



# Urgency of Islamic Civil Law in Heritage Aspect

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## **Abstract**

This research was conducted in order to obtain information data about inheritance issues in Indonesia in the aspects of Islamic Civil Law, so that it can provide a correct understanding to the public about the urgency of the state in resolving inheritance problems. Islamic Civil Law in Indonesia is formulated in the Compilation of Islamic Law which is expected to accommodate all debates on inheritance issues, so that it can provide legal force in a juridical format and serve as guidelines in Indonesian law. This research also uses the literature study method in order to obtain data related to the problems studied. Research is expected to be a reference for readers to what extent the urgency of inheritance in Islam in order to provide rights based on the principle of justice.

**Keywords:** Inheritance, Mandatory Will, Civil Code, Islamic Law

## **1. Introduction**

Islam has a very broad teaching scope covering various aspects of life, both aspects of aqidah, sharia and morals. In the aspect of faith, Islam places belief in Allah as the most important branch of faith, while in the aspect of sharia it is a branch of faith in which it covers the problems of mahdhah and ghairah mahdhah worship. In the aspect of sharia, there is a term known as Islamic law which is used as formal law in Indonesia or known as a compilation of Indonesian Islamic law. One of the discussions in the compilation of Indonesian Islamic law is to discuss the issue of inheritance.

The problem of inheritance among Muslims, even though it has been regulated in the Criminal Code, has yet to be implemented among the Muslim community in Indonesia. Public awareness in the distribution of inheritance cannot be separated from the existence of cultural factors such as the matrilineal or patrilineal system which refers to customary law, so inheritance tends to be given based on local customs. For example, the matrilineal system adopted by the Minang tribe where the lineage of the mother has more rights than that of men. Because it is a problem in the inheritance system even though the state has formulated sharia law through the Criminal Code.

Normatively, Islamic law is one of the frameworks of worship and practicing it is a form of obedience and obedience of a Muslim to his God. Therefore, the 1945 Constitution has guaranteed every Indonesian people to carry out and practice Islam in a Kaaffah manner. (Suadi, 2015) The state has an obligation to regulate religious life in order to create peace, prosperity and tranquility in life. One of the state's efforts

in regulating religious matters is the formulation of Islamic civil law laws which regulate the procedures for marriage, divorce, waqf, inheritance and so on. In this case, the researcher will raise civil law issues related to inheritance problems because they are motivated by various problems in society in order to obtain solutions that have a positive impact on Muslims.

## 2. Approach Method

This research was conducted using the literature study method by searching for good data in the form of journals, books, monographs in order to obtain data related to this research. Literature study is a research method used by researchers to obtain accurate qualitative data so as to provide clear and comprehensive information.

## 3. Result and Discussion

### 3.1 Understanding Islamic Civil Law

According to the terminology, civil law is a law that aims to ensure certainty in the relationship between one person and another, both as members of society and objects in society. Meanwhile, the definition of Islamic civil law is a part of Islamic law that has been applied in a formal juridical manner or has become positive law in the Indonesian legal system, the contents of which are only part of the scope of mu'amalah, this part of Islamic law becomes positive law based on or because it is appointed by statutory regulations. invitation. (Maudin, 2017) Islamic civil law has a broad scope, covering issues regarding marriage, inheritance, endowments, divorce, justice and issues of worship.

### 3.2 Development of Islamic Civil Law in Indonesia

Historically, Islamic civil law has been applied since the time of the Islamic kingdom in Indonesia as the development of Islam in Indonesia. According to van Perseun, Islamic law which is known in Indonesia has a syafiiyah style and is known to have begun to be known in Malay keraajaan. As is evident in the historical evidence of the Islamic kingdom of Malacca, Sultan Malik Zahir of Samudra Pasai was a religious expert and also a well-known Islamic jurist in the middle of the XIV century AD.

The famous scholar in Aceh Nuruddin ar-Raniri (d. 1068 H / 1658 AD) who wrote a book on Islamic law entitled Shiraat al-Mustaqim in 1628 can be called an Islamic figure of the XVII century. The book şīrah al-Mustaqīm is the first book of Islamic law that was disseminated throughout the archipelago. (Maudin, 2017) At the time of the Islamic empire, the civil law system (Islamic inheritance) was known, which also consisted of pluralism of teachings, such as the teachings of the inheritance of Ahlul Sunnah Waljama'ah, Shiite teachings, Hazairin's teachings that were most dominant in Indonesia were Ahlul teachings Sunnah Wal Jama'ah (Syfi'i, Hanafi, Maliki and Hanbali Schools)

However, along with the Dutch colonialization, the Dutch government implemented that Islamic law was only allowed within the scope of civil law, in order to tolerate Muslims such as the Dutch strategic policy, namely Receptie in Complexu (Salomon Keyzer & Christian Van Den Berg [1845-1927]), This theory states that the law regarding a person's religion, if that person embraces Islam, it is Islamic law that

applies to him, but the applicable Islamic law is only in matters of family law, marriage and inheritance (Ramulyo)

During the independence period, the Compilation of Islamic Laws was issued by the government of the Republic of Indonesia. KHI is one of the political products of Islamic law in Indonesia which has received juridical recognition with the issuance of Presidential Instruction No.1 of 1991. (Aris, 2020) However, KHI is a product of human thought, it is a collection of Islamic civil law drawn from detailed arguments. The rules contained in the KHI are the result of the *ijtihad* of Indonesian ulama. Thus, KHI has a relative position and can undergo changes in line with the dynamics of changing times.

