

Epistemology of Islamic Inheritance Law Justice in the Perspective of Islamic Legal Philosophy

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Abstract

This study reviews the Epistemology of Islamic Inheritance Law Justice in the Perspective of Islamic Law Philosophy that Islamic inheritance law basically applies to Muslims anywhere in the world. However, the style of an Islamic state and the life of the people in that country or region have an influence on the inheritance law in that area. The influence is a limited influence that cannot go beyond the main lines of the provisions of the Islamic inheritance law. However, this influence can occur in parts that come from ijihad or the opinions of Islamic jurists themselves (Sajuti (1995)). In Islamic teachings, there is no distinction between genders, both men and women, all of them are equal in any matter, except for the nature bestowed by Allah that distinguishes them, which is their nature. Likewise, in terms of inheritance, everything is balanced and fair in terms of the distribution of inheritance, there is no such thing as 2:1 anymore but everything is divided.

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1. INTRODUCTION

Before the rising of the Islamic sun, women were not given any inheritance at all, for the reason that women could not fight and were unable to defend their tribe. The Arabs said: "How can we give wealth to people who cannot ride a horse and cannot carry a sword and cannot fight the enemy." So, they forbade him to inherit as much as they forbade small children (Muhammad (1995)).

From here a fair researcher will know that when the Islamic law came, the Arabs were persecuting women, they did not give their husbands' or their parents' inheritance to them at all. So, with these noble verses the generous Islamic law gives them the right to inherit. They will take it with full glory and honor. This is not someone's gift to them, and it is not based on pity or humility but based on God's provision for them.

Islamic inheritance law basically applies to Muslims anywhere in the world. Despite this, the pattern of an Islamic country and the life of the people in that country or region influence the inheritance law in that region. That influence is a limited influence that cannot surpass the main lines of the provisions of Islamic inheritance law. However, this influence can occur in parts that originate from ijihad or the opinions of Islamic legal experts themselves (Sajuti (1995)).

As for the next problem, here the author wants to examine in more depth the concept of Islamic inheritance justice in the lives of Muslims with the theme "**Epistemology of**

Islamic Inheritance Law Justice in the Perspective of Islamic Legal Philosophy," which will be outlined next in a clear and detailed manner.

2. RESEARCH METHOD

This research is library research (*library research*), is qualitative, analytical descriptive.

As usual, every research must have a method so that it is directed until the intended goal is achieved properly. The following is a description of the research methods in this study. This type of research is library research, namely research that aims to collect data and information such as books, magazines, manuscripts, notes and documents, as well as other references related to the subject of discussion of Islamic Heritage.

Descriptive method This method is used by researchers to explain and outline the main ideas of this research.

Comparative Method This method functions to compare concepts, theories and thoughts. The comparative method is research used to compare two or more ideas to find similarities or differences.

3. DISCUSSION

Definition of Terms and Limitations of Inheritance Law

Inheritance law is one part of civil law as a whole and is the smallest part of family law. Inheritance law is closely related to the scope of human life, because every human being will definitely experience a legal event called death. The legal consequences that then arise, with the legal event of someone's death, include the issue of how to manage and continue the rights and obligations of someone who dies (M Idris (1982)). Settlement of rights and obligations as a result of a person's death is regulated by inheritance law. As for the legal definition of "inheritance" to date, both among Indonesian legal experts and in the Indonesian legal literature, there is no uniform understanding, so the terms for inheritance law are still diverse. For example, Of course, Wirjono Prodjodokoro, uses the term "inheritance law." Hazairin uses the term "inheritance law" and Soepomo calls it "inheritance law".

Paying attention to the terms put forward by the three Indonesian legal experts above, both regarding the mention of the terms and regarding the meaning of inheritance law itself, the author is more inclined to follow the term and meaning of "inheritance law" as used by Soepomo. He explained that "inheritance law" contains regulations that regulate the process of passing on and passing on property and intangible items from a generation of humans to their descendants (Poerwardamita (1982)). Therefore, the term "inheritance law" contains an understanding that includes "rules" and principles that regulate the process of transferring property and the rights and obligations of someone who dies.

