

ISLAMIC LEGAL REVIEW OF THE DIVISION OF PROPERTY WHILE BOTH PARENTS ARE STILL ALIVE

Oleh:

Efdian Marbun

Akademi Deli Serdang

E-mail:

efdianmarbun@gmail.com

ABSTRACT

The reason for dividing inheritance while the heirs are still alive is to avoid conflicts that will give rise to conflicts between heirs and not contradict Islamic law. The provisions of the Compendium of Islamic Law regarding the distribution of inheritance to living heirs provide evidence that the condition of the testator's death remains an implicit condition for inheritance of his assets in the form of inheritance. However, the Compilation of Islamic Law provides another way to carry out the distribution of inheritance before the death of the heirs as stated in Article 187 paragraph (1) of the Compilation of Islamic Law. The Islamic legal view regarding the distribution of inheritance to living heirs can be taken if there is a risk of disputes and conflicts between heirs that result in losses.

Keywords: Islamic Law, Distribution of Assets, Still Living .

INTRODUCTION

For Muslims, following the provisions relating to inheritance law is an obligatory obligation, as it demonstrates faith and devotion to Allah SWT and His Messenger. However, in the history of the application of Islamic law, when linked to Islamic law, there has been considerable interaction with local communities, including in Indonesia. This is due to Indonesia's dense population. The spread of these groups has given rise to a legal framework that ultimately strengthens the role of law. When Islamic law attempts to emphasize the importance of regulating the social order, it is within this context that law is addressed.

There are three basic elements that must be fulfilled, known as the pillars or elements of a will, or the transfer of assets from one heir to another. These three basic characteristics distinguish the transfer of personal assets in the form of a transfer from those that contradict inheritance, namely the transfer of personal assets in the form of gifts, wills, grants, infaq and sadaqah, zakat, payment of dowries, payment of bills, and buying and selling.

The transfer of a person's assets in the form of inheritance must fulfill three basic elements: the existence of heirs, beneficiaries, and inheritance. First, an heir is the owner of the deceased's assets, whether real or legal or taqdiri. Second, an heir is generally, legally and naturally, the recipient of the transfer of the deceased's assets, provided that a causal relationship exists between them and the deceased's owner. Third, inheritance is the rights and assets left behind by a person due to their legal death and the presence of many dependents.

The inherited property comes from the pre-marital property of one person known as natural property and from the acquisition after marriage with one person known as joint property, with the condition that it will be divided in two if there is no pre-marital conception and the inheritance contributes to the joint property. joint property after providing rights related to the needs of the deceased (heirs) including tajhiz saram, payment of debts, gifts if any, and others related to the rights of others.

The conditions relating to the transfer of inherited assets by heirs to their heirs are called the transfer of assets in the form of inheritance. The Compendium of Islamic Law discusses

three main elements in accordance with Article 171 letter b of the Compilation of Islamic Law. The Association of Islamic Law provides explanations or rules regarding the requirements for heirs, namely people who leave heirs and inheritance when they die or are declared dead according to the decision of the Religious Court.

Based on letter b of the Compilation of Islamic Law Article 171, this means that the heirs must have 4 (four) degrees, the first is deceased, the second is Muslim, the third leaves an heir and the fourth leaves an agricultural one. In these 4 (four) conditions, the Compilation of Islamic Law still emphasizes that the status of the deceased heir remains a condition for the declared inheritance, namely the transfer of assets in the form of inheritance. However, the Compilation of Islamic Law provides another way to carry out the distribution of inheritance assets before the death of the heir according to Article 187 paragraph (1) of the Compilation of Islamic Law.

Article 187 Article (1) of the Compilation of Islamic Law introduces another method of inheritance that has not been found in fiqh inheritance. The power to make a will is not subject to death, is not absolute or temporary in its implementation. This comes from the word "suitable" which has two meanings. First, it means that a will can be made if it is not dependent on the death of the testator. Second, it means that a will cannot be made unless it is dependent on the death of the testator.

Allowing the execution of a will regardless of the testator's death is intended to prevent conflicts that would cause losses among the heirs during the execution of the will. Since the testator is still alive, the deceased owner may be able to resolve inheritance disputes. Therefore, the only way is to execute the will while the testator is still alive. However, if there is no dispute regarding the assets to be left by the testator, the execution of the assets must take place after the death of the heir.

RESEARCH METHODS

The type of research used in this thesis is normative research. This study explains. The type of data used in this research is a literature review. This research conducted qualitative data analysis.

RESULTS AND DISCUSSION

1. Reasons That Result in the Division of Assets While Both Parents Are Still Alive

Given the reality of society and the numerous disputes that arise, concrete efforts by the government and village heads are essential to resolve these emerging issues. This will have an impact on the deprivation of progress and will reduce inheritance issues within the community.

