

An Overview of Islamic Law in the Mechanism of Individual Distribution if the Wife of the Heir is more than One

Ani Maryani^{*)}, Umar Ma'ruf^{**)} & Winanto^{***)}

^{*)} Faculty of Law, Sultan Agung Islamic University (UNISSULA), E-mail: animaryani487@gmail.com

^{**)} Faculty of Law, Universitas Islam Sultan Agung (UNISSULA), E-mail: umar@unissula.ac.id

^{***)} Faculty of Law, Universitas Islam Sultan Agung (UNISSULA), E-mail: winanto@unissula.ac.id

Abstract. *This study aims to determine and analyze the mechanism of inheritance distribution if the wife of the heir is more than one in terms of Islamic law. The research approach method used in the preparation of this thesis is a normative juridical research method. This research specification uses descriptive analysis. The type of data used is secondary data from legal materials in the form of the Qur'an and Hadith, the Civil Code, the Marriage Law, and the Compilation of Islamic Law. Collecting data by studying documents or library materials that are collected and processed systematically. The results of this study indicate that: first, the acquisition of inheritance rights for wives or wives is contained in the Qur'an letter An-Nisa' verse 12 and in the Compilation of Islamic Law Article 180. After removing part of the joint property, the rest is distributed to the heirs. If the heir leaves children, the wife's share is 1/8 and if the heir does not leave children, the wife's share is of the inheritance. Second: The concept of marriage in Indonesia based on Act No. 16 of 2019 concerning amendments to Act No. 1 of 1974 concerning marriage contains elements of monogamy, but the court can grant permission on fair conditions, the wife's consent, guarantees the necessities of life for the wife and children, and permit has permanent legal force. KHI explains that joint assets in each marriage are separate and independent and are calculated at the time of the second, third or fourth marriage contract.*

Keywords: Division; Heirs; Inheritance; Islamic; Wives.

1. Introduction

The implementation of inheritance distribution is not only based on dividing the inheritance with the distribution as desired by the heirs, but it must be

understood in advance that the distribution of one's inheritance must be based on the applicable law in Indonesia.

Inheritance law is closely related to family law. This is because the issue of inheritance has been regulated in the Act which is based on blood kinship and marital relations. The diversity of the Indonesian people in customs and religion has resulted in the emergence of various inheritance laws. However, the Indonesian people have the same values and ideals contained in Pancasila.

In Indonesia, there are three applicable inheritance law systems, namely the western inheritance law system, the customary inheritance law system and the Islamic inheritance law system¹. The procedure for regulating inheritance law in Indonesia is regulated in the Civil Code and based on Presidential Instruction Number 1 of 1991 concerning the Compilation of Islamic Law. Islamic inheritance law applies to Indonesian citizens of the original Indonesian group who are Muslim. Islamic inheritance law is commonly referred to as faraid science. The science of faraid is one part of the overall Islamic law which specifically regulates the transfer of the assets of someone who has died to someone who is still alive. Islamic law or Islamic law is a system of rules based on the revelations of Allah SWT and the Sunnah of the Prophet regarding the behavior of the mukalaf (people who have been burdened with obligations) which are recognized and believed to be binding on all adherents. And this refers to what the Apostle has done to carry it out totally².

Compilation of Islamic Law Article 171 letter a states that Islamic inheritance law is the law that regulates the transfer of rights and transfer of inheritance (tirkah) of the heirs, determining who is entitled to become heirs and how much of each. Inheritance or inheritance according to Islamic law is "a number of property and all rights of those who have died in a clean condition", meaning that the inheritance inherited to the heirs is a number of property and all rights after deducting the payment of the debts of the testator and other payments resulting from the death of the testator.

So important is the position of inheritance law in Islamic law that the hadith of the Prophet narrated by Ibn Majah and Addaraquthni taught, "learn faraid and teach it to the people because faraid is half knowledge and is easily forgotten and is the first knowledge lost from my ummah".