There are three reasons for the birth of the KHI based on its historicity, namely:

- a. as a material guideline or law for judges in PA in resolving problems in the field of marriage, inheritance, and endowments, or complementing existing material law,
- b. for unification or legal certainty (unification),
- c. As a form of contextualization of Islamic law. (Maulidia, 2011)

### 3.3 The basis of inheritance law in Islam

The concept of inheritance is part of the discussion of Islamic law related to family law which contains regulations on the distribution of inheritance assets, so that families who are related by blood have the right to the assets left behind. In Islamic legal literature, several terms are found to name inheritance law such as: Faraid, Fiqih Mawaris, and hukmal-Waris. Inheritance law is a law that regulates the transfer of ownership of inheritance (*tirkah*) inheritance. The problem of transferring the deceased to the heir has been regulated in the science of mawaris, which is a branch of sharia science. (al-Zuhaili, 2001)

Islamic law has laid down rules regarding inheritance and laws regarding property as well as possible and fairly. This is because Islam defines a person's property rights to property, both male and female, such as transferring property to his heirs after he dies. (Wahyuni, 2018) Referring to pre-Islamic history, women were discriminated against in the distribution of inheritance by being obstructed in the distribution of inheritance, so that after the arrival of Islam, the position of women was placed as fairly as possible among men without any discrimination, as implied in surah al-hujurat: 13. (Sriani, 2018)

يَا أَيُّهَا النَّاسُ إِنَّا خَلَقْنَاكُمْ مِنْ ذَكَرٍ وَأُنْثَىٰ وَجَعَلْنَاكُمْ شُعُوبًا وَقَبَائِلَ لِتَعَارَفُوا إِنَّ أَكْرَمَكُمْ عِنْدَ اللَّهِ أَتْقَاكُمْ إِنَّ اللَّهَ عَلِيمٌ خَبِيرٌ

13. O people, verily We created you from a man and a woman and made you nations and tribes so that you might know one another. Surely the most noble among you in the sight of Allah is the most devout among you. Allah is All-Knowing, All-Knowing

The principles of inheritance in Islam adhere to the principle of justice regardless of gender, male or female, as long as they are not hindered in accepting an inheritance due to differences in faith, the heirs will receive the fairest inheritance rights, in contrast to the inheritance system during the era of ignorance where women do not inherit rights. Therefore the Koran strictly

regulates inheritance with the principle of justice, based on surah annisa verses 7, 33:

لِّلرِّجَالِ نَصِيبٌ مِّمَّا تَرَكَ الْوَالِدَانِ وَالْأَقْرَبُونَ وَلِلنِّسَاءِ نَصِيبٌ مِّمَّا تَرَكَ الْوَالِدَانِ وَالْأَقْرَبُونَ مِمَّا قَلَّ مِنْهُ أَوْ كَثُرَ ۚ نَصِيبًا مَّفْرُوضًا

7. For men there is a right to share from the inheritance of the mother-father and relatives, and for women there is the right to share (also) from the inheritance of the mother-father and relatives, either a little or a lot according to a predetermined share.

وَلِكُلٍّ جَعَلْنَا مَوَالِي مِمَّا تَرَكَ الْوَالِدَانِ وَالْأَقْرَبُونَ وَلِلَّذِينَ عَقَدْتَ أَيْمَانُكُمْ فَأَتَوْهُمْ نَصِيبُهُمْ إِنَّا اللَّهُ كَانَ عَلَى كُلِّ شَيْءٍ شَهِيدًا

33. For every inheritance of the property left by the mother, father and relatives, We will make it the inheritor. And (if there are) those whom you have sworn allegiance to, then give them their share. Truly Allah witnesses all things

### 3.4 The Urgency of Inheritance Issues in the Compilation of Islamic Law

The discussion of inheritance law is contained in the Compilation of Islamic Law which as a whole consists of 229 articles which are grouped into three books. Book one on marriage consists of eleven chapters and 170 chapters. Book two on inheritance law consists of six chapters, chapter one general provisions, second chapter heirs, third chapter the size of the section, the fourth chapter aul and rad, the fifth chapter wills and the sixth chapter on grants. This second book starts from chapter 171 to article 214. Or consists of 44 chapters. Book three on waqf law which consists of 6 chapters starting from article 215 to article 229 or 15 articles.

