

THE ROLE OF WOMEN IN THE FAMILY AGAINST THE DISTRIBUTION OF INHERITANCE IN THE CITY OF PALEMBANG

Iftitah Utami*

Abstract : The issue of inheritance sometimes becomes a conflict in the community because some heirs do not want to accept the distribution of inheritance that has been determined accordingly *furudhul muqaddarah*. in the *furudhul muqaddarah* it is clear the parts of heirs, another case with the distribution of inheritance by customary law where the distribution of inheritance is done through the process of transition from family lineage. The problem in this research is how the views of Palembang IA Religious Court Judges about the Influence of Women's Role in the Family Against the Distribution of Inheritance in Palembang City Communities and How the Views of Palembang City Communities on the Effect of the Role of Women in the Family Against the Distribution of Inheritance in Palembang City Communities. Research Methods in this research are this study uses legal materials obtained from the results of Empirical Juridical research. From the Empirical Juridical research in this study focused on Research on Legal Identification, this research is analytical descriptive, which reveals legislation relating to legal theories that are the object of research. The findings of this study are the view of Palembang City IA Religion Court Judges on the Effect of the Role of Women on the Division of Inheritance for the People of Palembang City is that the Court still determines according to the provisions of Islamic law and the Compilation of Islamic Law (KHI). Palembang City Community's View of the Effect of Women's Role on the Division of Inheritance for Palembang City Communities is the influence of the role of women in terms of the distribution of inheritance. In fact, Palembang custom does not have a role, but just to take a part, but with the times there has been a change but never got more share of women but they are equally equal because of the agreement of fellow heirs for acceptable reasons.

Keywords: *inheritance, woman inheritance, division of inheritance*

Introduction

This study departs from the issue of inheritance that is rife in debate in society which is due to the development of the times so that women sometimes claim their rights, whereas in the Law it is clear that the distribution of women only gets half of men, but it does not rule out any possibility of agreement outside the provisions of the Law Islam and Compilation of Islamic Law

The issue of inheritance sometimes becomes a conflict in the community because some heirs do not want to accept the distribution of inheritance that has been determined accordingly *furudhul muqaddarah*. in the *furudhul muqaddarah* it is clear the parts of heirs, another case with the distribution of inheritance by customary law where the distribution of inheritance is done through the process of transition from family lineage.

*Fakultas Syariah dan Hukum UIN Raden Fatah Palembang, Email: iftitahutami@radenfatah.ac.id

According to Soepomo, inheritance customary law contains regulations that regulate the process of continuing and passing property and intangible goods (*immateriele goederen*) of a human force (*generative*) to its children (Ali, 2010:1).

As a country with a Muslim majority population, it is possible that many members of the community use the Islamic legal system. But along with the times marked by progress and technology the principles in Islamic law continue to experience rapid and always progress to follow the changing times in order to benefit the people of the world. From the description discussion above it can be concluded that Islamic Inheritance Law has accommodated the principles of gender justice law.

Research Findings

The view of the Palembang IA Religious Court in determining the Division of Women's Inheritance

The position of women in society in terms of law, women and men have rights and obligations based on positive legal regulations (applicable law) today. At this time Inheritance law which determine "inheritance rights" and "ownership rights" for women are still plural. 'This pluralism' occurs because in Indonesia there is currently no National Law of Inheritance Law that applies to all Indonesian citizens. In connection with the lack of this Law, in Indonesia 3 (three) inheritance legal systems are enacted as follows:

- a. Customary Inheritance Law
- b. Islamic Inheritance Law
- c. Inheritance Law according to Civil Law

The Indonesian government reforms and legalizes Islamic law as a national law that must be applied by the Indonesian Muslim community. The most significant reform effort, although the legal container is still being debated is the issuance of KHI. Through KHI, some rules on marriage, inheritance and Islamic representation are renewed, while several other rules are maintained.

