

INHERITANCE RIGHTS: DIFFERENCES BETWEEN BOYS AND GIRLS FROM AN ISLAMIC LAW PERSPECTIVE

Harisman^{1*}

^{*1}Universitas Muhammadiyah Sumatera Utara

^{*1}email: harisman@umsu.ac.id

Abstract: This discussion aims to find out and analyze what is the basis for consideration of the Qur'an on the difference in inheritance rights for boys and girls with a ratio of 2:1. Moreover, this issue received different responses from various groups. Some are of the view that the division of inheritance rights like this does not provide a sense of justice and even considers it to be discriminatory, especially for girls. For this reason, it is considered important to conduct normative research using a normative juridical approach that refers to the provisions contained in the Qur'an, hadith and compilations of Islamic law obtained through literature or literature studies. The data used in this study is secondary data obtained from the literature. To answer this question, a qualitative analysis was carried out on the secondary data that had been collected and then the results were described. Based on the analysis, it was found that there are several basic considerations for the differences in the share of inheritance rights between boys and girls, namely: first: to raise the status of girls to be equal to boys in obtaining inheritance rights to inheritance from their parents. Second: the obligations of boys are heavier than girls, because men provide for their wives and children, pay dowries, and even take care of their parents after marriage. Third: to emphasize the part of the girls make it a measure for boys.

Keyword: Inheritance rights, boy, girl, Islamic Law

INTRODUCTION

The issue of inheritance is a crucial and complicated matter that occurs in society. This is understandable because inheritance problems will be experienced by everyone, especially as inheritance problems very easily give rise to disputes or disputes between heirs. It is not uncommon for family disputes to occur, due to the distribution of inheritance which is considered unfair to the heirs or the family left behind. Family relationships become strained and even broken just because of the problem of dividing inheritance. This should not have happened, because all heirs have the same lineage or blood relationship as the testator. Such as: children suing their parents, younger siblings suing their older siblings or vice versa, and even worse, up to murder.

The teachings of Islam itself have been regulated firmly and clearly regarding inheritance. Isnina and Farid Wajdi found the position of inheritance law is very important in Islam. The law of inheritance is regulated in detail in the Qur'an ... (Isnina and Farid Wajdi: 2018: 147) Moreover, inheritance itself is related to the wealth left by the heir who experienced the event of death. The event of death is a condition for the opening of inheritance. Without death, there will be no inheritance. Therefore, the inheritance process occurs due to death and automatically because of death, the heir's inheritance passes to the heirs. (Tengku Erwinsyahbana, Harmita: 2017: 285) This inheritance issue in Islam is known as faraid law.

Faraid law in Islam occupies a very important place in Islamic law. As Rasulullah said, faraid knowledge is 1/3 of religious knowledge. From Abdullah bin Amr bin al-Ash, that the Messenger of Allah said: which means: "There are three kinds of knowledge, apart from

those which are obstacles (secondary), namely the muhakkamah verses (which have clear provisions), the sunnah of the Prophet SAW which is implemented, and the knowledge of faraid.” (HR. Abu Daud and Ibnu Majah; no. 2499)

Even the Prophet Muhammad SAW also advised Muslims to study faraid by saying:

يَا أَبَا هُرَيْرَةَ تَعَلَّمُوا الْفَرَائِضَ وَعَلِّمُواهَا، فَإِنَّهُ نِصْفُ الْعِلْمِ وَهُوَ يُنْسَى، وَهُوَ أَوَّلُ شَيْءٍ يُنَزَّعُ مِنْ أُمَّتِي

Meaning: "O Abu Hurairah, learn al faraidh and teach it to people. In fact, faraidh is half of knowledge, and it will be forgotten and it is also the first knowledge that will be revoked among my ummah." (HR. Ibnu Majah no. 2719)

The recommendation to study faraid law is intended to provide a sense of justice in the distribution of inheritance. Because, distributing inherited assets fairly according to the provisions of the Qur'an will make it a halal asset to be used. Moreover, faraid law is related to the issue of inheritance distribution. Allah SWT in the distribution of inheritance indicates in the Al Qur'an Surah An-Nisa verse 11 as follows:

يُوصِيكُمُ اللَّهُ فِي أَوْلَادِكُمْ لِلذَّكَرِ مِثْلُ حَظِّ الْأُنثَيَيْنِ ۚ

Meaning: "Allah has prescribed (required) you regarding (distribution of inheritance to) your children, (namely) the share of one son is the same as the share of two daughters... .."

