

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

By :
Jihan
Universitas Budi Darma

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 Treasure , Still Alive .

INTRODUCTION

A. Background Behind

For Muslims , following related provisions with law inheritance is mandatory obligations , because is form faith And piety to Allah SWT and His Messenger . However in history implementation Islamic law , if associated with Islamic law , has Lots happen interaction with public local , including Indonesia. This is due to dense Indonesian society . The spread groups the bring up framework the law that Finally strengthen role law . When Islamic law tries For put importance arrange order social , where the law That handled .

There are three element the main thing that must be done which is known with harmonious or element will or diversion treasure from expert inheritance to expert his heirs . Third characteristic base this is what makes the difference displacement treasure personal in transfer form with the opposite with form inheritance , namely diversion treasure personal in form grant , will , grant , infaq And shadaqah , zakat, dowry payment , pay bill And buy And sell .

Diversion treasure somebody in form inheritance must fulfil three element the main thing , namely existence expert heir , expert inheritance , and inheritance . First , the expert inheritance is owner treasure legacy deceased , both real both legitimate and or self-confidence . Second , the expert inheritance on in general , in general legitimate And natural , recipient diversion treasure late with see fulfillment connection cause and effect between he And owner treasure deceased . Third , inheritance is right And treasure abandoned objects by somebody consequence death in a way legitimate And Lots liability .

Inherited property originate from treasure pre-marital from one known person as treasure natural And from acquisition after Marry with one known person as treasure along with condition will shared two If No There is preconception marriage And inheritance give contribution For owned by together . property together after give related rights with needs (expert heirs) who died including tajhiz saram , payment debt , gift If there are , and other related things with the rights of others.

Related conditions with diversion property heritage by expert heir to expert

his heir called with diversion property deep shape inheritance . Compendium Islamic law discusses three element tree suitable with Article 171 letter b Compilation Islamic Law . Collection Islamic law provides explanation or rules about conditions expert heir is the person who leaves expert heir and property heritage on moment died world or stated died according to verdict Religious Court .

Based on letter b Compilation Islamic Law Article 171, meaning expert inheritance must have degrees 4 (four), the first died , the second the third is Muslim leave expert inheritance and the fourth leave . agriculture . In 4 (four) conditions said , Compilation Islamic law remains emphasize that the status of death expert inheritance still become condition for declared inheritance , namely transfer treasure in the form of legacy . However Compilation Islamic law provides another way to carry out distribution treasure inheritance before death expert inheritance according to Article 187 paragraph (1) Compilation Islamic law .

Article 187 Article (1) Compilation Islamic law introduces method other inheritance that has not been found in inheritance jurisprudence . Power For make will No submit on death , no nature absolute or nature temporary in its implementation . This originate from the word " cocok " which has two meaning . First , it means that will can made If No depends on death heir . Second , it means that will No can made except depends on death expert inheritance .

Let implementation will let go from death heir intended For prevent the conflict that will cause losses between expert inheritance during implementation will . Because heir Still living , deceased owner Possible can finish dispute legacy . By Because that , the only one method is carry out will during heir Still live . However , if No There is dispute about the treasure that will abandoned by heir , execution treasure must done after death expert inheritance .

RESEARCH METHODS

Type research used in writing thesis This is study normative . Study This explain . Type of data used in study This is studies library . In study This done qualitative data analysis .

RESULTS AND DISCUSSION

1. Reasons That Result Distribution Treasure On Moment Both parents Still Life

See reality in society And many disputes that arise in society , then very need existence effort real from government And head village For finish problems that arise , things This impact on robbery progress And problem inheritance will reduced . in in community .

Factors that influence people to distribute treasure inheritance before treasure inheritance die is :

a. Factor Knowledge Religious

Formation perception to surrounding events very influenced by religious knowledge . The more Lots religious knowledge that must be they have , more and more They also have a lot of insight express or produce wisdom . The importance of improvement awareness religious to public in frame increase understanding his religion For reduce violation norm law And can impact positive for his soul .

b. Factor Education

Level of education very important for growth And rapid development use realize backwardness And backwardness society , besides That Also can speed up achievement environment laws that can achieved public that is education . Those who ignore problem education own greater impact big on understanding law And development values . Seeing improvement level education from year to year , society has ignore greater religious knowledge in .

c. Lack of Role Government

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. The community itself can raise questions about misunderstandings or ambiguities regarding inheritance.

d. Awareness Public

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 do not implement that Islamic law must use the applicable doctrine. This is 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. Provision According to Compilation Islamic Law in Distribution Treasure On Moment Both parents Still Life

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 KH I states that :

Heir is a person who moment die world or based on decision Religious Courts declared die world , leaving expert inheritance And treasure 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. View Islamic Law Regarding Distribution Treasure On Moment Both parents Still Life

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 giver grant, specify 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.

BIBLIOGRAPHY

A. Book

Abubakar, Zainal Abidin, *Collection of Regulations Religious Courts*, Jakarta: Al-Hikmah Foundation, 2006.

Afabdi , Ali , *Law Inheritance , Law Family* , Law Proof , Jakarta: PT. Reineka Copyright , 2017.

Al- Hafizh , Al-Imam, and Ibn Hajar Al-Asqalani , *Sahih Al-Bukhari (Fathul Baari)* , Trans. Amiruddin , Library Azzam , Jakarta, 2005.

Alvin, Johnson, *Sociology Law* , Translated by Rinaldi Simamora , Jakarta: PT Rineka Son , 2006.

Karim, Helmi , *Fiqh Transactions* , PT Raja Grafindo Persada , Jakarta, 2007.

Lubis , Suhardi K., and Commission Simanjuntak , *Law Islamic Inheritance (Local) And Practical*), Ray Gafika , Jakarta, chet 3, 2001.

Mughniyah , Muhammad Jawad, *Five Schools of Fiqh* , Lentera Basritama , Jakarta, 2004.

Sabiq , Sayyid , *Fiqh Sunnah* Volume 5, trans . Abdurrahim And Masrukhin , Publishing Horizon , Jakarta, 2009.

Suparman , Eman , *Law Indonesian Heritage : Islamic, Customary, and BW Perspectives* Aditama , Bandung, 2005.

Syarifuddin , Amir, *Law Islamic Heritage* , Jakarta: Prenada Media, 2004.

Thalib , Sajuti , *Law Islamic Heritage in Indonesia*, Jakarta: Sinar Graphic, 2010.

Yahya , Mukhtar, and Fatchurrahman , *Basics Development Law Islamic Fiqh* , Bandung: PT. Al Ma'arif , 2009.

B. Regulations Legislation

Book Constitution Law Civil .

Compilation Islamic law .

C. Journal , Works Scientific

Iryani , Eva, “ Islamic Law , Democracy And Right Basic Humans ”, in *Journal Scientific Batanghari University* , Jambi, Vol.17 No.2 , 2017 .

Naskuranti , “ Distribution Inheritance When the Heirs Still Life Learn Article 187 Article (1) KHI” , *Journal Scientific Al- Syir'ah* , Volume 15, No. 1 , 2017 .