



Renewal on the Radd System on Inheritance Law in the Compilation of Islamic Law

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Abstract

Islamic inheritance law in Indonesia is based on the Qur'an, al-hadith and jurisprudence legal doctrines that refer to several fiqh books. The Compilation of Islamic Law has been adapted to the conditions of Indonesian society. Inheritance law is tied to the development of society and will always be attached to the community itself, or in other words the law runs behind the social development of society. The issue of inheritance is closely related to the issue of death which is the end of human life and at the same time it is also the beginning of all his legacy. The inheritance that must be completed by the heirs can go well or vice versa which depends on the heirs. The application of inheritance distribution with the radd system in the Compilation of Islamic Law needs attention from Islamic law experts because in addition to requiring accuracy and clear calculation guidelines, it must also be implemented immediately. Justice and expediency are the goals to be achieved. Social sensitivity to see the position of each heir needs to be studied in depth. The difference in the calculation of the radd method between the compilation of Islamic law and the previous scholars gave rise to a perception of the effectiveness of the radd system used in the compilation of Islamic law, especially after grandchildren become heirs in the same position as daughters because they become substitute heirs.

Keywords: *Radd System; Inheritance Law; Compilation of Islamic Law*

Introduction

Inheritance is closely related to the event of death that will occur and must be experienced by everyone. Then, inheritance law is required to resolve legal events after death. Inheritance law in Islam has been enforced since the time of the Prophet SAW which is a source of law that is obeyed by companions, tabiin, tabiit-tabiin, and scholars of hadith and fiqh. In addition to these sources of law, Indonesia also enforces the Compilation of Islamic Law which also regulates inheritance events. The Compilation of Islamic Law is the work of Indonesian Ulemas and is enforced according to Presidential Instruction No. 1 of 1991 which is used as a reference in solving problems including inheritance issues.

Islamic inheritance law in Indonesia is based on the Qur'an, al-hadith and jurisprudence legal doctrines that refer to several fiqh books. The Compilation of Islamic Law has been adapted to the conditions of Indonesian society. Inheritance law is tied to the development of society and will always be attached to the community itself, or in other words the law runs behind the social development of society. Practically, these developments are sometimes difficult to accept and apply because of the many

differences in thoughts, concepts or theories. Legal certainty should be the foundation for justice seekers who need a unified understanding of their problems. Society needs legal formulations that are mutually agreed upon as applied. However, these formulations are often found to be incomplete and difficult for judges to understand. For example, the compilation of Islamic law, as a formulation on inheritance law, contains Books I to III with 229 articles discussing inheritance starting from Article 171 to Article 193 (23 Articles). However, some articles still need explanation and cannot stand alone without being referred back to their parent Al-Quran, Hadith, and even fiqh doctrine. For example, the share of boys commonly referred to by jurists as having the Ashabah share is not specifically explained in the compilation. The share of grandparents which is fully described in fiqh books is not explained in the Compilation of Islamic Law. The Radd system in the Compilation of Islamic Law is stated in Article 193 which means (Murlisa, 2015).

“If in the distribution of inheritance, among the heirs of Dzawil Furudh indicate that the numerator is smaller than the denominator, while there are no ashabah heirs, then the distribution of the inheritance is carried out on a radd basis, i.e. according to the rights of each heir, while the rest is equally divided between them”.

The system of radd inheritance calculation in fiqh books has various interpretations. The opinion of Jumhur ulema ignores the wife or husband's share on the grounds that the husband/wife does not have a relative relationship, because radd is only intended for relatives of dzawil furudh or relatives who have definite shares. On the other hand, the position of husband or wife in the compilation of Islamic law is included in the section that gets radd. The question is what are the implications for the application of Radd to inheritance law according to the Compilation of Islamic Law?