Based on the verse above, Allah SWT orders the distribution of inheritance for the heirs' children (heirs) according to the portion prescribed in the Qur'an. Regarding the determination of inheritance distribution portions, this often becomes a topic of discussion and is questioned by many groups, especially regarding the share of sons and daughters. This is because there are provisions for differences in the share or portion of inheritance between sons and daughters. Boys are considered to have a larger portion than girls. The existence of differences like this often becomes the focus of many parties and becomes a source of conflict. Actually, this doesn't need to happen, because provisions like this come from Allah SWT which is mandatory for believers to believe in

Realizing this, it is felt that it needs to be studied with the aim of providing a common understanding of the differences in inheritance portions between male and female children as heirs. In this way, it is hoped that there will be no more debates that could lead to family conflicts related to the division of inheritance between sons and daughters.

RESEARCH METHODS.

This research is normative research with a normative juridical approach that examines the Qur'an and the Compilation of Islamic Law. This research uses secondary data sourced from literature. The data collected was analyzed qualitatively with the results being descriptive, so that the basis for differentiating inheritance rights for boys and girls based on the Qur'an can be found.

RESULT AND DISCUSSION

Meaning of Inheritance

The word "inheritance" in Arabic "al miirats" is the masdar form of waritsayarits-irtas-miiratsan, meaning the passing of something from one person to another, or from one people to another. (Muhammad Ali Ash Shabuni: 1996: 33) According to etymology, The word inheritance or al-mirats means the transfer of something from one person to another, or from one people (a group of people) to another. (Muhammad Ali Ash-Shobuni: 2005: 39)

In Arabic the term "inheritance" is interpreted as something left by a deceased person to his heirs. The jurists interpret inheritance in the sharia sense as a right that can be shared and given to the person who has the right to it after the death of the person who has the right due to relatives, marriage and liberating. (Abdul Rahman Yusub Jalal: 1969: Jalal: 1).

There are also those who use the term "tirkah" to refer to inheritance. Among the faradhiyun the term "tirkah" is interpreted as something left behind by the deceased in the form of absolute wealth. (Sayyid Sabiq: 1981: 425) According to Malikiyah, Syafi'iyah and Hanabilah, the term "tirkah" is mentioned, namely: covering everything that the deceased has left behind from the assets or forms of rights, whether in the form of material rights or other than those material assets. (Abd Rahim, Amal Hayati, Mhd. Nur Husei Daulay: 2022: 71)

Based on the definition above, inheritance or tirkah (inheritance) is related to property issues. The assets referred to are all legacies belonging to the testator, whether in the form of material rights or other rights other than material rights. The assets left behind by the testator are called inherited assets. Inherited assets are assets that have been left behind by the deceased which will be distributed to all the heirs who are entitled to receive them after his death, provided that after expenses have been paid for the deceased's needs and anything related to the assets with other people, such as wills or debts. (Abd Rahim, Amal Hayati, Mhd. Nur Husei Daulay: 72) In the terminology of jurisprudence, inheritance or legacy assets are everything left behind by the heir, whether in the form of assets (money) or other things. (Asmuni, Isnina, Atikah Rahmi: 2021: 4)

Apart from the word "inheritance", the term "inheritance" is also found which means: the transfer of property rights of a person who has died to his or her surviving heirs, whether what is left behind is in the form of movable and immovable property or rights according to Sharia law. (Muhammad Ali Ash-Shobuni: 2007: 33)

Children's Rights to Inheritance from Parents

In the family, children have an important and strategic position. Moreover, children are the result of the love of their parents whose presence is highly hoped for. There is not a single person who does not want children in their family. It is hoped that the presence of children in the family will make them happy and will be a comfort to the hearts and eyes of their parents, as well as when they grow up. In Islam, children are seen as a trust, a gift and blessing from Allah SWT, the successor of the bloodline, the preserver of the rewards of their parents, and trials and tribulations, as well as independent creatures.

Even Islam itself calls on parents to care for and educate their children. The Prophet said in his hadith narrated by Abu Hurairah RA:

كُلُّ مَوْلُودٍ يُوَلَّدُ عَلَى الْفِطْرَةِ، فَأَبَوَاهُ يَهُودَانِهِ أَوْ يَمَجْسَانِهِ أَوْ يَنْصَرَانِهِ

Meaning: Every child born is born above fitrah (holy). It was his parents who made him a Jew, Magian or Christian. (HR. Bukhari and Muslim).

