



Technium.

50/2023



The 7th International Conference on Social Sciences
Organized by Faculty of Social Science
and Law Manado State University

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IMPLEMENTATION OF ISLAMIC INHERITANCE LAW IN MAKASSAR CITY (Study on Class IA Makassar Religious Court)

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Abstract:

The purpose of this study is to find out 1) How is the inheritance distribution system in the Muslim community in the city of Makassar, 2) What factors influence the implementation of Islamic inheritance law in the city of Makassar. The research is a research (Field Research), the location of research of the Makassar Religious Court class IA, with a normative sociological approach. In this study, several data collection techniques were used, namely; interviews, observations and documentation.

The results showed that; 1) The implementation of inheritance law among the Muslim community of Makassar City varies greatly, some distribute and hand over property to each of their children in the form of grants strengthened by a statement letter, some go through deliberation or compromise for the sake of creating peace and benefit in their family environment, some settle their inheritance with an Islamic inheritance law approach, and some through the help of religious courts, Both through mediation and through court decisions, and of course there are also in their own way regardless of the rights of other heirs. 2) The implementation of Islamic inheritance law in Makassar City has not been fully implemented, this is influenced by factors, namely; the substance of the law, the level of knowledge of the community, the level of knowledge of the apparatus, the level of public perception, the level of customs (legal culture) of the community and the level of legal awareness of the community.

INTRODUCTION

In accordance with the current pace of human growth and development and human civilization, human needs are increasingly complex, causing many problems both in society and the family. Among the problems that have arisen lately is the issue

of inheritance. The Qur'an as a guide to life for Muslim communities, contains rules or standards that govern all aspects of human life, including inheritance law. The method or standard is systematically arranged into a single unit so that it has functional relationships that lead humans to develop into perfect humans. Man created by God, having faith in his Creator, is said to obey the laws commanded by God the creator of the entire universe. It is the awareness of Muslims to apply the commandments of Allah subhanahu wa ta'ala in the Qur'an and the Sunnah as manifestations of their faith and values. As in the Qur'an Surah An Nisa verse 65: *“So by your Lord, they did not believe until they made you (Muhammad) the judge in the matter they disputed, (so) then there was no objection in their hearts to the verdict you gave, and they accepted it completely”*.

Currently the inheritance law system that applies to Indonesian society is still diverse, in addition to the current Islamic legal system, there is still a common law system and a civil law system, with the three legal systems having their own legal basis in their implementation, as stated by Idris Ramulyo (Ramulyo, 1987: 2) that:

1. The Western (European) civil law system listed in the Civil Code is based on the provisions of article 131 IS. Stablad 1917 number 129 already. Stablad 1917 number 12 on the conquest of Europe, Bergelig Wetboet (WB) provides:
 - a) Europeans and they agree with Europeans.
 - b) Foreign East China.
 - c) other foreign Easterners and Indonesians subject to European legislation.
2. The common Islamic inheritance legal system also has different systems that are influenced by ethnic forms in different areas of the common law environment.
3. The Islamic inheritance law system of Indonesian Muslims is based on Stablad 1855 number 2 in Indonesia. Stablad of 1929 number 221, which was amended and so on, was finally based on article 29 of the 1945 Constitution. Tap MPR No. II/MPR/1983.1

With the passage of the three inheritance law systems in Indonesia above, the consequences will continue to affect the resolution of inheritance dispute issues, because they cannot choose one of the three legal systems according to them in accordance with general provisions as in Law Number 7 of 1989 concerning religious

courts. However, if we look at the contents of Article 1(1) of the Law on Limitation of Religious Courts Number 7 of 1989 which affirms that religious courts are courts for Muslims. From the understanding of religious courts, it is clear that with the enactment of the Law on Religious Courts Number 7 of 1989, the issue of Islamic inheritance is the authority of religious courts to resolve it. Then, references to the implementation of Law No. 7 of 1989 are regulated in the Compilation of Islamic Law and implemented with Presidential Instruction No. 1 of 1991.

