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Settlement of Inheritance Property Distribution Through Consensus in the Perspective of Islamic Law

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ABSTRACT

The division of inheritance is the transfer of ownership rights of the inherited property to the heirs. A deliberative division of inheritance can help minimize disputes between heirs. Some steps that can be taken in completing the division of inheritance are: agreeing on the inheritance law to be used, determining the inheritance of the testator, determining the heirs, calculating the share of the heirs, making an agreement on the division of inheritance. This paper explains the importance of understanding the division of inheritance by deliberation in a fair community environment. The presentation of this paper is based on the analysis of library data with a descriptive model. From the results of the discussion, it can be concluded that the settlement of the division of inheritance through deliberation consensus in the perspective of Islamic law is carried out by deliberation consensus, namely by sitting together to solve a problem by presenting all heirs, religious leaders, government officials and families who are close to the heirs and heirs. This deliberative division is due to several factors, namely social factors where this division can reduce conflicts between heirs. In the perspective of Islamic law, this practice is the division of inheritance based on mutual agreement of the heirs. This division is carried out after the heirs realize their respective shares. The division of inheritance by deliberation is regulated in Article 183 of the Compilation of Islamic Law.

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1. INTRODUCTION

Inheritance Law in Islam regulates how the property of a deceased person is transferred to the living (Fatmawati, Asis, & Nadid, 2023). These rules are known by several names, such as *Faraidh*, *Fikih Mawaris*, and *Hukm al-Waris*. The differences in naming are due to the different focuses in the discussions. The most commonly used term is *Faraidh*. This term was used by an-Nawawi in *Minhaj al-Thalibin's fiqh book* and by al-Mahalliy in Minhaj's commentary. The reason why the word *Faraidh* is used is because the word Faraidh is the plural form of the word *Faridhah*, which means a clearly

determined part. In the provisions of Islamic inheritance in the Qur'an, there are more determined parts, so this law is given the name *Faraidh* (Syarifuddin, 2015).

One form of relationship between humans is inheritance. Inheritance is the transfer of inherited property to heirs who are entitled to receive it. For Muslims, implementing the provisions regarding inheritance law is a form of manifestation of faith and devotion to Allah and His Messenger (Puspita & Meidina, 2023). The law of inheritance as a textual statement in the Qur'an, is something absolute and universal for every Muslim to realize in social life that contains eternal values, in order to overcome all problems according to the conditions of space and time (Farman, 1995).

The use of the word Mawaris sees property as the object of Islamic inheritance law, which passes to living heirs. The word mawaris is the plural form of the word mirats, which means inherited property. Therefore, the term warits used in several Islamic legal jurisprudence books refers to the person who receives the inheritance, because the word warits means heir (Syarifuddin, 2015) and (Sumarno, Musfiratul, & Syaifulloh, 2024).

Inheritance is also known as ownerless property because the original owner has died or left without certainty when he will return. Because the owner can no longer manage the property, the law gives authority and responsibility to those closest to him to enjoy and take care of the property so that it is not neglected (O. Y. Kukhariev, 2022). Distribution of inheritance is the transfer of ownership rights of inherited property to the heirs. The division of inheritance carried out through deliberation can help minimize disputes between heirs. Some steps that can be taken in resolving the division of inheritance are: Agreeing on the inheritance law to be used, Determining the testator's inheritance, Determining the heirs, Calculating the heirs' share of the proceeds, Making an inheritance division agreement.

Before the inheritance is distributed, there are several rights that must be fulfilled first, namely the right to pay off the costs of caring for the body, pay the deceased's debts, and carry out the will. After all these rights are fulfilled, then the inheritance can be distributed to the heirs. Although the rights of male and female heirs are the same, there are certain rights that must be fulfilled first before the distribution of inheritance is carried out (Lukmanul Hakim, 2023).

