

## CAUSES AND BARRIERS TO INHERITANCE IN ISLAMIC LAW

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**Abstract:** Islamic law is the law of Allah Almighty, and as the law of God he demands obedience from the Muslim ummah to carry it out as a continuation of faith in Allah, one of the rulings to be implemented is the ruling of the Islamic heirs. In the inheritance there is one very important point about who is entitled to inherit and anyone who is not entitled to receive an inheritance from al-marhum. The obstacle to receiving inheritance (mawani' al-irts) is one of the important sub-languages in the discourse of Islamic inheritance law. It is closely related to other sub-languages which are the stages of selection of beneficiaries before the calculation and division is carried out, namely selection based on family relationships that rest on two lines of relationship, namely: blood relations and legitimate marital relationships. At this stage, families who do not pass the selection, such as brother-in-law and son-in-law, are eliminated by themselves. The next selection is not entitled to receive inheritance some things, At this stage, prospective beneficiaries who do not pass the sekeksi, such as taking a life, or different religions with people who would bequeath property to him (muwarrits) become eliminated by itself, and slavery causes no inheritance.

**Keywords:** *Causes, Barriers, Heritage, Law, Islam*

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### A. Introduction

Allah has ordained for you concerning that which is on the one hand, that men may dispute about it, and on the other hand Allah does not desire to eat of that which is not right. (Amir Syarifuddin, 2010:148). Thus in the law of Islamic inheritance there is a rule of law to whom property will be earned and anyone who cannot receive inheritance. The determination of the receipt of inheritance is due to several reasons, because there is a reason for kinship, marriage and a person to free a slave. In addition, inheritance should not be given to heirs due to murder, religious differences (FathcurRahman, 1981:90) and slavery.

### B. Literature Review

#### 1. Understanding Inheritance

The word inheritance comes from the Arabic Al-miirats, in Arabic is a form of masdar (infinitif) from the word waritsa- yaritsu- irtsan- miiratsan. The meaning according to language is the transfer of something from one person to another. Or from one people to another. (M. Ali Shabuni, 1996:3). In Islamic law there are several terms, namely, faraidhl, fiqh mawaris, and others. (M. Syarbaini, 200:3). The word fara'id is a plural form of faridah, which is interpreted by the scholars' farridiyun semakna with the word mafrudah, which is the predetermined part. (Dian Khairul Umam, 1999: 11). Inheritance means the transfer of property rights from the deceased to his living heirs. (Ahmad Rofiq, 1995:13).

Islamic inheritance law is a law that governs all matters relating to the transfer of a person's rights and/or property obligations after his death to his/her heir. Therefore, in the legislation of inheritance there are three basic elements that are interconnected, namely heirs, relics, and heirs. Kawarisan is essentially part of an important law, while legislation is part of the basic aspects of Islamic teaching. (Ali Uncle, 1995:1).

## 2. Source of Islamic Heritage Law

Mawaris has been stipulated in the Qur'an and explained also in the hadith only the law of inheritance is described in detail in the Qur'an because the inheritance is a form of legal ownership in Islam or in the state and is true by Allah SWT. The source of the law of mawāris is the Qur'an and hadith or sunnah of the apostle. As in the verses contained in the Qur'an which speaks of the inheritance, among others, in surah Al-Nisa' verse 7: Men shall have a share in what their parents and kins parents and kins, and women shall have a share in what their parents and kins parents and kins with, whether it be little or much, a share determined (a part of it). (QS. An-Nisa/4: 7).

In addition to the legal basis of inheritance contained in the Qur'an, also bias is found in the hadith of the Prophet Muhammad which directly regulates the inheritance of hadith derived from Abdullah ibn Abbas narrated by Sunan Tirmidhi:

3. حَدَّثَنَا مُوسَى بْنُ إِسْمَاعِيلَ حَدَّثَنَا وَهَيْبٌ حَدَّثَنَا ابْنُ طَاوُسٍ عَنْ أَبِيهِ عَنْ ابْنِ عَبَّاسٍ رَضِيَ اللَّهُ عَنْهُمَا عَنِ النَّبِيِّ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ قَالَ أَلْحِقُوا الْفَرِضَ بِأَهْلِهَا فَمَا بَقِيَ لِأَوْلَى رَجُلٍ ذَكَرٍ. (رواه الترمذي)

