

Islamic Family and Inheritance Law in Indonesia: Conflict, Mediation, and Social Justice in the Distribution of Inheritance

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Abstract

Islamic inheritance law constitutes an integral component of the family law system in Indonesia, regulated through the Compilation of Islamic Law (KHI) pursuant to Presidential Instruction No. 1 of 1991 and Law No. 3 of 2006 on the jurisdiction of the Religious Court. This study aims to analyze the implementation of Islamic inheritance law in Indonesia, identify various forms of conflict arising in the distribution of inheritance, and examine available dispute resolution mechanisms, particularly mediation and litigation. A normative juridical method with statutory and case approaches was employed. The findings indicate that inheritance conflicts in Indonesia are triggered by structural factors such as unclear asset inventories, rejection of the 2:1 male-to-female share ratio, and clashes among Islamic law, customary law, and civil law. Resolution through mediation proves more effective in preserving family harmony than litigation. Islamic social justice principles such as takharuj and wasiat wajibah provide essential flexibility to align inheritance distribution with actual family conditions.

Keywords : *Islamic inheritance law, KHI, inheritance dispute, mediation, social justice, faraidh, takharuj, wasiat wajibah*

I. INTRODUCTION

Inheritance law is one of the branches of civil law that most frequently gives rise to disputes in Indonesian society. The complexity of inheritance law in Indonesia is compounded by the legal pluralism in force, namely Islamic inheritance law, customary inheritance law, and civil inheritance law (BW/Civil Code), each with its own principles, subjects, and procedures. For the Muslim community, which constitutes the majority of Indonesia's population, Islamic inheritance law—known as *faraidh*—serves as the primary reference in resolving inheritance matters.

The state has provided a solid legal foundation for the implementation of Islamic inheritance law through the Compilation of Islamic Law (KHI) established by Presidential Instruction Number 1 of 1991. The KHI constitutes a codification of *fiqh munakahat*, *faraidh*, and *waqf* adapted to the context of Indonesia's national legal system. Furthermore, Law Number 3 of 2006 on Amendments to Law Number 7 of 1989 on Religious Courts strengthens the absolute jurisdiction of Religious Courts to adjudicate Islamic inheritance disputes.

Although regulations are sufficiently comprehensive, the practice of inheritance distribution in the field still frequently gives rise to conflict. Data from the Supreme Court shows that inheritance cases consistently rank among the highest categories of cases filed with Religious Courts each year. These conflicts are triggered by various factors, ranging from unclear inheritance assets and differing interpretations of the law to psychological and emotional dynamics within the family.

This study comprehensively examines three main aspects: (1) the positive legal framework of Islamic inheritance law in Indonesia and its technical provisions; (2) the typology of conflicts and factors that exacerbate inheritance disputes; and (3) the available dispute resolution mechanisms and principles of social justice that can be applied.

II. METHOD

This research uses a normative juridical method (normative legal research), which examines law as norms or rules applicable in society. The normative juridical approach was selected because this study focuses on the analysis of legislation, doctrine, and court decisions relating to Islamic inheritance law in Indonesia.

This study employs two simultaneous approaches. First, the statutory approach, which analyzes relevant legislation including Quranic Surah An-Nisa verses 11, 12, and 176 as primary sources; the Compilation of Islamic Law (KHI) Presidential Instruction No. 1 of 1991; Law No. 3 of 2006 on Religious Courts; and Supreme Court Regulation (PERMA) No. 1 of 2016 on Mediation Procedures in Courts. Second, the case approach, which analyzes patterns of inheritance disputes based on legal literature and religious court practices in Indonesia.

Data sources used in this study consist of primary legal materials and secondary legal materials. Primary legal materials include the Quran, Hadith, the Compilation of Islamic Law, the Religious Courts Act, and related Supreme Court Regulations. Secondary legal materials

include Islamic inheritance law textbooks, scientific journal articles, dissertations and theses, and published Religious Court decisions. Data collection was conducted through library research by examining, recording, and systematizing relevant legal materials. Data analysis was conducted qualitatively using a prescriptive-analytical method, describing existing legal conditions, analyzing identified problems, and formulating solutions based on applicable legal principles.

III. RESULT AND DISCUSSION

Legal Framework of Islamic Inheritance Law in Indonesia

Islamic inheritance law or ilmu faraidh is derived from the Quran, the Sunnah of the Prophet Muhammad SAW, and the ijtihad of scholars. In Indonesia, faraidh provisions are positively codified in Book II of the Compilation of Islamic Law (KHI) comprising Chapters I through VI, covering general provisions, heirs, proportional shares, aul and rad, wills, and grants.