One of the causes of inheritance is death, so that the property left by someone who has died requires arrangements regarding who is entitled to receive it, how much and how to get it. This is very natural because humans in principle tend to control inheritance that is not their share. In some areas in Indonesia there are local customs in dividing inheritance through a process of deliberation. Therefore, in this study the author will discuss how inheritance is divided according to Islamic law and how inheritance is divided through deliberation and consensus.

2. METHODS

The method used in this study uses a library *research method or approach* with a descriptive model. Library or bibliographic studies can be interpreted as a series of activities related to library data collection methods, reading and recording and processing research materials. Based on the above, data collection in research is carried out by reviewing and/or exploring several journals, books, and documents (both printed and electronic) as well as other data and/or information sources that are considered relevant to the research or study.

3. FINDINGS AND DISCUSSION

Inheritance Law from the Perspective of Islamic Law Compilation

Faraid science is a branch of science that discusses the rules for distributing the inheritance of someone who has died, both their assets and their legal rights according to Islamic law (Saad & Rasli, 2022). Sheikh Muhammad Ali as-Sabuny said that Faraid's science was knowledge that provided information about the transfer of ownership of property left by the heir to his heirs in the form of inheritance (Syakur, 2015).

Islamic inheritance as Islamic law and more specifically as part of the muamalah aspect, sub civil law and cannot be separated from other aspects of Islamic teachings. Therefore, the compilers of the rules must be based on the same sources as the aspects of Islamic teachings.

The sources of Islamic inheritance law are the Qur'an, hadith and ijma, these three sources are used as benchmarks in the distribution of inheritance law. The Al-Qur'an is the main source for ratifying Islamic inheritance law, so that the Al-Qur'an has become a fairly detailed guide (Baderin, 2021).

The issue of heirs does not always mean that family members automatically have the right to inherit the deceased's estate. The closeness of family relationships affects their position and rights in receiving inheritance, although close relatives can be categorized as heirs who are entitled to receive inheritance through the female line. Heirs are divided into two types:

a. *Nasabiyah heirs*, who are related to inheritance due to blood relations, and
b. *Sababiyah heirs*, which are related to inheritance due to factors such as legal marriage, freeing servants, or the existence of an agreement to help each other (Hasbiyallah, 2020).

According to the Compilation of Islamic Law, an heir is someone who is declared to have a kinship relationship, whether blood relationship (nasab), relationship by marriage or marriage and is Muslim and is not prevented from inheriting as stated in article 173 of the KHI. The following are the provisions of inheritance law in the (Welas, 2021):

a. An heir is a person who dies and leaves an inheritance.
b. Heirs are people who are related by blood or marriage to the testator, are Muslim, and are not hindered by law.
c. Heirs have the obligation to take care of the body, settle debts, and complete the testator's will.
d. Heirs have the right to inheritance according to the acquisition determined by Allah.
e. Adopted children do not automatically receive inheritance rights like biological children.
f. KHI maintains the Sunni heritage, which consists of *Dzawil Furdl, Ashobah,* and *Dzawil Arham*.

Meanwhile, inheritance law according to the Compilation of Islamic Law is the law that regulates the transfer of ownership rights of the testator's inheritance *(Tirkah)*, determining who has the right to be an heir and how much each person's share is (Saleh, 2007). Thus, the division of inheritance using the science of Faraid will get their rights according to the provisions of Allah SWT. However, it should be remembered that the division according to Faraid in the division of inheritance must be carried out by human resources who deeply understand the science. In the division of inheritance, it is known as the conditions and elements of inheritance.

Distribution of inheritance through deliberation in the community

Inheritance distribution through deliberation is a method of inheritance distribution carried out by the family, where the heirs voluntarily divide their inheritance through an agreement based on certain circumstances (Zuhirsyan, Pagar, & Yamamah, 2022). This method of inheritance distribution is similar to the customary method of inheritance distribution which is different from the method of inheritance distribution through faraid (Yafie & Zahro, 2023).

