



The Existence of Dzawil Arham's Heir in Islamic Law and Its Application at the Syar'iyah Court of Banda Aceh

Ilyas; Mahfud; Riza Chatias Pratama

Faculty of Law, Syiah Kuala University, Indonesia

<http://dx.doi.org/10.18415/ijmmu.v10i7.4806>

Abstract

One of the legal dimensions that is continuously interesting to study in the Islamic inheritance concept is known as the dzawil arham heirs, which are heirs who legally do not have a definite share. According to Islamic law, the heirs of Dzawil Arham will only receive the legacy if Zawil Furudh does not exist. Nevertheless, several cases show different distributions. Dzawil Arham gets a share of the inheritance even though Zawil Furudh is still alive. The problem studied is how the inheritance rights for the dzawil arham heirs are defined in fiqh and how the inheritance rights for the dzawil arham heirs are defined in their application in court.

Keywords: *Dzawil Arham; Heirs; Islamic Law*

Introduction

The concept of Islamic inheritance is yet another interesting theme to discuss, in addition to the existence of other legal concepts and constructions governing inheritance law, such as customary inheritance and conventional civil inheritance in Indonesia. The concept of Islamic inheritance has a place that is quite urgent for the settlement of inheritance between Muslims in Indonesia. Recognition of the concept of Islamic inheritance is strengthened through Presidential Instruction No. 1 of 1991 concerning the Compilation of Islamic Law (KHI), to be precise, Book II.

Talking about Islamic inheritance becomes more interesting when it moves to detailed and causal issues, such as the inheritance of *dzawil arham*. *Dzawil arham* is a term used to name heirs who are not included in the heirs whose share is determined (*zawil furud*) nor as heirs who spend assets (*ashabah*). [1] In another sense, *Dzawil Arham* is an heir who only gets a share of the inheritance when the heirs of *Zawil Furudh* and *Ashabah* are vague. [2]

The arrangement of inheritance rights has been regulated in several verses of the Qur'an. Among the verses that specifically mention the inheritance section are QS. Al-Nisa's [4] verses 11, 12, and 176. [3] The three verses expressly state the parts of the heirs with certainty, and these parts are then called *furudh al-muqaddarah*, namely the parts that have been determined and regulated with certainty in the

propositions of the texts. Through this concept, relatives also appear who have close family ties, but their part is not mentioned. This heir occupies the position of *Dzawil Arham*.

The arrangement of *Dzawil Arham* rights is not stated in statutory regulations. One of the regulations governing Islamic inheritance is Presidential Instruction Number 1 of 1991 on the Compilation of Islamic Law. In this Presidential Instruction, the status of the inheritance rights of *Dzawil Arham* is not clearly specified. Article 191 only states that if the heir does not leave any heirs at all, or whether the heirs exist or are obscure, then the legacy, based on the decision of the Religious Court, is handed over to the Baitul Mal for the benefit of the Islamic religion and general welfare.

In the perspective of classical *fiqh*, there are various opinions among scholars regarding the heirs of *Dzawil Arham*. Some scholars believe that, when the heirs of *Zawil Furudh* are not existing, then *Dzawil Arham* does not have any share of inheritance from the heir's assets, but the property is given to Baitul Mal, while in another opinion, *Dzawil Arham* actually has the right to share inheritance when *Zawil Furudh* is not present. [4]

In the context of the current judiciary, *dzawil arham's* rights are assigned together with *ashabah*, which actually has no legality from a *fiqh* perspective. In several cases, it was found that the judge placed *dzawil arham* as having the right to share the inheritance with the heirs of the *ashabah*. This can be found in several decisions, including Decision Number 0101/Pdt.P/2014/MS.Bna, Decision Number 0062/Pdt.P/2014/MS.Bna, and Number 014/Pdt.P/2014/MS.Bna.

Due to these problems, this article was originally written to analyse the concept of the inheritance of *dzawil arham* according to the perspective of classical *fiqh* and its application in court.

