

The Inheritance Rights of Daughters In Islmanic Inherintace Law And Javanese Customary Law

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Abstract

The existence of 3 (three) inheritance law systems in Indonesia often triggers conflicts in the distribution of inheritance assets. Each inheritance law has its own provisions that differ from the others. Inheritance law is not coercive in nature, so the community can choose the inheritance law to be applied in the distribution of inheritance assets. This research aims to deeply examine the comparison of the concept of inheritance rights for daughters according to Islamic inheritance law and Javanese customary law. The type of research used is normative legal research with a comparative legal approach. The research data consists of secondary data, which includes primary legal materials and secondary legal materials. The research results show that Islamic inheritance law provides legal certainty for daughters as heirs of dzawil furudh with a fixed share of 1/2 or 2/3, and they can become ashabah bil ghairi heirs if they are with sons, with a share half of the sons' share. The distribution of inheritance for daughters in Javanese customary law is flexible and does not use standard mathematical calculations; instead, it prioritizes the principle of consensus deliberation and considers the actual contributions and economic conditions of the heirs.

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1. INTRODUCTION

Indonesia has a diversity of cultures and customs that also influence how the inheritance process is regulated, so conflicts or inheritance disputes often occur as a result of overlapping customary norms, religious laws, and state laws. Inheritance law is a set of regulations that govern the wealth of deceased individuals, particularly the methods of distribution and the parties entitled to receive it, whether they have a direct relationship with the deceased or are connected thru a third party.

Customary law is a norm or rule that lives and develops in society, is unwritten, regulates social relations, and is implemented based on the customs and agreements of the local community. The national legal system of Indonesia recognizes the existence of customary law as part of the legal system that lives within society, as affirmed in Article 18 B paragraph (2) of the 1945 Constitution. This provision serves as evidence that customary law remains part of the national legal system as a reflection of legal pluralism in Indonesia, as long as the law is still alive and practiced by the community (living law), does not conflict with statutory regulations, and is in accordance with the values of Pancasila and the 1945 Constitution. Inheritance law in various customary regions of Indonesia shows diversity, for example, the matrilineal system in the Minangkabau community and the patrilineal system in the Balinese community. Unlike the two, the Javanese inheritance law is parental/bilateral, so both sons and daughters equally receive inheritance rights, reflecting the more

egalitarian nature of Javanese society. The parental/bilateral system is a kinship system that traces descent from both sides, both from the father's side and the mother's side, so that the position of sons and daughters in terms of inheritance is balanced and equal.

Javanese customary law specifically emphasizes the values of family, mutual cooperation, and consensus deliberation as the basis for resolving disputes or social conflicts. In Javanese customary law, daughters have inheritance rights, but their share is usually smaller compared to sons because lineage and primary economic responsibilities are considered to lie with males. A single daughter typically receives a portion of what a son would receive, while if there are two or more daughters, their shares are combined and divided equally among them.

Islam is a system of teachings and a religion that originated from the Prophet Muhammad (peace be upon him), the last prophet and messenger sent to provide guidance for humanity until the end of time. As a system of teachings, Islam has quite comprehensive rules concerning various aspects of human life. Islamic inheritance law is a set of rules that govern the distribution of a person's estate after their death. The details of the heirs' shares have been precisely established in the Qur'an (Surah An-Nisa verses 11, 12, and 176) and Hadith. Islamic inheritance law in Indonesia has been compiled thru the Compilation of Islamic Law (KHI) based on Presidential Instruction Number 1 of 1991, which regulates inheritance provisions in detail and is binding from Articles 171 to 214. The intersection between the normative-mathematical nature of Islamic law and the flexible-bilateral nature of Javanese customary law is the main issue, particularly regarding the position and share of daughters as heirs. The share obtained by daughters as heirs is influenced by the presence of other heirs, such as sons or the deceased's parents. This research specifically discusses the comparison of inheritance rights for daughters in the perspective of Islamic inheritance law and Javanese customary law, with the hope of contributing as a legal educational resource for the community and developing mechanisms to harmonize the two legal systems for the sake of justice for daughters in receiving inheritance.

Based on the description, the issue examined in this research is the comparison of the concept of inheritance rights for daughters according to Islamic inheritance law and Javanese customary inheritance law.

2. METHOD

1. Type of Research

The type of research used is normative legal research, which includes research on legal principles, legal history, legal systematics, the level of legal synchronization, and legal comparisons.

2. Research Approach

This research uses a statutory approach, which involves examining laws and other regulations related to the legal issues being studied.