Discussion

Renewal is an expression that means renovation or improvement. According to the Big Indonesian Dictionary (KBBI), the meaning of renewal is perfection. In Islam, renewal means tajdid, namely efforts to adapt Islamic religious understanding to new developments brought about by advances in modern science and technology (Nihwan & Munir, 2019). Islamic law itself is defined as the Shari'a from Allah SWT for mankind brought by the Prophet Muhammad SAW. It contains legal provisions relating to belief (aqidah) as well as laws relating to amaliyah (deeds) carried out by all Muslims (Iryani, 2017). Inheritance law is the law that regulates the transfer of property from the heir to his heirs. Meanwhile, according to Article 171 of the Compilation of Islamic Law, it is stated that *"the law governing the transfer of ownership rights to the inheritance (tirkah) of heirs determines who is entitled to become heirs and how much of each."*

Definition of Islamic Inheritance

Literally, inheritance in Arabic irsi or mirats means the transfer of something from one person to another, or from a group of people to another group of people in the form of wealth, knowledge, honor, and so on (Ritonga et al., 2022). According to the term, it is the transfer of ownership rights from the deceased to their living heirs in the form of movable and immovable property and all legal rights (Rifenta, 2019). The provisions of inheritance are partly contained in QS 4:11 which explain the share of children, mothers, fathers, the obligation to pay debts and carry out wills.

“Allah commands you regarding your children: the share of the male will be twice that of the female. If you leave only two (or more) females, their share is two-thirds of the estate. But if there is only one female, her share will be one-half. Each parent is entitled to one-sixth if you leave offspring. But if you are childless and your parents are the only heirs, then your mother will receive one-third. But if you leave siblings, then your mother will receive one-sixth—after the fulfilment of bequests and debts. (Be fair to) your parents and children, as you do not (fully) know who is more

beneficial to you. (This is) an obligation from Allah. Surely Allah is All-Knowing, All-Wise." (Cahyani, 2018).

The issue of inheritance is closely related to the issue of death which is the end of human life and at the same time it is also the beginning of all his legacy. The inheritance that must be completed by the heirs can go well or vice versa which depends on the heirs. Sayyid Sabiq in Fiqh Sunnah explains that there are several obligations of the heir to the heir that must be fulfilled which include: (Sabiq, 2021).

1. The first obligation is to bathe, shroud, bury, and complete it as guided in the fiqh book on Janazah. This situation resulted in financing before the tirkah was distributed to the heirs.
2. The second obligation is to settle debts to humans and to Allah SWT because according to Jumhur Ulama, the debts of the deceased are divided into two types:
 - a. There are two kinds of debts to fellow human beings, namely debts in the form of assets and debts other than assets.
 - b. Debts to Allah SWT that involve the rights of Allah SWT, for example debts of vows, zakat, kafarat, etc. According to the Shafi'i school, debts to Allah should take precedence over paying debts to humans. But this opinion is different from the opinion of Imam Maliki who prioritizes paying debts to humans.
3. The third obligation is the testator's will while still alive. A will is a statement containing a promise to give an object or property to a person or group of people or institutions other than the heirs, at most one third of the total assets owned because the will against the heirs is not valid. According to Imam Shafi'i, wills are not allowed for heirs because the inheritance verses are revealed which means they should not harm the rights of the heirs. Meanwhile, according to Imam Malik, it is okay as long as it is approved by all heirs. If they do not agree, then the will is taken from the person who approves it. This provision has also been stated in Article 195 of the Compilation of Islamic Law:

(2) *A will is only allowed as much as one third of the inheritance unless all the heirs agree.*

(3) *The will to the heirs is valid if it is approved by all the heirs.*

4. The fourth obligation is to immediately distribute the inheritance to be given to all entitled heirs. Surah An-Nisa verse 58:

"Indeed, Allah commands you to return trusts to their rightful owners; and when you judge between people, judge with fairness. What a noble commandment from Allah to you! Surely Allah is All-Hearing, All-Seeing."

The division of inheritance mentioned in the Qur'an is very global. It requires deep understanding and even interpretation. This is evidenced by the differences of opinion among companions, tabiin, and fiqh scholars in the books they have written. As a result, these books are difficult to understand because of the many differences between the priests of the madhhab. For this reason, various understandings need to be re-examined as the study that produced the Compilation of Islamic Law on the initiative of legal experts in synergy with Indonesian scholars to establish Islamic inheritance law that can be applied in Indonesia.

