



Inheritance Sharing Model that Can Be Done Not as the Provision in Al-Quran

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Abstract

This article aimed to seek an understanding that inheritance in Islamic inheritance law regulated in Al-Quran can be subordinated. The nature of Islamic inheritance law is *ijbari*. It is defined as the property transfer from the deceased person to his/her inheritor that is applied automatically according to Allah and His prophet' provision without depends on the will of the testator/testatrix or the inheritor. In Indonesia, inheritance is regulated in article 183 of Compilation of Islamic Law (KHI). This study employed a normative approach. Inheritance distribution that is not in accordance with Al-Quran can be done by distributing the inheritance peacefully by *takharuj* or *tashaluh*, which is justified by *Maddhab Hanafi*.

Keywords: Islamic Inheritance Law; Peaceful Inheritance Distribution; Takharuj Inheritance

Introduction

The nature of Islamic inheritance law is *ijbari* in other words, it has been automatically because of Allah provision. This *Ijbari*, Allah enacts this because inheritance is a big problem since it is related to a person and another person. Even in prophet Muhammad SAW era, there was a man did, an he did not want to pray for the dead if his debt had not been paid. "he soul of the believer is held back by his debt until it is paid off on his behalf." (HR Tirmidzi, Ibnu Majah and Ahmad).

Allah establish law in general without seeing to a certain person and things. Such law, at its initial formation is determined for all without seeing the possibility that will occur later. Such general law is called as *azimah* law among the scholars of Usul Fiqih. *Azimah* law is determined by Allah to maintain legal certainty and to make sure that law does not subject to particular things.¹ One of them is inheritance law.

In Islamic law, Al-Quran has rigidly regulated an inheritor' rights. Things related to the inheritance in the form of inheritors' right shall be completed immediately when the testator/testatrix deceases. It shall be completed immediately to prevent the mixing of illegitimate properties and private property. "O you who have believed, do not consume one another's wealth unjustly but only (in lawful)

¹ Muhammad Abu Zahrah. (2005). *Ushul Fiqih*, penerjemah Saefullah Ma'sum, Pustaka Firdaus, Jakarta. p. 63.

business by mutual consent.” (QS: An-Nisaa: 29). And Al-Baqarah verse 188: “*Ad do not consume one another’s wealth unjustly or send it (in bribery) to the rulers in order that (they might aid) you (to) consume a portion of the wealth of the people in sin, while you know (it is unlawful).*”

Inheritance law, according to the Compilation of Islamic Law, is a law that regulates the transfer of testator/testatrix’ inheritance wealth (*tirkah*), determines who reserves the right to be the inheritor and how much the ration for each is.² Inheritance law is essential in Islamic Law. The importance of inheritance law is shown by the Prophet’ hadith transmitted by Majah and Al-Daraqutni: “Learn about the inheritance and teach it, for it is half of knowledge, but it will be forgotten. This is the first thing that will be taken away from my nation.”³

While, in Islamic inheritance law, a man does not possess a right to refuse to be an inheritor, however, the inheritors may share inheritance amicably by *takharuj* dan *tashaluh* dasar *ijma*. After an inheritance distribution is performed in accordance with Al-Quran and Al-Hadith and the inheritor has clearly known portion of respective inheritance, the inheritor is then allowed to step down or give a part or a whole of his/her inheritance portion to the other inheritors. Inheritors may agree to have a peaceful inheritance distribution after each party realize their portion (article 183 of KHI). Peaceful agreement among the inheritors on the resignation of an inheritor to not receive his/her portion is called as *takharuj*.

Al-Quran has rigidly regulated Islamic inheritance law regarding who the inheritor is and how much his/her ration is. Islamic inheritance law which is *ijbari* in nature, actually can be subordinate in term of the rations based on *ijtihad* that refers to maddhab Hanafi. Most of people only know that the form of inheritance distribution between man and woman is 2: 1. Actually, it can be subordinated without violating the provision in Al-Quran, and only a few people know about this. Of course, the basis for the scholars to perform *ijtihad* is because it relates to properties, for the sake of utility of mankind.