Quranic Surah An-Nisa verses 11, 12, and 176 constitute the primary basis of faraidh provisions. Sons receive twice the share of daughters (a 2:1 ratio). A husband receives one-quarter (1/4) if the deceased leaves children, or one-half (1/2) if there are no children. A wife receives one-eighth (1/8) if there are children, or one-quarter (1/4) if there are none. The father and mother each receive one-sixth (1/6) if the deceased leaves children.

The estate may only be distributed after deducting three obligations of the deceased: funeral expenses, settlement of all debts and receivables of the deceased, and execution of the will, which must not exceed one-third (1/3) of the net estate. These provisions are regulated in Article 175 of the KHI and constitute protection of third-party interests as well as a form of legal responsibility of the deceased.

From an institutional standpoint, Religious Courts hold absolute jurisdiction to adjudicate inheritance cases for Muslim citizens pursuant to Law No. 3 of 2006. This jurisdiction represents a significant expansion from the previous Law No. 7 of 1989, providing legal certainty for Muslims in formally resolving inheritance disputes.

Typology of Conflicts in Inheritance Distribution

Based on a study of Islamic inheritance law practices in Indonesia, at least five typologies of conflict most frequently arise:

First, disputes over inventory of inheritance assets. The first and most fundamental conflict is disagreement over what constitutes the inheritance estate. This issue arises because of the absence of clear asset records during the deceased's lifetime. Confusion frequently occurs between individual assets, jointly acquired assets (gono-gini) during the marriage, and the deceased's inherited assets from parents. Article 35 of Marriage Law No. 1 of 1974 clearly distinguishes between jointly acquired assets and individual assets, but in practice the two are often commingled, requiring careful inventory.

Second, rejection of the 2:1 ratio provision. The provision that male heirs receive twice

the share of female heirs frequently causes dissatisfaction, particularly in the context of modern society where women's roles in the family economy have increasingly grown. Some circles hold that this provision is inconsistent with the principle of gender equality, although classical and contemporary scholars explain that this ratio is proportionate to men's financial obligations in Islam.

Third, disputes over assets transferred during the deceased's lifetime. The third type of conflict relates to the deceased's legal acts during his or her lifetime, namely grants (*hibah*) and sales to certain heirs. Heirs who did not receive grants often question the validity of such actions, particularly if the grant was made close to the deceased's death or is considered prejudicial to the interests of other heirs. KHI Articles 210-214 regulate grant provisions, including the restriction that a person who has reached the age of at least 21 years may grant a maximum of one-third of his or her assets.

Fourth, disputes over the status of heirs. The question of who is entitled to be an heir also frequently becomes a source of conflict. Common cases include the status of illegitimate children (who, pursuant to Constitutional Court Decision No. 46/PUU-VIII/2010, have a civil relationship with their biological father), adopted children (who according to the KHI do not become heirs but are entitled to *wasiat wajibah*), and substitute heirs (*plaatsvervulling*) as regulated in Article 185 of the KHI.

Fifth, disputes over undivided immovable assets. Property in the form of land and buildings that cannot be physically divided is one of the most difficult sources of conflict to resolve. When several heirs have differing interests—some wishing to sell, others wishing to retain—special legal mechanisms such as distribution *in natura*, sale and distribution of proceeds, or transfer of rights through *takharuj* are required. Complications with land certificates still registered in the name of the deceased also frequently constitute an additional obstacle.

Factors Exacerbating Inheritance Disputes

This research identifies five main factors that exacerbate the intensity and duration of inheritance disputes:

First, the communication factor. The lack of openness by the deceased regarding the condition and plans for managing his or her assets during his or her lifetime is the root cause of most conflicts. Deceased persons who never discussed asset matters with their families leave an information vacuum subsequently filled by the assumptions and suspicions of each heir.

Second, the economic factor. Heirs in difficult financial circumstances tend to be more aggressive in asserting their inheritance rights. Economic pressure can drive parties to adopt an uncooperative stance in the deliberation process, thereby escalating conflict.

Third, the clash of legal systems. Indonesia recognizes inheritance law pluralism; in addition to Islamic law, customary law that varies by region and civil BW law for non-Muslim citizens also apply. When family members adhere to different legal systems, uncertainty over which law applies creates disputes that are difficult to resolve.

