

Basic Concept and History of Inheritance Law in Indonesia

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Abstract: Inheritance law is a law which is also referred to as the word faraid, which means distribution of inheritance of property if the death of the testator occurs. This research aims to understand the basic concepts of inheritance law and the history of inheritance law in Indonesia. This research uses the literature study method. The research results show that inheritance law is the law that regulates the distribution of inheritance from heir to heir. The basis for the legal position of inheritance is based on the Qur'an and the hadith of the Prophet Muhammad SAW. The history of inheritance law starts from the Jahiliyah era or before the arrival of Islam, the Islamic period, inheritance law before independence in Indonesia and after Indonesian independence there was Islamic law legislation through law number 7 of 1989 concerning Religious Courts which then gave birth to Presidential Instruction number 1 of 1991 which known as a compilation of Islamic law. In conclusion, the inheritance law in Indonesia has a long history, and it was finally established in the compilation of Islamic law.

Keywords: Inheritance; Basic Concepts; History

Abstrak: Hukum waris merupakan hukum yang juga disebut dengan istilah kata faraid yang berarti pembagian merupakan pewarisan harta benda apabila terjadi kematian pada pewaris. Tujuan penelitian ini untuk mengetahui konsep dasar hukum waris dan sejarah hukum waris di Indonesia. Penelitian ini menggunakan metode studi pustaka. Hasil penelitian, Hukum waris merupakan hukum yang mengatur pembagian warisan dari pewaris ke ahli waris. Dasar kedudukan hukum mawaris berdasarkan pada Alquran serta hadis nabi Muhammad SAW. Sejarah hukum waris dimulai dari sejak zaman Jahiliyah atau sebelum kedatangan Islam, masa keislaman, hukum waris sebelum kemerdekaan di Indonesia dan pasca Indonesia merdeka terjadi legislasi hukum Islam melalui undang-undang nomor 7 tahun 1989 tentang Peradilan Agama yang kemudian lahirnya Inpres nomor 1 tahun 1991 yang dikenal sebagai kompilasi hukum Islam. Kesimpulannya Hukum Waris di Indonesia memiliki sejarah yang panjang hingga akhirnya ditetapkan dalam Kompilasi hukum Islam.

Kata Kunci: Kewarisan; Konsep Dasar; Sejarah

Introduction

Islamic law is a law or rule prescribed by Allah SWT to his servants in relation to all aspects such as aspects of worship, morals and so on. Allah SWT said in the Qur'an, Surah Al-Jasiah verse 18 that,

ثُمَّ جَعَلْنَاكَ عَلَىٰ شَرِيعَةٍ مِّنَ الْأَمْرِ فَاتَّبِعْهَا وَلَا تَتَّبِعْ أَهْوَاءَ الَّذِينَ لَا يَعْلَمُونَ

“Then, We made you (Prophet Muhammad) follow the sharia of that (religious) affair. So, follow it (the law) and do not follow the lust of the ignorant.”

The verse above is the base for scholars in providing an understanding Shari'a or Islamic law comes from Allah and was brought by the Prophet Muhammad SAW. The terms are then divided into two sets of laws, namely laws relating to how to carry out acts which are referred to as branch laws and practices learned from the science of jurisprudence as well as the main laws of belief

containing intentions or beliefs in the set of 'kalam' sciences. Those separation aims to provide an understanding that religion has a hollistic scope, while Shari'a varies between people who adhere cause the essence of Shari'a is the basic legal norms established by Allah subhanahu wa ta'ala which must be worshipped by its followers, namely Muslims, based on beliefs and morals. in the relationship between God and humans, humans with other humans nor humans with nature.¹ Sharia is not only sourced from the Qur'an but also found in the sunnahs narrated by the Prophet SAW in his hadiths. Al Quran and Hadith can be a guide and support so that Muslims do not get lost and stay on the straight path.

Inheritance law is part of civil law as a whole and is the smallest part of family law. Inheritance law has a strong connection with human life from various aspects. This is because every human being experiences death. As explained in Ali Imron letter verse 185 :

كُلُّ نَفْسٍ ذَائِقَةُ الْمَوْتِ وَإِنَّمَا تُوَفَّقُونَ أُجُورَكُمْ يَوْمَ الْقِيَامَةِ ۚ فَمَنْ زُحْزِحَ عَنِ النَّارِ وَأُدْخِلَ الْجَنَّةَ فَقَدْ فَازَ ۗ وَمَا الْحَيَاةُ الدُّنْيَا إِلَّا مَتَاعُ الْعُرُورِ

“Everyone who lives will feel death. Only on the Day of Judgment will you be fully rewarded. Whoever is kept away from hell and admitted to heaven, indeed he has gained victory. The life of the world is only a deceptive pleasure.”

Death results in several problems related to the management and continuation of the rights and obligations of a person who has died.² The settlement related to the rights and obligations of the deceased is then regulated by the law of inheritance.

Inheritance is also referred to as 'faraid', a certain portion whose value has been assigned to the heirs. The implementation of inheritance law for Muslims is a necessity. The first reason is as a form of obedience to God the creator or as another expression of divine principles. This principle are the basis that the distribution of inheritance and its implementation must occur with the Qur'an and Sunnah for Muslims³. The application of inheritance law is also closely related to faith. Because inheritance law is a basis for believing or obeying Allah SWT. This obedience can be seen in a solid form, namely practicing the Qur'an and Sunnah, in this case the practice of implementing inheritance law. If it is not based on faith, then the distribution of inheritance could be outside of Islamic provisions.