Methodology

The present study was a normative legal research. The researcher focused on reading, understanding, and studying the primary and secondary legal material. This study is also called as literature research or document analysis since it mostly done through literature study, or is more known as a study on secondary data (Peter Mahmud Marzuki., 2005: 42).

The nature of this legal research is descriptive, it is a research that aims to provide thorough data regarding human, circumstances, or other phenomena. In other words, it aims at affirming the hypotheses to strengthen the existing theories, or in order to construct a new theory (Peter Mahmud Marzuki., 2005: 10). This study employed statute approach. A normative research shall employ statute approach since the object of the study is various regulations that become the focus as well as the central theme of a research (Johnny Ibrahim., 2006: 302). The data were collected through literature study, the data were analyzed by using qualitative analysis method.

Discussion

Islamic Inheritance Law is a part of the construction of Islamic doctrine that is literally stated in the text of holy verses in Al-Quran. Al-Quran has regulated the procedure of inheritance distribution,

² Kompilasi Hukum Islam, Buku II, Bab I, Pasal 171.

³ A. Kadir. *Memahami Ilmu Faraidh Tanya Jawab Hukum Waris Islam*. Amzah, Jakarta, 2016. page. 7.

inheritor, and the requirement to be an inheritor.⁴ While, Islamic law is a universal, it is a part of universal Islamic doctrine, it applies on every person regardless of his/her place and nationality. The purpose of Islamic law is to realize utility and prevent disutility for mankind.⁵

Islamic law regulates the Rukun of Inheritance of Islam which is used as one of the basis and requirement in distributing inheritance in Islam. Literally, rukun is the existence of something that becomes the part of the existence of the other. In other words, Rukun is something in which its existence is able to describe the other things, it may be a part of another part or it may be the one that specifies it, as a real formulation and ritual. Therefore, Rukun of Inheritance is something that must exist to realize the inheritance' ration which does not hold the commandments. There are three rukun of inheritor:

- 1) *Al-Muwarits* (testator/ testatrix) is a deceased individual whether in de jure or de facto, a death announced by Judge based on some considerations, although he/she has not been deceased who leaves properties or right;
- 2) *Al-Warits* (inheritor), it is a human or a child within a womb who hold inheritance right, although in several cases it may be hindered;
- 3) *Al-Mauruts* (inheritance), it is the property that is categorized inheritance. It includes inheritance or rights that may be able to be inherited such as qishas (civil law) and keeping the pawned properties.

Three Rukun of Inheritance If one of the Rukun does not exist, inheritance distribution cannot be done. When a man deceases and does not possess inheritance, inheritance distribution cannot be performed since the Inheritance' rukun is not fulfilled.⁶

Inheritance will be discussed after the testator/testatrix decease. Islamic law does not admit the term "rejecting inheritance", it is in contrast with the western inheritance law since the nature of Islamic inheritance law is *ijbari*. It is defined as the property transfer from the deceased person to his/ her inheritor that is applied automatically according to Allah and His prophet' provision without depends on the will of the testator/testatrix or the inheritor. However, as the era develop and many problems occur in Islamic inheritance law, muslim scholars perform an *ijtihad* that results in an *ijma* that inheritance may be share peacefully through discussion (article 183 of KHI).

In Indonesia, inheritance problems for muslim is solved in Religious Court. The Guideline of Islamic inheritance problem-solving is the Compilation of Islamic Law (KHI) in force based on the Presidential Instruction no. 1 of 1991 which then becomes the basis of inheritance law for Muslim in Indonesia.