The residents of Makassar City, which is predominantly Muslim, are always required to adjust all their religious issues in accordance with the teachings in accordance with the provisions of the Qur'an in regulating their lives, including inheritance matters. And the dynamics of people's lives must remain in harmony with the dynamics desired by Allah SWT. and Rasulullah saw..

Based on the description above, it is considered necessary to study further the implementation of Islamic inheritance law in the city of Makassar and what factors affect the implementation of Islamic inheritance law in Makassar City.

RESEARCH METHODS

The type of research used is a field study, the location of the Makassar Religious Court class IA research, normative and empirical sociological approaches were used in this study. In this study, several data collection techniques were used, namely; Interviews are given to informants as a source of information, so that researchers can answer any existing problems with questions that are closely related to this research. Based on observations, researchers collect data related to regulations and documents by studying literature related to Islamic heritage at related institutions. Research instruments used to obtain research data after the field data collection stage such as interviews, observations This research instrument refers to research methodology. Data processing and analysis techniques, where the data obtained and collected are analyzed quantitatively, is a research method whose purpose is to find quantitative truth.

DISCUSSION

A. Implementation of Islamic Heritage Law in Makassar City

Based on the results of the study, data was obtained that in the Islamic community in the city of Makassar there are several systems of inheritance distribution that are practiced, including:

1. *Distribution by way of grants*

Grants and wills share the same principle of giving from one person to another without expecting anything in return. The most underlying factors of these grants and wills are the humanitarian factor, the sincerity and sincerity of the grantor and testator. If there is a difference only in the time of implementation. A grant or gift is executed while the grantor is alive, while a will is executed after the testator has died. For example, Ahmad's heirs during his lifetime gave grants to their children in the form of houses (Fatimah, 2023), while parental grants to their children can be categorized and considered as inheritance as explained in KHI article 171 paragraph g.

A grant is a voluntary and unremunerated gift of an object from one person to another living person to own (Agung, 2014; 52). Grants can be made based on Q.S. al-Baqarah (2): 262:

Those who spend their wealth in the way of Allah, then they do not accompany what He earns by mentioning his gift and by not hurting (the feeling of the elder), they gain merit in the side of their Lord. There is no concern for them and no sorrow.

So is the word of Allah in Q.S. al-Munafiqun (63): 10: *And spend some of what We have given you before death comes to one of you; then he said: "O my Rabb, why do You not suspend my (mama-tian) until the near future, which causes me to be able to give alms and I belong to the righteous?*

The above verse contains instructions for those who are endowed with sustenance to spend some of their wealth for others. The gift to another person should not be more than 1/3 of his property, such as a will, while the parental allowance to his child should be fair and balanced, as stated in al. Nu'man ibn Basyir said:

عَنْ النُّعْمَانَ بْنِ بَشِيرٍ أَنَّهُ قَالَ إِنَّ أَبَاهُ أَتَى بِهِ رَسُولَ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ فَقَالَ إِنِّي نَحَلْتُ ابْنِي هَذَا غُلَامًا كَانَ لِي فَقَالَ رَسُولُ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ أَكُلَّ وَلَدِكَ نَحَلْتَهُ مِثْلَ هَذَا فَقَالَ لَا فَقَالَ رَسُولُ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ فَارْجِعْهُ (رواه مسلم)

Means:

That his father came with him to the Holy Prophet(sa) and declared: I have given my son a boy who is in me. So the Holy Prophet(sa) wondered: Did you give him this way to all your children? He replied: No. So the Holy Prophet(sa) said again: Withdraw from it. (HR Muslim)

The above narration shows that the Holy Prophet (peace be upon him) strongly expected every parent to treat his children equally with one another. Even more so in terms of material giving. If parents treat children unfairly, then parents on the basis have instilled in their children the seeds of contention, quarrels and hostility between them. This will be the trigger for disputes in the distribution of inheritance when parents die.

