



Heirs and Inheritance Law from the Perspective of Hadith: Protection of Family Rights

Ahmad Idus Showabi^{1)*}, Muhammad Wahibul Minan²⁾

¹⁾Universitas Islam Negeri Maulana Malik Ibrahim Malang

²⁾Universitas Islam Nahdlatul Ulama Jepara

*Correspondence Author: idusshowabi@gmail.com

ABSTRACT

Muslims always talk about the distribution of inheritance. This is because the division of inheritance is a problem that is directly related to daily life. In addition, Islamic inheritance law is often criticized by gender equality activists. However, the jurists (Islamic jurists) are of the opinion that the verses in the Qur'an that explain the parts of the heirs are verses that are qath'i al-dilalah, which means that the law is certain, so it is impossible to make ijtihad about it. A few people consider this distribution of inheritance to be unfair in some circumstances. For example, a boy is usually educated more than a girl in most societies. However, during the distribution of inheritance, boys receive twice the share of girls during the distribution of inheritance. In fact, a Testament is one way to accomplish this. But the Testament must not exceed 1/3 of the inheritance, and must have the approval of the other heirs. This is where additional questions arise about what a Testament and inheritance are, as well as who is entitled to give or receive a Testament. In this paper, quantitative approaches Testament be used, including case approaches, historical approaches, comparative approaches, and conceptual approaches. Quantitative analysis Testament be used to develop and use mathematical models, theories, and hypotheses on the problem of inheritance distribution based on Testaments from the perspective of ushul fiqh and Islamic legal philosophy.

Keywords: Heirs; Testament; Islamic Law

ABSTRAK

Umat Islam selalu berbicara tentang pembagian waris. Hal ini dikarenakan pembagian warisan adalah masalah yang langsung berkaitan dengan kehidupan sehari-hari. Selain itu, hukum waris Islam sering dikritik oleh aktifis kesetaraan gender. Namun, para fuqaha (ahli hukum Islam) berpendapat bahwa ayat-ayat dalam Alquran yang menjelaskan bagian-bagian ahli waris merupakan ayat yang qath'i al-dilalah, yang berarti hukumnya sudah pasti, sehingga tidak mungkin untuk berijtihad tentangnya. Segelintir orang menganggap pembagian waris ini kurang adil dalam beberapa keadaan. Misalnya, seorang anak laki-laki biasanya dididik lebih dari anak perempuan dalam kebanyakan masyarakat. Namun, saat pembagian waris, anak laki-laki menerima dua kali bagian anak perempuan saat pembagian waris. Sebenarnya, wasiat adalah satu cara untuk menyelesaikannya. Tapi wasiat tidak boleh melebihi 1/3 dari harta peninggalan, dan harus mendapat persetujuan dari ahli waris lainnya. Di sinilah muncul pertanyaan tambahan tentang apa itu wasiat dan waris, serta siapa yang berhak memberi atau menerima wasiat. Dalam tulisan ini, pendekatan kuantitatif akan digunakan, termasuk pendekatan kasus, pendekatan historis, pendekatan komparatif, dan pendekatan konseptual. Analisis kuantitatif akan digunakan untuk mengembangkan dan menggunakan model matematis, teori, dan hipotesis tentang masalah pembagian harta waris berdasarkan wasiat dari sudut pandang ushul fiqh dan filsafat hukum Islam.

Kata Kunci: Waris; Wasiat; Hukum Islam

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INTRODUCTION

Heirs are often related to a Testament, inheritance cannot be divided if the Testament related to the property is not settled. A person's inheritance Testament be distributed if the debt or Testament of the heir has been fulfilled or settled. The law of inheritance is closely related to the scope of human life, because every human being Testament definitely experience legal events, namely death, so that it Testament cause legal consequences of the event of a person's death, including the problem of how the rights and obligations of a person who dies, how the settlement of rights and obligations as a result of the death of a person is regulated by inheritance law. (Ellyne Dwi Poespasari 2016),