The application of inheritance law in dividing inheritance is an obligation that must be well understood by Muslims. Practices related to the division of inheritance can be implemented when the heirs know and understand the inheritance under the rules contained in the Qur'an and hadith. So that it is necessary to provide understanding starting from history, law, and matters related to the practice of faraid.⁴

Those underlies the researchers to provide basic concepts and history related to inheritance law in Indonesia. The problem in the research is what is the basic concept of inheritance law? And what is the history of Inheritance Law in Indonesia? The aim of this research is to understand the basic concepts of inheritance law and the history of inheritance law in Indonesia.

¹ Gisca Nur Assyafira, “Waris Berdasarkan Hukum Islam Di Indonesia”, *Al-Mashlahab: Jurnal Hukum Islam dan Pranata Sosial Islam*, 08, No : 1 (2020): 68-81, <https://doi.org/10.30868/am.v8i1.771>.

² Mohammad Yasir Fauzi, “Legislasi Hukum Kewarisan Di Indonesia”, *Jurnal Pengembangan Masyarakat Islam*, 09, No. 2 (2016): 53-76, <http://dx.doi.org/10.24042/ijpmi.v9i2.949>.

³ Amhar Maulana Harahap dan Junda Harahap, “Penerapan Kewarisan Islam: Sejarah, Hukum Dan Asas-Asasnya”, *Jurnal El-Ahli*, 03, No. 2 (2022): 181-193, <https://doi.org/10.56874/el-ahli.v3i2.998>.

⁴ *Ibid.*

he (the deceased) has several siblings, his mother gets one sixth. (The inheritance is divided) after (fulfilling) the will he made or (and paying off) the debt. (Regarding) your parents and your children, you do not know which of them is of greater benefit to you. This is God's decree. Indeed, Allah is All-Knowing, All-Wise.”⁷

Surah Annisa verse 33

وَلِكُلِّ جَعَلْنَا مَوَالِي مِمَّا تَرَكَ الْوَالِدِينَ وَالْأَقْرَبُونَ ۚ وَالَّذِينَ عَقَدْتُمْ أَيْمَانَكُمْ فَأْتَوْهُمْ نَصِيْبُهُمْ ۚ إِنَّ اللَّهَ كَانَ عَلَىٰ كُلِّ شَيْءٍ شَهِيدًا

“For every (male and female) We have appointed the heirs for what was left by both his parents and his close relatives. Those with whom you have sworn allegiance, give that portion to them. Indeed, Allah is the All-Witness of everything.”⁸

Legal Position of Inheritance

Inheritance is often a source of dispute or problems within the family. The problem that most often occurs is in determining who is and is not entitled to inheritance. This is what can cause a storm in the family. Based on one party it is considered fair while the other party is considered not fair because justice from a human perspective is very subjective. Therefore, the Islamic religion carries provisions from Allah SWT regarding inheritance so that Muslims who are devoted to Allah will run smoothly without any disputes or divisions in the family.⁹

The basis of Islamic Inheritance Law is as follows :

a. al-Qur'an

In the previous description, several verses of the Qur'an have been quoted containing the contents of erasing the legal provisions of the Jahiliyah period and the provisions that applied in the early days of Islam. The details can be confirmed: Elimination of the provision that recipients of inheritance are only male and adult relatives, through the word of Allah SWT. QS al-Nisa (4): 7 and 127, namely that male and female heirs, including children, each have the right to receive an inheritance according to the specified share. The abolition of fraternal ties between the Muhajirin and Ansar groups as a basis for inheritance through QS al-Ahzab (33): 6. Some opinions state that if you exceed the limits of His provisions, you will one day receive a very painful retribution, in the form of very painful and eternal torment in your life. hell. Paying attention to the content of the verses above, shows that the legal provisions regarding inheritance shares for each heir (such as 1/2, 1/3, 1/4, 1/6, 1/8, and 2/3 as well as the remaining portion or 'ashabah) is a final legal provision that cannot be changed. However, the extent of the history and dynamics of its implementation needs to be seen from other aspects relating to the situation and conditions of the community in which the law is implemented. The terms 'aul, radd, gharrawain, masyarakat which will be discussed later indicate technical changes in the implementation of the provisions in the verses of the Qur'an. With other editors, it is not uncommon for provisions that are already detailed and must be implemented to encounter difficulties. So the terms qathi'y al-tanfiz (certain implementation) and zanni'y al-tanfiz (uncertain implementation) emerged.

b. Sunnah

- 1) History of Bukhari and Muslim.
Prophet SAW. said;

⁷ Kementerian Agama Republik Indonesia, Al-Quran dan Terjemahannya, (QS. An-Nisa':11)

⁸ Kementerian Agama Republik Indonesia, Al-Quran dan Terjemahannya, (QS. An-Nisa': 33)

⁹ Ukhrowiyatunnisa, “Tinjauan Hukum Islam Tentang Penggunaan Harta Waris Yang Belum Dibagikan (Studi di Desa Talagasari Kecamatan Cikupa Kabupaten Tangerang)”, *Syaksia: Jurnal Hukum Perdata Islam* 20, No. 02 (2019): 357-380, <https://doi.org/10.37035/syaksia.v20i2.2357>.