Regarding inheritance, KHI generally takes traditional fiqh doctrine and refers to relevant Qur'an texts, for example giving a son an inheritance equal to two daughters, and maintaining the 'ashabah rule that is the closest male relative get leftovers (KHI: 176-180). However, influenced by local customs and norms, KHI introduced other rules, such as a system of successor heirs and mandatory wills that are not found anywhere in fiqh books. The successor heir system is used to solve the problems of orphaned grandchildren, whose parents have died before their grandfather or parents of their own father or mother (KHI: 185). According to the classical Islamic inheritance system, orphans' grandchildren are hijacked or obstructed in the inheritance of their grandparents. All Sunni schools agree that an orphan grandchild does not have the right to a part of his grandfather or grandmother if there is a son (boy) of the corpse (grandfather) who is still alive (Zuhaily, tt: 7699). Following this rule, some Muslim countries regulate that the heirs who die first and their heirs or descendants do not receive a share of the inheritance while there are boys who are still alive. However, later this rule was believed to cause problems for Muslims (Euis: 97)

Another rule that appears to be updated in the KHI is a rule related to the part of siblings which according to fiqh can only be part if the heir does

not leave the child. In the view of the 'scholars' children referred to in the Koran is a boy. The effect of this view is that you can get inheritance if the heir does not leave the child, that is, a son. Another common understanding is that if an heir leaves a child or only a daughter, a brother can inherit. If the testator leaves a son, the brother is closed and has no right to inheritance. The conclusion is that if a boy has a position to veil a brother, not a daughter, and a daughter must consequently share the inheritance with brother, if they meet in an inherited condition.

Indonesian scholars apparently see the rules in fiqh as being somewhat gender biased. Through a article, 182, the compilers of KHI regulate that the share of siblings is determined by the existence of the child. As in the Koran, KHI states that brother will only get inheritance if the heir does not leave the child. The difference is, if the child mentioned in the Koran is explained again by the views of the 'scholars' especially Sunni, who mentioned that what is meant by *walad* is a boy

Based on Article 174 (1) Groups of heirs consist of: a. According to blood relations: -male group consists of: father, son, brother, uncle and grandfather.- The female group consists of: mother, daughter, sister of the grandmother. b. According to the marital relationship consists of: widower or widow. (2) If all heirs are present, then those entitled to inheritance are only: child, father, mother, widow or widower. Then in Article 175 (1) The heirs' obligations to the testator are: a. Take care of and finish until the funeral is finished; b. Settle both debts in the form of treatment, treatment, including the obligations of the testator and the collector of receivables; c. complete the will of the testator; d. Dividing inheritance among the rightful heirs. (2) The heir's liability for the heir's debt or liability is limited to the amount or value of the inheritance.

So the name of inheritance can be done after taking care of and completing until the funeral is complete, then if there is debt also must be settled, then complete the testator's inheritance, then can divide the inheritance among the heirs. It means that the so-called heir is not only the inheritance's inheritance, but the debt is also the inheritance which must be settled first, then the management will be distributed to the heirs.

According to Mrs. Fadhlun Palembang judge of Religion Class IA Palembang The influence of women's role in the inheritance of Islam, women actually get a smaller portion than men, unless there are other reasons such as looking after their mothers or because of an agreement so that the distribution is generalized. Formally there is no formal regulation but there is a family regulation (Interview with Religious Court Judge Mrs. Fadlun, on Tuesday, October 8, 2019 at 09.00)

However, this does not mean that all provisions in KHI are properly implemented by the judges. Some real decisions show that in a number of their cases, the first-rate judges, deviated from the KHI and instead referred to the fiqh books. They did not appear to be worried that their decisions would be overturned by a higher court. There are several reasons why they tend to refer to fiqh and leave KHI. In addition to accommodating the public interest where many judges think that deviations from the rules contained in the KHI are sometimes necessary to create public benefit or to ensure justice for the parties or one of the parties involved in one case, the fact that they disagree with the existing rules in KHI is one of the reasons why they in

certain cases, do not fully apply some of the rules in KHI, specifically related to inheritance rules, there are some interesting examples to be observed and discussed.