As for the term boundaries regarding inheritance law, they are (Eman (2011)).

1. Inheritance, this term means a person who has the right to receive the inheritance (legacy) of a person who has died.
2. Inheritance, means inheritance, heirlooms and wills.
3. An heir is a person who is a member of an inheritance, namely a person who dies and leaves behind a number of assets, an inheritance or a will.
4. Heirs, namely all people who are heirs, mean people who have the right to receive the inheritance of the testator.
5. Inheriting, that is getting an inheritance, usually all the heirs are inheriting the inheritance of the heir.
6. Inheritance process, this term has a process in the sense of two meanings, namely:

- a. Means succession or appointment of heirs while the heir is still alive, and
- b. Means the distribution of inherited assets after the testator dies.

One thing that needs to be noted is that, although there are various formulations and descriptions of inheritance law, in general legal writers agree that, "Inheritance law is a set of rules that regulate the method or process of transferring assets from the heir to the heirs or heir."

Sources of Islamic Inheritance Law

1. Al-Qur'an

The Koran is the main source of Islamic law. Therefore, even though there are three sources of Islamic inheritance law, the two laws after the Koran (Sunnah Rasul and Ijtihad) must still refer to the Koran.

Specifically in relation to Islamic inheritance law, the Koran has provided quite detailed guidelines. Surah an-Nisa contains almost all the inheritance verses. All of the inheritance verses can be grouped into two large groups. First, the core group of inheritance verses, namely verses that directly explain the division of inheritance into predetermined parts the amount. These verses include, (Q.S. an-Nisa: 7), (Q.S. an-Nisa verse, 11), (Q.S. an-Nisa verse, 12), (Q.S. an-Nisa: 176),

Surah an-Nisa verse 7 as mentioned above discusses heritage globally as a first step in breaking the Arab Jahiliyah tradition which does not provide inheritance rights for women (both children and adults) and men who are still children. This is adapted to their life traditions which are fond of wandering and war, whereas fighting is the obligation of adult men. Meanwhile, the Qur'an in Surah An-Nisa verse 7 emphasizes that women and men who are not yet adults have equal rights. for inheritance. The difference only lies in the share of each heir (Abdul Ghofur (2010)).

Verses 11 and 12 especially from the beginning of the sentence until the sentence, "...if you have children, then para wife get one eighth of the property You leave..." is the core inheritance paragraph which relates to the details of each heir's share in "normal" cases. It is said to be normal because in these two verses there is enough share of heirs which is common in society. That is, a person who dies in ordinary cases must leave behind a husband or wife and children, you can also add parents and siblings who also become heirs. Thus, an-Nisa verses 11 and 12 are complete in dealing with normal cases.

Verse 176 and the final part of verse 12 as mentioned above specifically discuss *kalalah* (without offspring). In the two verses there seems to be a difference in the same case. In discussing this issue, Hazairin stated that the difference lies in the condition of the testator's parents. For this reason, Hazairin considers that paragraph 176 applies specifically to situations where the heir has no descendants and there are siblings, but there is no father or mother or the mother is still alive, but the father has died. Meanwhile, paragraph 12 applies to situations when the heir has no children, but there are siblings and the father is still alive, while the mother may still be alive and may have died.

All provisions contained in the Qur'an are only distributed after fulfilling the testamentary obligations that have been made by the testator and/or paying debts.

Second, the group of auxiliary inheritance verses, are verses that function as clarifiers or assistants in the discussion of the guidance of the Qur'an related to Islamic inheritance law. There are quite a lot of helper inheritance verses that are spread in the letter *an-Nisa*, *al-Baqarah*, *al-Anfal*, And *al-Ahzab*.