ذَكَرَ رَجُلٌ لِأَوْلَىٰ فَهُوَ بَقِيَ فَمَا بِأَهْلِهَا الْفَرَائِضَ أَحْفُوا

“Give certain portions to those who are entitled to them, after that the rest goes to men who are more important (closer in kinship).” (H.R. Bukhari and Muslim).”

- 2) Hadith narrated by Bukhari and Muslim

الْمُسْلِمِ الْكَافِرِ وَلَا الْكَافِرِ الْمُسْلِمِ يَرِثُ لَا

“Muslims have no right to inherit from unbelievers, and unbelievers do not have the right to inherit from Muslims. (H.R. Bukhari and Muslim).”

- 3) Narrations of Bukhari and Muslim from Sa'ad ibn Abi Waqqas about the maximum limit of execution of a will.

حَدَّثَنَا مُوسَى بْنُ إِسْمَاعِيلَ حَدَّثَنَا عَبْدُ الْعَزِيزِ بْنُ عَبْدِ اللَّهِ بْنِ أَبِي سَلَمَةَ أَخْبَرَنَا الزُّهْرِيُّ عَنْ عَامِرِ بْنِ سَعْدٍ عَنْ أَبِيهِ قَالَ جَاءَنَا رَسُولُ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ يَعُودُنِي مِنْ وَجَعٍ اشْتَدَّ بِي زَمَنَ حَجَّةِ الْوَدَاعِ فَقُلْتُ بَلِّغْ بِي مَا تَرَى وَأَنَا ذُو مَالٍ وَلَا يَرِثُنِي إِلَّا ابْنَةٌ لِي أَفَأَتَصَدَّقُ بِثُلُثِي مَالِي قَالَ لَا قُلْتُ بِالشَّطْرِ قَالَ لَا قُلْتُ الثُّلُثُ قَالَ الثُّلُثُ كَثِيرٌ أَنْ تَدَعَ وَرَثَتَكَ أَغْنِيَاءَ خَيْرٌ مِنْ أَنْ تَذَرَهُمْ عَالَةً يَتَكَفَّفُونَ النَّاسَ وَلَنْ تُنْفِقَ نَفَقَةً تَبْتَغِي بِهَا وَجْهَ اللَّهِ إِلَّا أُجِرْتَ عَلَيْهَا حَتَّىٰ مَا تَجْعَلُ فِي فِي امْرَأَتِكَ

“Prophet SAW came to visit me in the year of hajj wada' when I was suffering from severe pain. Then I asked him, "O Messenger of Allah, I am suffering from severe pain, what do you think, I am a wealthy person while no one will inherit my wealth except a daughter, am I giving charity (will) of two-thirds of my wealth?" "No" answered the Messenger. I asked "half"? "Don't" answered the Messenger. I asked "a third"? The Prophet replied "a third" a third is a lot or big, really if you leave your heirs in a sufficient condition it is better than leaving them in a poor condition begging from people. (H.R. Bukhari and Muslim).”

Basics of Inheritance

The principles of Islamic inheritance can be seen in the Qur'anic verse regarding the division of inheritance according to Islam and the hadiths of the Prophet. The principles of Islamic inheritance are as follows.¹⁰

- 1) Mandatory basis

According to language, the principle of ijbari is coercion. This principle is implemented not from the will of the heir. According to this, inheritance is the transfer of assets of a deceased person to a living person. This means without any legal action or statement from the heir.

We can know the following principles from various forms as follows:

- Seen through the transfer of property
- Judging from the amount of inheritance, it is more
- And to whom the inheritance will be transferred

We can find this principle in the Qur'an surah An Nisa verse 7

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

¹⁰ Naskur, “Asas-Asas Hukum Kewarisan Dalam Islam (Studi Analisis Pendekatan Al-Qur'an Dan Al-Hadis Sebagai Sumber Hukum Islam),” *Jurnal Al-Syir'ah* 10, No. 2 (2012): 1-15, <http://dx.doi.org/10.30984/as.v10i2.253>.

“For men there is the right to share in the assets inherited from their parents and relatives and for women there is the right to share (also) in the assets inherited from their parents and relatives, whether small or large, according to the portion that has been determined.”

2) Bilateral Basis

In Islamic inheritance, the bilateral principle means that humans have the right to inheritance belonging to both sides of their family, namely from the female line and the male lineage. This bilateral principle can be explicitly found in the provisions of the Qur'an, Surah An-Nisa, verses 7, 11, 12 and 176.

﴿ وَلَكُمْ نِصْفُ مَا تَرَكَ أَزْوَاجُكُمْ إِنْ لَمْ يَكُنْ لَهُنَّ وَلَدٌ ۖ فَإِنْ كَانَ لَهُنَّ وَلَدٌ فَلَكُمْ الرُّبْعُ مِمَّا تَرَكَنَّ مِنْ بَعْدِ وَصِيَّتَيْنِ يُوْصِيْنَ بِهَا أَوْ دَيْنٍ ۚ وَهُنَّ الرُّبْعُ مِمَّا تَرَكَنَّ إِنْ لَمْ يَكُنْ لَكُمْ وَلَدٌ ۚ فَإِنْ كَانَ لَكُمْ وَلَدٌ فَلَهُنَّ الثُّمُنُ مِمَّا تَرَكَتُمْ مِنْ بَعْدِ وَصِيَّتِي تُوْصُونَ بِهَا أَوْ دَيْنٍ ۚ وَإِنْ كَانَ رَجُلٌ يُورَثُ كَلَلَةً أَوْ امْرَأَةٌ وَهِيَ كَلَلَةٌ أَوْ أُخْتُ فَلِكُلِّ وَاحِدٍ مِنْهُمَا السُّدُسُ ۚ فَإِنْ كَانُوا أَكْثَرَ مِنْ ذَلِكَ فَهُمْ شُرَكَاءُ فِي الثُّلُثِ مِنْ بَعْدِ وَصِيَّتِي يُوْصَى بِهَا أَوْ دَيْنٍ غَيْرِ مُضَارٍّ ۚ وَصِيَّتِي مِنَ اللَّهِ ۗ وَاللَّهُ عَلِيمٌ حَلِيمٌ ۝﴾

