

Review of Inheritance Law in the Perspective of a Compilation of Islamic Law

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Abstract. Sharia law teaches about the individual principle, which means that each heir is entitled to the share he gets without having to be related to other heirs. Especially for heirs who obtain inherited assets before they are adults or are unable to act in carrying out their rights and obligations over the assets they obtain from inheritance, then the guardian is appointed as guardian based on a judge's decision or a suggestion from a family member. People who have inheritance law problems can prioritize non-litigation channels (mediation or negotiation) before rashly filing a lawsuit in court. This type of research is Normative research. This research resulted in the finding that inheritance is a topic that is often discussed and almost everyone experiences it. Islamic law establishes inheritance rules in a very regular and fair. Islamic regulation likewise specifies the option to move responsibility for individual after death to his beneficiaries, from every one of his family members and genealogies, without recognizing people, large or little. The Qur'an explains and details in detail the laws relating to inheritance rights without ignoring anyone's rights. The portions that must be received are all explained according to the lineage position of the heir. The consideration of substitute beneficiaries in the gathering of Islamic regulation to satisfy a feeling of legitimate equity.

Keywords: Legal Review, Inheritance Law, Compilation of Islamic Law

1 Introduction

The Indonesian state has regulated inheritance issues in the Compilation of Islamic Law (KHI) book II articles 171-193. These articles explain the meaning of inheritance, the terms of inheritance, and the parts of each heir. In the Aggregation of Islamic Regulation, Article 176 makes sense of the offer that young men and young ladies get. It is expressed in the article that: " If by some stroke of good luck one little girl gets part of the legacy, however on the off chance that there are at least two girls, they share 66%, and assuming the girl is along with the child, the young men are two to one with the young ladies' portion." Article 176 directs the piece acquired by children and girls who stick to the Expression of Allah Q.S An-Nisa section 11. In the mean time in the Aggregation of Islamic Regulation Article 183 makes sense of harmony which peruses: " The main beneficiaries can consent to wipe the slate clean in the conveyance of property legacy, after they each understand their portion"[1].

Sharia law teaches about the individual principle, which means that each heir is entitled to the share he gets without having to be related to other heirs. Therefore, the shares obtained

by the heirs are owned separately so that they can freely determine the shares obtained by each heir. This principle, in the Compilation of Islamic Law, is reflected in the articles regarding the size of the heir's share, in chapter III, Article 176 to Article 180. Especially for heirs who obtain inherited assets before they are adults or are unable to act in carrying out their rights and obligations over the assets they obtain from inheritance, then the guardian is appointed as guardian based on a judge's decision or a suggestion from a family member. People who have inheritance law problems can prioritize non-litigation channels (mediation or negotiation) before rashly filing a lawsuit in court. This is on the grounds that legacy regulation is one piece of common regulation overall and is the littlest piece of family regulation. Legacy regulation is firmly connected with the human circle. This is because if there is life there must be death. Discussion of inheritance can arise and exist because of death, if there is no death then inheritance law will never exist [2].

Inheritance law is essentially the law that regulates the transfer of rights and ownership of deceased assets, determining who has the right to be heirs and their respective parts. From this understanding, it can be seen that the substance of inheritance law, including Islamic inheritance, is to regulate the transfer of property rights from the dead to heirs. In Islamic jurisprudence literature, Islamic inheritance law is known by several names or designations, namely inheritance law, *faraid* law, and *al-mirats* law. This division of inheritance has the aim of ensuring that people who have been left behind do not cause quarrels and disputes. The chronology of the determination of inheritance law originates from events experienced by Umm Saad, who was an orphan. His father, Saad bin Rabi, was martyred in the Battle of Uhud. He was born a few months later.

Islamic inheritance law has been regulated in such a way in the Al-Quran, including in Surah Al-Nisa (4): 7, 8, 9, 10, 11, 12, 33, and 176. Compared with other verses of the Al-Quran, these verses on inheritance law are the most explicit and detailed legal verses in their content. Determining who has the right to be an heir and when inheritance assets (Tirzah) can be divided. In the Compilation of Islamic Law (KHI), it is stated that "Inheritance Law is the law that regulates the transfer of the rights of the owner of inherited property (tirzah) to heirs, determining who has the right to be an heir and how much each person shares." Meanwhile, the meaning of Islamic Inheritance Law according to Prof. Dr. Syarifudin can be interpreted as "a set of written regulations based on the revelation of Allah and the Sunnah of the Prophet regarding the transfer of assets or tangible assets from the dead to the living, which are recognized and believed to be valid and binding for all Muslims [3].