The Study of Indonesian Ulama initiated by the Supreme Court of the Republic of Indonesia has produced a Compilation of Islamic Law which is a legal reform in Indonesia. Among other things, it contains the law of inheritance as a stipulation of Indonesian scholars so that it can be used by the government and the community as a guide in solving problems in their field, although there are certain

parts that are renewals at the same time that need to be elaborated further so that there are no misunderstandings in their application (Wulandari, 2018).

Ashabul Furudh's Inheritance Share

Ashabul furudh or commonly referred to as furudul muqoddara is a person or heir who gets a predetermined or definite share. In general, fiqh books mention 12 people, four from the male group, namely: 1) father, 2) grandfather, 3) biological brother from mother, 4) husband; and eight from the group of female heirs, namely: 1) wife, 2) daughter, 3) sibling, 4) half-sister, 5) mother-in-law, 6) daughter of a son (grandchildren), 7) mother, and 8) grandmother. Then, according to the compilation of Islamic law, there are only 7 Ashabul Furudh people, consisting of: father, biological brother and sister from mother, biological brother and sister from father, mother, daughter, widower, and widow (Ritonga et al., 2022).

Ashabul Furudh of the male group is:

1. Father

- a. The father gets $\frac{1}{6}$ of the share if the heir has a son or grandson
- b. Father gets ashabah, if there are no sons or grandsons.
- c. The father gets a share of $\frac{1}{6}$ plus the remainder, if there are only daughters or granddaughters of sons.

2. Grandfather's Share

- a. Grandfather gets $\frac{1}{6}$ share if the heir has a son or grandson (grandfather here is the father's father because the father died earlier than the heir, not the grandfather of the heir's mother line).
- b. Grandfather gets ashabah share as the father's share, if there are no children or other heirs who are entitled to get a share of the property.
- c. Muqosamah means that the grandfather shares equally and equally with other heirs who are considered or positioned as brothers whose share is ashabah. Thus, if grandfather is with his sister, grandfather gets twice the share of women.
- d. Grandfather gets $\frac{1}{6}$ of the share plus the remainder if the heir has a daughter or granddaughter from a son.

3. Biological brother from one mother

- a. Biological brother from one mother gets $\frac{1}{3}$ of the share if there are 2 or more people, either male or female. If he is alone, he gets $\frac{1}{6}$ of the share.
- b. The share is acceptable on the condition that there are no children, grandchildren, fathers, and grandfathers.
- c. Husband's share

The husband's share or Zauj is as stated in the letter An-Nisaa 'verse 12, the point of which is:

- a. The husband gets share if the heir does not have children or grandchildren from sons.
- b. The husband gets of the share, if the deceased heir (wife) has children or grandchildren.

Ashabul Furudh from the women's group consists of:

1. Wife

2. Daughter

- a. Daughter gets share of the inheritance if they are alone and not with the boys.
- b. Daughter gets $\frac{2}{3}$ of the share if 2 or more people are not with the boys.
- c. Daughter gets a remainder or ashabah if she is with a boy, with a share of two to one.

3. Sister Siblings Share

- a. Sister siblings get share if she is alone and has no siblings.
- b. Sister siblings if more than one get $\frac{2}{3}$ of the share.
- c. A sister gets ashabah bil ghair if she has a brother and gets ashabah ma'al ghair if she has daughters or grandchildren.
- d. Sisters become mahjub if they have sons, grandchildren, fathers, or grandfathers.

4. Share of Sister of One father

- a. Sister of one father gets the share when she is alone.
- b. Sister of one father gets $\frac{2}{3}$ of the share if there are 2 or more people.
- c. One or more sisters get $\frac{1}{6}$ of the share, if you have a sister
- d. Sister of one father gets ashabah if she has a brother with the same father.
- e. The division or portion can be carried out if there is no father, grandfather, child, half-brother and sibling.

