

ISLAMIC INHERITANCE LAW POLICIES VIEWED FROM THE PERSPECTIVE OF GENDER JUSTICE ACCORDING TO APPLICABLE REGULATIONS IN INDONESIA

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Abstract

As a country where the majority of the population is Muslim, it is possible that many members of the community use the Islamic legal system. But along with the times characterized by progress and technology, the principles of Islamic law continue to progress rapidly and always follow the changing times for the benefit of people in the world. Without distinguishing between men and women. In Indonesian legal literature, the word "inheritance" is often used. The word comes from Arabic but in practice it is more commonly called "Heritage". The verb form is Warastra Yasiru and the masdar word is Miras. There are three other masdar according to the science of sasaf, namely wirsan, wirasatan and irsan. While the word inheritance is a person who gets inheritance or heirloom. From the description of the discussion above, it can be concluded that Islamic Inheritance Law has accommodated the principle of gender justice law.

Keywords: Inheritance; Gender; Islamic Law

INTRODUCTION

Sociologically, according to Satjipto Rahardjo, social change is an inherent feature of society. This is because society undergoes a development. (Alkostar, 1986) Therefore, these developments need to be responded to by Islamic law, which in turn is expected to have the ability as a *social engineering* function or as a *social control* that serves to shape social behavior. Islamic law as a product of intellectual work, needs to be understood not limited to fiqh.

The Islamic law reform movement can be interpreted as an effort both individually and in groups in certain periods and situations, to make changes in perceptions and practices that have been established to a new understanding. Renewal that stems from assumptions or views that are clearly influenced by the situation and social environment, that Islamic law as a reality and a particular environment is not in accordance and even deviates from the true Islam. (Mudzar, M Atho;, 1991)

In contrast to Harun Nasution, who emphasizes that the renewal of Islamic law is needed to adjust religious understanding with new developments brought about by the development of modern science and technology. (Nasution, Harun;, 1986) Science and technology will inevitably affect mindsets and changes in values, systems as well as problems, especially in the field of law. Islamic law is no exception. (Rofiq, Ahmad;, 2001) So in this context, Islamic law is required to accommodate the problems of the people without having to lose its basic principles.

Islamic law is formulated as a set of religious rules that regulate the behavior of human life in all its aspects. Both personal and group. It is because of this all-encompassing nature that places Islam in the order of human life that has never been achieved by any other religion or belief before Islam. Thus it will be very difficult to understand Islam without fully understanding Islamic law. (Amal, 1994)

As a country where the majority of the population is Muslim, it is possible that many members of the community use the Islamic legal system. But along with the development of the times characterized by progress and technology, the principles of Islamic law continue to progress rapidly and always follow the changes of the times for the benefit of people in the world. Without distinguishing between men and women.

The principle of law in Islamic inheritance does not see the difference between men and women, all heirs both male and female have the same rights as heirs. But only the ratio is different. Indeed, in Islamic inheritance law, what is emphasized is balanced justice, not equal justice as fellow heirs. Because this principle is often a polemic and debate that sometimes causes disputes between the heirs. Likewise, the women's movement is fighting for their rights to be equal to men. Because in this day and age the role of women and the role of men is almost the same in running the family economy. Women who were once only dichotomized as *konco winking* who were only in charge of household affairs have experienced a shift in values along with changing times. (Bachtiar, Mariyati, 2007)

Along with gender bias, feminists always demand the same position as men, because in principle the law does not differentiate between men and women. The increasing number of feminist demands on masculine people also affects the legal system that applies in society. The meaning of justice has also changes, which in the past men were the ones responsible for every problem in the household, but now it has undergone significant changes. (Sugiharto, Bambang, 1996) Now men are not the only breadwinners in the family.