Sharia law is the law that regulates the transfer of assets left behind by someone who dies, which is called inheritance. The distribution of Islamic inheritance has been determined in the Koran, and provisions regarding the share of assets of heirs have been determined based on the concept of justice. In this way, the inheritance does not fall on one person, but all the heirs left behind. The distribution of each heir, whether male or female, has been determined. However, the amount of inheritance rights they must obtain is not stated. In the dissemination of legacy, it is contained in Surah An-Nisa section 11 "Allah has endorsed for you in regards to (conveyance of legacy to) your kids. Namely: the portion of one child is equivalent to the portion of two kids female; furthermore, in the event that every one of the kids are multiple little girls, for them 66% of the property is abandoned; In the event that there is just a single little girl, she gets a portion of the property. also, for two guardians, for every one of them one-6th of the property abandoned, assuming the departed has youngsters; assuming that the individual who bites the dust has no youngsters and he is acquired by his folks (just), then the mother gets 33%; in the event that the departed has a few kin, the mother gets one-6th. (The disseminations referenced above) in the wake of satisfying the will he made or (and) subsequent to paying his

obligations? (As to) guardians and your kids, you don't know which of them is nearer (of much) advantage to you. This is a declaration from Allah. To be sure, Allah is Omniscient, All-Wise." 122 QS[4]. *Surah An-Nisa* verse 11 stipulates that the share of men is twice as large as the share of women, because women get property from their husbands and parents. Therefore, comparing two parts with one part is not an absolute calculation that is considered unfair, but rather a balance of rights between men and women.

The transfer of assets that are transferred in Islamic law can be automatic or non-automatic. These provisions have been regulated in the Koran, among others, namely grants, wills, endowments, alms, and inheritance. All these provisions are contained in the correct text and aim to provide an easy way out for humans towards a happy life *fi al-dunya wa al-akhirah*. One of the provisions contained in the text of the Koran which discusses the issue of transferring assets from a person who dies to their heirs is called Islamic inheritance law. Islamic inheritance law is one of the important issues in Islam and is a pillar between pillars of law which is reflected directly from sacred texts whose existence has been agreed upon. One thing that cannot be denied is that the existence of Islamic inheritance law is presented in detailed, systematic, concrete, and realistic texts.

Inheritance is a subject that is often discussed and almost everyone experiences it. The Koran talks a lot about this, of all the laws that apply in society, inheritance reflects the family system. Therefore, the science of inheritance must be known by every human being, especially Muslims, because Islam has explained in detail the science of inheritance. Islamic law establishes inheritance rules in a very regular and fair form, property ownership for every human being, both men and women, in a legal manner. Islamic regulation likewise specifies the option to move responsibility for individual after death to his beneficiaries, from every one of his family members and genealogies, without recognizing people, large or little. The Qur'an explains and details in detail the laws relating to inheritance rights without ignoring anyone's rights. The portions that must be received are all explained by the lineage position of the heir [5].

In Islamic law, inheritance law occupies a very important place. Al-Quran verses regulate inheritance law clearly and in detail. Understandably, everyone experiences inheritance problems. Apart from that, the law of direct inheritance concerns property. If provisions are not provided, it is very easy to cause disputes between heirs. In Islamic inheritance law, it is not yet implemented or is not even implemented in some areas. They are more likely to follow their traditional customary inheritance laws. Assuming they utilize Islamic dispersion, it is expected that it could cause questions between individual beneficiaries, and it is even expected that they could challenge the aftereffects of the circulation of legacy. Legacy regulation is essential for family regulation which assumes a significant part, in any event, deciding and mirroring the family framework that applies in the public eye. Legacy regulation is firmly connected with human existence since it is connected with riches and one individual to another. Death or passing away is an event that a person will experience because death is the end of a human's life journey [6].

2 Methodology

This type of research is Normative research. The approaches used are a statutory approach and a conceptual approach. The data source used is secondary data. Data analysis was carried out descriptively and qualitatively [7]. Conclusions are drawn using a deductive method,

namely concluding from general to specific, especially those related to the research topic, namely Review of Inheritance Law from the Compilation of Islamic Law. Qualitative data analysis is carried out if the data is empirical and is obtained in the form of a collection of words and not a series of numbers and cannot be arranged into categories. Data can be collected in various ways (interview observations, document instances, and recording tapes). It is usually processed first before being used in qualitative research, counting the aftereffects of interview records, information decrease, investigation, information translation, and triangulation.[8].