2. Sunnah of the Prophet

Explanation of the basis of inheritance law apart from the Koran explained also from which Hadith hadith This is an explanation of the arguments in the Al-Quran. as Rasulullah SAW said as follows:

Abdul-Ala bin Hammad (Al-Barsi) told us, Wahib told us on the authority of Ibn Tawus, on the authority of his father, on the authority of Ibn Abbas, he said: The Messenger of God, may God's prayers and peace be upon him, said: "Give the duties to those who deserve them, and whatever remains is the property of the first male man."

Narrated by Muslim.

It means: *"already notify to us abul a'laa bin hammaad (al narsi), has told us wuhaib from ibnu thaus from his father from ibnu abbas, he said: the Messenger of God, may God bless him and grant him peace, said: "give parts of the inheritance to the rightful heirs and the rest to the closest male heir from the male line" (HR. Muslim)*

The hadith of the Prophet that regulates the issue of dividing inheritance is as follows.

On the authority of Ibn Abbas: The Messenger of God, may God bless him and grant him peace, said: Divide what is due among the people of the religious duties according to a book written by God (Narrated by Muslim)

It means: *"From Ibnu Abbas said: The Messenger of Allah, peace and blessings be upon him, said. Divide the inheritance among the heirs according to the provisions of the book of God. (HR. Muslim). (Muslim (1993))*

3. Ijtihad

Although the provisions regarding Islamic inheritance have arranged as detailed by the Qur'an and Hadith, but does not exclude the possibility that there are many questions that still require the ijtihad of the companions and eminent mujtahids who have not yet explained by the nash that *sharih (Wahidah(2008))*. Consensus and ijtihad friends, madhhab imams and mujtahids can get used in problem solving heir which has not been explained by Nash Yang Sharih For example: the status of grandchildren whose father died earlier than their future grandfather inherited and who inherited it together with his father's brothers (Dian (1999)). and the status of siblings who inherit at the same time as their grandfather (Faturrahman (1975)).

Fundamentals of Inheritance Policy

Regarding the fundamentals of Islamic inheritance law, it can be found from the verses of inheritance law and the Sunnah of the Prophet Muhammad, peace be upon him. The basics can classified as follows (Waryani (2012)).

1. Mandatory basis

Etymologically, "Ijbari" contains The meaning of compulsion, namely doing something outside one's own will. In terms of inheritance law, this means that the transfer of assets from someone who has died to someone who is still alive occurs automatically. This means without any legal action or statement of will from the heir. In other words, when the testator dies, his assets automatically pass to his heirs.

2. Bilateral Basis

What is meant by the bilateral principle in Islamic inheritance law is that a person receives inheritance rights from both relatives, namely from the female line and the male lineage. This bilateral principle can be explicitly found in the provisions of the Al-Qur'an in Surah An-Nisa verses 7, 11, 12 and 176. Among other things, in verse 7 it is stated that a man has the right to inherit from his father and mother. Likewise, women inherit from both parents. This bilateral principle also applies to side line relatives (i.e. through father and mother).

3. Individual basis

The meaning of this individual principle is: each heir (individually) is entitled to the share obtained without being tied to other heirs. Thus, the share obtained by individual heirs is entitled to receive all the assets that have become their share. This provision can be found in the provisions of the Koran, Surah An-Nisa, verse 7, which states that the share of each heir is determined individually.

4. The Basics of Balanced Justice

The principle of balanced justice means a balance between rights and obligations and a balance between what is obtained and needs and uses. In other words, it can be argued that gender does not determine inheritance rights. The legal basis for this principle is in the provisions of the Al-Qur'an in Surah An-Nisa verses 7, 11, 12 and 179.

Epistemology of Inheritance Law Justice According to Islamic Legal Philosophy

1. Islamic Law and Justice

Talking about Islamic law means talking about Islam itself, because separating Islamic law from Islam is impossible, apart from Islamic law originating from the Islamic religion, Islamic law cannot also be separated from faith and social (morals). Because the three core components of Islamic teachings, namely, faith, law and morals are a series of entities that form the Islamic religion itself (Abdul Ghofur (2010)).