“For you (husbands) half of the property left by your wives, if they have no children. If they (your wives) have children, you get a quarter of the property they left after (fulfilling) the will they made or (and after paying) their debts. For them (wives) a quarter of the property you leave if you have no children. If you have children, for them (wives) one-eighth of the property you leave behind (after fulfilling) the will you made or (and after paying) your debts. If a person, whether male or female, dies without leaving a father and child, but has a brother (maternal) or a sister (maternal), for each of the two types of relatives one-sixth of the property. However, if they (mother's brothers) are more than one, they are together in that third part, after (fulfilling) the will he made or (and after paying) his debt without causing trouble (to the heirs).”

يَسْتَفْتُونَكَ قُلِ اللَّهُ يُفْتِيكُمْ فِي الْكَلَالَةِ إِنْ امْرُؤٌ هَلَكَ لَيْسَ لَهُ ۙ وَلَدٌ وَهِيَ كَلَلَةٌ فَلَهَا نِصْفُ مَا تَرَكَ وَهِيَ يَرِثُهَا إِنْ لَمْ يَكُنْ لَهَا ۙ وَلَدٌ ۚ فَإِنْ كَانَتَا اثْنَتَيْنِ فَلَهُمَا الثُّلُثَانِ مِمَّا تَرَكَ إِنْ كَانُوا إِخْوَةً رِجَالًا وَنِسَاءً فَلِلذَّكَرِ مِثْلُ حَظِّ الْأُنثِيَيْنِ ۗ يُبَيِّنُ اللَّهُ لَكُمْ أَنْ تَضِلُّوا ۗ وَاللَّهُ بِكُلِّ شَيْءٍ عَلِيمٌ ۝﴾

“They ask you for a fatwa (about kalālah). 191) Say, "Allah gave you a fatwa about kalālah, (that is) if a person dies and he has no children, but has a sister, his share (his sister) is half of the wealth which he left behind. As for her brother inherits (all of her sister's property) if she has no children. However, if there are two sisters, for both of them two thirds of the property left behind. If they (the heirs consist of) several brothers and sisters, the share of one brother is equal to the share of two sisters. Allah explains (this law) to you so that you do not go astray. God knows all things.”

In verse 7 it is stated that a man has the right to inherit from both his father and mother. Likewise, women have the right to inherit from both parents.

3) Individual Basis

The Individual Principle is the principle by which heirs receive inherited assets without any relationship with other inheritance recipients. In this way, the part he gets will become his. Therefore, the heir will personally receive all the assets that have become his share. This is in

accordance with the provisions in the Al-Quran in surah An-Nisa verse 7 which explains that the share of each heir is determined individually.

4) Basics of Balanced Justice

The principle of balanced justice is a balance between what a person obtains and the obligations he or she must carry out in accordance with the inheritance received. In fact, this principle can be explained that the gender factor does not determine inheritance rights. This is in accordance with the provisions of the Qur'an in Surah An-Nisa verses 7, 11, 12, 176.

5) The basis of death

The basis of death is that a person's property is legally transferred to his heirs after the person dies. In other words, if a person's property has not yet died, it cannot be transferred. So the bottom line is that if the heir has not passed away, the inherited property cannot be transferred to the heir.

Pillars, Conditions and Reasons for Inheriting

There are three pillars of inheritance distribution, including the following¹¹:

1. Heir

The heir is the person who inherits the inheritance. And this person has been decided by the court (hukmi) or has been determined that Sanya has died.

2. Heirs

The heir is someone who will receive the inheritance from the heir later. To obtain the inheritance, the heir must have a relationship with the deceased or heir, such as marriage and lineage or lineage.

3. Heritage Property

Inherited property is more than the property left by the deceased, after the implementation of things such as management of the corpse, paying debts to God, paying debts to people, wills, and the rest is called inherited property.

Requirements are something that we must achieve or have to get what we want. To divide the inheritance there are conditions for the distribution, namely:

- a) The heir has died essentially, legally and taqriri.
- b) His heirs are still alive in essence and taqriri.
- c) Know the ins and outs of dividing inheritance assets.

After knowing the terms and conditions for dividing inheritance, we must also know the reasons for obtaining the inheritance. The reasons for getting an inheritance include:

- a) Marriage (Saheeh Contract)
- b) Nasab (lineage) relationship
- c) Freeing slaves (slaves)

Classification and Barring of Heirs

The classification and barring of heirs is as follows:¹²

a. Classification of Heirs

- 1) The heir is properly declared dead, either essentially dead due to death or legally dead due to a judge's decision stating so on the basis that the heir is declared missing (al-mafqud) without the circumstances being known.
- 2) The heir is declared to be still alive when the testator is declared dead.
- 3) It is correctly stated that there is a reason or reasons why the heir has the right to inherit the heir's property.