5. Sister of One Mother

- a. Sister of one mother gets $\frac{1}{3}$ share if there are 2 or more people, both male and female.
- b. Sister of one mother gets $\frac{1}{6}$ of the share if she is alone.
- c. The share can be accepted on the condition that there are no children, grandchildren, fathers, and grandfathers.

6. Mother

- a. Mother gets $\frac{1}{3}$ of the share if the heir does not have children or grandchildren, nor does he have several brothers or sisters.
- b. Mother gets $\frac{1}{6}$ of the share if she has a son or grandson, or has a brother or sister, whether she is the same mother, or father, or siblings.

7. Granddaughter of Son

- a. A son's granddaughter gets of the share if she is alone, and there are no sons, no daughters, and no grandsons.
- b. Granddaughter of a son gets $\frac{2}{3}$ of the share if there are 2 or more people, if there is no son, daughter, and no grandson.
- c. The granddaughter of a son gets $\frac{1}{6}$ of the share if he has one daughter. Actually part $\frac{2}{3}$ completes part 2 for girls which means that daughters get and granddaughters get $\frac{1}{6}$. The division is on the condition that there are no sons and grandsons.
- d. A granddaughter gets ashabah if she has a grandson, with a share of two to one between a grandson and a granddaughter. Grandsons get two parts, while granddaughters get one share. This division is carried out on the condition that there are no sons.

8. Grandmother

The grandmother referred to here is mother's mother, father's mother, and grandfather's mother, not grandmother's mother.

- a. One or more grandmothers get $\frac{1}{6}$ of the share, if the heir does not have a mother, just as grandfather does not get an inheritance if there is a father.
- b. The grandmother who was close, prevented (hijab) on the grandmother who was far from all directions and the grandmother from the father's path died because of the father but did not abort the grandmother from the mother's side.

Ashabul Furudh according to the Compilation of Islamic Law:

1. Father (Article 177 Compilation of Islamic Law)
 - a. The father gets $\frac{1}{3}$ share.
 - b. The father gets $\frac{1}{6}$ of the share if he has children.

2. Brothers and Sisters from One Mother (Article 181 of the Compilation of Islamic Law)
 - a. Brothers and sisters from one mother each get $\frac{1}{6}$ share (if there is no child and father).
 - b. Brothers and sisters from one mother 2 or more people together get $\frac{1}{3}$ share (if there is no child and father).

3. Biological Sister or from One Father (Article 182 Compilation of Islamic Law)
 - a. Biological sister or from one father 1 person gets share.
 - b. Biological sister or from one father 2 or more people get $\frac{2}{3}$ of the share.
 - c. Biological sister or from one father with brothers, brothers get 2 parts, while sisters get 1 share (two to one).

4. Mother (Article 178 Compilation of Islamic Law)
 - a. Mother gets $\frac{1}{3}$ share.
 - b. Mother gets $\frac{1}{6}$ share if there are 2 or more children or siblings.
 - c. The mother gets $\frac{1}{3}$ of the remainder after the widow or widower's share is taken, if the mother has a father.

5. Daughter (Article 176 Compilation of Islamic Law)
 - a. 1 daughter gets share.
 - b. Daughters 2 or more get $\frac{2}{3}$ share.
 - c. Daughters and sons get ashabah (the share of sons compared to the share of daughter is two to one).

6. Widower (Article 179 Compilation of Islamic Law)
 - a. Widower gets $\frac{1}{2}$ share.
 - b. Widower gets $\frac{1}{4}$ share if he has children.

7. Widow (Article 180 Compilation of Islamic Law)
 - a. Widow gets $\frac{1}{4}$ share.
 - b. Widow gets $\frac{1}{8}$ share if she has children.