There are 2 (two) kind of Inheritance:

- 1) Determination of inheritance is to determine the heirs like to take care of deposits, land certificates in want to reverse the name.
- 2) Inheritance disputes, there is no agreement in the heirs regarding the distribution of inheritance controlled by one party, even though deliberations have been made, mediators, but they are not finished being handled by the Court in terms of settlement.

There is a difference between the determination of inheritance and inheritance dispute, the determination of inheritance is not a dispute which only determines the heirs for management in managing assets such as reversing names on deposits, house letters, land deeds and others. While the inheritance dispute is indeed there is really no agreement between the heirs because they are not satisfied with the predetermined division through family consultation.

According to Mrs. Maisunah, Judge of the Religion Court of Palembang class IA, the case of inheritance dispute in the trial was not found if the woman won, it all depended on the evidence and the reasons and provisions of the applicable law. So the Court still determines according to the provisions of Islamic law, which is 2: 1 between men and women, so women cannot get more shares than men. So that woman has no major influence in the distribution of inheritance (Interview with Religious Court Judge Mrs. Maisunah, on Tuesday, October 8, 2019 at 09.00)

It is different if it is the case of shared assets then the division is divided in half first and then divided again with Islamic law as stipulated in the distribution of heirs, for example if there are children then the husband gets a quarter and the wife gets an eighth, but if they do not have children the husband gets half and the wife gets one quarter.

Then Hermanto also argued that regarding the Division of inheritance in the Religious Courts based on Islamic Law and Comparison of Islamic Law, Beyond that based on the agreement of the heirs whether divided according to the provisions of Islamic law or family agreement. Judges can take other Policies if a dispute arises between fellow heirs. *An example of a case of shared assets, which made big news in the media in mid-2005 was the divorce case of the artist Dewi Hughes with her ex-husband Afin. Hughes divorce suit was granted by the South Jakarta Religious Court (PA). The PA stipulates that the distribution of joint assets or joint assets collected by a husband and wife when married is 50:50. Upon the stipulation, Hughes appealed because according to him the property considered Afin was actually Hughes' own property. In addition, during the marriage Hughes felt he had worked harder, while Afin only acted as Hughes' manager a few moments after marriage (Susanto, 2008: 1)According to applicable regulations, managers are entitled to 10 percent (10%) of the fees received by clients (Kompas, 27 June 2005). The case is only one of many cases related to the problem of sharing of property that occurred due to divorce. With the increase in divorce rates, especially in the jurisdiction of the Malang District Religious Court, it is predicted that this will lead to new disputes regarding the distribution of shared assets.*

In many cases, the issue of sharing shared assets often does not fulfill a sense of justice for either party, especially for the ex-wife. What is alarming, most members of the community apparently do not have adequate legal knowledge about this issue. Especially among women who experience divorce. As a result, there were many monopolistic practices of joint assets after divorce by the ex-husband. On the side of women many are disadvantaged in the distribution of property (gono-gini) because of their weak position in marital relations. For this reason, we need to look more closely at this reality. In a divorce claim filed by the wife as the Plaintiff - which was then used as the object of study in this paper - with her husband as the Defendant, a share of joint property or gono-gini was also requested. Malang Religious Court granted Plaintiff's claim. This includes deciding the respective portions of joint assets or joint assets. Because it was not immediately carried out voluntarily by the Defendant (husband), the Plaintiff (wife) also submitted an application for the execution of the court's decision (Susanto, 2008: 4).

If we see from the case that most people still do not know much about the law of the distribution of inheritance in Islam, and then also cannot be resolved also through deliberation so that the dispute is submitted to the court. The importance of deliberation in the family, given the sensitivity related to the distribution of property, triggers the emergence of a civil war because it does not find an agreement in resolving the problem, so that the problem drags on to the descendants below it. If in the religious court it is clear that the 50:50 shared property is divided first before being divided again according to the provisions of Islamic law based on *furudhul muqaddarah*. *Furudhul muqaddarah* namely the distribution of heirs that have been determined in number, especially in this case if there are children, the husband gets a quarter share and the wife gets an eighth, then if the child does not exist, the husband gets a half share and the wife gets a quarter share. A person may get more if they are in a family meeting, but if they still want to be resolved in court, the court will continue to refer to the applicable legal provisions. If there is a prenuptial agreement then in the case of division of assets in accordance with the agreement that has been made both in writing and verbally which was also witnessed by witnesses who were at the time.