Sources of law that are used as the basis in inheritance matters include the Qur'an in Surah An-Nisa' verse 11: *"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*

¹ Ninuk Tri Welas, *Studi Banding Perkembangan Hukum Waris Islam Menurut KHI dan Ilmu Faroid*, Vol. 3 No. 1 (2021), Maret 2021 <http://jurnal.unissula.ac.id/index.php/SANLaR/article/view/12961> accessed on 15 April 2022 at 17.00 WIB.

² Ong Argo Victoria, ME Ersoy, *Adopted Foreigners Inheritance By Indonesian Citizen*, *Sultan Agung Notary Law Review*, 2020, Volume 1, Number 2, November 2019, page. 82-96, <https://core.ac.uk/download/pdf/286134568.pdf>

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."

And in QS. An-Nisa' verse 12 states: "*You will inherit half of what your wives leave if they are childless. But if they have children, then 'your share is' one-fourth of the estate—after the fulfilment of bequests and debts. And your wives will inherit one-fourth of what you leave if you are childless. But if you have children, then your wives will receive one-eighth of your estate—after the fulfilment of bequests and debts. And if a man or a woman leaves neither parents nor children but only a brother or a sister 'from their mother's side', they will each inherit one-sixth, but if they are more than one, they 'all' will share one-third of the estate—after the fulfilment of bequests and debts without harm 'to the heirs'. 'This is' a commandment from Allah. And Allah is All-Knowing, Most Forbearing.*"

In addition, as-Sunnah narrated by Imam Al-Bukhari and Muslim, which states "*Muslims have no right to inherit non-Muslims, and unbelievers have no right to inherit Muslims*".³

Act No. 16 of 2019 concerning amendments to Act No. 1 of 1974 concerning marriage Article 1 states that marriage is an inner and outer bond between a man and a woman as husband and wife with the aim of forming a happy and eternal family (household) based on Belief in the one and only God. Marriage creates a broad legal relationship for the husband and wife in marriage. From this marriage arises a bond that contains rights and obligations, including among others regarding the legal relationship between husband and wife, the formation of marital property, the position and status of legitimate children, and inheritance relationships. The emergence of the legal consequences of the marriage can only be obtained if the marriage is carried out legally⁴.

Such an arrangement shows that there are strict provisions that must be obeyed by a man and a woman who enter into a marriage, so that with the fulfillment of the above provisions, the marriage will be recognized and have legal force. The Compilation of Islamic Law (KHI) Article 4 states that marriage is legal if it is carried out according to Islamic law in accordance with Article 2 Paragraph (1) of the Marriage Law, and Article 5 Paragraph (1) states that in order to ensure the orderliness of marriage, for the Islamic community every marriage should be noted.

Marriage aims to realize a sakinah, mawaddah and warahmah household life (Article 3). Basically marriages must be registered with the Office of Religious

³Khisni, Akhmad, (2019), *Hukum Waris*, Semarang: Unissula Press. p. 4 – 5.

⁴ Purnamasari, Irma Devika, (2012), *Kiat-Kiat Cerdas Mudah dan Bijak Memahami Masalah Hukum Waris*, Bandung: Mizan Pustaka.

Affairs (KUA) as contained in Act No. 16 of 2019 concerning amendments to Act No. 1 of 1974 concerning Marriage, but in reality in society there are marriages that are not registered for several reasons⁵.

Monogamous marriage is a marriage bond that only allows the husband to have only one wife at a certain time. While polygamous marriage is the marriage of a man with more than one woman at the same time. From the above understanding between monogamy and polygamy there is a clear difference, namely in the number of wives owned by the husband, for monogamy only one wife while polygamy has more than one wife. Allah SWT allows polygamy up to four wives on the condition that they treat them fairly. The permissibility of marrying up to four women is contained in the Qur'an Surah An-Nisa' (4) verse 3. Act No. 16 of 2019 concerning amendments to Act No. 1 of 1974 concerning Marriage does not explicitly regulate the obligations of husbands who have more than one wife. This is understandable because one of the principles emphasized in this law is monogamy. In Article 3 paragraph (1) polygamy or having more than one wife can only be done after the court gives permission, if the plan for polygamy is desired by the husband and wife concerned.