What Fatimah (pseudonym) did was certainly not only a preventive measure, but also intended so that her children would no longer question property or claim property that was on other heirs later after her death. Even to corroborate the gift, a statement was made that was offered to his children to be signed at the time of handing over the house. FL policy provides grants to their children, of course, on the consent and willingness and sincerity of the wife to what her husband does.

2. Division by means of deliberation

The distribution of inheritance by deliberation is carried out by the heirs after the heir dies. The initiative to conduct deliberation is born from the heir (wife of the testator) to settle the estate in a practical way. What was on his mind was fed and discussed with his children, so that they agreed with what his mother wanted. After the agreement was realized among his children, the results of the agreement were realized.

The agreement of the heirs to divide the inheritance by deliberation or compromise can be justified in article 183 of the IHL which states: "*The heirs may agree to make peace in the division of the inheritance after each realizes his share*".

What is stated in article 183 of the KHI implies that before making peace in the division of inheritance, each individual must know very well his part according to Islamic teachings or laws, so as not to arise regrets in the future because of his ignorance. That is why heirs who are not yet adults must be accompanied by guardians or other relatives, as stipulated in article 184 of the KHI "For heirs who are not yet adults or are unable to exercise their rights and obligations, then for him to be appointed guardian based on the decision of *the Judge on the proposal of family members.*"

So is the word of Allah in QS al-Nisā'/4:11.

Allah decreed for you about (the distribution of inheritance to) your children. that is, the share of a son is equal to that of two daughters; and if the child is all girls more than two, then to them two-thirds of the property left behind; If the daughter is alone, then she gets half the property. and for two parents, to each one-sixth of the property left behind, if the deceased had children; if the deceased has no children and he is inherited by his parents (only), then his mother gets one third; if the deceased had several relatives, then his mother got one-sixth. (the aforesaid divisions) after the fulfillment of the will he made or (and) after the payment of his debt. (About) your parents and your children, you do not know which of them is closer (many) benefits to you. this is the obstinacy of God. Indeed, Allah is All-Knowing, All-Wise.

Verse 11 in QS al-Nisā'/4 indicates the existence of an obligation that must be carried out by every individual who is an adult or able to exercise his rights and obligations. The existence of this obligation can be understood from the words: "*God obliges you*". The word is a passive verb that can be interpreted for work that is being or will be done. The form and format of execution depends on the time of death of the owner of the estate (heir). The law contained in the verse is a demand to be done by believers called the taklif law, which is the law related to the provision of burdens. (Fathurrahman, 1993: 124).

The rules or laws that Allah Almighty. It has been determined that it must be obeyed for the benefit of the family and society, but if the law is applied it will give birth to mafsadah in the family or community, then it is possible to find and use other alternatives that can give birth to benefits to the family or community.

3. Division under the law of inheritance

Ibu Yuliah (Pseudonym) as the wife of the deceased Rahman (Pseudonym) has understood the rules of inheritance so that in the course of her household, she has separated her personal property from joint property. (Yuliah, 2023). When the husband dies, the first thing to do is to complete all hospital financing and body management, according to the rules of the IHL article 171 paragraph (e): After the rules of the IHL are fulfilled and the inheritance is clear, then the next step for the heirs is to divide the property into two parts, one part for the wife and the other part for the heirs, in accordance with the rules of the IHL article 96 paragraph 1.

Based on the KHI rules, half of Gono Gini's assets are part of the late wife. RB is Y's mother, while the other half becomes an estate that is divided among the late heirs. RB., namely wife, father and 2 daughters. The wife gets 1/8 share, the father gets 1/6 while the rest is for his 2 daughters.