It means: *Has told us Musa bin Isma'il has told us Wuhaib has told us Ibn Thawus from his father from Ibn 'Abbas of the Prophet 'alaihi wasallam said: "Give the part of fara'idh (the inheritance that has been set) to the rightful, then the remaining part for the heir of the closest man (nasab)".*

## 3. Causes For Inheritance

In the determination of Islamic law, the reasons for being able to accept the legacy there are three:

### a. Al-Qarabah (Because of Brotherly Relationship)

It is a familial relationship between the heir and the muwaris. This kind of kinship is called haqiqiy customer. (Ali Abri, 2006: 8). Among the reasons for the switching of the property of the dead to the living is the relationship between the two. The existence of kinship is determined by the presence of blood relations determined at the time of birth. In the first stage a child finds a relative's relationship with the mother who gave birth to him. A child born to a mother has a relative relationship with the mother who gave birth to him. This is natural and no one disputes this because the child clearly came out of his mother's womb. Indeed, according to the usual and naturally the child born to a mother bersal from the seeds of the mother who has chimed with the man who has touched her so that it can be said that the mother who gave birth is the mother who has the seeds. (Amir Syarifuddin, 2012: 177).

The legal basis of kinship as a provision that men and women have inheritance is the word of Allah SWT in Surah Al-Nisa Verse 7:

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

*Men shall have a share in what their parents and kins parents and kins, and women shall have a share in what their parents and kins parents and kins with, whether it be little or much, a share determined (a part of it).*

This means that the determination of the relationship of relatives is connected to the mother line and the father line. Although admittedly, that the female part is only half of the male part. (Ahmad Rofiq, 1998:398).

Thus it can be said that kinship prevails between a child and a man as his father, if the child is born from the result or result of marriage that prevails between the man and the mother who gave birth to him. (Amir Syarifuddin, 2012: 178). It should be added here, Islam does not distinguish the legal status of a person in devolution in terms of his physical strength, but simply because of blood ties or kinship. (Ahmad Rofiq, 1998:43).

#### **b. Al-Musaharah (Because of Marriage)**

Marital relations or *semenda* (*al-musaharah*), one of the causes of mutual inheritance in Islamic inheritance. A valid marriage leads to an inherited legal relationship between husband and wife. Some call it merely a record, but there are some opinions that call it a condition that if not fulfilled results in invalid marriage. The law of marriage in Indonesia, seems to give leeway in this case. That is, the legal measure or not of marriage is not an administrative provision, but the provisions of religion. but it must be recognized that the provisions of this administration, is an urgent, because with the evidence of administrative record-keeping, a marriage has the force of law. (Ahmad Rofiq, 1998:44).

The validity of inheritance between husband and wife is based on two provisions.

- 1) This provision means that the marriage of people who are Muslims is valid if according to Islamic law the marriage is a *shah*. The legal understanding according to Islamic law is *sesuara* that is done in accordance with the pillars and conditions have been avoided from all obstacles. (Amir Syarifuddin, 2012: 190).
- 2) With regard to inheritance caused by marital relations is that the husband and wife are still tied in the marriage rope when one of the parties dies. This provision is that one of the parties may die while the marriage bond has been broken in the form of divorce *raj'i* and the woman is still in *iddah*. A woman who is undergoing the period of divorce of *Raj'i* has the status of a wife with all the consequences of her law, except sex (according to the *jumhurulama*) because the lawful sex has been *berahir* with the existence of divorce. (Amir Syarifuddin, 2012: 178).

#### **c. Al-Wala' (For Freeing Servants)**

*Al-Wala'* is a relationship of inheritance because a person frees a slave, or through a covenant of help. For the last one, it seems rare to do if it does not exist at all. As for *al-wala'* the first is called *wala' al-ataqah* atau *'usubahsababiyah*, and the second is called *wala' al-muwaalah* that arises because of one's willingness to help with others through a covenant of guardianship of the free slave, if the man is called *al-mu'tiq* and if the woman *al-mu'tiqah*. The guardian of the helper is called *mauladan* the person who is helped is called *mawali*. (Ahmad Rofiq, 1998:45).

And who is free from the slave, when the freeing of the slave dies, and has wealth, then the freeing of the free shall inherit it. The part of him who frees his slave is 1/6 of the inheritance. If then there is a question of whether there are still slaves, then the answer is that the abolition of slavery is one of the successes of the Islamic mission. Because the reward of inheritance to *al-mu'tiq* or *al-mu'tiqah* one of the objectives is to motivate anyone who is able, in order to help and restore the rights of slaves to become free people. (Ahmad Rofiq, 1998:44).