¹¹ Gisca Nur Assyafira, *Loc. Cit.*

¹² Gisca Nur Assyafira, *Loc. Cit.*

b. Barrier of Heirs

Even though the basis for inheritance is based on Islamic law, in fact there are various provisions or conditions that cause an heir to lose or be prevented from obtaining inheritance assets which are described as follows.

- a) Heirs and heirs have different religions. This prohibition is based on a hadith narrated by Bukhari and Muslim which states that a Muslim cannot inherit anything other than Muslim descendants.
- b) The heir was murdered by the heir. According to the Hadith narrated by Tirmidhi Ibn Majah, the killer is not permitted to inherit inheritance. However, there are several conditions that do not prevent an heir from inheriting his inheritance, namely murder committed by mistake, carried out by an incompetent person, carried out because of duty, and carried out because of old age or self-defense.

Rights and Obligations of Heirs

The rights and obligations of the heirs are as follows :¹³

a. Rights of Heirs

The rights that an heir has are the right of inheritance ownership (marriage) legacy of the heir. The inheritance can be in the form of goods, debt, or receivables obtained by the heirs based on the provisions of Islamic law or the will of the testator. In terms of inheritance ownership, an expert according to Islamic law cannot reject the inheritance he receives unless the expert dies or changes his religion.

Based on Article 187 paragraph (2) of the Compilation of Islamic Law, an inheritance must be distributed to the rightful heirs.¹⁴ This requirement indicates a prohibition against the heir rejecting the inheritance he received. However, certain conditions allow an heir to refuse an inheritance provided that the heir is a person of sound mind, is an adult and is not under duress. Apart from that, inheritance that can be rejected is inheritance according to statutory provisions, for example, inheritance of patent rights.

Apart from these provisions, Islamic law upholds morality and ethics where someone who refuses or even disputes an inheritance that they receive is an act of violating that morality. The reason is that rejection and inheritance disputes can break ties of friendship, which is haram under Islamic law.

b. Obligations of Heirs

A person who has passed away certainly leaves behind all matters in the world, whether those matters have been settled or some matters have not been settled. The matters that have not been resolved by a person should be settled by his heirs. This makes an heir, in addition to inheriting property and receivables, also inheriting the debt owned by the heir. Thus, an heir has obligations that must be performed on the deceased heir, among others as include:

- 1) Funeral care costs (tajhiz al-janazah) which must be paid by the heirs. Based on Q.S. Al-Furqan Verse 67, the cost of caring for the corpse is the responsibility of the heirs and should be done fairly. This reasonableness is measured by the simplicity of caring for the corpse, which should require costs that are not excessive and also not too "stingy".
- 2) Repayment of debts (wafa' al-duyun) paid by the heirs. Debts that have not been paid off by the heirs are a liability that must be paid off by the heirs. This is based on Q.S. An-Nisa Paragraph 11, which states that inheritance distribution can be done after fulfilling the will he made or after paying his debts. The form of inherited debt can be in the form of money, goods, or carrying out certain activities, for example, the late Fulan promised during his

¹³ Gisca Nur Assyafira, *Loc. Cit.*

¹⁴ Instruksi Presiden Nomor 1 tahun 1991 tentang Kompilasi Hukum Islam Pasal 187 ayat (20)

lifetime to help Fulana in completing the construction of his house, so the heirs are obliged to carry out this assistance task.

- 3) Execution of a will (tanfiz al-wasaya) in the form of granting material rights to other people in the case of deceased heirs making such a will. According to Q.S. Al-Baqarah Verse 180, that a person who, when there are signs of death and is about to leave a lot of wealth, must make a will for his mother, father, and close relatives in a proper or correct manner as a form of obligation of pious people.

Determination of Inheritance Share

The following is the determination of what the heirs get in dividing the inheritance according to the inheritance law concept :¹⁵

1. The husband gets $\frac{1}{2}$ if there is no furu' heir and gets $\frac{1}{4}$ if there is furu' heir.
2. The wife will get $\frac{1}{4}$ if there is an heir. if there is no furu' waris and get an eighth if there is furu' waris.
3. Girls will get $\frac{1}{2}$ if they are alone and there is no boy, and $\frac{2}{3}$ if there are two or more people and there are no boys.
4. The granddaughter will get $\frac{1}{2}$ if she is alone and there are no grandsons, she gets $\frac{2}{3}$ if there are two or more granddaughters and there are no grandsons. Gets $\frac{1}{6}$ when their daughter gets $\frac{1}{2}$.
5. Father will get $\frac{1}{6}$, if there are male and female furu' heirs. Get $\frac{1}{6}$ if the furu' heirs are only men and get $\frac{1}{6}$ plus the remainder of the furu' heirs are only women.
6. Mother gets $\frac{1}{3}$ on the condition that there are no furu' heirs at all and no more than one sibling. Get $\frac{1}{6}$ if there is an heir and there are two or more siblings.
7. Grandfather gets $\frac{1}{6}$ if not father and furu' heirs are male and female. Get $\frac{1}{6}$ if the father and furu' are not only male heirs, and get $\frac{1}{6}$ plus the remainder if the father and furu' are not only female heirs.
8. Maternal grandmother gets $\frac{1}{6}$ if there is no mother or father
9. The maternal grandmother gets $\frac{1}{6}$ if the mother is not present.
10. Siblings get $\frac{1}{2}$ if there are no siblings alone, and there is no father and grandfather and no furu' heirs at all. Get $\frac{2}{3}$ if there are two or more people, no siblings, father and grandfather, and no furu' heirs at all.
11. Half-siblings get $\frac{1}{2}$ share if they are alone, if there are no half-siblings there are no biological brothers and sisters, no father and grandfather, and no furu' heirs at all. Get a $\frac{2}{3}$ share if there are two or more people, no half-siblings, no biological brothers and sisters, no father and grandfather, and no furu' heirs. Get $\frac{1}{6}$ share if siblings get $\frac{1}{2}$ and there are no half-brothers, no biological brothers and sisters, no father and grandfather and no furu' heirs at all.
12. Brothers and sisters on the mother's side get $\frac{1}{6}$ share if they are alone and there is no dzukur proposal and there is no furu' waris at all. Get a $\frac{1}{3}$ share if there are two or more people and there is no dzukur proposal and there is no furu' waris.