3 Results and Discussion

3.1 Form of Review of Inheritance Law from the Perspective of the Compilation of Islamic Law

In reality, inheritance is experiencing significant development, due to society's increasingly complex needs and patterns of thinking that can change according to developments over time. Among them is Islamic inheritance law which is experiencing development with the existence of replacement heirs, the implementation of which in Indonesia is regulated by the Compilation of Islamic Law (KHI). The Civil Code is strictly regulated regarding the replacement of the place of heir (*plaatsvervulling*). In the Qur'an, the term replacement heir is not known, but their position as heirs can be known through the expansion of the definition of the direct heir as explained in the Qur'an. Regarding the extent of their position as heirs about the direct heirs they replace, both in terms of the share they receive and in terms of the strength of their position, there is no definite guidance in the Al-Qur'an or strong Hadith. In this case, God leaves it to humans to determine the law.

So the replacement heir's share is as large as the share of the heir he replaces, for this reason, replacement heirs need to be developed in Islamic inheritance law. Moreover, this will not harm other heirs. It is believed by some parties that Islamic law does not recognize substitute heirs in inheritance law. This is deemed unfair if it is related to a grandson replacing his parents and taking his parents' place as their child, a nephew replacing his parents and taking his parents' place as their sibling, cousins replace their parents and take their parents' place as their uncles, and so on. In Islamic inheritance law, there are substitute heirs, which in several respects differ from the replacement of heirs (*plaatsvervulling*) in the Civil Code's inheritance law. To clarify the above, further research is needed limited to a comparison between Islamic inheritance law and the Civil Code inheritance law regarding replacement heirs, this is not due to the lack of value of customary inheritance law in Indonesia.

Islamic legacy regulation applies to Muslims anyplace on the planet, however the attributes of an Islamic nation and the existence of individuals in that nation or district impact legacy regulation around there. This impact is a restricted impact that can't go past the principal lines of the arrangements of Islamic legacy regulation. However, this influence can occur in parts that originate from *ijtihad* or the opinions of Islamic legal experts themselves. Indonesia is a country where the majority of the population is Muslim and uses the Koran as a source of legal rules in everyday life, regardless of the form of the country. which is not based on religion, and for Muslims implementing the

Shari'ah designated by authentic texts is mandatory, therefore the implementation of inheritance based on Islamic inheritance law is mandatory.

As society develops, to answer legal needs, the law is also required to be able to keep up with social changes. As is the rule of jurisprudence, various existing teachings and situations cause differences in decision-making, so it is understood that there is a need for regulations that accommodate differences of opinion in a legal unification and to provide legal certainty. The Assemblage of Islamic Regulation (KHI) is available in Indonesian regulation through the legitimate instrument Official Guidance (Inpres) number 1 of 1991 dated 10 June 1991, then further with the Pronouncement of the Pastor of Religion of the Republic of Indonesia No. 154 of 1991 dated 22 July 1991.

3.2 The Urgency of Reviewing Inheritance Law in the Perspective of the Compilation of Islamic Law

The Compilation of Islamic Law (KHI) was agreed to be a guideline for cases in Religious Courts, which regulate matters of marriage, inheritance, and waqf, this was done to make it easier for judges to obtain references. Thus, the Compilation of Islamic Law (KHI) has become a form of legal unification in the Religious Courts. The Compilation of Islamic Law (KHI) is indeed a form of unification of existing Islamic family law, but several articles contain updates to inheritance law. In this case, the researcher took one of the articles, namely Article 185 of the Compilation of Islamic Law (KHI), which discusses the issue of replacement heirs. By giving inheritance to grandchildren or relatives whose parents have died before the testator, the aim is to ensure the survival of the heir, saving descendants from misery. Substitute heirs in Islamic inheritance law are to complement existing laws and also aim to seek a sense of justice for heirs. Substitute heirs are heirs due to a change of position [5].