The need for a compilation of Islamic law that discusses inheritance is intended so that there is public awareness of dividing inheritance based on the principle of justice in accordance with the Al-Quran and Sunnah. The community needs legal protection in the aspect of inheritance so that there are no disputes among the family. The distribution of inheritance based on customs that is not rooted in religion can lead to injustice, even though Islam has stipulated the law for the distribution of inheritance as fairly as possible. Therefore, the Compilation of Islamic Law is needed in bridging the needs of Muslims for justice. Compilation of Islamic Law in Indonesia contains 3 issues, namely:

- a. Marriage law;
- b. Inheritance law; and
- c. The law of waqf

Within the KHI itself, inheritance is better known as inheritance law. Inheritance law according to KHI 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. The heir itself is a person who at the time of death or is declared dead based on a court decision is Muslim by leaving an heir and inheritance. Meanwhile, heirs are people who have blood or marital relations with the heir and are Muslim and are not hindered by law from becoming heirs. (Sanjaya, 2014)

The position of the KHI is essentially a guide and guide in inheritance issues among Muslims, so that it can be used as a guide in making decisions in court. The existence of KHI cannot be separated from the need for judges in making decisions. Muslims must have legal awareness in obtaining an inheritance determination because it requires a religious court that can decide inheritance rights as fairly as possible in accordance with the guidance of the Koran and the Sunnah. When one of the heirs who refuse submits it to the religious court, the judge will try to find the answer with directions and guidance from KHI. The parties will be divided and determined by the amount of their inheritance by the judge in accordance with Islamic law in force in Indonesia. (Sanjaya, 2014)

However, the weakness of the KHI can be seen in terms of legal legality which is not yet binding because it is only under the umbrella in the form of a presidential instruction not yet a formal juridical law. The issue of inheritance in the State of Indonesia still refers to three things, namely customary inheritance law, Islamic inheritance law and Western inheritance law as stated in Burgerlijk Wetboek (BW). In addition, there are various customary laws as we know there is a kinship system in Indonesia, namely (1) the patrilineal system (found in people in Tanah Gayo, Alas, Batak, Ambon, Irian Jaya, Timor and Bali), (2) the matrilineal system. (found in the Minangkabau area), and (3) bilateral or parental systems (found in areas including: Java, Madura, East Sumatra, Riau, Aceh, South Sumatra, all of Kalimantan, all of Sulawesi, Ternate and Lombok) (Fauzi, 2016 )

Seeing the diversity in the inheritance system in Indonesia can have a negative impact. Therefore, legal unification is needed so that it can provide a way out. There are two possible ways to resolve the issue of inheritance law conflicts, namely: (1) to keep inheritance law in diversity and whenever a legal conflict arises then it is submitted to the court; or (2) unification by making a new law in the field of national inheritance. (Fauzi, 2016)

KHI is an effort in the form of legal unification because it tries to unite different views in the kinship system and the opinions of the scholars, including among the Sunnah ahlus. For example, the inheritance polemic put forward by the Ahlu Sunnah states that only boys can cover the heir's siblings. Whereas in the KHI, it is stated in Article 174 paragraph 2 which reads: If all the heirs are there, only those entitled to inheritance are: children, fathers, mothers, widows or widowers.

KHI also accommodates the existence of customary law that is included in the compilation of Islamic law by taking one of the aspects of managing assets through a mandatory will. With the wills and mandatory approach, it can bridge the gap between customary law and Islamic law. For example, in Article 209 KHI, it is stated that adopted children and adoptive parents are recipients of a mandatory will with a maximum receipt of one third of the inheritance property. This means that between adopted children and adoptive parents can inherit each other by obtaining a maximum share of 1/3 of the inheritance. In fact, neither the adopted child nor the adoptive parents have blood relations at all, but by using the mandatory will as regulated in the KHI, both of them get inheritance rights. (Suleman, 2016)

#### 4. Conclusion

The pluralistic system of inheritance in Indonesia requires legal unification of the plurality of interpretations of the Koran and hadiths so as to avoid various polemics that arise in the community. Thus, the unification of understanding that is realized in the form of a compilation of Islamic law on various inheritance issues is important, even though it needs improvement, as a solution in bridging the gap between customary law and Islamic law.

The compilation of Islamic law is Islamic civil law under the auspices of the State law in Indonesia and serves as a guide in resolving inheritance issues that are determined through a religious court process. The compilation of Islamic Law is the result of ulama's *ijtihad* in solving various kinds of inheritance problems, including the different kinship systems in Indonesia such as the matrilineal, bilateral and patrilineal systems.

Therefore, KHI, in dealing with customary issues, finally accommodates a kinship system to bridge the gap through the *Wajibah* will system. With the wills and mandatory approach, it can bridge the gap between customary law and Islamic law. For example, in Article 209 KHI, it is stated that adopted children and adoptive parents are recipients of a mandatory will with a maximum receipt of one third of the inheritance property.

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