However, the monogamy principle in the Marriage Law is not absolute, meaning that it is only a direction and recommendation for the formation of monogamous marriages by making it difficult and narrowing polygamy, not eliminating polygamy altogether, Article 2 paragraph (2) of the Marriage Law states that the religious court may give permission to a husband to have more than one wife if the parties concerned want.

This provision opens the possibility that a husband can practice polygamy with the permission of the Religious Courts by fulfilling the following conditions: the wife cannot carry out her obligations, the wife is physically disabled or has an incurable disease, cannot give birth to children, and there is a guarantee that the husband will act fairly. . The Compilation of Islamic Law (KHI) has regulated and limited the freedom of polygamy based on reasons of public order. Moreover, if we pay attention to the provisions of Surah An-Nisa' (4) paragraph 3, the legal degree of polygamous marriage is permissibility. This permissibility if traced its history depends on the situation and conditions of the early days of Islam⁶.

To determine the inheritance of an heir who has more than one wife, the inheritance must first be reduced by the joint property between the heir and his wife. This is in accordance with Article 94 of the Compilation of Islamic Law with

⁵ Zufi Imran, 2017, *Pandangan Quraisy Shihab Tentang Konsep Adil Dalam Praktik Poligami, Sabilarrasyad*, Vol. II Nomor 01 January-Juni 2017 <https://jurnal.dharmawangsa.ac.id/index.php/sabilarrasyad/article/view/123> accessed on 26 March 2022 at 19.00 WIB.

⁶ A El Khalfi, BFM Zukri, Ong Argo Victoria, Comparative Law Of Islamic Inheritance And Civil Law Inheritance (West), *International Journal of Law Reconstruction*, Doktor Hukum Unissula, Comparative Law 1 (2), 2019, https://scholar.google.com/citations?view_op=view_citation&hl=en&user=9BcCVQUAAAAJ&ctx=20&pagesize=80&citation_for_view=9BcCVQUAAAAJ:FM0BhI9EiAC

the provision of joint property from the marriage of a husband who has more than one wife, each separate and independent. The ownership of joint property from the marriage of a husband who has more than one wife is calculated at the time of the second, third or fourth marriage contract.⁷

In reality, in society, due to marriages carried out by heirs who have more than one wife, many problems arise in the future. This can be seen from the relationship of the heirs to the inheritance from their parents, because each wife and offspring of each marriage feel more entitled than other wives and children in obtaining inheritance from their late father. Many people assume that because they feel they have a hereditary relationship, they must obtain inheritance which can lead to family disputes. Families that were originally harmonious and compact because of fighting over inheritance eventually had to fight until their children and grandchildren and not infrequently friendship broke.

2. Research Methods

The approach method used in this study is a normative juridical approach. In this effort, data such as legislation, decisions, courts, legal theories and opinions of leading scholars are used. The Compilation of Islamic Law (KHI) is a written law that becomes the basis or guideline for judges in deciding a case that proceeds in the Religious Courts. The Compilation of Islamic Law (KHI) was chosen by the author as a regulation that becomes the main reference because the Compilation of Islamic Law regulates marriage, as well as the distribution of inheritance according to the provisions of Islamic law. In writing this thesis, the research specifications used are descriptive analysis, namely research that in addition to providing an overview, writing and reporting an object or an event will also draw general conclusions from the problems discussed.

3. Results and Discussion

3.1. Overview of Islamic Law in the Mechanism of Inheritance Distribution If the Wives of Heirs are More Than One

In Indonesia, there are three applicable inheritance law systems, namely the western inheritance law system, the customary inheritance law system and the Islamic inheritance law system. The procedure for regulating inheritance law in Indonesia is regulated in the Civil Code and based on Presidential Instruction Number 1 of 1991 concerning the Compilation of Islamic Law. Islamic inheritance law applies to Indonesian citizens who are Muslim. Islamic inheritance law is commonly referred to as faraid science. The science of faraid is one part of the whole Islamic law which specifically regulates the transfer of the assets of a person who has died to those who are entitled to receive it, with the distributions that have been determined in Islamic law.