Research Method

The type of research used in this paper is normative juridical to answer the first problem and empirical juridical to answer the second problem, which is supported by secondary and primary data. For normative juridical research using a statutory approach, conceptual approach, and comparative approach. The statutory approach is the approach used to examine and analyse legislation, both in terms of synchronisation and harmonisation, related to the object of the thesis study. while the empirical juridical research approach is descriptive.

Discussion

At least, there are two important matters to be explained in this discussion, Firstly is relating to the acquisition of inheritance rights for the *dzawil arham* group in Islamic inheritance *fiqh*, followed by the results and discussion on the application of the acquisition of *dzawil arham* inheritance rights in court. For this reason, each of the reviews can be stated as follows:

1. Acquisition of Inheritance Rights for the *Dzawil arham* Group in Islamic Inheritance Fiqh

There are several views that have developed regarding the acquisition of inheritance rights to the *dzawil arham* group. At least, there are two views that have developed in Islamic inheritance *fiqh* regarding this issue, namely the opinion that comes from the Companions, followed by the *fuqaha*.

The first outlook states that the heirs of *dzawil arham* have inheritance rights when the heirs are in the *zawil furudh* and *asabah* groups. This means that *Dzawil arham* still has the opportunity to inherit from the heir as a close relative. As long as *zawil furudh* and *ashabah* exist, then at that time *dzawil arham* will not get a share of the inheritance. On the other hand, if *zawil furudh* and *ashabah* do not exist,

either due to disappearance, death, and other reasons that cause them to be absent, then *dzawil arham* here still has inheritance rights.[6]

This opinion originates from the narrations of the companions, namely Ali bin Abi Talib, Ibn Mas'ud, Ibin Abbas, Muaz bin Jabal, Abu al-Darda, and Abu Ubaidah bin al-Jarah. While among the *tabi'in* are Syuraih, ibn Sirin, Atha, and Mujahid. This opinion was then taken up by the *fugaqas* among the *madhhab* scholars, which became the opinion of Abu Hanifah which was attributed to the Hanafi *Madhhab*, Imam Ahmad bin Hanbal which was attributed to the Hanbali *Madhhab*. [7] The reference argument is referring to QS. Al-Anfal [8] verse 75, the meaning is as follows:

“And those who later believed, migrated, and struggled alongside you, they are also with you. But only blood relatives are now entitled to inherit from one another, as ordained by Allah. Surely Allah has ‘full’ knowledge of everything”.

This verse provides information that *dzawil arham* is in his position as a relative or has a relative relationship, so he has more rights than those who do not have a relative relationship. In this context, the inheritance rights of *dzawil arham* take precedence over *Baitul Mal*. Because *Baitul Mal* is not part of the heir's relatives. Except in cases where all the heirs are absent, be it *zawil furudh*, *ashabah*, and *dzawil arham*, then the heir's assets are given to the *Baitul Mal*.

The second opinion suggests that the heirs of *dzawil arham* do not have inheritance rights when the heirs of the *zawil furudh* and *ashabah* groups do not exist. This means that *Dzawil arham* has no opportunity to inherit from the heir as a close relative. As long as *zawil furudh* and *ashabah* exist, then at that time *dzawil arham* will not get a share of the inheritance. Likewise in cases where *zawil furudh* and *ashabah* are absent, either due to loss, death, and other reasons that cause them to be absent, then *dzawil arham* will also not receive inheritance. The inheritance was given to *Baitul Mal*. That is, *Baitul Mal* occupies matters that are entitled to inheritance when *zawil furudh* and *asabah* do not exist.

This opinion originates from the history of Zaid bin Thabit and Abdullah bin Abbas which was later taken up by Said bin Musayyab and Sa'd bin Jubair. This view was then followed by the jurists (*ulama* of the *madhhab*), namely Imam Malik bin Anas who was attributed to the *Maliki Madhhab*, then Muhammad bin Idris al-Syafi'i who was attributed to the *Shafi'i Madhhab*. The argument that they use is to refer to one of the *hadith* narrations which means:

That Rasulullah SAW, wore a robe to pray to Allah SWT, about the inheritance of 'Ammad and khalah. Then Allah SWT gave instructions that for both of them there is no inheritance right.