Various reasons encourage people to share inheritance without the provision in Al-Qur'an for utilities, peace, and welfare for other inheritors. Based on most cases where one of the inheritor has been wealthy and the other one is financially underprivileged, what people mostly understand is that the inheritance distribution between man and woman is 2: 1. Therefore, the condition of each family is different, the women may marry with an underprivileged man, while her testator/testatrix is very rich, while the inheritor man has worked and wealthy. While, such inheritance will be very helpful in assisting the woman inheritor' family. It is good to be done since it is noble act when the inheritor man give a part or even the whole of his ration to his sister. The main requirement is the inheritor' compliance.

⁴ Joko Danang Kurniawan. (2015). Pelaksanaan Tashaluh dalam Pembagian Warisan Pada Masyarakat Muslim Kotagede Yogyakarta. Tesis UGM, p. 107.

⁵ Yahya Muhtar. (1993). *Dasar-Dasar Pembinaan Hukum Fiqh Islam*, Al-Ma'arif, Bandung, p. 333.

⁶ Komite Fakultas Syariah Universitas-Azhar, Hukum Waris, Senayan Abadi Publising, Jakarta, 2004, p. 27.

According to Ahmad Rofiq, such peaceful procedure is in line with the statement of Muhammad Salam Madkur, that Umar Bin Khattab ra advised the muslim peoples to prefer a peaceful way in solving a problem. Umar ra said: "It is allowed to make peace among Muslimin, except it does not justify the forbidden, and forbid the justified". In addition, Umar orders: "Bring the problem-solving back to the sib so that they may perform peace, for problem-solving through a court create unpleasant feeling."⁷

Based on Abu Zahrah' explanation, inheritance distribution, if each inheritor voluntarily share it peacefully, may be performed based on the agreement of each party concerned. Even, it is legitimate if among the inheritors there is an inheritor who voluntarily take off his/her inheritance rights to be distributed to the other inheritors.⁸

Noticing Abu Zahrah' notion, inheritance law is not absolutely enacted. In this case, as Muhammad Abu Zahrah states, inheritance right is a pure right of an individual. So, by the existence of willingness, acceptance, and agreement among the inheritor, it is allowed to perform an inheritance distribution that deviates from or is not in accordance with the provision.⁹

Related to the definite provision in inheritance distribution and a certain party' willingness in a certain circumstance that demands other ways, indeed, there is no hadith that becomes the guide for the exception. However, the demands for justice and willingness from the parties concerned will solve the problems. The problem-solving may be in two forms:¹⁰

- a. **The first:** The problem-solving is done after the inheritance distribution. It means that, after the ration of each party is determined and they have received their rights, the entire inheritance is re-gathered, then the distribution based on the agreement is performed by respective willingness. By this method, every party has received their ration in accordance with their needs, while the law has been formally implemented. Although such method materially violates the distribution determined by syara', formally, the inheritance law has been implemented so it satisfies the requirement of syara'.

This method is acceptable since it is supple and provide a place from adat demands. Therefore, the Minangkabauese practically may inherit his/ her inheritance to his/her daughter. Likewise, the person who adhered patrilineality may inherit his/her entire properties to the eldest son based on the agreement and the requirement that has been agreed. From the perspective of mutual assistance in which a brother helps his sister by handing over all of his inheritance is a noble deed demanded by the religion as Allah' word in Al-Maidah (5) verse 2.

- b. **The second:** The problem-solving prevails before the inheritance distribution. It means that there is an agreement among the inheritors to perform an inheritance distribution outside the method determined by syara'. In particular understanding all inheritors' agreement on one or more person' discharge of inheritance distribution by compensation taken from the group of inheritance properties. It can also mean that based on the agreement, one of the inheritors take off his/her inheritance right by taking one of the forms of inheritance. This method, in Islamic law literature is called as *takharuj*.

Takharuj is originated from word (خرج-يخرج-خروج) *kharaja*, *yakhruju*, *khuruujan* which means go out, by consideration *tafa'ul* (تفاعل), that is (تخارج - يتخارج) *takharaja*, *yataklarju*, *takharujan* that mean mutual. It means that the inheritor is out from his/ her position as the inheritor.¹¹ The legal basis

⁷ Ahmad Rofiq. (2000). *Pembaruan Hukum Islam di Indonesia*, Gama Media, Yogyakarta, page.15.