⁷Judiasih, Sonny Dewi, (2019), *Harta Benda Perkawinan Kajian terhadap Kesetaraan Hak dan Kedudukan Suami dan Isteri atas Kepemilikan Harta dalam Perkawinan*, Bandung: Refika Aditama, p. 55.

The implementation of inheritance distribution is not only based on dividing the inheritance with the distribution as desired by the heirs. If a person dies, there will be four types of rights attached to the inheritance, namely four things that will be taken from the inheritance of the heir, namely the funeral costs must be taken from the inheritance, the debts if there are any must be deducted from the inheritance in its entirety, if the testator leaves a will then his will must be carried out, and the remainder must be divided among the heirs according to the rules of Islamic law.

The Qur'an has confirmed the provisions of the inheritance. QS. An-Nisa' verse 11-12. The above verse has mentioned that the acquisition of inheritance rights for wives or wives has been regulated in such a fair and wise manner in the Qur'an. The requirements for heirs based on the Compilation of Islamic Law (Article 171 c) are:

- Having blood relations (Article 174 KHI)
- Having a marital relationship with the heir: widower or widow

In the event that the heir does not make a marriage agreement, the widow/widower gets first share of their total joint property in the marriage (Article 190 KHI). After being issued part of the joint property, then the rest is distributed to all heirs according to the rules. After the share of gono-gini property is issued to the widower/widow of the heir, the respective share is calculated as follows:

- The share of the husband of the heir is of the inheritance of the heir if the heir does not have children, as much as of the share of the inheritance of the heir if the heir has children.
- The heir's wife's share is of the heir's inheritance if the heir does not have children, 1/8 of the heir's inheritance if the heir has children.

Because of getting a certain share, the husband/wife (widow/widower) of the heir is always included in the category of heirs of *dzulfaraidh* or *ashabul furudh*. In the Compilation of Islamic Law the acquisition of a wife is regulated in Article 180. However, in the Compilation of Islamic Law it is not explained that only or 1/8 is used for the wife's share and does not mention an explanation if you have more than one wife, because in principle the concept of marriage in Indonesia is monogamous based on the Act No. 16 of 2019 concerning amendments to Act No. 1 concerning Marriage.

3.2. Legal Certainty of the Wife's Position in the Distribution of Inheritance According to the Marriage Law and the Compilation of Islamic Law

In principle, the concept of marriage based on Act No. 1 of 1974 concerning marriage in Indonesia contains elements of monogamy. This is emphasized in Article 3 Paragraph 1 of the Marriage Law which states "Basically a man can only have one wife and a woman can only have a husband". However, in paragraph 2 it is stated "The court may give permission to a husband to have more than one

wife if the parties concerned want". In practice, with reference to the Qur'an Surah An-Nisa' (4) verse 3, some Muslim men decide to practice polygamy, having more than one wife.

This is possible in the Marriage Law as long as the husband who wants to practice polygamy applies for permission to the local religious court and must meet the following requirements:

- The wife's consent
- There is certainty that husbands are able to provide for the necessities of life for their wives and children.
- There is a guarantee that husbands will be able to treat their wives and children fairly.

In Article 4 Paragraph 2 of the Marriage Law it is also emphasized that even though these conditions have been fulfilled by a husband who wants to practice polygamy, the court will only grant permission if the husband fulfills the following conditions: The wife cannot carry out her obligations as a wife; The wife has a disability or an incurable disease; and the wife cannot bear children.

Having more than one wife can only be done after the court gives permission, and if the plan for polygamy is desired by the husband and wife concerned. A husband who will carry out the next marriage can only carry it out if the determination of the Religious Court that gives the permit has permanent legal force. The acquisition and inheritance rights in Islamic inheritance law for the second, third and fourth wives if not understood will lead to discriminatory treatment. The compilation of Islamic law states that every marriage has its own joint property which is confirmed in Article 94 that:

- Shared assets of a man who has more than one wife, each separate and independent.
- The ownership of joint marital property of a husband who has more than one wife is calculated at the time of the second, third and fourth marriages.

