testament, the debts of the heir as a liability of inheritance. Similarly, in terms of the share of each heir, in Islamic law distinguishes the share of heirs between men and women. so that the Islamic law of inheritance for Muslims is a means of building a good sense of kinship so that it is a top priority in the division of inheritance.

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