It is not only the responsibility of parents to care for and educate their children. Islam also pays attention to the rights of children to inherit from their parents when death befalls the family. Children are the first and main heirs of their parents. Moreover, Islam places children as people who have the closest relationship with their parents due to their blood relationship (nasab). The Imam mentioned it as ai-Rahim or true kinship, which means: every relationship whose cause is birth, includes branches - descendants - the deceased or its origin is the descendant of the deceased's origin. (Ishak Kasim: 2016: 154)

The Qur'an explicitly gives the inheritance of parents to the children they leave behind, as in Surah An-Nisa verse 7 as follows:

لِّلرِّجَالِ نَصِيبٌ مِّمَّا تَرَكَ الْوَالِدَانِ وَالْأَقْرَبُونَ وَلِلنِّسَاءِ نَصِيبٌ مِّمَّا تَرَكَ الْوَالِدَانِ وَالْأَقْرَبُونَ مِمَّا قَلَّ مِنْهُ أَوْ كَثُرَ ۚ
نَصِيبًا مَّفْرُوضًا

Meaning: For men there is a right to share in the assets inherited from their parents and relatives, and for women there is a right to share (also) in the assets inherited from their parents and relatives, whether a little or a lot according to the portion that has been determined.

Based on Surah An-Nisa verse 7, Islam requires the granting of inheritance rights not only to sons but also to daughters. Boys and girls are equally given the right to inherit property from their parents who have died. This is different from the Jahiliyah era when inheritance was only given to sons. Daughters are not considered heirs of their parents.

Likewise, Surah An-Nisa verse 11 reaffirms that boys and girls are equally entitled to the inheritance of their parents. Although the inheritance share of sons is greater than that of daughters, namely; with a ratio of 2 (two) girls to 1 (one) boy. It can be said that Islam views the position of children's inheritance rights as part of the number of male and female heirs along with other heirs. However, the position of inheritance rights of sons and daughters can never be walled off (hijab) and instead can be walled off (hijab) to other heirs.

According to the Compilation of Islamic Law (KHI) in Indonesia in accordance with Article 174, under any circumstances children always receive a portion of inheritance, except in cases where there are obstacles to obtaining inheritance according to Article 173 KHI. Children have the status of inheriting together with their father, mother, widow or widower. However, children can also be prevented from inheriting due to committing acts of fraud as stipulated in Article 173 of the KHI which states that: a person is prevented from becoming an heir if a judge's decision has legal force and is still punished because:

- a) Being accused of killing or attempting to kill or seriously assaulting the testator;
- b) Being accused of slanderously filing a complaint that the testator has committed a crime punishable by 5 years in prison or a heavier sentence.

Fulfilling the two elements of the above actions can result in the loss of inheritance rights for the child. Furthermore, there are also reasons that prevent children from inheriting, namely: due to differences or different religions, although there is still debate. Like the Hadith from Usamah ibn Zaid according to the History of al-Bukhari-Muslim, Abu Dawud, at-Tarmidhi and Ibn Majah which means: a Muslim does not receive an inheritance from a non-Muslim and a non-Muslim does not receive an inheritance from a Muslim. (Al Buhari: 1981: 181)

In general, these differences in views are grouped as follows: (Amir Syarifuddin: 1984: 47)

- a) Most Ahlu Sunnah views hold that Muslims cannot be heirs to non-Muslim or apostate heirs. This opinion was held by the companions of the Prophet, namely: Abu Bakr, Umar bin Khattab, Usman, Ali, Usamah Ibn Zaid, Jabir and 'Urwah, while among the Mujtahid scholars namely: Abu Hanifah, Maliki and As-Shafi'I, and so on also among the Zahiri ulama.
- b) Others are of the view that a Muslim can become the heir of an heir who is not a Muslim and/or an apostate. This view is based on an analogous interpretation or qiyas of the legal provisions contained in Surah Al Maidah verse 5, namely: it is permissible for Muslim men to marry non-Muslim women who are experts in the book. In other words, if a Muslim man can marry a non-Muslim woman who is an expert on the book, then a Muslim can become the heir of a non-Muslim heir who is an expert on the book.

Even though there is still debate, most mujtahids do not want to use analogy or qiyas interpretations, because in inheritance there are already strong sunnah arguments which

completely contradict the analogy or qiyas arguments, thus what is used as the legal basis is the provisions of the sunnah. (Suhrawardi K Lubis, Simanjuntak Commission: 1999: 58)

Analysis of the Differences in the Inheritance Rights of Boys and Girls

Basically, Allah SWT revealed Surah An-Nisa verse 7 in response to the conditions of social customs during the period of ignorance in the distribution of inheritance which did not give a share of inheritance to women and small children. What's worse, it is permissible for the eldest son to inherit from his wife or widow to use it as a covert business tool. (Anjar Kususiyanah: 2021: 70) This verse was revealed, ending the jahiliyah custom, so that women and children received inheritance even though the amount of their share had not been stated. Then verse 11 was revealed which in detail provides inheritance shares for heirs, including for sons and daughters with the provisions of section 2:1, namely: 2 shares for sons and 1 share for daughters.