Science Inheritance is the basic science based on fiqh and arithmetic science related to the calculation of inheritance for those who are entitled to receive it. The goal is that everyone who is entitled to receive inheritance from tirkah gets his rights as he should. The science of inheritance has a high position and great influence. Allah swt. has detailed and explained the points of knowledge in the Qur'an. It is God who gives the boundaries of the parts and to whom the inheritance must be given. This reinforces that it is important for each heir to get his share according to



his rights according to the wisdom that has been determined by Allah swt. (Abu Malik Kamal bin As-Sayyid Salim 2009). The Compilation of Islamic Law regulates the law on Islamic inheritance in a Chapter entitled Law of Inheritance. According to the Compilation of Islamic Law article 171 letter a, the meaning of inheritance law is a law that regulates the transfer of the right of ownership of inherited property (tirkah) of the heir, determining who is entitled to be the heir and how much of each of them is. Testament comes from the sentence *Washaitu-ushi asy-syai'a*, meaning that I convey something. Therefore, a person who makes a Testament is a person who conveys a message during his life to be carried out after his death. (Sayyid Sabiqn 2016). A Testament is a voluntary handover of property from a person to another party that applies when the person dies, whether the property is in the form of material or benefits. *Fuqaha* arguing that under normal circumstances, the law of this Testament is sunnah (recommended) while carrying out the contents of the Testament, the law is mandatory.

In the problem that often occurs, a father leaves behind three heirs, two men and one woman. Before the heir's death, he told his daughter that his inheritance house should be divided in two, namely for him and for his brother. While his eldest son did not get a share because he had given up his share for his siblings, he did not want the house because he felt that he had lived enough all this time and his current residence was very far from the house. Some time later, the Heir also advised his son that the house was a complete part for him. This was then discussed by the heirs and a dispute arose between the heirs. This is because there are two different Testaments related to the house. and in both Testaments, there is no consent of the other heirs about the Testament.

In this study, the author found several journals that discuss mandatory Testaments. The previous studies that the author found include: The article entitled "Obligatory Testaments in Islamic Heritage in Indonesia" written by Syafi'i in this study discusses several principles in Islamic inheritance that are adopted in the implementation of inheritance, including: 1) The Ijbari Principle, 2) The Bilateral Principle, 3) The Individual Principle, 4) The Principle of Justice. The article entitled "The Application of Compulsory Testaments According to the Compilation of Islamic Law (KHI) in Juridical Normative Studies" written by Eko Setiawan in this study explains Mandatory Testaments.

In this study, of course, it is different in the problem that the researcher takes and later Testament be applied in the Compilation of Islamic Law article 171 letter F, a Testament is the gift of an object from the heir to another person or institution that Testament take effect after the heir dies. (Ahmad Rofiq 2013). In the book Islamic Inheritance Law as a Positive Law Renewal in Indonesia, a Testament is the last message of a person who is approaching his death, it can be in the form of a message about what the beneficiaries of the Testament must do with his or her wishes or other messages outside of the inheritance (Amina Sites 2021). Imam Abu Hanifah, who was accompanied by Idris Ramulyo, defined a Testament as the granting of the right to own *tabarru'* (voluntary) whose implementation is suspended after the death of the person who gives it, whether something is in the form of goods or benefits. Meanwhile, according to Imam Malik, a Testament is an agreement that requires the beneficiary of the Testament to obtain the right to 1/3 of the estate of the heir after his death or requires the replacement of the right of 1/3 of the property to the beneficiary of the Testament after the death of the testator (Nina Ismaya And Andi Safriani 2022) Imam Shafi'i defines a Testament as an act of charity with a right that is based on the circumstances after death, whether it is based on words or not (Imam Hambali) explained that a Testament is to tell others to make an effort after the person who made the Testament dies. In this study, the researcher used the quantitative approach method of approach to the case, approach to the historical, comparative approach, and conceptual approach. using quantitative analysis that develops and uses mathematical models, theories and/or hypotheses related to a phenomenon that addresses the problem of inheritance distribution based on Testaments.