Furthermore, in the distribution of inheritance by the court, inheritance is usually cashed in order to easily carry out its distribution, but the Court in the distribution or execution directly to the field is very rare. Distribution must also be voluntary if not then it is done by force.

After that, regarding adopted children and apostate children can also get a share through compulsory testament that is no more than 1/3 of inheritance, more than that it must be authorized by an heir and called a grant, so adopted children and apostate children here are not as heirs but receive as a will of the heir. Because in Islam as the Prophet said that a Muslim cannot inherit an infidel, and an infidel cannot inherit the wealth of a Muslim.

In KHI there are articles containing provisions concerning people who according to inheritance law cannot receive inheritance or are not entitled to inheritance, but they can get inheritance through court decisions or through wills. These articles are article 185 concerning successor heirs and article 209 concerning adopted children or foster fathers. In article 185 KHI stated:

1. Heirs who died earlier than the inheritance will be replaced by their children, except those mentioned in article 173.
2. The portion of the substitute heir must not exceed that of the heir equal to that of the heir.

Article 173 KHI which is an exception in the case of a substitute heir as mentioned in article 185, is due to the judge's decision because he was blamed for murder, attempted murder, severe maltreatment, and slandering.

The article is:

A person is prevented from becoming an heir if by the decision of a judge who has permanent legal force, is convicted of: *first*, is blamed for murdering or attempting to kill or ill-treat the heir; *second*, blamed on defamation for filing a complaint that the heir has committed a crime that is punishable by a sentence of 5 years in prison or severe punishment.

The article 209 KHI concerning adopted children or foster parents reads:

- 1) The inheritance of adopted children is divided based on articles 176 to 193 above, while for adoptive parents who do not receive a will given a compulsory testament as much as 1/3 of the inheritance of their adopted child.
- 2) For adoptive children who do not receive a will given a will *wajibah* and obligation as much as 1/3 of the inheritance of their adopted parents.

In Islamic law there are rules which explain that if in a problem there are benefits and awareness, then it is better to avoid the awareness than taking benefit. One-sided inheritance raises a benefit in which the wealth of Muslims increases and at the same time raises *madarat*, which is hatred towards Islam. Based on this rule the action that must be done and better is to eliminate unilateral inheritance because it raises consciousness.

The view of the Palembang City Society in establishing the customary inheritance of women

Customary inheritance law recognizes three inheritance systems, individual, collective and major. The individual inheritance system is that the heirs inherit individually. The inheritance is distributed to the heirs. The benefit of this system is personal ownership of property. The heirs can freely control and use according to their individual needs without being influenced by other family members. Its weaknesses are the breakdown of inheritance and the stretch of kinship. This system applies in the Batak, Javanese, Sulawesi and others.

The collective inheritance system is the heirs inherited the inheritance in a localized way. The inheritance is not shared individually. Goodness of this system is if the function of wealth is intended for the survival of the family members' property. Its weakness is that it creates a narrow way of thinking, lacks openness because it is always fixed on family interests only. The major inheritance system is inherited from the whole or a large portion (a large amount of the basic assets of a family) by a child. This system is of two kinds, male major as is the case in the Lampung community and female major (*tunggu tubang*), as is the case in Semendo, South Sumatra.

The major inheritance system is basically a collective inheritance system as well, it's just that the continuation and transfer of the right of ownership over the undivided property is delegated to the eldest child who acts as the head of the household or the head of the family who replaces the position of parents, father or mother. This system lies in the leadership of the eldest child who replaces the position of parents to take care of property and use it for the benefit of all family members. His weaknesses would appear if the eldest child was not able to take care of his parents' wealth (Soekanto, 2008: 260).