3. Research Legal Materials

Here are the legal materials used in this research, including:

a. Primary Legal Materials Consisting of

- 1) Al-Qur'an
- 2) Compilation of Islamic Law

b. Sekunder Legal Materials

- 1) Inheritance law books.
- 2) Journal, a scientific work related to this research.

4. Method of Collecting Legal Materials

The collection of legal materials is carried out thru library research or literature review, which involves gathering data from books, literature, and other readings that are related to this research.

5. Data Analysis Method

The data obtained from the research is selected and then systematically organized to facilitate the analysis of all the data and information gathered in this study. After all the data is systematically organized, an analysis is conducted using qualitative analysis methods, which involves analyzing the data based on the quality of the data used to solve the problems within this research.

3. RESULTS AND DISCUSSION

1. The Concept of Inheritance Distribution for Daughters According to Islamic Law

The Qur'an has definitively determined the mechanism for the distribution of inheritance received by daughters as part of the binding system of faraidh. Based on the hadith narrated by Ibn Abbas in Sahih al-Bukhari, the Prophet Muhammad (peace be upon him) said that the fixed shares (faraidh) should be given to those entitled, while the remainder becomes the right of the ashabah (the closest male relatives). This hadith forms the basis of the Islamic inheritance system, which combines two mechanisms: ashab al-furud (those who receive fixed shares) and ashabah (those who receive the remainder of the estate). Daughters are included in the group of ashab al-furud who receive a fixed share, especially when they are the only child or when there are two or more daughters without any sons.

A single daughter is entitled to 1/2 (half) of the inheritance as stipulated in Surah An-Nisa verse 11, which states that if there is only one daughter, she will receive half of the inheritance. This provision is also emphasized thru the hadith narrated by Abu Hurairah, which states that the share of a single daughter is half. If there are two or more daughters without any sons, they receive a joint share of 2/3 (two-thirds) of the total inheritance, which is then divided equally according to the number of daughters.

If the heirs consist of daughters and sons, the inheritance distribution follows a 2:1 ratio (two parts for the son, one part for the daughter), as emphasized in Surah An-Nisa verse 11 that the share of a son is equal to the share of two daughters. This condition changes the status of daughters from fixed share recipients (dzawil furudl) to co-heirs (ashabah bil ghair). The presence of other heirs, such as parents or the deceased's spouse, also allows for further adjustments to the daughters' shares as regulated in Surah An-Nisa verses 12 and 176. The inheritance rights of daughters are also emphasized thru the hadith narrated by Abu Dawud from Jabir ibn Abdillah, regarding the decree of the Prophet Muhammad (SAW) who ordered the distribution of 2/3 of the estate to the two daughters of Sa'ad ibn al-Rabi, 1/8 to the deceased's wife, and the remainder to their uncle.

The application of Islamic inheritance law in Indonesia is regulated thru Articles 171 to 214 of the Compilation of Islamic Law (KHI), which governs the definition of heirs, inherited property, the shares of each heir, and the distribution methods based on Islamic legal principles. The Religious Court serves as the institution authorized to examine, adjudicate, and decide inheritance cases based on codified Islamic law. The consistency of this application is reflected in several court rulings. The Surakarta Religious Court Decision Number 0031/Pdt.G/2019/PA.Ska stipulates that male children receive twice the share of female children according to Article 176 of the Compilation of Islamic Law (KHI), and emphasizes that Islamic inheritance law applies to Muslims and cannot be replaced by customary law if the dispute is resolved thru the Religious Court. The Surabaya High Religious Court Decision Number 0021/Pdt.G/2018/PTA.Sby emphasizes that a single daughter is entitled to 1/2 of the inheritance, while the remainder is given to the ashabah. The Supreme Court thru Decision Number 489 K/AG/2020 also emphasized that the rights of daughters cannot be ignored even if there is a will from the testator stating that all assets are to be handed over to the son, because the will only applies to 1/3 of the inheritance and should not harm the rights of the designated heirs. Nevertheless, the community does not always strictly adhere to

formal regulations due to factors such as customs, socio-economic conditions, and family deliberations, so inheritance distribution is sometimes done amicably to avoid conflicts

2. The Concept of Inheritance Rights Distribution for Daughters According to Javanese Customary Inheritance Law

Javanese customary inheritance law can be understood as norms that live within Javanese society and regulate aspects of life based on local cultural values and traditions. Javanese customary inheritance law has several characteristics, such as flexibility, familial nature, and consensus deliberation as the basis for decision-making and law enforcement. One aspect of life regulated by customary law, including Javanese customary law, is inheritance.

The concept of inheritance in customary law is generally based on the kinship system adopted by certain communities, such as patrilineal, matrilineal, or bilateral. This kinship system will determine who is entitled to be an heir and how the property will be distributed. The concept of Javanese customary inheritance tends to use a bilateral system with flexible distribution, and the status of male and female children is relatively balanced.