METHOD

This study uses a normative legal research method with a qualitative approach that focuses on the analysis of Testament conflicts in the distribution of inheritance according to Islamic law. This type of research was chosen because the problems studied are related to the normative legal provisions contained in the Quran, Hadith, and the Compilation of Islamic Law (KHI). The approaches used include a statutory approach to analyze the provisions of the KHI, especially Article 171 and articles related to Testaments, a conceptual approach to understand the concept of Testaments in *fiqh mawaris*, a case approach to analyze conflicts of Testaments that conflict conflict in one object of inheritance, and a historical approach to understand the development of the arrangement of Testaments in Islamic law and implementation in Indonesia.



The data sources of this research consist of primary legal materials including the Quran and Hadith related to Testaments and inheritance, the Compilation of Islamic Law, Law Number 1 of 1974 concerning Marriage, as well as court decisions relevant to Testament disputes. Secondary legal materials are in the form of Islamic inheritance law books, legal journals, scientific articles on compulsory Testaments, and the results of previous research relevant to the research topic. Meanwhile, tertiary legal materials include legal dictionaries, Arabic-Indonesian dictionaries, and internet sources related to research topics. Data collection techniques are carried out through library research and documentation studies by inventorying, identifying, and classifying legal materials based on their hierarchy and relevance to the research problem.

Data analysis in this study uses descriptive analysis techniques to describe the arrangement of Testaments in Islamic law and KHI, comparative analysis to compare various opinions of scholars regarding the resolution of conflicting Testaments, normative juridical analysis based on the principles of Islamic law and the principles of justice in the distribution of inheritance, and legal interpretation of the provisions of Testaments in the Quran, Hadith, and KHI. To ensure the validity of the data, this study uses source triangulation by utilizing various primary, secondary, and tertiary data sources, as well as conducting member checks with Islamic legal experts and peer review with fellow researchers in the field of Islamic law. The systematics of the analysis begins with the identification of legal problems, an inventory of the applicable legal rules, an analysis of the application of the legal rules to the facts of the case, and the drawing of conclusions by providing appropriate legal solutions to resolve conflicting Testaments in the division of inheritance.

RESULT AND DISCUSSION

Definition and Urgency of A Testament In Inheritance

A Testament etymologically is a message or promise of a person to another person to do an act, both when the person making the Testament is still alive and after death. A Testament is a form of means of helping fellow Muslims, both material and beneficial. Meanwhile, in terminology, fiqh scholars define a Testament as the voluntary handing over of property from a person to another party that takes effect after the person dies, whether the property is in material form or in the form of benefits, from this definition it can be seen the difference between a Testament and the ownership of other assets such as buying and selling or renting, because ownership in the latter two forms of contracts can be valid while the person concerned is still alive.

As for the Testament, even if the contract is made while the person making the Testament is still alive, the law only takes effect after the person making the Testament dies. Before that, the Testament contract did not have any effect in terms of transferring property rights to the person who was given the Testament. The issue of the distribution of inheritance in Islam has been regulated in the science of faraid, namely the science related to inheritance, how to calculate its distribution and the share of each heir. But sometimes in matters of a caustic nature, the distribution of inheritance based on faraid raises several questions. Such as the existence of close relatives who are poor but are not included in the ashhab al-furudh or ashhab al-furudh, including rich people. In cases like this, there needs to be a solution, one of which is with the Testament of the deceased. Based on the consideration of benefits, a person can make a Testament about the distribution of all his property. However, this does not mean that we do not believe in the concept of inheritance distribution in Islam, but rather try to place this concept of inheritance distribution proportionally, like Umar bin Khatab RA who did not execute the punishment of cutting off the hands of thieves because of caustic considerations.

Hadith Study of Protection of Family Rights In Istinbath Law

Heirs have a very important role in family protection. Inheritance is the rights given to a person or group of people to receive property or wealth from someone who has died. Family protection, therefore, is closely related to how inheritance rights are governed and respected. The following Testament be explained a hadith that contains principles in inheritance which is a manifestation of the protection of family rights.