Even though the Qur'an has determined in detail the share of certain heirs, there are still differences of opinion among fuqaha (*fiqh* legal experts). Differences of opinion only arise if an issue is not or is not regulated in the Qur'an. In terms of the position of a grandson. The Qur'an does not specify the grandchildren's share of their grandfather's or grandmother's inheritance. In its development, the issue of a grandson's position has given rise to problems, namely whether or not the replacement heir system is known in Islamic inheritance law. If a person dies leaving behind a son and two grandsons from the sons, then the entire inheritance goes to the sons, while the two grandchildren do not receive an inheritance because they are obstructed (*hijab*) by the sons. Because of this very unfair situation, the law treats this disappointment with what is called a mandatory will. The *Wajibah* Wills Institution is implemented in Egypt, namely in the Egyptian Wills Law number 71 of 1946[9].

Renewal of Islamic law, especially the issue of successor heirs, someone who dies first and is replaced by his descendants, in this case, the child, to receive the inheritance from his grandfather. The inclusion of substitute heirs in the compilation of Islamic law to fulfill a sense of legal justice. Compilation of Islamic Law in Book II concerning inheritance. Article 185 paragraph (1) regulates that heirs who die before the heir can be replaced by their children, except for those who cannot become heirs because they are punished based on a court decision that has legal force. remains as stated in Article 173 of the Compilation of Islamic Law. In this case, there is no explicit explanation as to who the heirs who can be replaced are.

Inheritance is a legal fact, not a legal act such as wills and gifts because only legal acts can be carried out based on Islamic law or others. As a legal fact, inheritance has legal consequences, which means that resolving inheritance issues should have no choice for Muslims except based on Islamic inheritance law. Thus, inheritance can be said to be a set of regulations that regulate the rights and obligations of a person who has died by heirs or other legal entities. The conditions and pillars of inheritance in Islamic inheritance law for recipients of inherited assets are based on the principle of *ijbāri* which states that the heir must give two-thirds of his *tirkah* to the heirs, while for the other third, the heir can make a will to give the inheritance to whom he wishes as *taqarrub* and hope for a reward from Allah SWT, without depending on the will of anyone, either the heir or the heirs. The principle of *ijbāri* also means: 1) the transfer of assets is certain to occur after the "*Mawāris*" dies, 2) the amount of assets has been determined for each heir, 3) the people who will receive the inheritance have been determined with certainty, namely those who are related by blood and marriage [5].

According to Islamic inheritance law, the transfer of a person's assets to another person by inheritance takes effect after the person who owns the assets dies. Thus, there is no distribution of inheritance as long as the heir is still alive, either directly or indirectly. In inheritance law, a principle applies, if someone dies, then immediately all rights and obligations are transferred to all his heirs. The Al-Qur'an and Al-Sunnah are sources that are considered sufficient to provide legal guidelines relating to the social life of a Muslim, especially in the field of inheritance. However, dynamic human life requires laws that can change with changes in social conditions that exist in people's lives. For this reason, efforts are needed that allow different situations to be handled and enable Muslims to create new laws that are relevant to their needs. Indeed, changes in time do not always require changes in the law. When considerations of benefit do not require this, one aspect of inheritance matters[2].

4 Conclusion

1. In Islamic law, inheritance law occupies a very important place. Al-Quran verses regulate inheritance law clearly and in detail. Understandably, everyone experiences inheritance problems. Apart from that, the law of direct inheritance concerns property. If provisions are not provided, it is very easy to cause disputes between heirs.
2. As society develops, to answer legal needs, the law is also required to keep up with social changes. As is the rule of jurisprudence, various existing teachings and situations cause differences in decision-making, so it is understood that there is a need for regulations that accommodate differences of opinion in a legal unification and to provide legal certainty.
3. Legacy regulation is basically the law that directs the exchange of freedoms and ownership of deceased assets, determining who has the right to be an heir and their respective parts. From this understanding, the substance of inheritance law, including Islamic inheritance, is to direct the exchange of property privileges from the dead to main beneficiaries.

5 Suggestion

1. Replacement heirs have been formulated in the Compilation of Islamic Law, but to strengthen their position, they need to be upgraded to a law, namely the Law on National Inheritance Law.
2. It is hoped that in the future more in-depth research can be carried out regarding inheritance law which is growing and developing in Indonesian society to realize the unification of National Inheritance Law.
3. Islamic inheritance law is one of the important issues in Islam and is a pillar between pillars of law which is reflected directly from sacred texts whose existence has been agreed upon. One thing that cannot be denied is that the existence of Islamic inheritance law is presented in detailed, systematic, concrete, and realistic texts. Inheritance is a subject that is often discussed, and almost everyone experiences it.

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