The view of customary law on inheritance law is very much determined by the customary law community itself. Some of these alliances are genealogical alliances, in this alliance members feel themselves bound to one another because they are from the same ancestors, so that there is a family relationship between them. Furthermore, territorial alliance, in this alliance, members feel bound to one another because they have exactly the same position in an area, such an alliance is in Aceh. The third is legal alliance formed because of territorial and genealogical. This is found in some areas, such as in Mentawai called *uma*, in Minangkabau called *Nagari*, and in Batak it is called *Kuria* or *Huta*.

Basically, Palembang City society still refers to Islamic Law, but as the times evolve since the emancipation of women, the position of women in terms of their responsibilities or roles is the same so that with the progress of this, women sometimes demand due to injustice in the distribution of inheritance, he believes that he the more role in the family. Yet in Islamic law it is clear that the male and female portions are 2: 1. Then the volunteerism of each one is needed not to cause a civil war.

According to Mister Ari Panji as a native of Palembang, there are two kinds of inheritance which are divided directly or not, said to be divided directly if there is a will of the heir, both written and unwritten witnessed by several witnesses. Then what is not directly divided is adjusted to the provisions of Islamic law or also by family agreement (Interview with Pak Ari Panji, on Monday, October 14, 2019 at 13:00)

The influence of the role of women in terms of the distribution of inheritance according to him is actually in Palembang customary there is no role, but to participate, but with the times, there is a change but never get a share of more than women but that there is equal.

Sometimes we only know in our society that the inheritance is only the inheritance of the heir, but in essence the debt is also the inheritance left by the heir which must be settled first by the new heir; ah can be carried out the distribution of heirs, but if divided the inheritance first instead of paying the debt first then there will be a commotion between the heirs regarding the accounts payable of the testator.

Then regarding the distribution of assets there are divided still in the form of assets and there are also cashed in to make it easy in terms of distribution, but in the Palembang tradition there is a term to be paid or paid by one of the heirs who is more capable than other heirs so he pays the house and then shares it in accordance with the provisions of Islamic law or according to family agreement. The occurrence of *'dileboni'* it's usually because of historical, affection or social factors and also the agreement of all

parties, because for those homes that come down lineage dear they are sold to other people and better 'dileboni' by their own families.

The negative impact in the practice of inheritance is the presence of a third party intervention or giving advice so that it is contaminated which previously agreed with the Joint agreement and then changed their mind because of the intervention, so in a family meeting in this case about the distribution of inheritance should only the nuclear family be present and not be attended by the family-in-law both from the next husband and wife so that there are no outside influences that result in negative impacts so that it can cause a civil war because they are not satisfied with the division earlier.

According to Masayu Aisyah, she said that in general the Palembang customary heirs were the same as other regional customs; a woman is usually inherited from philosophies or advice, advice from generation to generation that is without having to have a special division. In the distribution of inheritance the most important is based on Islamic law but deliberation and consensus is also used in determining the distribution of inheritance.

From the perspective of Masayu Aisyah it means that the practice of division of Palembang's traditional inheritance is still based on Islamic law, the same as Kemas Ari Panji's opinion that the division of Palembang's customary inheritance is based on Islamic law but can also be determined through deliberation and consensus. It means that a woman has been given advice from hereditary inherited by elders to accept the deliberation decisions made because it is clear that the division of inheritance between a man and woman is 2: 1. another case if there are other reasons that can change the decision, for example because of the care for the family. and in the end the distribution is generalized.(Interview with Masayu Aisyah, on Wednesday, October 18, 2019 at 15.30)

Furthermore, according to Habib Ahmad Syukri, the matter of inheritance in Palembang is a Malay custom which still refers to Islamic law and the rest if there is an agreement of each party the heirs can be divided according to family agreement.(Interview with Habib Ahmad Syukri, on Monday, October 14, 2010 at 13:00)

Then according to Ahmad ar-Royyan Rasyid related to the inheritance of women the practice still refers to Islamic Law, and the issue of agreement outside the provisions of Islamic law is different, the problem is not about the inheritance of Islamic Law (Interview with Ahmad ar-Royyan Rasyid, on Wednesday, October 1, 2019 at 14:30.