Prohibition of Testaments Exceeding One-Third of Inheritance

حَدَّثَنَا أَبُو نُعَيْمٍ، حَدَّثَنَا سُفْيَانُ، عَنْ سَعْدِ بْنِ إِبْرَاهِيمَ، عَنْ عَامِرِ بْنِ سَعْدٍ، عَنْ سَعْدِ بْنِ أَبِي وَقَّاصٍ . رَضِيَ اللَّهُ عَنْهُ . قَالَ جَاءَ النَّبِيُّ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ يَغُودِي وَأَنَا بِمَكَّةَ، وَهُوَ يَكْرَهُ أَنْ يَمُوتَ بِالْأَرْضِ الَّتِي هَاجَرَ مِنْهَا قَالَ " يَبْرَحُمُ اللَّهُ ابْنَ عَفْرَاءَ " . فُلْتُ يَا رَسُولَ اللَّهِ، أَوْصِي بِمَا لِي كَلِيلًا قَالَ " لَا " . فُلْتُ فَالْشَّطْرُ قَالَ " لَا " . فُلْتُ الْفُلْتُ . قَالَ " فَالْفُلْتُ، وَالْفُلْتُ كَثِيرٌ، إِنَّكَ أَنْ تَدَعَ وَرَثَتَكَ أَغْنِيَاءَ خَيْرٌ مِنْ أَنْ تَدْعَهُمْ عَالَةً يَتَكَفَّمُونَ النَّاسَ فِي أَيْدِيهِمْ، وَإِنَّكَ مِنْهُمَا أَنْفَقْتَ مِنْ نَفَقَةٍ فَإِنَّمَا صَدَقَةٌ، حَتَّى اللَّئِمَةُ الَّتِي تَرْفَعُهَا إِلَى فِي امْرَأَتِكَ، وَعَسَى اللَّهُ أَنْ يَرْفَعَكَ فَيَنْتَفِعَ بِكَ نَاسٌ وَيُضَرَّ بِكَ آخَرُونَ " . وَمَنْ يَكُنْ لَهُ يَوْمٌ إِلَّا ابْنَةٌ. "

Means:

"He has told us Abu Nu'aim has told us Sufyan from Sa'ad bin Ibrahim from Amir bin Sa'ad from Sa'ad bin Abi Waqash said; The Prophet came to visit me (when I was sick) when I was in Makkah". He does not like it when he dies in the country from which he has emigrated. He said; "May Allah bless Ibn 'Afra". I say: "O Messenger of Allah, I want to make a Testament to hand over all my wealth". He said: "Don't". I say: "Half" He said: "Don't". I said again: "A third". He said: "Yes, a third and a third are already many. Indeed, if you leave your heirs in a rich state, it is better for you to leave them in poverty and beg people with their hands up. Indeed, whatever you spend in the form of real sustenance is included in shadaqah even if it is a mouthful that you put in your wife's mouth. And may Allah raise you up where Allah benefits mankind through you or gives madharat to others". At that time he (Sa'ad) had no heir except a daughter.(Mugniyah 2010)

This hadith is in the riyayatkatan of Sa'ad bin Abi Waqash His full name is Sa'ad bin Abi Waqqash bin Uhaib Az-Zuhri with the nickname "Abu Ishaq", he was one of the ten companions who received the good news of going to heaven, and the first person to throw arrows in the battle of Sabillillah, he was the fourth person to convert to Islam through the hands of Abu Bakr when he was 17 years old. Sa'ad ibn Abi Waqqash participated in many battles with the Messenger of Allah (peace and blessings of Allaah be upon him), in which he joined the cavalry. He came from the Banu Venu as long as the Prophet's mother (Aminah).