Menghitung Waris dengan Sistem Aul

Aul in Fiqh Sunnah uses the word *Irtifa* 'or lift and the word *aul* sometimes tends to act of persecution. Then, according to the Aul fiqh experts, the share of *dzawil furudh* increases, thereby reducing their respective share (Rumambi, 2015). Sayuti Talib calls it the settlement of losses, because this loss arises from the distribution of the first level which is caused by too large a divisor so that it needs to be taken or it needs to be deducted from each heir in a balanced manner. Therefore, this reduction is called *aul*. (Thalib & Listianingsih, 2016) Practically, the calculation is easier because the larger denominator immediately becomes the divisor in performing calculations or divisions. Example: A woman dies, leaving a property of 1000 leaving an heir, a husband, a biological mother, and 2 daughters:

Table 1. Distribution of inheritance with the Aul system

Husband	$\frac{1}{4}$	3	$1000 ; 13 \times 3 =$	231
Biological Mother	$\frac{1}{6}$	2	$1000 ; 13 \times 2 =$	154
2 Daughters	$\frac{2}{3}$	8	$1000 ; 13 \times 8 =$	615
Source of Problem 12	12	13 Aul	$13 = \text{Aul}$	1000

Calculating Inheritance with the Radd System

Radd is defined as a reduction that occurs due to an excess of the divisor or denominator so it is necessary to reduce the number that is the origin of the problem and add it to the share of each heir because there is an excess of division, provided that there are no ashabah heirs but there are dzawil furudh (heirs who have definite part) (Bachri, 2020). The problem of distributing inheritance to husband/wife as a widower/widower due to death, especially the radd problem occurred after there was a renewal in the Compilation of Islamic Law (Sa'adah, 2022). Whereas some fiqh scholars do not include the radd system for the part of husband and wife (widows/widowers) left by their husbands/wives, among them the majority of scholars (Imam Abu Hanifah, Imam Ahmad, Imam Shafi'i and some followers of Imam Malik) who argue that radd not given to husband and wife but given to ashabul furudh, because husband and wife are not included as heirs who get radd because their inheritance rights are only limited to marital relations, not kinship (Fitriyati, 2014). Meanwhile, according to Zaid bin Thabit who was followed by Imam Syafi'i, radd was not given to anyone including dzawil furudh but was given to Baitul Maal. Meanwhile, according to Usman's opinion, followed by Sayuti Talib, all those who have been determined as dzawil furudh are entitled to a share of the remainder imposed by radd (Thalib, 2018). This opinion is the same as that stated in Article 193 of the Compilation of Islamic Law (Murlisa, 2015).

According to the two opinions in fiqh plus the Compilation of Islamic Law, the opinion about Radd is divided into three schools, each of which has advantages and disadvantages according to the opinions of each school. Furthermore, regarding to whom the remainder of this deduction is given, it has three opinions as follows:

- 1) The first opinion, it is given baitul maal. This opinion was followed by Zaid bin Thabit, Imam Malik, and Imam Shafi'i. If you use this opinion, there is no radd problem.
- 2) The second opinion is given to dzawil furudh except husband and wife because husband and wife cannot have more shares. This is the opinion of the majority of scholars.
- 3) The third opinion, it is given to all dzawil furudh including husband/wife. This is the opinion of Usman which was followed by Sayuti Talib, which was then followed by the understanding of the Compilation of Islamic Law (Thalib, 2018).

The impact of Radd in the Indonesian Legal Compilation system on the one hand benefits husband/wife, because husband/wife is included in the count that performs radd. On the other hand, it turns out that it is detrimental to the biological daughter when the biological child has a grandchild in the position of a substitute heir, because the position of the grandson gets $\frac{1}{6}$ share and then increases to $\frac{1}{3}$ when he becomes a substitute heir. As a result, the share of girls, of course, goes down from part down to $\frac{1}{3}$ part (Aniroh, 2018).

Thus, the division of the radd system needs to be reviewed, especially from the perspective of justice. According to Aristotle, justice is divided into distributive justice and corrective justice where distributive justice is focused on the distribution of goods and honor to each person according to his position. This needs to be emphasized because between biological children and grandchildren, the system

of proximity to the heir is different. So, the distribution of inheritance should not be equalized on the grounds of radd.

Example 1: Radd the fiqh system and the Islamic Law Compilation system with an asset value of 1000. One person dies leaving behind a wife, a mother, and 2 daughters.