⁸ Satria Efendi M. Sein. (2004). *Problematika Hukum Keluarga Islam Kontemporer: Analisis Yurisprudensi dengan Pendekatan Ushuliyah*, Prenada Media, Jakarta, p.343.

⁹ Suhairi, *Perdamaian Dalam Pembagian Harta Warisan (Kritik Atas CONSEP Qat'i Dalam Hukum Kewarisan Islam)*, STAIN Jurnal Siswo Metro Lampung, Lampung, Vol. VI No. 1, Januari 2012, p.164.

¹⁰ Agus Efendi, Loc.Cit, page.62.

¹¹ Amir Syarifuddin, *Op. Cit*, page.296.

of Inheritance distribution with Takharuj concept is the result of ijihad. *Takharuj* arises because of an event occurred during Usman bin Affan governance era.

In inheritance matter, *at-Takharuj* possesses three forms as the following:

- a. **The first**, *at-takharuj* occurs to one of the inheritors. It means that *al-kharij* agree with one of the inheritors who is voluntarily take off his/ her inheritance right. That inheritor is also willing to receive some properties as the substitute for his/her inheritance right. Such substitute properties do not come from the inheritance property. *Takharuj* process in this form is determined based on sale and purchase covenant. Therefore, the inheritor who gives such substitution becomes *al-kharij* (the man who is out) because he/ she is the purchaser, so he/ she possess the inheritance ration of *al-kharij* and is added by his/her original ration.
- b. **The second**, *at-takharuj* occurs to all inheritors. In this case, *al-kharij* is voluntarily “out” or take off his/her inheritance right if it is substituted with a certain amount of money that is not the inheritance. That substitute money given by the other inheritors. *Takharuj* process in this form is determined base on sale covenant since *al-kharij* sells his/her ration to other inheritors. Therefore, those inheritors may possess *al-kharij*’ rations in accordance with such agreement in *takharuj* covenant.

If those inheritors have given the money to *al-kharij* in amount equivalent to their inheritance ration, they will gain *al-kharij*’ inheritance ration in accordance with their inheritance right. However, if every inheritor give the same amount of money to *al-kharij*, *al-kharij*’ ration is equally shared to them.

- c. **The third**, *at-takharuj* with the inheritors. In this case, *al-kharij* initiates an idea so that he/ she is “taken out” or does not receive the inheritance that becomes his/ her right with a certain compensation either in the form of money or things taken from the inheritance. This *takharuj* process is imperfect distribution between *al-kharij*, who leaves his/ her ration, with the other inheritors who hold the rest of the inheritance. The nature of this form is as the same as *qismah* (distribution law), not sale-purchase. This form often occurs among the society.

In this situation, we distribute the inheritance to all inheritor –including *al-kharij*- as if no one is out. Then, we abort *al-kharij*’ portion from its least common multiple, ‘*aul, tash-hih*, as we abort it from inheritance, the we make that rations as the least common multiple. The, inheritance property is divided based on the least common multiple.

The most important thing here is that an individual may take off his/ her inheritance right voluntarily without any pressure from any party. When peaceful inheritance distribution may be performed as long as it does not justify the forbidden or otherwise, then an individual may take off his/ her inheritance rights by the aim of prospering other inheritors.

Conclusion

It is allowed to take off an inheritance right based on the scholars’ ijma that is justified by The Hanafi Maddhab, which in Indonesia, is regulated in article 183 of the Compilation of Islamic Law. Such distribution can be performed by two methods, the first method is the completion is performed after the inheritance distribution. Or by a discussion after *fara'id* formal has been performed. Both completion prevails before the inheritance distribution by *takharu* or *tashaluh*, it is an agreement of the entire inheritors on one or more inheritors taking off their inheritance right with or without the compensation taken from the inheritance property group.

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