Factors that influence people to distribute inheritance before the deceased dies are:

a. Religious Knowledge Factor

The formation of perceptions of events around them is greatly influenced by religious knowledge. The more religious knowledge they possess, the more insights they can express or produce wisdom. Increasing religious awareness in the community is crucial in order to improve their understanding of religion, reducing violations of legal norms and positively impacting their lives.

b. Education Factor

Education is crucial for rapid growth and development, addressing the challenges of underdevelopment and backwardness in society. It can also accelerate the attainment of a legal environment accessible to the public, through education. Those who neglect education have a greater impact on legal understanding and the development of values. As education levels increase over the years, society has neglected deeper religious knowledge.

c. Lack of Government Role

Because all Muslim communities are aware of inheritance distribution according to Islamic law, a more comprehensive strategy is needed. This is where the government must take strategic action. Extension workers should represent all target groups in their outreach programs, using a methodological approach. Communities themselves can raise questions about misunderstandings or ambiguities regarding inheritance.

d. Public Awareness

The application of inheritance law is considered one of the explanations of Islam for Muslims in principle, some Muslims feel that in Islamic teachings there are several laws that regulate inheritance issues but are not implemented that Islamic law must use the applicable doctrine. not always applicable.

On the one hand, some people resolve the issue simply by understanding the other side of everyday life. In fact, Islamic law is a living law that must be created. But it doesn't work smoothly. So, fundamentally, many factors determine public awareness, local dissent, and some people don't fully accept Islamic law as binding. Furthermore, there are dos and don'ts when faced with inheritance issues.

2. Provisions According to the Compilation of Islamic Law Regarding the Division of Assets While Both Parents Are Still Alive

In the KHI specifically for Muslims, requests for the distribution of inheritance from living people are permitted according to articles 187 and 188 of the KHI. The examiner must determine and consider according to good law (KHI) in articles 187 and 188 of the law that requires the distribution of the assets of living people so that the correct legal review can be clearly seen. Although absolutely necessary in the event of the death or death of the testator, the distribution of inheritance is interpreted as the distribution of assets in the form of inheritance as explained in QS. An-Nisa verse 7 and QS. verse 176 Nisa which applies in the event of the death of a convert and as stated in letter b in Article 171 of the KHI.

Article 171 letter b KHI states that:

Heirs are people who, upon death or based on a Religious Court decision, are declared dead, leaving behind heirs and inheritance.

This arrangement can be modified by allowing the distribution of inheritance before the death of the property. This is regulated in Article 187 paragraph (1) of the KHI as follows:

- a. If the heir leaves inheritance, he can appoint several people as administrators of the heir during his lifetime or heirs to distribute the inheritance with the following obligations:
 - 1) A will must be made from a will, both movable and immovable property, which is approved by the heirs concerned and then, if necessary, valued in money;
 - 2) Calculate the amount that will be used for the benefit of the guarantor according to article 175 paragraph (1) letters a, b, and c.
- b. The remaining amount above is the assets that will be distributed to the legal heirs.

Article 187 paragraph (1) of the Islamic Law (KHI) introduces another method of inheritance that has not been found in Islamic inheritance. Permission to make a will that is not subject to death, incomplete or temporary in its implementation. This can be understood as the word "suitable" which has two meanings. First, it means that a will can be made if it is not dependent on the death of the testator. Second, it means that a will cannot be made unless it is dependent on the death of the testator. Allowing the execution of a will without depending on the death of the guarantor is intended to prevent conflicts that will cause losses among the heirs during the execution of the will. Because the testator is still alive, the deceased owner may be able to resolve inheritance disputes. Therefore, the only way is to execute the will while the testator is still alive. However, if there is no dispute about the assets to be left by the testator, then the execution of the will must be carried out after the testator dies.

3. Islamic Law's View on the Division of Assets While Both Parents Are Still Alive

In Islam, inheritance is recognized as a consequence of death, closely related to the concept of *ijabri* (contract of inheritance). However, Islam generally emphasizes, and even encourages, the right to share wealth with children, family, and relatives through gifts or bequests. There are three types of wealth: gifts, inheritance, and bequests.

a. Donated Assets

Grant comes from the word *Huhub ar-rih* which means strong wind, the word gift is used and intended as a voluntary gift and payment to another person, whether it is property or another person. Let his property be used by someone but do not transfer his property to that person, it is a loan. Likewise, if he gives something that cannot be valued as property, such as alcohol or a corpse, then he is not declared as a giver and the gift cannot be said to be a grant, unless there is a transfer of ownership during his life, but in relation to the situation after death, it is voluntary.

It is said that a gift is valid with the existence of agreement and acceptance and all words that indicate the transfer of goods without compensation, a gift that occurs with the presence of a party who gives, a party who receives the gift, and a party who receives the gift. The goods are provided, with the provisions stated in each as follows:

Conditions related to the grantor, determine the following conditions::

- 1) The giver must have the goods he gives.
- 2) He is not in a limited state for reasons that limit his power.
- 3) He must be in his youth, as minors cannot yet enter into support agreements.
- 4) Grants must be made at one's own discretion, as they are contractually conditioned on the happiness conditions associated with one's performance.

CONCLUSION

A. Conclusion

1. The reason for the division of assets while both parents are still alive is to avoid disputes which will ultimately cause losses among the heirs and this does not conflict with Islamic law.
2. The provisions according to the Compilation of Islamic Law regarding the distribution of assets while both parents are still alive prove that the condition of the heir's death remains an implied condition for the inheritance of his assets to other people in the form of inheritance. However, the Compilation of Islamic Law provides an alternative way to enforce the distribution of inheritance assets before the death of the heir as regulated in Article 187 paragraph (1) of the Compilation of Islamic Law.
3. The Islamic sharia view on the division of assets while both parents are still alive can be adopted if there is concern that there will be disputes among the heirs which will cause losses.

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