Calculation of the division in jumhur fiqh and the Compilation of Islamic Law

Table 2. Calculation System According to Jumhur Fiqh

Wife	1/8	3	1000 : 24 x 3	125
Mother	1/6	4	875 : 20 x 4	175
2 Daughters	2/3	16	875 : 20 x 16	700
	Am 24	23	<i>Radd</i>	1000

Note: Jumuhur fiqh system calculation, the wife gets 125 parts.

Table 3. Raad Calculation System According to the Compilation of Islamic Law

Wife	1/8	3	1000 : 23 x 3	130
Mother	1/6	4	1000 : 23 x 4	174
2 Daughters	2/3	16	1000 : 23 x 16	696
	Am 24	23	<i>Radd 23</i>	1000

Note: Calculation of the radd system of the Islamic Law Compilation model, the wife gets 130 shares, an increase of 5 points.

Example 2: Radd fiqh system and Islamic Law Compilation system with an inheritance value of 1000. A person dies leaving behind a wife, a mother, a daughter, and a granddaughter from a daughter:

Table 4. Jumhur Radd system, with 1000 inheritance

Wife/Widow	1/8	3	1000 : 24 x 3	125
Mother	1/6	4	875 : 20 x 4	175
Daughter	1/2	12	875 : 20 x 12	525
Granddaughter from son	1/6	4	875 : 20 x 4	175
Inheritance = 1000	AM 24	23	<i>Radd 23 - 3 = 20</i>	1000

Note: If the wife is expelled after getting 125 shares out of 1000, then the remaining 875 is distributed to blood relatives.

Table 5. The radd system in the Compilation of Islamic Law with a total inheritance of 1000:

Wife/Widow	1/8	3	1000 : 23 x 3	130
Mother	1/6	4	1000 : 23 x 4	174
Daughter				348/daughter
Granddaughter of son (surrogate)	2/3	16	1000 : 23 x 16 ; 2	348/granddaughter
Inheritance = 1000	Source of problem 24	23	<i>Radd 23</i>	1000

Note: Article 185 of the Compilation of Islamic Law "The successor's share of heirs may not exceed those who are equal to the successor. Because granddaughters are with daughters, grandchildren are made equal to daughters. So the share of 2 daughters is 2/3".

Table 6. The Radd system according to Usman followed by Sayuti Talib

Wife/Widow	1/8	3	1000 : 23 x 3	130
Mother	1/6	4	1000 : 23 x 4	174
Daughter	1/2	12	1000 : 23 x 12	522
Granddaughter	1/6	4	1000 : 23 x 4	174
Inheritance = 1000	AM 24	23	Radd 23 - 3 = 20	1000

Conclusion

The discussion of inheritance is inseparable from differences in the use of calculation systems, especially the radd system. Jumhur Ulama or Imam Madzhab include Imam Abu Hanifah, Imam Ahmad, Imam Syafi'i and some followers of Imam Malik agreed to exclude husband/wife from the calculation of the radd system. While the radd system in the Compilation of Islamic Law still includes husband/wife. In fact, in the radd system of the Islamic Law Compilation, it also includes grandchildren (as substitute heirs) sharing the same with biological children in obtaining radd. In fact, judging from the closeness of kinship between grandchildren and biological children, they are not the same. This gives rise to many perceptions because the Compilation of Islamic Law itself is not perfect. There are many problems that need to be studied, including the effects of the radd system and how it is calculated.

The application of inheritance distribution with the radd system in the Compilation of Islamic Law needs attention from Islamic law experts because in addition to requiring accuracy and clear calculation guidelines, it must also be implemented immediately. Justice and expediency are the goals to be achieved. Social sensitivity to see the position of each heir needs to be studied in depth. The difference in the calculation of the radd method between the compilation of Islamic law and the previous scholars gave rise to a perception of the effectiveness of the radd system used in the compilation of Islamic law, especially after grandchildren become heirs in the same position as daughters because they become substitute heirs.

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