Concluded from the history above, it is stated that someone who has a relative relationship with the heir and is in the position of *dzawil arham*, then for them they will not get the heir's inheritance. Thus, the scholars of the *madhhab* are of the view that the inheritor's assets are given to *Baitul Mal* to then be used for the benefit and benefit of the public..

2.Acquisition of Inheritance Rights of the *Dzawil arham* Group in Its Application in Court

With regard to the acquisition of the inheritance rights of the *dzawil arham* heirs in application in court or the *Syar'iyah* Court, it appears that several judge's decisions granting rights to this *dzawil arham* class, although the *zawil furudh* and *asabah* parties still exist. This can be seen in the three judges' decisions, such as Decision Number: 0101/Pdt.P/2014/MS.Bna, Decision Number: 0062/Pdt.P/2014/MS.Bna, and Decision Number: 014/Pdt.P /2014/MS. Bna.

In decision Number: 0101/Pdt.P/2014MS.Bna the judge determined the heirs for the heir to consist of 3 grandsons from biological sons, 3 granddaughters from biological sons and 2 grandsons from biological sons, 3 granddaughters from biological sons and 2 grandsons from biological daughters. If seen

from his position, the grandson of his biological daughter is a *dzawil arham* and inherits together with *'ashabah*.

In the Decision Number: 0062/Pdt.P/2014/MS.Bna the judge granted the petitioner's request and determined the heirs for the heir to consist of 1 child (applicant) and 7 sister's children. In this case, children from sisters are likewise counted in the *dzawil arham* cluster who inherit together with the heirs from the *'ashabah* group, specifically children from the brothers.

Based on the description above, cases like those rarely happened especially in Nanggroe Aceh Darussalam, because it involved the distribution of inheritance in general which often happened by applying a mediation process. [8]

Safwani clarified that in Sunni jurisprudence, if an heir means he has no other heirs other than the heirs of *dzawil arham*, then the inheritance will be handed over to the Baitul Mal, because in Islamic inheritance law it is explained that brothers of the same religion have affiliation are the emergence of one of the reasons for receiving an inheritance. Therefore, brothers of the same religion are prioritized over the heirs of *Dzawil arham*. [9]

Based on the interviews with Anshary,[10] the acquisition of *dzawil arham* inheritance rights has occurred, specifically Decision Number: 0101/Pdt.P/2014/MS.Bna, Decision Number: 0062/Pdt.P/2014/MS.Bna and Decision Number: 014/Pdt.P/ 2014/MS. Bna. In those case, the solution is for the judge to determine the heirs for the heir, which consists of 3 biological sons' grandsons, 3 biological sons' grandsons and 2 biological male grandchildren, 3 daughters. from biological sons and 2 grandsons from biological daughters. If seen from his position, the grandson of his biological daughter has the position of *dzawil arham* and inherits together with his *'ashabah*.

However, the case has been registered at the Syar'iyah Court of Banda Aceh and following the procedures of the Syar'iyah Court, where the heir who dies and leaves an inheritance and then the heir files the case. after complying with the procedure, the panel of judges and the members of the judge examine the case file. In court seeking a mediation effort is the process of resolving disputes through a process of negotiation, consensus of the parties assisted by a mediator who does not have the authority to decide and force a settlement.

The main feature of this mediation process is a negotiation which is principally the same as a process of compromise, deliberation or consensus. In accordance with the nature of negotiations or deliberations, there should be no coercion to accept or discard an impression or settlement throughout the mediation process. Everything must obtain the permission of the parties. If the mediation process fails, the judges make an exception. The exception is a response or denial, and a defense filed by the defendant against the plaintiff's lawsuit. [10]