History of Inheritance Law

a. Law of Inheritance in the Age of Ignorance

The period of ignorance or the period before the arrival of Islam had inheritance laws by gave inheritance to men who had strong ownership. Meanwhile, women do not inherit. This happens because there is a view that men have higher dignity than women. Strong men are considered capable of facing enemies on the battlefield between tribes.

¹⁵ Martua Nasution dan Raja Ritonga, "Teori Penentuan Bagian Ahli Waris Ashabul Furudh", *Teraju: Jurnal Syariah Dan Hukum* 4, No.1 (2022) 15–25, <https://doi.org/10.35961/teraju.v4i01.414>.

The basis of inheritance used by society in pre-Islamic times was based on kinship ties (al-qarabah), promises of allegiance (al hilf wa al-mu'aqadah) and adoption or adoption (al-tabanni). Kinship ties can be used as a reason to inherit property provided that the inheritance is directed to a physically strong man. Inheritance can also be done to someone based on a present promise to another person. The agreement was carried out based on the interests of mutual assistance and mutual guarantee of security between the parties who promised. A family is also allowed to inherit property to an adopted son who is physically strong on the grounds that the child will continue the legacy of the family giving the inheritance. The adopted child is cared for by the adoptive father's family so that he has the same status as the biological child. The adopted child then has the right to inherit from his adoptive father, but cannot receive the inheritance from his biological father because their relationship was severed as a result of the child's adoption process.¹⁶

There were several inheritance distribution systems known to the Arabs before Islam came, namely inheritance law with the Jewish system, the Roman system and the customary inheritance system. Vary of these laws, a woman does not receive a share of inheritance as long as there is a male heir. In the Jewish system of inheritance law, all inheritance that has been left behind is inherited by men and the first son's share gets twice the share of the other male children. Meanwhile, women only get money for their living expenses until they are adults. Likewise, a mother or wife does not receive a share of the inheritance. The Roman inheritance system is almost similar to Jewish law, namely that to receive a share of an inheritance, there are two provisions for obtaining inheritance. Among these provisions are: the existence of blood relations and former slave relations. Meanwhile, in customary inheritance law, to obtain an inheritance, there must be a blood relationship, adoption, and an oath of allegiance. Talking about blood relations means that only a man has the right to receive a share, including men who have reached maturity and can fight, and a woman has no right to this share of inheritance. From these three laws, we can see that only men inherit property.¹⁷

b. Law of Inheritance During the Islamic Era

Inheritance law has changed since the arrival of Islam brought by the Prophet Muhammad. Islam initially did not have a significant impact on inheritance. At the beginning of its spread, Islam still focused on the strategy of preaching by increasing the sense of brotherhood between Muslims. The addition of a new basis for inheritance brought by Islamic teachings began when the prophet Muhammad migrated from the city of Mecca to the city of Medina. At that time the Muslims who came from Mecca did not have any supplies to continue life in Medina. This aims to strengthen relationship or bonds of brotherhood. In this way, the assets owned by the Ansar could be given to the Muhajirin (immigrants) who were people from Mecca.¹⁸

With the gradual revelation of the Al-Qur'an, several customs regarding the inheritance of property were changed based on the provisions of the Al-Qur'an. These changes are as follows :

- 1) Q.S. An-Nisa Paragraphs 7 and 127 remove the provision that acceptance of inheritance can only be made to relatives and adult men, but instead allow men, women, and children who are not yet adults to receive a share of the inheritance according to what has been determined;
- 2) Q.S. Al-Ahzab Verse 6 eliminates the basis for inheritance according to the fraternal ties of the Muhajirin and Anshor groups. This verse stipulates that people who are related by blood are more entitled to inheritance than people who are not related by blood.

¹⁶ Gisca Nur Assyafira, *Loc. Cit.*

¹⁷ Amhar Maulana Harahap dan Junda Harahap, *Loc. Cit.*

¹⁸ Gisca Nur Assyafira, *Loc. Cit.*

- 3) Q.S. Al-Ahzab Verses 4,5, and 40 remove the inheritance principle of adopting a child who is treated as a biological child. What is emphasized in those verses is that giving an inheritance to a natural child is fairer than giving an inheritance to an adopted child.