#### **d. Causes of Barriers To Obtaining Inheritance**

The barrier to obtaining inheritance referred to here is a condition that causes a person to be unable to receive inheritance, when the person has sufficient causes and conditions. (Ahmad

Rofiq, 1998:45). There are four barriers that cause a person to be unable to receive the inheritance in this teaching book. The four reasons the author can explain as follows:

### 1) For Murder

Murder prevents a person from inheriting the inheritance of the person he killed. If an heir kills an heir Nabi saw:

It means: Whoever kills a victim, he cannot destroy it even if the victim has no heirs other than him, and if the victim is his father or his son, then the murderer has no right to receive inheritance Nabi saw. (Hadis R. Abu Daud).

From the understanding of the hadeeth of the Prophet was born a very famous expression among the fuqaha which is also used as a rule:

مَنْ عَجَلْ بِشَيْءٍ عَوْقِبَ حَرَمَانِهِ

It means: Whoever hastens to get something before his time, then he does not get his share. The killings, which are not a hindrance to the Hanafiyah scholars, are:

- a) Indirect murder, for example someone digs a hole, then his family is mired in the hole resulting in death. This does not lead to qishash, kaffarah and does not hinder the obtaining of inheritance.
- b) Murder by right, because there is a word of god in surah al-Isra' verse 33:

وَلَا تَقْتُلُوا النَّفْسَ الَّتِي حَرَّمَ اللَّهُ إِلَّا بِالْحَقِّ وَمَنْ قَتَلَ مَظْلُومًا فَقَدْ جَعَلْنَا لَوْلِيهِ سُلْطَانًا فَلَا يَسْرِفُ فِي الْقَتْلِ إِنَّهُ كَانَ مَنْصُورًا

It is true: And do not kill the banned soul of Allah (killing it), except with a true (excuse), and Whoever is undocumented, Indeed We have given the power to the heirs, but do not bear the heirs beyond the limits of killing. Surely it is the one who gets help.

- c) Murder committed by a person who is not talking about acting, such as a crazy person and a child who has not reached the age (puberty). They are not mukallaf, not confronted by him religious orders or burdens. (Ali Abri, 2006:12).

Syafi'iyah scholars argue that every killing is absolutely a barrier to receiving inheritance either directly or indirectly either because there is or not, whether done by the person acting or not. Anyway all sorts of murders are considered a barrier to obtaining inheritance. (Ali Abri, 2006:12). Hambali sect scholars argue that murders that are declared as heirs are any type of murder that requires the perpetrator to be diqishash, pay diyat, or pay a kafarat. In addition, it is not classified as an eviction of inheritance. (Ahmad Sarwad, 2013:40).

### 2) Because of Different Religions

Muslims only inherit muslims. When the deceased are Muslims, while the beneficiaries are non-Muslim, then the beneficiary does not obtain inheritance. For example, a Muslim child while his father is non-Muslim, the father cannot inherit his son's inheritance and vice versa. This is in accordance with the prophet's saying:

عَنْ أُسَامَةَ بْنِ زَيْدٍ رَضِيَ اللَّهُ عَنْهُمَا أَنَّ النَّبِيَّ صَلَّى اللَّهُ وَسَلَّمَ: لَا يَرِثُ الْمُؤْمِنُ الْكَافِرَ وَلَا الْكَافِرُ الْمُؤْمِنَ (متفق عليه)

*The sericality: A Muslim cannot inherit the disbelievers and the disbelievers cannot inherit Muslims. (HR. Bukhari-Muslim). (Ibn Hajar, 1995:45).*

The sect's scholars agree that non-Muslims cannot inherit Muslims, but they differ on whether a Muslim can inherit a non-Muslim. Imamiyah, (Muhammad Jawad Mughniyah, 2011:541), Umar, Muaz, and Mua'wiyah argued: a Muslim can inherit non-Muslims. (Hajar M, 2007:25). However, according to the fourth sect, namely Shafi'i, Hanafi, Maliki dan Hambali said that a Muslim cannot inherit non-muslim. (Muhammad Jawad Mughniyah, 2011:521).

The reason Imamiyah, Umar, Muaz and Mua'wiyah argue that a Muslim can inherit non-Muslims is an analogy to the ability of Muslim men to marry women of the Book as stated in verse 5 al-Maidah. While jumhur does not use qiyas because of the strong sunnah evidence that is contrary to the analaog. (Hajar M, 2007:25).