The settlement is as follows:

Wife : $1/8 \times 24 = 3/24 \times \text{Rp. } 504.000.000,- = \text{Rp. } 63.000.000,-$

Father : $1/6 \times 24 = 4/24 \times \text{Rp. } 504.000.000,- = \text{Rp. } 84.000.000,-$

2 children homework : remaining = $17/24 \times \text{Rp. } 504.000.000,- = \text{Rp. } 357.000.000,-$

The share received by the wife is in accordance with QS al-Nisā'/4:12 and article 180 of the KHI, while the father's share is also in accordance with article 177 of the KHI. However, if referring to the jurisprudence, of course the father is in a position side by side with the daughter, in addition to getting 1/6 also gets asabah (remaining). The part of the foundation is based on the hadith narrated by Bukhari (aL-Bukhari):

عَنْ ابْنِ عَبَّاسٍ رَضِيَ اللَّهُ عَنْهُمَا عَنْ النَّبِيِّ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ قَالَ أَلْحِقُوا الْفَرَائِضَ بِأَهْلِهَا فَمَا بَقِيَ فَهُوَ لِأَوْلَى رَجُلٍ ذَكَرٍ (رواه البخارى)

Means:

(Hadith narration) from Ibn 'Abbas (ra). The Holy Prophet (peace be upon him) said: Give the share of farā'id} (established inheritance) to the rightful, then the remaining share goes to the nearest male heir (nasabnya) (H.R. Bukhari)

As for the part 2 of the daughter who gets the rest is not in accordance with the rules, because it is in the Islamic inheritance law as instructed by QS al-Nisā'/4:11 and article 176 of the KHI that if the daughter consists of 2 or more

people, then they together get 2/3. If it is resolved based on the rules in Islamic inheritance law, then the solution is as follows:

$$\text{Wife : } 1/8 \times 24 = 3$$

$$2 \text{ children homework : } 2/3 \times 24 = 16$$

$$\text{Father: } 1/6 + a = (1/6 \times 24) + a = 4 + 1 = 5$$

The result is:

$$\begin{aligned} \text{Wife : } & 3/24 \times \text{Rp. } 504.000.000,- \\ & = \text{Rp. } 63.000.000,- \end{aligned}$$

$$\begin{aligned} 2 \text{ children homework : } & 16/24 \times \text{Rp. } 504.000.000,- \\ & = \text{Rp. } 336.000.000,- \end{aligned}$$

$$\begin{aligned} \text{Father : } & 5/24 \times \text{Rp. } 504.000.000,- \\ & = \text{Rp. } 105.000.000,- \end{aligned}$$

Based on the calculation above, then the father should get Rp. 105.000.000,- and 2 girls receive Rp. 336.000.000,-

Comparison of the results of the settlement made by Yuliah's mother with the rules of Islamic inheritance law, as follows:

Settlement of Mrs. Y	Legal Rules of Inheritance
Wife (Rp. 63.000.000,-)	Wife (Rp. 63.000.000,-)
Father (Rp. 84.000.000,-)	Father (Rp. 105.000.000,-)
2 kids homework (Rp. 357.000.000,-)	2 kids homework (Rp. 336.000.000,-)

The comparison table above illustrates that Yuliah's mother's settlement shows that the father's share is less, when compared to the father's share according to the rules of the Law of Inheritance, while the share of 2 daughters is more, if compared to the part 2 of the children of homework based on the rules of the Law of Inheritance.

The attitude of the father (the testator's parents) by returning half of his share handed over by the testator's wife causes his share to decrease further is a

privilege of the settlement of the RB family inheritance. If you consider QS al-Nisā'/4:11 which explains the share of children and parents, the verse ends with the statement that your parents and your children do not know which of them benefits much, then it is quite natural that the attitude of the heir father towards his grandson (2 daughters) gives half of his share.

What has been practiced by the heirs of the alm. RB is the practice of Islamic values, especially in the field of inheritance. The heirs, inheritance and shares of each heir are clear and each party also understands its rights so that all parties feel satisfied and happy. Even if after the division is carried out, then there are among the heirs who willingly and without pressure hand over a share or half share to other heirs, it does not matter even better.