The Caliphate Umar bin Khatthab appointed him commander of the army sent to fight the Persians and succeeded in defeating him in 15 AH at Qadisiyah. A year later, in 16 AH, in Julailak, he conquered Madain and the Banu al-Kuffa in 17 AH. Sa'ad bin Abi Waqqash was the ruler of Iraq during the reign of Umar bin Khatthab which continued during the reign of Uthman bi Affan. He was one of the six companions of the people who were nominated as Caliphs, since the great disaster of Uthman's assassination. Sa'ad bin Abi Waqqash narrated hadiths from Abdullah bin Abbas, Abdullah bin Umar and Khaulah bint Hakim. The one who narrated the hadith from him was Mujahid, Alqamah bin Qais as sa'ib bin Yazid, the most authentic sanad from which it originated was that narrated by Ali bin Husayin bin Ali, from Sa'id bin al-Musayyab, from whom (Sa'ad bin Abi Waqqash). He died in 55 H in Aqiq. Fahrur Roji And Mochamad Samsukadi.

This hadith is a proof that a Testament should not be more than one-third of the inheritance if there is an heir. As for if there are no heirs, then it is permissible to make a Testament with all the inheritance. The legal reason for this problem is to keep the heirs from falling into poverty. Although this hadith does not reach the level of mutawatir, the ijma' scholars have established the same thing as this hadith. In another hadith, it is narrated that the Prophet PBUH said:

حَدَّثَنَا عَبْدُ الْوَهَّابِ بْنُ نَجْدَةَ، حَدَّثَنَا ابْنُ عَبَّاسٍ، عَنْ شُرَيْحِ بْنِ مُسْلِمٍ، سَمِعْتُ أَبَا أُمَامَةَ، سَمِعْتُ رَسُولَ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ يَقُولُ " إِنَّ اللَّهَ قَدْ أَعْطَى كُلَّ ذِي حَقٍّ حَقَّهُ فَلَا وَصِيَّةَ لِرِثٍ

Means: *"Indeed, Allah SWT has given to everyone who has the right to his rights, so there is no Testament for the heirs."*

This hadith is narrated with many sanad, but each sanad is inseparable from the discussion (Maqal). Although in every sanad there is a discussion, the number of sanads shows that this hadith has a source (ashl). Even Imam Shafi'i is more inclined to say that this hadith is mutawatir. But al-Fakhr al-Razi rejected his mutawatirity.(Sumadi, 1995).

This hadith is a prohibition on making a Testament to the heirs whose inheritance has been determined. The wisdom of this prohibition is to eliminate the impression that the Testament shows differences in affection between fellow heirs that can ultimately lead to disputes between them. Therefore, a person should not make a Testament to



an heir who gets a share of his inheritance, unless allowed by other heirs. Permission from other heirs is required because the property that has been inherited is their joint right which must be divided according to the provisions of sharia. If they are Testamenting to reduce their rights, then the Testament can be executed.

Prohibition of Mutual Inheritance of Muslims with Non-Muslims

Based on the verses about inheritance, what needs to be underlined is inheritance due to nasab and kinship. And one thing that the author notes in relation to the inheritance of different religions, is that the above verses do not explicitly explain that the heirs (deceased) and the heirs (family and relatives) are both Muslims. There is no word in the above verses that indicates that the heir is or should be a Muslim. As for the legal source of the hadith, it can be said that at least some of the hadith narrations speak of the prohibition of Muslims inheriting non-Muslims:

حَدَّثَنَا أَبُو عَاصِمٍ، عَنِ ابْنِ جُرَيْجٍ، عَنِ ابْنِ شَيْهَابٍ، عَنْ عَلِيِّ بْنِ حُسَيْنٍ، عَنْ عَمْرِو بْنِ عُثْمَانَ، عَنْ أُسَامَةَ بْنِ زَيْدٍ. رَضِيَ اللَّهُ عَنْهُمَا. أَنَّ النَّبِيَّ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ قَالَ " لَا يَرِثُ الْمُسْلِمُ الْكَافِرَ، وَلَا الْكَافِرُ الْمُسْلِمَ " .

Means: "It was narrated to us by Abu 'Ashim from Ibn Juraj from Ibn Shayab from Ali ibn Husayn from Amru bin Uthman from Usama bin Zaid (may Allah be pleased with him), the Prophet (peace and blessings of Allaah be upon him) said: "Muslims do not inherit disbelievers, and disbelievers do not inherit Muslims". (HR. Imam Bukhari).