After it crystallized into Islam and was revealed to the face of the earth, Islam became rahmatan lil' find out which covers all aspects of life, the aspect of life itself consists of three main parts (*Cardinal Subject Matter*) namely God (*Theology*), man (*Anthropology*), and nature (*Cosmology*). The group of basic teachings of Islam is summarized both written and implied in the Qur'an and Hadith which form a teaching about Islam commonly called 'aqidah. Finally, the creed is also divided into three parts, belief about God, Angels, Messengers, the Book, Destiny, and the Day of Judgment, even though faith concerns the totality of issues regarding deity, experience, and humanity.

In a philosophical view, the ultimate goal of law is justice. related With Islamic law, justice that must be achieved must refer to the basic guidelines of the Islamic religion, namely the Koran and Hadith. This means that the goal of justice through legal channels must start from two aspects and lead to justice in two aspects as well. It is said to start from two aspects because Islamic guidelines are in the form of the Koran and Hadith On the one hand, it must be able to unite with the guiding principles of justice in general according to human views, on the other hand. The initial task that is then faced is an effort to formulate the Koran and Hadith, especially those related to law, so that they are able to appear in accordance with the principles of justice in general. It is hoped that the combination of these two aspects will become a standard search guide for product justice through legal channels. In the end, these guidelines are able to become universal legal

standards that are able to appear anywhere and at any time in accordance with the nature of the revelation of Islam to the face of the earth.

The purpose of the two-sided estuary of justice is that the final goal in the form of justice that must be achieved by a universal legal system must be oriented towards justice towards humans (creatures) and justice towards Allah (khaliq). Justice for humans leads to various definitions of justice, which is not impossible for one human society to differ in interpreting legal justice. It means flexibility justice products are needed in the heterogeneity of humans and their environment, while the estuary of justice towards Allah is existing legal products that still place Allah in accordance with His proportions as God, and human activities in efforts to formulate legal goals in the form of justice also remain within the corridor of worship to Him. . This is in accordance with the word of Allah SWT, in the Qur'an Q.S adz_Dzariat verse 56. Apart from this, the indications of legal justice that Allah SWT desires are also contained in Q.S. Al-Maidah: 8.

The essence of the verse above is the spirit of upholding justice to anyone without discrimination. Islam own absolute standards of justice by combining basic divine norms with basic principles of human justice. The law was applied to everyone on an equal basis, without distinction between the rich and the poor, between blacks and whites, between ruler with the common people. Legal justice too implemented in the field of welfare balance, rewards for services, in the sense of a balance between rights and obligations.

2. Elements of Justice in the Concept of Bilateral Inheritance

The concept of bilateral/parental inheritance justice is further divided into several elements of justice, namely:

a. Metaphysical Justice

The bilateral inheritance stems from Hazairin's contemplation of Islamic law which is fully supported by his ability to master anthropology. From this understanding, Hazairin offers a concept of Islamic law which contains two values of justice at once, namely God's justice and human justice. God's justice is a value of justice that is based on the understanding that justice comes from the transcendental. This means that justice can be achieved through God's placement regularly proportional. In this sense, God is the central point of every movement and behavior of creatures, starting from the beginning of the incident until rules that become the standards for the movement of creatures. Meanwhile, human justice is justice that bases its principles on the value of human justice.

Hazairin makes metaphysical justice the primary basis for contemplating bilateral inheritance. God through the Koran and Hadith laid down His rules to serve as a guide for human life. Therefore, as a Muslim who believes in His majesty and greatness, Hazairin also believes in the truth of the verses of Allah SWT.

Hazairin saw the reality of the various family systems that surround Muslims. This fact made Hazairin feel the need to express his belief in one family system that is desired by the Koran, so every Muslim must base himself on that system. The decisions taken are also based on the understanding that two systems family others (patrilineal and matrilineal) are two "one-sided" family systems that anthropologically cannot represent the universality of Islamic teachings.