This shift in the role of men and women has become a gender issue in society. Women's demands for their rights are in accordance with the role of women in the family, so that Islamic inheritance law must also be able to accommodate the needs of the community for laws that can provide justice to women in this day and age. Where there are differences in the calculation of distribution in Islamic inheritance law. Where men get more shares than women. Therefore, the author is interested in compiling a writing on Islamic Inheritance Law viewed from the Perspective of Gender Justice

RESEARCH METHODOLOGY

The research method in this writing is normative juridical research is one of the many types of research known in legal research. Normative juridical research is a type of research based on legal materials by looking at theories, concepts, principles, and relevant legal regulations to obtain normative knowledge about the relationship between regulations and other regulations and their application in practice. In this research, the approach used is a case study approach by examining cases related to the topic of discussion in the research. In research, primary data (or basic data) is data obtained directly from the community, while data from library materials is called secondary data. Included in the category of secondary data used in this research are as follows : 1) Primary legal materials, primary legal materials are legal materials that are authoritative, meaning they have authority. Primary legal materials consist of legislation, official records or minutes in the making of laws and regulations, and judicial decisions. In this study, the primary legal material to support research is the United Nations Charter; 2) Secondary legal materials, which consist of textbooks, opinions of legal scholars, cases, jurisprudence, journals, and the results of recent symposiums related to the research topic.

Data collection in this study was carried out by reading literature on concepts, principles, and regulations related to the problem. The data analysis method used in this research is descriptive. Therefore, since this research will not reach general conclusions (generalization), the results will be qualitative descriptive.

RESULTS AND DISCUSSION

Talking about justice depends on the culture, understanding and intellectual level of the people. The issue of justice has never been discussed since humans were born until now. The understanding of justice itself depends on the demands of humans in their own era. The demands of justice in a traditional society will be different from a modern society, so there are no legal norms that apply worldwide. (Kamarudin;, 2015)

In Indonesian legal literature the word "waris" or inheritance is often used. The word comes from Arabic but in practice it is more commonly called "Pusaka". The verb form is Warastra Yasiru and the masdar word is Miras. There are three other masdar according to the science of sasaf, namely wirsan, wirasatan and irsan. While the word inheritance is a person who gets inheritance or heirlooms.

In Arabic legal literature you will find the use of the word Mawaris, the plural of Miras. But many fiqh books do not use the word mawaris while the word used is faraid before the word mawaris. Rasullullah SAW used the word faraid and did not use the word mawaris. The hadith narrated by Ibn Abas Ma'ud reads: from Ibn Abas he said, Rasullullah said: Learn the Qur'an and teach it to others. Also learn faraid and teach it to people (HR Ahmad). (Kuzari, Achmad,; 1973)

In the Civil Code (BW) according to Article 830 "Inheritance only occurs if there is death". If there is no death then no inheritance has occurred. Wiryono Prodjudikoro said:

"Inheritance is a matter of whether and how the various rights and obligations concerning a person's wealth at the time of his death will pass to another person who is still alive."

Justice is indeed inseparable from the question of law (Huijbers, Theo,; 1991) and human issues because humans are always the subject of all laws. Because it is humans who have awareness in doing legal actions both good and bad, fair and unfair, beautiful and bad. (Notohamijojo,; 1971).

Justice in Islamic Thought, Talking about Islamic law means talking about Islamic law itself, because separating Islamic law from Islam is something that is impossible, besides the law comes from Islam, Islamic law cannot be separated from faith and morality. Because the three core components of Islamic teachings are faith, law, and morals are a series of unities that make up the religion of Islam itself. (D.M, Ali,; 1996)

After crystallizing into Islam and revealed to the earth, Islam becomes rahmatan lil alamin which covers all aspects of life, the aspect of life itself consists of three main parts, namely God, humans, and nature. The collection of the main teachings of Islam is summarized in the Al-Quran and Hadith which form a teaching about Islam commonly called aqidah. Finally, aqidah is also divided into three parts, aqidah about God, aqidah about humans and aqidah about nature.