The revelation of this inheritance verse is a form of response to the traditions and problems that existed in pre-Islamic society. This is intended to raise the status of girls to the same level as boys in obtaining inheritance rights to inheritance from their parents --- their families ---. Although with different provisions for inheritance, between sons and daughters. This shows that the verse contains the concept of justice between boys and girls in obtaining inheritance rights. The justice taught in inheritance is justice that is balanced, not equal. (Anjar Kususiyanah: 85)

Apart from that, this verse also contains the command that when giving inheritance, always pay attention to the children of the heir. There is a right to a son's share as much as 2 (two) times the share of a daughter because the obligations carried out by men are heavier than just providing a living and paying a dowry. (Anjar Kususiyanah: 71) This even includes the rights and obligations of sons to take care of their parents after marriage. (Gema Dewi: 2013: 101) Moreover, boys are considered to always occupy themselves as rulers in society, so that the Islamic teachings conveyed are adapted to the interests of men. (Muhammad Syahrur: 2007: 231)

To better understand what was the motivation for the revelation of Surah An Nisa verse 11, it can be seen from various existing opinions. According to M. Quraish Shihab, the inheritance division provisions in Surah An-Nisa verse 11 place more emphasis on the share of daughters, with the intention of making it a measure for sons. Before the boys' section is determined, the girls' section is first determined. Just like when you want to measure something, of course you have to have a measuring instrument, then you can measure the size of that thing. The use of editorials like this is intended to describe women's rights to inheritance, and is not the same as was implemented during the Jahiliyah era. (M, Quraish Shihab: 2000: 344)

The distribution of inheritance according to the Qur'an is a provision that has been adapted to the nature, functions and duties assigned to men and women. (M, Quraish Shihab: 351) Men have the burden of paying the dowry, paying for their wives and children, unlike women, this is not the case. If a woman has property, then the property is used for her own benefit and is not required to be used to support her husband or children.

Asy-Sya'rai, as quoted by M. Quraish Shihab in his interpretation, actually the Qur'an is more in favor of women than men. A man needs a wife and he has to pay for her. It's different when a woman needs a husband, but the woman - the wife - is not obliged to pay for him, (M, Quraish Shihab) even the wife must have her needs met. Therefore, the division of inheritance that appears to be greater for men turns out to be basically for his wife as well. If a man is obliged to spend, then half of what he should receive will suffice him.

Meanwhile, a woman getting just one share is actually enough for herself, just as one share is sufficient for a man if he is not married. However, for married women, their living needs are borne by their husbands. The part of a married man will of course be used up and will no longer be intact, because the two parts he has must be divided into two, while the one part that a woman has will become intact because it is not used at all. Therefore, Allah SWT's involvement with women is heavier than involvement with men in matters of inheritance distribution. (M, Quraish Shihab: 352)

This is no different from Ibn Kathir's opinion regarding the distribution of inheritance 2:1 for sons and daughters. Distribution of inheritance 2:1 is God's command to act fairly by dividing inheritance property for women, even if it is only half of the share of sons. There is a 2:1 division of inheritance rights like this, because men have a heavier burden in life than women. Men are responsible for providing for their families, bear trade, and bear other burdens. So it is considered fair for men to get a larger share of inheritance than women. (Bahrum Abu Bakar: 2016: 481)

Apart from that, the provision of 2:1 distribution of inheritance for boys and girls also reflects that Allah SWT loves His creatures very much, does not differentiate between boys and girls. In fact, God's love for his servants is greater than the love of parents for their children. (Bahrum Abu Bakar)

Likewise, Munawir Sajali, although he has a different view from M. Quraish Shihab regarding the 2:1 inheritance division provisions, both of them share the same view that the provisions of the Qur'an are intended to protect the rights of girls. Although Munawir Sajali wants the distribution of inheritance to be equal 1:1 for sons and daughters. The reason for consideration is: if women do not have a role, then provision 2:1 does not apply. The role referred to here is that a woman is active in a job or existing organizations. Munawir is of the view that there is no sense of justice for women who have a role. (Munawir Sjadzali: 1995: 88) Moreover, considering the current condition of the structure of society which has changed compared to previous times, women play an active role in the family and are not just dominated by sons.

CONCLUSION

Islam strictly and clearly regulates the law of inheritance in the Qur'an as found in Surah An Nisa verse 7 and verse 11. In Surah An Nisa verse 11, Allah SWT stipulates that the inheritance portion is 2:1 for boys and girls. Distribution of inheritance like this is caused by: aiming to place the dignity of girls on the same level as boys, girls being used as a benchmark in the distribution of inheritance, protecting girls, placing the same sense of justice for boys and girls, and showing God's love for his people is greater than that of parents.

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