After the gradual revelation of the Qur'an, changes regarding inheritance occurred, namely according to what was stipulated in the Qur'an. Inheritance, which initially could only be given to male relatives and children, then changed not only to relatives and male children, but all men and women and also children who were not yet adults were also happy. This is found in the Qur'an Surah Annisa verse 7 and verse 127 which contains about inheritance. Then another change was a change in the brotherhood between the people of Mecca and Medina, then it changed that those who were entitled to inheritance had to be in the form of biological ties of brotherhood or blood relations. This is stated in the sixth verse of the Qur'an, surah Al-Ahzab. Apart from that, changes also occurred in the inheritance regarding adopted children which was carried out before Islam existed, then it is stated in the Qur'an, Surah Al Ahzab, verses four, five and the fortieth verse. In this verse it is explained that inheritance should be given to biological children rather than adopted children. Apart from this verse, there are words of the Prophet or Hadith regarding the distribution of inheritance which have provisions or grounds for distribution. As in the history of Bukhari and Muslims which explains that it is not permissible to bequeath wealth to people who are not Muslims. Likewise, people who are not Muslim or not Muslim are not allowed to give their wealth to Muslim people.¹⁹

c. Inheritance Law in Pre-Independence Indonesia

Inheritance law in Indonesia before independence mostly used customary law which was based on belief in ancestors. So the concept and teachings of customary law regarding inheritance were based on the customary law association itself. Muhammad Yasir classifies 2 (two) partnerships in inheritance:

1. A territorial federation is a federation that refers to the existence of the same place or territory.
2. A descent alliance (genealogical) is an alliance that refers to the same line of descent (blood relation) from the ancestors or ancestors (the existence of a family relationship). In this lineage (family) association, there are 3 (three) types of relationship systems:
 - a) patrilineal (paternal),
 - b) matrilineal (maternal) and
 - c) parental (father and mother).
 - 1) The patrilineal system were the origin of the word "pater" which means father. This means that Indonesian people who take/carry on the lineage from the male (father) in the family are called patrilineal. Tribes that adopted the patrilineal customary system in Indonesia include the Batak tribe, Gayo tribe, Ambonese tribe, and so on.
 - 2) The matrilineal system, with the origin of the word "mater" which means mother. This means that Indonesian people who take/continue the lineage from the female (mother) in the family are called matrilineal, which is the opposite of the patrilineal system. Tribes that adopt a matrilineal customary system in Indonesia include the Minangkabau tribe.
 - 3) The bilateral or parental system, namely the family line system adopted by Indonesian society by taking/continuing the lineage from the female (mother) and male (father) in the family, or in other words a combination of matrilineal and patrilineal. Tribes that adopt the bilateral or parental customary system in Indonesia include Javanese, Acehnese, Madurese, South Sumatra, Lombok, Ternate, all of Sulawesi and all of Kalimantan.²⁰

¹⁹ Amhar Maulana Harahap dan Junda Harahap, *Loc. Cit.*

²⁰ Abdur Rahim, "Legalisasi Hukum Waris di Indonesia: Suatu Pendekatan Historis". *Al-Ushrah : Jurnal Al-ahwal As-Syakhsiyah* 09, No. 01 (2021): 38-54, <http://dx.doi.org/10.30821/al-usrah.v9i01.10388>.

d. Inheritance Law based on the Civil Code (BW)

In western inheritance law there are two important elements, namely:

- a) a). Individual elements (concerning a person's personal self). In principle, a person who owns an object has the broadest freedom as an individual to do whatever he or she wishes with the object he owns, including his assets.
- b) b). The element of public (social) interest, is limited freedom in exercising authority/action towards something that one owns, which is the opposite of the individual element. The public (social) interest element in inheritance law is based on considerations that may cause losses to heirs. Freedoms that are limited by inheritance law are known as *legitieme portie* (restrictions on freedom) in civil law.²¹ *Legitieme portie* which is regulated in inheritance law legislation to regulate the freedom of restrictions on the heir's freedom in making wills, alms and gifts in order not to cause harm to his heirs.²²

The Civil Code regarding inheritance does not recognize the term community property in marriage, because inheritance is a unit of ownership of the heir after being left by the heir when he dies. A person has the right to be an heir so he is entitled to inheritance due to two things:

- 1) Based on blood and marriage relations, there are 4 (four) groups of relations, namely
 - a) The first group, family in a straight line downwards, includes children and their descendants along with the husband or wife who is left behind / or who lives the longest. The husband or wife who was left behind/lived the longest was only recognized as heir in 1935, whereas previously husband/wife did not inherit from each other; b) The second group, family in a straight line upwards, includes parents and siblings, both male and female, as well as their descendants. For parents, there are special regulations that guarantee that their share will not be less than $\frac{1}{4}$ (a quarter) of the inheritance, even if they inherit jointly with the heir; c) The third group, includes grandfathers, grandmothers and the next of ancestor to the heir; d) The fourth group, includes family members in the lateral line and other relatives up to the sixth degree. During the Dutch colonial period, the BW concordance principle was declared valid for European groups in Indonesia. This BW is also stated to apply to Chinese Foreign Easterners. Meanwhile, for the non-Chinese Foreign Eastern group, only the parts regarding property law from BW apply. The rest, namely the family and inheritance aspects, apply their own laws from their country of origin.^{23,24}

The Civil Code regarding the concept of inheritance adopts the equal position of male and female heirs, as well as the same order of birth position. The concept of equality of birth position has an impact on legal rules, namely the second (second) group of heirs will be hijab/primary, as long as there are still heirs from group I (first) if there are still any, meaning that as long as there is a group with a higher degree they will be hijab to lower level groups.