The word *kāfir* from the point of view of its relation to Islamic law (*Shari'ah*) can mean *kāfir harbī* and *Dzimmī*, while from the point of view *Aqidah*, *Unbelievers* distinguishable *Becoming a Kafir Ahlu al-Kitāb*, *kafir musyrik* and *kafir atheis* (not believing in God or not religious) When *Lafaz Kāfir* be *Pronunciation* that 'amm, the hadith can be doubted to be used as a legal basis, but the opinion of this scholar is clear, that Muslims do not get inheritance from their apostate family, or conversely apostates do not get inheritance from their Muslim family. Because apostasy means that a person leaves the religion of Islam automatically he becomes a *kafir*. Thus, different religions according to inheritance law in Islam are an obstacle to obtaining inheritance. (Wahbah Az-Zuhaili).

This hadith emphasizes that people of different religions do not inherit from each other. What is meant by these different religions are Muslims and infidels (non-Muslims). Included in this case are apostates, all scholars have agreed that apostates, people who leave Islam cannot inherit their family's inheritance, whether their family is Muslims, infidels or apostates as well (Khoirul Anwar, 2019).

Moral Values of Hadiths Protection of Family Rights

The hadiths related to inheritance highlight some important moral values in the context of family protection. Inheritance in Islam is set out in detail in the Qur'an and Hadith, and the moral values embodied in those inheritance principles involve aspects such as justice, compassion, and responsibility. Here are some moral values that can be identified from the perspective of family protection in the hadiths regarding inheritance (Munarif Munarif and Asbar 2022).

Justice

The hadith states the importance of treating inheritance fairly among the heirs. Justice is a key value in Islam, and the separation of inheritance must be done fairly, without discrimination on the basis of gender or social status.

Responsibility

The hadiths teach that the person responsible for distributing the inheritance must fulfill his obligations responsibly. This includes ensuring that the rights of all heirs are respected and protected.

Love and Honor for Family

In the process of inheritance, the hadiths emphasize the importance of maintaining good relationships between family members. Affection, understanding, and respect for family members are highly emphasized.



Sustainability and Preservation of Heritage

The hadiths highlight the need to preserve and use inheritance wisely. This includes the responsibility to maintain and ensure the sustainability of the heritage resources received.¹

Social Welfare

Moral values in the hadith also include thinking about social welfare. Equitable distribution of inheritance is expected to contribute to the well-being of families and society as a whole. This is emphasized in the Qur'an Surah Anisa' Verse 9

وَلْيَخْشَ الَّذِينَ لَوْ تَرَكَوْا مِنْ خَلْفِهِمْ ذُرِّيَّةً ضِعْفًا خَافُوا عَلَيْهِمْ فَلْيَتَّقُوا اللَّهَ وَلْيَقُولُوا قَوْلًا سَدِيدًا

Means: "Fear those who should (die) leave behind them, the weak descendants (who) they fear about. Therefore, fear Allah and speak the truth (in terms of protecting the rights of his descendants)".²

Obedience to Religious Teachings

The importance of adhering to religious teachings in the context of inheritance is also emphasized in the hadiths. The alignment of the inheritance process with Islamic principles is considered an important step to protect the family.

CONCLUSION

In the view of the hadith, Testaments and inheritances have been regulated regarding the division of inheritance and prohibitions in the inheritance itself. The regulation of inheritance and Testament aims to provide protection in the rights of the family. The wisdom of Testaments and inheritances in the protection of family rights in Islam is as follows: First, justice in the distribution of inheritance in the Islamic system has been carefully established to ensure justice in the distribution of property. This division is based on the provisions of the Qur'an and the Sunnah, which give the rights of each heir according to the stipulated portion. Furthermore, the protection of women's rights related to the distribution of inheritance, Islam grants inheritance rights to women, including wives, mothers, and daughters, which is often ignored in the traditional inheritance system in some societies.

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