The aqidah about God is a theoretical expression that takes the form of beliefs or thoughts about God, while the aqidah about man is a theoretical expression that takes the form of beliefs or thoughts about nature, other than human nature itself. The bond of aqidah needs to be actualized in real action which can be called muamalah. Muamalah is not something that is only related between humans and humans, but the entire range of muamalah towards God, muamalah towards humans and muamalah towards nature. Muamalah towards God is a sociological expression in the form of service to God's will in this nature, whose

target is also human, muamalah towards humans is asociological expression towards humans, and muamalah towards nature is a service to nature, and the main target is also human. In other words, the Qur'an carries teachings that contain aspects of service to God, nature, and humans. Thus, what is contained in the Qur'an brings aspects of real balance towards God, man, and nature. (S, Sabiq; Sunnah,Fiqhus;, 1996)

The process of actualizing Islamic teachings then gave birth to values that are commonly said to be worship, so worship is then divided into three categories. Worship to God, worship through humans and worship through nature. Worship to God is a direct devotion based on the demands of aqidah sharia. While worship through humans is the value contained in the service of fellow human beings. Akidah, muamalah, and worship are all movements of the human body and soul that are regulated by a device called Islamic law. Believing in Islam means being bound by Islamic law itself, while Islamic law will only be realized if the law is applied by its adherents with a strong inner drive. This order of balance is supernatural and a means of supporting the possibilities that exist in everyday life with its dual nature: universal and eternal. It remains the same for all times and for all people.

So far, it seems that everyone agrees that the law only regulates human affairs with other humans and new laws exist after the existence of humans, which also means that the law only exists in human society and as if the law outside human society never existed. However, if you have the opinion that the law has the function of managing the order of society, then of course there must be an acknowledgment that the society in which it exists is governed by law. This means that the law is for everything in this universe.

In the Islamic view, the ultimate goal of law is justice. In relation to Islamic law, justice must be achieved even though it refers to the main principles of Islam, namely the Qur'an and Hadith. The meaning of the goal of justice through legal channels must start from two aspects and lead to two-faceted justice as well. Especially with regard to the law so that it can appear in accordance with the principles of justice ingeneral. The combination of seeking justice becomes a universal legal standard that is able to appear anywhere and anytime in accordance with the nature of Islam's descent to earth. (Anshari, Abdul Ghofur;, 2006)

The meaning of two-faceted justice is that the ultimate goal of justice to be achieved by a universal legal system must be oriented towards justice towards humans and justice towards God. Justice for humans leads to various definitions of justice that are not impossible between one human society and another in interpreting legal justice. This means that the flexibility of justice products absolutely needs to be treated in the heterogeneity of humans

and their environment, while the mouth of justice is to God. God's law is a legal product that still puts God in proportion so that human actions must remain in the corridor of God's law.

Justice in Indigenous Thought, The realm of thought of customary law communities is generally influenced by the magical-religious nature of their surroundings. The realm of thought that links the real with the unreal. Between the mortal realm and the afterlife, between human power and God's power, between human law and God's law. This realm of thought includes the principles of divinity, humanity, unity and community togetherness, so that customary law can be said to be a law that has the philosophy of Pancasila. Customary law with the characteristics of the Pancasila philosophy is a manifestation of the crystallization of the noble values of the Indonesian nation so that customary law is a very diverse law but is a unified whole in the frame (Bhineka Tunggal Ika). (Pambudi, Galih Satya, 2012)

CONCLUSION

From the description of the discussion above, a conclusion can be drawn that Islamic Inheritance Law has accommodated the principle of gender-equitable law with evidence : 1). Between men and women have the same strong rights in getting inheritance from their parents and from their siblings; 2). Women are heirs who are highly protected by Islamic inheritance law. Daughters as dzawil furud if there is no son. If there is a son then the daughter will become asobah along with the son; 3).. The ratio between husband and wife is (2:1), if the husband is the sole person responsible for the household economy.

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