The kinship system adopted by the Javanese community, namely parental or bilateral, is a system that recognizes kinship relations on both sides, whether on the paternal or maternal line.. This system impacts the relatively balanced position of men and women within the family structure. Thus, familial relationships are not solely centered around one lineage.

The bilateral kinship system results in every family member having an equally important relationship in both existing lineages. This means that children have equal legal and social ties to both the paternal and maternal families. This principle reflects balance and equality in kinship relations.

The bilateral kinship system has a direct impact on the implementation of the inheritance distribution system. Boys and girls generally have the same opportunities in receiving inheritance from their parents, reflecting that Javanese customary law does not rigidly differentiate between genders in matters of inheritance. The inheritance distribution system based on kinship principles also makes the principles of justice and family deliberation the primary choice compared to mathematical rules in determining heirs or the portions to be distributed.

The distribution of inheritance based on Javanese customary inheritance law is generally also adjusted to the needs, economic conditions, and contributions of family members. The inheritance distribution system also allows for variations with certain agreements mutually agreed upon (without referring to formal provisions). This reflects that Javanese customary law is dynamic and greatly influenced by the social values that grow and thrive within the community.

3. Comparison of Inheritance Rights for Daughters in Islamic Law and Javanese Custom.

Islamic inheritance law and Javanese customary inheritance law have a fundamental similarity in recognizing daughters as legitimate heirs. The most fundamental difference between the two systems lies in the nature and strength of the laws governing inheritance distribution for daughters. Islamic inheritance law establishes a definite and binding share based on the provisions of the Qur'an, whereas Javanese customary inheritance law is flexible and depends on family agreements.

Islamic inheritance law places daughters as the primary heirs who belong to the group of *dzawil furudh*, with their shares explicitly determined by the Qur'an in Surah An-Nisa, verse 11. Javanese customary inheritance law recognizes daughters as legitimate heirs and equal to sons based on the bilateral kinship system adopted by Javanese society. This difference has significant implications for the protection of girls' rights in daily practice, especially when inheritance disputes arise within the community.

Comparison of Girls' Rights in Islamic Inheritance Law and Javanese Customary Inheritance Law

Aspect	Islamic Inheritance Law	Javanese Customary Inheritance Law
Legal Basis	Al-Qur'an (An-Nisa: 11-12, 176), Hadis, Ijma', Qiyas, dan KHI Pasal 171-214	Unwritten norms, oral traditions, socio-cultural values, and family deliberation
Kinship System	Moderate patrilineal; men receive a larger share with a 2:1 ratio.	Bilateral/parental; recognizing the lineage of both father and mother equally
Girls' Section	Determined definitely: 1/2 (single), 2/3 (two or more daughters), a ratio of 1:2 if there are brothers.	Flexible; relatively equal with male siblings, depending on family discussions
Nature of Rules	Normative and binding; cannot be changed without a valid Sharia basis.	Dynamic and contextual; adjusted to the social, economic conditions, and family needs.
Distribution Mechanism	Mathematical calculations based on the faraid provisions established by the Qur'an	Deliberation with consensus considering needs, contributions, and economic conditions.
Recognition of Women's Rights	Recognized as the primary heir (dzawil furudh) with a fixed share that cannot be revoked.	Recognized as the legitimate heir, but its realization depends on local customary agreements.
The Influence of Marriage	Inheritance rights are not severed; daughters still receive inheritance from their parents.	Inheritance rights are also not severed; married daughters can still participate in deliberations.
Dispute Resolution Agency	Religious Courts based on KHI and codified Islamic law	Traditional leaders, heads of families, or informal mediation based on social and cultural values.
Justice Orientation	Proportional; considering the different economic responsibilities between men and women	Social; considering the real conditions, needs, and contributions of each family member

4. CONCLUSION

Islamic inheritance law places daughters as the primary heirs (dzawil furudh) with a fixed share determined in the Qur'an, which is 1/2 if single, 2/3 if more than one without any brothers. If daughters inherit alongside sons, then daughters become ashabah bil ghairi, with the son's share being twice that of the daughter's, meaning the daughter's share is only half of the son's share. This division is based on the balance between the rights received and the economic responsibilities of a man within the structure of a Muslim family. Meanwhile, Javanese customary law uses a bilateral kinship system that tends to be egalitarian, so the positions of boys and girls are relatively equal. The distribution of inheritance in Javanese customary law is flexible and does not use standard mathematical calculations;

instead, it prioritizes the principles of deliberation and consensus, substantive justice, and considers the actual contributions and economic conditions of the heirs.

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