If there is a conflict or dispute between the heirs, the first step in resolving the dispute is to discuss it until it reaches consensus and even peace (islah). Dispute resolution by deliberation and consensus can be said to be a settlement according to Islamic law, because one of the principles of Islamic law is to prioritize deliberation and consensus, but this settlement by deliberation and consensus can only be deliberation to choose inheritance law to be used in resolving the dispute, and then the parties submit it to the judiciary, namely the religious court, meaning that the heirs are given the option to resolve their inheritance problems. However, everything can be resolved by consensus, so it does not need to be resolved at the judicial level.

According to the Compilation of Islamic Law (KHI) Article 183 which reads "the heirs can agree to make peace in the distribution of inheritance, after each is aware of his share". Settlement of inheritance disputes that are carried out outside the court can be done either without intermediaries or with

intermediaries. The religious court is also authorized to determine the heirs by submitting an application to the local religious court in the event that the heir and heir are Muslim. In Article 49 letter b of Act No. 3 of 2006 concerning amendments to Act No. 7 of 1989 concerning the Religious Courts it is stated that: "The religious court has the duty and authority to examine, decide, and resolve cases at the first level between religious people. Islam in the field of inheritance.

4. Conclusion

The acquisition of inheritance rights for wives or wives is contained in the Qur'an letter An-Nisaa' verse 12. In the Compilation of Islamic Law the acquisition of wives is regulated in Article 180. QS. An-Nisa' stated that the share of the wives if the heir does not leave children is (a quarter) share and if the heir leaves a child, then the wives of the heir get 1/8 (one-eighth). While the Compilation of Islamic Law does not explain using only or 1/8 for the wife's part and does not mention an explanation if you have more than one wife because in principle the concept of marriage is based on Act No. 16 of 2019 concerning amendments to Act No. 1 of 1974 concerning Marriage in Indonesia adheres to the element of monogamy which states that in principle a man can only have one wife and a woman can only have one husband. In KHI it is also regulated in Article 94 of the Compilation of Islamic Law (KHI) which explains that joint assets in polygamous marriages are separate and independent. The separation of the assets is calculated at the time of the second, third and/fourth marriage contract.

5. References

Journals:

- [1] A El Khalfi, BFM Zukri, Ong Argo Victoria, Comparative Law Of Islamic Inheritance And Civil Law Inheritance (West), *International Journal of Law Reconstruction*, Doktor Hukum Unissula, Comparative Law 1 (2), 2019, https://scholar.google.com/citations?view_op=view_citation&hl=en&user=9BcCVQUAAAAJ&cstart=20&pagesize=80&citation_for_view=9BcCVQUAAAAJ:FM0BhI9EiAC
- [2] Ninuk Tri Welas, *Studi Banding Perkembangan Hukum Waris Islam Menurut KHI dan Ilmu Faroid*, Vol. 3 No. 1 (2021), Maret 2021 <http://jurnal.unissula.ac.id/index.php/SANLaR/article/view/12961> accessed on 15 April 2022 at 17.00 WIB.
- [3] Ong Argo Victoria, ME Ersoy, Adopted Foreigners Inheritance By Indonesian Citizen, *Sultan Agung Notary Law Review*, 2020, Volume 1,

Number 2, November 2019, page. 82-96,
<https://core.ac.uk/download/pdf/286134568.pdf>

- [4] Zufi Imran, 2017, *Pandangan Quraisy Shihab Tentang Konsep Adil Dalam Praktik Poligami, Sabilarrasyad, Vol. II Nomor 01 January-Juni 2017* <https://jurnal.dharmawangsa.ac.id/index.php/sabilarrasyad/article/view/123> accessed on 26 March 2022 at 19.00 WIB.

Books:

- [1] Judiasih, Sonny Dewi, (2019), *Harta Benda Perkawinan Kajian terhadap Kesetaraan Hak dan Kedudukan Suami dan Isteri atas Kepemilikan Harta dalam Perkawinan*, Bandung: Refika Aditama.
- [2] Khisni, Akhmad, (2019), *Hukum Waris*, Semarang: Unissula Press.
- [3] Purnamasari, Irma Devika, (2012), *Kiat-Kiat Cerdas Mudah dan Bijak Memahami Masalah Hukum Waris*, Bandung: Mizan Pustaka.