Article 183 of the Compilation of Islamic Law discusses the distribution of inheritance through deliberation. The distribution of inheritance through deliberation must meet several requirements in order to create a fair and safe distribution. These requirements include:

a. Ability to act before the law;
b. Already mature;
c. Have the ability to control assets *(rusdy).*

The division of inheritance through deliberation in a village is done by gathering and sitting together to discuss problems and reach agreements, as is done by the village community. There are several factors that influence the use of the inheritance distribution system through deliberation, such as economic conditions, hereditary customs, and the social situation of the heirs. However, agreement remains key in the division of the inheritance.

The distribution of inheritances such as rice fields and gardens is usually not distributed equally to the heirs. The distribution is adjusted to the circumstances and economic conditions of the heirs. Because if it is divided equally, it has the potential to cause conflict or disputes among the heirs, because one of the heirs during his lifetime received more education costs until he was successful compared to the other heirs.

Religious leaders and village heads can provide a solution to inheritance distribution disputes through deliberation to minimize disputes between heirs. The goal is to create justice. In the process, of course, it is mandatory for the heirs to be present in the distribution process witnessed by religious figures, family, and local government.

The results of the agreement should be recorded and archived in a peace deed that is recognized by the local government, and must be owned by all heirs and the government so that it has legal force.

In achieving this process, the division of inheritance through deliberation is not easy because it requires coordination between all heirs to gather and discuss the division. In addition, obstacles in the division of inheritance through deliberation can be in the form of unclear division of assets, injustice, and disputes. Therefore, it is necessary to understand that in Islamic inheritance, there are principles, provisions and rules related to inheritance law. In the distribution of inheritance, there are several pillars of inheritance that must be fulfilled, namely:

a. Heir (*muwaris*)

The heir is a person who dies and leaves behind property. For the heir, the provision applies that the property left behind is fully owned, and he has truly died. The death of the testator according to Islamic jurisprudence scholars is divided into 3 types, namely true death, death based on a judge's decision, and death according to assumption (Muhibbin, 2009). In article 171 point b of the Compilation of Islamic Law, it is explained that an heir is a person who, at the time of his death or who is declared dead based on a Muslim court decision, leaves heirs and inheritance.

b. Heir

An heir is described in the Compilation of Islamic Law in article 171 point c as a person who, at the time of his death, had a direct or marital relationship with the testator, was a Muslim and was not hindered in obtaining inheritance. Meanwhile, according to Islamic law, heirs are people who have an inheritance relationship with the deceased (Zubair, 2015).

In order for someone to inherit the property of a deceased person, the relationship between the two must be clear, such as the relationship between husband and wife, relatives, and religion.

c. Inheritance property

In the Compilation of Islamic Law, inheritance and legacy assets are distinguished, in article 171 point d it is stated that legacy assets are assets left by the testator, either in the form of objects that are his property or his rights. Meanwhile, what is meant by inheritance assets as explained in article 171 point e of the Compilation Islamic law is that the inherited property is added to the portion of joint property after being used for the needs of the testator when he is sick until he dies, the costs of managing the body *(tajhiz)*, paying debts and giving to relatives (Zubair, 2015).

The division of inheritance by consensus is the division of inheritance in a family way where the heirs divide their property voluntarily with the agreement of the heirs based on certain circumstances. The division of inheritance by consensus is the same as the division of inheritance according to custom which seems different from the division of inheritance according to *Faraid*. The division is based on QS. Asy-Shura: 38 and the compilation of Islamic law in Article 183, namely:

a. Qs. Ash-Shura: 26/38

وَالَّذِيْنَ اسْتَجَابُوْا لِرَبِّهِمْ وَاَقَامُوا الصَّلٰوةَ وَاَمْرُهُمْ شُوْرٰى بَيْنَهُمْ ۖ وَمِمَّا رَزَقْنٰهُمْ