This pattern of interpretation leads to the understanding of fair law viewed from two aspects as per Kelsen's concept of justice, namely rational justice and metaphysical justice. The rational justice of Hazairin's concept of bilateral

inheritance is reflected in its scientific concept, because it starts from the conclusions of scientific research. In addition, bilateral inheritance is formed from cultural patterns and behavior as well as human empirical views regarding the values of justice in general, while the metaphysical justice offered by Hazairin is justice that emanates from the basic guidelines of the source of metaphysical justice itself, namely the Koran and Hadith.

b. Anthropological Justice

Anthropological justice is a value of justice that departs from the understanding of human cultural plurality. Anthropological justice can also be interpreted as human justice, meaning justice that is based on the understanding of justice from a natural human perspective. Hazairin used the value of human justice as the basis for establishing Islamic inheritance law. Logically, humans live as social creatures who have creativity, taste and initiative as elements that form culture. This variable needs to be considered, because culture is an empirical reality, while the concept of inheritance, before being applied, is a theoretical concept. If in efforts to operationalize inheritance law we do not pay attention to the reality on the ground, then this concept will find it difficult to reach the practical level, because it is felt that it does not pay enough attention to humans in their capacity as humans who naturally experience life experiences (*life experience*) as a process of cultural formation.

c. Gender Justice

The special feature offered by Hazairin in the concept of bilateral inheritance is *mawali*. This concept is seen as meeting gender justice standards. *Mawali* is said to reduce male dominance in previous Islamic inheritance law. In the Syafi'i inheritance, a daughter becomes an 'ashabah not because of her own position as an 'ashabah, but because of the presence of a son who attracts her as an ashabah, in the language of Imam Syafi'i it is called '*Ashabah bi al-Ghairi*.

The concept of Syafi'i's inheritance model is in contrast to the concept offered by Hazairin. In Hazairin's concept, boys and girls have the same rights and positions as heirs. Their existence is independent without dependence on one another.

In addition, the concept of Syafi'i inheritance which is judged to be gender biased is the difference in hijab ability between men and women. Boys can hijab relatives from all majors, whether male or female, grandparents from heirs in hijab *hirman*. But girls don't have the ability for that. While in the concept of bilateral inheritance, sons and daughters have the same ability in affairs *hijab-mahjub*

d. Legal Justice

Legal justice in Hazairin's eyes is related to various things surrounding the law, both in theory and practice, because in his view, laws made by legal theorists will only reach society on the theoretical plane as well. Laws that are able to reach the realm of applicability are laws that have been explored by practitioners supported by their ability to master theory. Even though Islamic law is not just a theory that is separated from practice in the form of real action.

Legal justice in Hazairin's view is directly related to all surrounding situations and conditions stuck-human links in relation to his rights, obligations, and violations viewed from the point of view of influence individual as well as social. Meanwhile, law is only the main guideline in efforts to achieve justice.

3. CONCLUSION

Islamic law is the incarnation of the law of Allah SWT. It is a combination of "what" the law is and "how" the law should be. In other words, Islamic law, besides positive law, is also ideal law, because Islamic law looks at objects. Islamic law is not only human beings with all the problems in it, but Islamic law covers all aspects of balance as one of the elements of justice.

Before the rising of the Islamic sun, women were not given any inheritance at all, for the reason that women could not fight and were unable to defend their tribe. With the advent of Islam, all the jahiliyah customs of that time changed drastically, namely that women also had the right to inherit property from their parents' legacy on the same level as men in terms of inheritance. This means that Islam raises the dignity and status of women who previously did not receive a share of inheritance, but with the presence of Islam women received a share of inheritance according to their rights and shares. In Islamic teachings, there is no distinction between gender, whether men or women are all equally equal in any respect, except for the nature bestowed by Allah which differentiates them, which is their nature. Likewise, in terms of inheritance, everything is balanced and fair in terms of the distribution of inheritance, there is no longer such a thing as 2:1 but everything is distributed equally, based on sociological factors and changes in social status that develop in society. Because in essence the verses of the Qur'an relating to inheritance are bilateral/parental in nature, not what has been understood in a patrilineal way.

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