Other opinion from Salmi Mahmud, that in general cases of transferring inheritance to *dzawil arham* are rarely encountered, but the application in court may not be explained because it does not follow the trial process but the implementation of the recipient of the inheritance by *dzawil arham* can be divided if indeed *dzawil arham*'s heirs in relation to relatives. However, the definition of kinship is very broad and not all of them are accommodated in the group of people who are entitled to receive inheritance as detailed earlier. Previously, the heirs who had the right to receive as *dzawil furudh* and heirs of *ashabah* had been detailed, by first dividing it to *dzawil furudh* then the remaining assets were given to the heirs of *ashabah*. If there are still assets left behind, the excess assets will be given to other relatives who have not yet received them. Another relative who has not received it is named the heir of *Dzawil arham*. [11]

Syahrizal abbas likewise thought about the share of legacy. In inheritance law contains many sensitive issues, especially when it comes to the distribution of inheritance. Because at the time of distribution of assets, uncommonly result in prolonged conflicts between family break the relationship.

Thus, to avoid conflicts between family members, Islamic inheritance law has provided guidelines for the implementation of the division of inheritance. And in the distribution of inheritance, it must be done carefully, prudently and as fairly as possible. In addition, Syahrizal abbas also believe that the *dzawil arham* group is all people who have a kinship relationship with the heir but do not receive an inheritance because they are veiled by the heirs of *dzawil furudh* and *asabah*.

Based on the discussions above, it can be seen that the application of the *dzawil arham* inheritance rights in court is very likely to be carried out for casuistic cases as mentioned in several previous decisions. This depends on the role and considerations of the judge in seeing and examining whether the *dzawil arham* deserves to get that portion of the inheritance, so that legally it seems acceptable because it protects the interests and goodness of the heirs concerned..

Conclusion

To conclude, there are two conclusions can be drawn. First, there are two views that have developed in Islamic inheritance fiqh regarding the inheritance rights of *dzawil arham*. The first opinion states that the heirs of *dzawil arham* have inheritance rights when the heirs of the *zawil furudh* and *asabah* groups do not exist. Secondly, the inheritance rights of the *dzawil arham* in its application in court, which is the judge determines the heirs for the heir consisting of 3 male grandchildren from biological sons, 3 granddaughters from biological sons and 2 male grandchildren. - biological son, 3 granddaughters from biological sons and 2 grandsons from biological daughters. When viewed from the position of the grandson of this biological daughter, it is found that he has the position of *dzawil arham* and inherits together with *'ashabah*.

References

- [1] Achmad Yani, *Faraidh dan Mawaris*, (2016), Kencana, Jakarta.
- [2] Abd. Shomad, (2017), *Hukum Islam: Penormaan Prinsip Syariah dalam Hukum Indonesia*, Cet 3, Edisi Revisi, Kencana Prenada Media Group, Jakarta.
- [3] Muhammad Ali al-Shabuni, (2007), *Pembagian Waris Menurut Islam*, Terj: A.M. Basalamah, Gema Insani Press, Jakarta.
- [4] Achmad Yani, *Faraidh dan Mawaris*, (2016), Kencana, Jakarta.
- [5] Moh. Muhibbin dan Abdul Wahid, (2009), *Hukum kewarisan Islam (sebagai Pembaruan)*, Sinar Grafika, Jakarta.
- [6] Amrullah Ahmad, dkk, (2006) *Dimensi Hukum Islam dalam Sistem Hukum Nasional*, Gema Insani Press, Jakarta.
- [7] Muhammad Ali al-Shabuni, (2007), *Pembagian Waris Menurut Islam*, Terj: A.M. Basalamah, Gema Insani Press, Jakarta.
- [8] Interviewed with Darmansyah Hasibuan. Judge at Syari'ah Court of Banda Aceh, 18th of June 2020.
- [9] Interviewed with Safwani Zainun, Chief of Baitul Mal of Banda Aceh, 18th of June 2020.
- [10] Interviewed with Anshary, Judge's of Banda Aceh Syari'yah Court, 18th of June 2020.

[11] Interviewed with Salmi Mahmud, Secretary of Commission A of Ulama Consultative Assembly of Aceh.

Copyrights

Copyright for this article is retained by the author(s), with first publication rights granted to the journal.

This is an open-access article distributed under the terms and conditions of the Creative Commons Attribution license (<http://creativecommons.org/licenses/by/4.0/>).