Meaning: *(it is also better and more lasting for) those who accept (obey) God's call and perform prayers, while their affairs are (decided) by deliberation between them. They spent part of the sustenance that We bestowed upon them* (Qs. Ash-Shura: 26/38).

b. Compilation of Islamic Law Article 183

Based on the Compilation of Islamic Law, Article 183 states that " *The heirs agree to make peace in the division of inheritance after each is aware of their share." 21* (*Law of the Republic of Indonesia Number 1 of 1974 Concerning Marriage and Compilation of Islamic Law*, 2018)

In the division of inheritance through deliberation, the conditions that have been determined must be met in order to create a fair and safe distribution. The conditions are:

a. Ability to act before the law

The ability to act before the law is required because in the distribution of inheritance through deliberation, some parties may need to sacrifice and relinquish their rights, either in whole or in part. The issue of termination of ownership rights is closely related to the capacity to act before the law, meaning that the termination is considered valid if it is carried out by a person voluntarily and has the capacity to (O. Kukhariev, 2024). The termination of a property right is not considered valid if the person loses the capacity to act in conditions that could interfere with his freedom to determine his attitude. The ability to act in the study of *ushul fiqh* is known as *al-ahliyat al ada.* (Zein, n.d.).

Al-ahliyat al ada is a person's ability to be burdened with performing worship and to act to carry out legal acts. With the ability to act, a person can be called mukallaf. Mukallaf means someone who is burdened with carrying out all forms of taklik or obligations, and all his actions will be taken into account by Islamic law. The hook for this ability to act is reason, the presence or absence of this ability to act depends on the intelligence of his reason.

b. *Adulthood*

When measured by physical development, a woman is considered to have reached puberty if she menstruates and a man experiences wet dreams. Scholars have different opinions on the age of puberty, Syafi'i and Hanbali state that the age of puberty for boys and girls is 15 years, while Maliki sets it at 17 years while Hanafi sets the age of puberty for boys at 18 and girls at 17 years (Supriyadi, 2011).

c. Ability to control assets (*Rusdy*)

The problem of wealth still requires the nature of rusdy or controlling and spending. This is because in reality, not all people who are mature and sane are able to control their wealth. Among them, there are those who are wasteful in using it. Therefore, in addition to being mature and sane, the ability to act in matters of wealth requires a *prudent nature* (Zein, n.d.).

A person who is of legal age and of sound mind will have the characteristic of *being rusdy*, and is considered to have the capacity to act on his property rights, unless he is in a certain situation which is regulated in detail in Islamic law which can eliminate that capacity or reduce it.

Inheritance problems in society still often cause disputes, disagreements or conflicts for heirs, because one party wants to control a larger portion than the other party's portion and justifies any means with the intention of seizing the portion of the inheritance that should not be their right. And there are also those that are caused because the inheritance was only divided after a long time the heir was declared dead. So that this inheritance dispute will bring disaster to the heirs in the form of a strained or even broken family relationship.

In a fair distribution of inheritance, several principles must be taken into account, namely justice, considering the interests of the family, paying debts and respecting the will that has been made. Justice in the distribution of inheritance means that each heir must receive a fair share according to the proportions that have been regulated by religious teachings. This is important so that no one feels wronged or does not get their rights in the distribution of inheritance.

4. CONCLUSION

Settlement of inheritance division through deliberation and consensus from an Islamic legal perspective carried out through deliberation by consensus, namely by sitting together to solve a problem by presenting all heirs, religious figures, government officials and families close to the heirs and testators. The division by deliberation is due to several factors, namely social factors where this division can reduce conflict between heirs. In the perspective of Islamic law, this practice is the division

of inheritance which is carried out based on a mutual agreement of the heirs. This division is carried out after the heirs are aware of their respective parts. The distribution of inheritance by deliberation is regulated in Article 183 of the Compilation of Islamic Law (KHI). The purpose of this division of inheritance through deliberation is to create a fair and safe distribution.

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