### 3) Because of Slavery

The majority of scholars agree that a slave is prevented from receiving inheritance because he is considered incapable of doing legal deeds.<sup>86</sup> The Word of God in the Qur'an (QS. al-Nahl {16}: 75).

ضرب الله مثلا عبدا مملوكا لا يقدر على شيء ومن رزقناه منا  
رزقا حسنا فهو ينفق منه سرا وجهرا هل يستوون الحمد لله بل  
أكثرهم لا يعلمون

*Allah sets forth an example: a slave owned [by his right hand] who has no power over anything, and one to whom We have given a goodly rezki, and he spends from it secretly and openly. Praise be to Allah, but most of them do not know.*

And Allah is All-Er, All-Knower. In the case of inheritance, there are two things that are contrary, namely on the one hand relinquishing the property of the property, and on the other hand receiving the property rights of the property, therefore, the obstruction of the slave in terms of inheritance can be reviewed from two departments, namely:

#### a) Inherit the inheritance of his heirs.

A slave shall not inherit from his heirs if:

- (1) He is seen as incapable of managing property. Had he been given an inheritance from his deceased relatives, the juridical inheritance he had received would have fallen into the hands of his master.
- (2) The family status of his relatives has been broken so that he has become a foreign family that is not his family. Whereas it has been the agreement of the scholars that bequeathing foreigners is not allowed and the law is null and void.

#### b) Inherit his inheritance to his heirs.

A slave shall not bequeathed his inheritance if he dies leaving the property to his own heirs. This is because he is considered destitute and has no inheritance. Likewise, a slave whose slavery was not full, like a slave mukattab.

## C. Method

The methods that constituents use in conducting this research are as follows:

### 1. Types of research

In preparing this thesis, the compiler uses a type of library research that is, studying and researching the source of literature both from the Qur'an, as-Sunnah, Fikih books, Tafsir books, Scientific papers, articles related to inheritance issues.

### 2. Nature of Research

This research is descriptive, is a research that can produce an overview by collecting facts that have the dimensions of space and time and raise the answer to what questions.

### 3. Data Collection Techniques

Data sources that become the object of this research are divided into two, namely, primary data sources and secondary data sources, as follows:

- a. Primary, is the data source that the compiler makes as the main reference in discussing.

- b. Secondary is the data obtained from the results of research or processed by others that have become forms of books, scientific works, and other sources.

## **D. Result and Discussion**

For those who have the right to menerinya must have a special relationship for the deceased. The relationship is characterized by the presence of:

### **1. Kinship**

The existence of kinship is determined by the presence of blood relations determined at the time of birth. In the first stage a child finds a relative's relationship with the mother who gave birth to him. A child born to a mother has a relative relationship with the mother who gave birth to him. This is natural and no one disputes this because the child clearly came out of his mother's womb.

### **2. Marital relations**

With regard to inheritance caused by marital relations is that the husband and wife are still tied in the marriage rope when one of the parties dies. This provision is that one of the parties may die while the marriage bond has been broken in the form of divorce *raj'i* and the woman is still in *iddah*.

### **3. Al-Wala'**

And who is free from the slave, when the freeing of the slave dies, and has wealth, then the freeing of the free shall inherit it. The part of him who frees his slave is 1/6 of the inheritance.

While the barriers to gain such inheritance, are:

#### **a. Murder**

A strong opinion among the *Ulam Syafi'iyah* stipulates that murder in any form prevents the right of inheritance. But weak opinion states that the right to murder is not an obstacle to obtaining the right to inheritance.

#### **b. Religious surge**

What is meant by religious diversity is a religious diversity that is the belief of the person inherited with the inherited person. For example, the religion of the person who inherited the disbelievers, whereas the inherited Muslims, then these disbelievers cannot inherit the inheritance of Muslims.

#### **c. Boy**

A person with a boy has no right to inherit even from his brother. The reason for everything that belongs to the boy, directly belonging to his good boy as *qinnun* (pure boy), *mudabbar* (the boy who has expressed independence if his master dies), or the *face* (the boy who has carried out a liberation agreement with his master).

## **E. Conclusion**

And Allah is All-Mighty, All-Aware. While the barrier to inheritance is also three things, namely: because murder will prevent a person from obtaining inheritance rights from the person he killed, because of different religions. If the deceased is a Muslim, while the heir is not a Muslim, then the heir does not get an inheritance. The next barrier is because Slavery became an inherited barrier, not because of its humanitarian status, but simply because of its formal status as a slave.

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