According to Mistress Fauziah the problem of the distribution of women's inheritance basically remains carried out in accordance with the provisions of Islamic law, and then if there is a dispute in the family, the distribution of inheritance can also be done through the agreement of fellow heirs (Interview with Mistress Fauziah, on Wednesday, October 16, 2019 at 15:30)

In the Chinese community in Ilir Timur I, Palembang City, South Sumatra Province, the heirs were the oldest or eldest son, the child born from the marriage of the heir. The distribution of inheritance to the Chinese community in Ilir Timur I District is regulated as follows: (Andrisma, 2007: 10).

- a. The acquisition of sons and daughters is one in half (1: 1/2).

- b. The acquisition of a widow (a parent left behind) is equal to the acquisition of a daughter which is half (1/2).
- c. New inheritance can be distributed to the heirs after the parents die, the widow dies, or remarries.
- d. The eldest son is given the power to cultivate or manage family inheritance.

From the writing above it is very clear the method of division of inheritance in the Chinese community in the District of Ilir Timur I, by placing the domination of the eldest son as the most important heir, but with a few exceptions the patrilineal method mentioned above can be distorted. The intended deviation is, among others, possible if it is generally known that boys have ugly temperaments, mental disabilities or other causes which are not acceptable for heirs, herein lies the cultural acculturation that occurs in Chinese society in Ilir Timur I District.

According to Mr. Burhan Lecturer of UIN heirs Raden Fatah Palembang related to the distribution of heirs if there is an agreement of heirs outside the provisions of Islamic law it could have been done on the grounds that for example a man is richer than the other heirs, or also because of looking after his mother so that he needs many costs for maintenance (Interview with Mr. Burhan, on Tuesday, October 15, 2019 at 09:00)

The practice of distributing inheritance is cashed or valued to make it easier to distribute, especially in this case for those who resolve inheritance issues to the Court, but for those who settle it traditionally, it depends on the family's agreement whether the distribution is based on existing assets or cashed.

Conclusion

Based on the above Research Findings, the following conclusions are: The view of the Judge of the Religion Court of the Class IA of Palembang on the Effect of the Role of Women on the Distribution of Inheritance for the People of Palembang City is that the Court still determines according to the provisions of Islamic law and the Compilation of Islamic Law (KHI) The distribution of inheritance is divided 2: 1 between men and women, so that women cannot get more parts than men. So the woman does not have a big influence in the distribution of inheritance, there is no big influence on the role of women in Islamic inheritance, women actually get a smaller share than men, unless there are other reasons such as caring for their mother or because of an agreement so that the distribution is generalized. Formally there is no formal regulation but there is a family regulation.

Palembang City Community's View of the Influence of Women's Role on the Division of Inheritance for Palembang City Communities is the influence of the role of women in terms of the distribution of inheritance. In fact, Palembang custom does not have a role, but only follows, but with the times there is a change but never gets more share of women but what is there is equal because of the agreement of fellow heirs with acceptable reasons, for example because of caring for his mother or siblings, so that the distribution of inheritance can be done outside the provisions of Islamic Law and Compilation of Islamic Law.

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- Wawancara dengan Hakim Pengadilan Agama Ibu Maisunah, pada hari Selasa tanggal 08 Oktober 2019 jam 09.00
- Wawancara dengan pak kemas ari panji, pada hari Senin, 14 Oktober 2019 jam 13.00
- Wawancara dengan pak Hermanto Makusin, pada hari Senin, 14 Oktober 2019 jam 13.00
- Wawancara dengan IbuMasayu Aisyah, pada hari Rabu, 16Oktober 2019 jam 15.30
- Wawancara dengan IbuFauziah, pada hari Rabu, 16Oktober 2019 jam 13.00
- Wawancara dengan IbuRamiah Lubis, pada hari 15Oktober 2019 jam 10.00
- Wawancara dengan pak Ahmad ar-Royyan Rasyid, pada hari Rabu, 1 Oktober 2019 jam 14.30
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