Fourth, emotional and psychological factors. The distribution of inheritance frequently resurfaces old conflicts among family members, such as past unfair treatment, feelings of not being appreciated, or harbored jealousy. This emotional dimension often impedes rational resolution based on applicable legal norms.

Fifth, the absence of estate planning. Deceased persons who die without leaving a will or clear estate planning documents leave a vacuum that is difficult to fill. The KHI provides room for the deceased to make a will to regulate the distribution of assets according to his or her wishes, provided it does not exceed one-third of the inheritance.

Mechanisms for Resolving Islamic Inheritance Disputes

Mediation as the primary pathway. Mediation is the preferred dispute resolution mechanism in Indonesia's legal system. PERMA No. 1 of 2016 on Mediation Procedures in Courts requires all disputing parties to first undergo a mediation process before the examination of the substantive case begins. This mediation obligation also applies to inheritance cases at Religious Courts.

Mediation has several advantages over litigation. First, the mediation process is faster and less costly. Second, the results of mediation in the form of a voluntary agreement accepted by all parties have greater potential for compliance. Third, mediation preserves family relationships because there is no party that "loses." Mediators may be drawn from Supreme Court-certified mediators, trusted religious figures, or local customary leaders. At the family level, deliberation facilitated by family elders or religious scholars constitutes a form of informal mediation that is highly encouraged as a first step.

Litigation as a last resort. Litigation through Religious Courts is a last resort when mediation and deliberation have not produced results. Conditions that justify pursuing litigation include: mediation has failed after maximum effort; there is an uncooperative party or one who repudiates an agreement already made; and a legally binding decision is required for administrative purposes (such as land certificate transfer, etc.). The disadvantages of litigation are its relatively lengthy process, higher costs, and the potential to permanently damage family relationships.

Principles of Social Justice in the Distribution of Islamic Inheritance

Distributive justice based on faraidh. The faraidh system fundamentally constitutes a form of distributive justice that establishes proportional entitlements in accordance with the command of Allah SWT. This principle ensures that no heir is entirely excluded from the inheritance (except for certain reasons such as killing the deceased). Justice in faraidh does not mean mathematical equality, but rather proportionality that takes into account the financial responsibilities of each heir.

Takharuj: voluntary agreement among heirs. Takharuj is a mechanism whereby one or more heirs voluntarily relinquish part or all of their entitlement to another heir, or exchange their entitlement for something mutually agreed upon. This instrument provides extraordinary flexibility because it allows distribution to be tailored to the actual needs and conditions of

each family member. For example, a child who has been caring for his or her parents may receive a larger share through takharuj agreed upon by the other heirs.

Wasiat wajibah. Wasiat wajibah is a legal breakthrough accommodated by the KHI to provide protection to parties who under faraidh law do not receive an inheritance share, but who in terms of social justice are deserving of one. Article 209 of the KHI stipulates that adopted children and adoptive parents are entitled to receive wasiat wajibah of a maximum of one-third of the inheritance. This instrument has also been used by Religious Court judges in several progressive decisions to provide a share to orphaned grandchildren who are prevented from receiving an inheritance because their parents predeceased them.

Need-based perspective in deliberation. In addition to formal legal instruments, consideration of the actual needs of each heir may be used as material for deliberation in the distribution process. Heirs with many dependents, those who have been caring for the deceased, or those in the most economically vulnerable condition may be considered for a larger share through voluntary agreement without violating the mandatory faraidh provisions.

IV. CONCLUSION

Islamic inheritance law in Indonesia has obtained a solid positive legal foundation through the KHI and the Religious Courts Act. Faraidh provisions derived from the Quran regulate the rights and shares of each heir proportionally, while taking into account the financial obligations accompanying those rights.

Conflicts in the distribution of inheritance in Indonesia are multidimensional in nature. Structural factors such as unclear assets, clashes of legal systems, and the absence of estate planning, combined with psychological factors in the form of family emotional dynamics, create complex and protracted disputes. Effective resolution requires an approach that is not only legal in dimension, but also social and psychological.

Islamic inheritance law in fact provides mechanisms that are sufficiently flexible to realize social justice. Instruments such as takharuj, wasiat wajibah, and family deliberation provide the necessary room for adjustment so that the distribution of inheritance is not merely formal and mathematical, but truly reflects the spirit of justice and compassion across generations. In line with these conclusions, this research recommends: (1) strengthening community-based inheritance law education programs; (2) promoting a culture of estate planning through national campaigns; (3) optimizing the role of Religious Courts in facilitating inheritance mediation; and (4) strengthening the capacity of law students as agents of legal literacy in society.

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