- 2) Based on legitimate portion (testament)

A person obtains the right to inherit property from someone (the heir) apart from being related by blood or marriage, by means of a will (testament). This is a person's right to an inheritance that is left behind due to a statement both verbally and in writing after the death of the testator. In terms of *legitieme portie*: will (testament), Article 881 of the Civil Code provides restrictions so that losses do not occur to other heirs.²⁵

The reasons why heirs are prevented from obtaining rights to the inheritance left by the heir according to the Civil Code are:

²¹ Mohammad Yasir Fauzi, *Loc. Cit.*

²² Abdur Rahim, *Loc. Cit.*

²³ Mohammad Yasir Fauzi, *Loc. Cit.*

²⁴ Abdur Rahim, *Loc. Cit.*

²⁵ Abdur Rahim, *Loc. Cit.*

- a) An heir who, by a judge's decision, has been convicted of killing or at least attempting to kill the heir;
- b) An heir who, by a judge's decision, has been convicted of slandering and complaining to the heir that the heir has been slandered for committing a crime punishable by a sentence of four years or more;
- c) An heir who by force has clearly prevented or prevented the heir from making or withdrawing a will;
- d) An heir who has embezzled, destroyed, and forged a will.

When the heir is related by blood and does not act due to any obstacle to obtaining an inheritance, then to ensure that he (the heir) receives a share of the inheritance, it must be ensured that the conditions for implementing the inheritance law have been fulfilled, namely:

- a) There is a death event (the heir)
- b) There are inheritances left by heirs
- c) There are heirs when the heir dies, and the heir is a person who knows the law.

By fulfilling the above conditions, the heirs can then decide between three possibilities, namely:

- a) Fully accept the inheritance
- b) Receive an inheritance without being obliged to pay the heir's debts above his share (in the Civil Code this is known as the beneficiary);
- c) Completely reject inheritance.

If someone does possibility number 3 (three) above, namely completely rejecting the inheritance, the inherited assets are not protected and utilized properly. So the Inheritance Hall becomes a government institution that has the authority and obligation to manage the inheritance without having to wait for a decision from the court, which then reports to the relevant local district attorney regarding the management of the inheritance left/rejected by the heirs until it reaches within 3 (years) the inherited assets will be inherited and become the property of the state. Furthermore, when there is a dispute regarding the inheritance that the heir receives or rejects, the resolution of the dispute will be resolved through court and decided by a court judge.

e. Post-Independence Inheritance Law

Cell Post-independence inheritance law, Islamic, western, and customary inheritance law remains in effect. This is under the explanation in Article II of the 1945 Constitution Transitional Regulations which reads: "All state bodies and existing regulations apply immediately, as long as new ones have not been made according to this Constitution."²⁶

In this way, customary law, Islamic law, and Western law continue to be recognized. The existence of Article II of the Transitional Regulations at the beginning of Indonesia's independence was unavoidable due to the need for consistency, a legal vacuum that created urgent conditions for legal differences to govern the newly independent country. Even though in the course of the history of the Indonesian nation these three sources of law have sometimes not been able to work together.

Legislation on Islamic law, including inheritance, began to be implemented through Law No. 7 of 1989 concerning Religious Courts. then with the birth of Presidential Instruction No. 1 of 1991 which is known as the Compilation of Islamic Law (KHI). On the other hand, customary inheritance law goes through various jurisprudence. Meanwhile, western law has stagnated or has not changed as in the colonial era.²⁷

²⁶ BPHN, Undang-Undang Dasar Negara Republik Indonesia Tahun 1945 (yang dipadukan dengan Perubahan I, II, III & IV), https://bphn.go.id/data/documents/uud_1945.pdf

²⁷ Abdur Rahim, *Loc. Cit.*

Conclusion

The law of inheritance is a law that is also called the term faraid which means that division is the inheritance of property when the heir dies. The basis of the legal position of inheritance is based on the Qur'an and the hadith of the Prophet Muhammad SAW. The principles of inheritance include compulsory, bilateral, individual, balanced justice, and death. Pillars for inheritance opinion include the existence of heirs, heirs and inherited property. The conditions for having an inheritance are the heirs after death, the heirs are still alive, understand the intricacies of the division of inheritance while the reasons for getting inheritance can be through marriage, descent, and freeing slaves.

The history of inheritance law starts from the Jahiliyah era or before the arrival of Islam where inheritance was given to the strongest male child. During the Islamic era it changed according to the rules of the Qur'an and hadith. Inheritance law in Indonesia before independence used customary law and the civil code. It was only later after Indonesia became independent that Islamic law legislation occurred through law number 7 of 1989 concerning Religious Courts which then gave rise to Presidential Instruction number 1 of 1991 which is known as the compilation of Islamic law.

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Book

Kementrian Agama Republik Indonesia, Al-Quran dan Terjemahannya

Constitution

Instruksi Presiden Nomor 1 tahun 1991 tentang Kompilasi Hukum Islam Pasal 187 ayat (2)
Kitab Undang-Undang Hukum Perdata Pasal 830 tentang Pewarisan Karena Kematian
Undang-Undang Dasar Negara Republik Indonesia Tahun 1945