4. Inheritance settlement practices in Religious Services

There are three very essential things that are always the attention of judges when they want to make a decision in resolving cases, namely: justice (gerechtigheit), expediency (zwochmatigheit), and certainty (rechtsecherheit) (Nessa, 2016). These three essences must be balanced professionally with each other so that the judge's decision is beneficial in public life, especially for justice seekers.

Based on these three essences, sometimes the decision of the Makassar city religious court in the fifty-fifty division of inheritance feels less fair, so that the judges of the religious court try their best to reactualize the thoughts and understanding of the existing rules of inheritance through ijtiḥad to obtain and adopt universal principles of justice, although in some cases sometimes judges ignore the norms or existing provisions for the sake of justice (Musi, 2023).

For example, the division of inheritance is 2:1. If in the past court decisions were based on male and female sex, then the thinking of judges today does not only look at the types of men and women, but also the relationship and good relations between heirs and heirs when alive. The 2:1 division feels very unfair if boys are given 2 parts while girls who take care of their parents even almost all of their lives are spent taking care of their parents, then given 1 share.

Nevertheless, religious courts in resolving inheritance cases still place more emphasis on peaceful settlement, in accordance with article 183 of the KHI. Peace efforts are carried out not only at the mediation stage, but if the case reaches the trial stage, the judge continues to actively try his best to reconcile. As for the form of peace, it is left to both sides to agree on it.

B. Factors Affecting the Implementation of Islamic Heritage Law in Makassar City

Analysis of the factors related to the implementation of Islamic inheritance law in Makassar City can be seen with two approaches, namely; normative approach to legal substance factors and sociological approach.

1. Legal Substance Approach

The intended legal substance approach is legal substance which includes legal material which is stated in laws and regulations. The legal structure concerns the institutions (institutions) of law implementers, the authority of institutions and personnel (law enforcement officials). This can be seen in two things, namely legal investigation and legal completion

a. Legal Inventory

- Law No. 7 of 1989 concerning religious courts.
- Presidential Instruction R.I. Number 1 of 1991 concerning the dissemination of the Compilation of Islamic Law.
- Decree of the Minister of Religious Affairs of the Republic of Indonesia Number 154 of 1991 concerning the implementation of Presidential Instruction of the Republic of Indonesia Number 1 of 1991 dated June 10, 1991 concerning the Compilation of Islamic Law.
- Circular Letter of the Director of Development of the Islamic Religious Justice Board Number 3694/E.V/HK.03.4/AZ/1991 dated July 25, 1991.

Based on the laws and regulations governing Islamic Heritage Law, if analyzed, it shows that the hierarchical legislation for the implementation of the Compilation of Islamic Law (vide book II on Islamic Heritage Law) is only in the form of a Presidential Instruction whose contents are recommendations to

disseminate the Compilation of Islamic Law for use by government agencies and communities that need it.

b. Legal Synchronization

Based on the analysis of the contents of the provisions of Law Number 7 of 1989 concerning the authority of Religious Courts to implement Islamic Heritage Law as stated in the Compilation of Islamic Law, it appears that there is an imbalance between the issue of competence and choice of law in inheritance cases.

The inequality occurs in the General Explanation point 2 of Law Number 7 of 1989 which is stated in the field of inheritance is about determining who is the heir, determining the share of each heir, and the executor of the distribution of the inheritance, if the inheritance is carried out based on Islamic law.

This gives consideration to the parties to choose what law to use in the distribution of inheritance, namely whether Islamic law, customary law or civil law (BW), if the heirs agree to choose Islamic inheritance law there is no problem, and vice versa if the heirs agree to choose the path through civil law is also not problematic, but what is a problem if one heir chooses civil law and one chooses Islamic law or law custom, this is where the problem arises. Muslims should choose Islamic law as the choice in resolving inheritance issues and if this is done then the PN does not comply with Supreme Court Circular No. 2 of 1990, dated April 3, 1990, from what has been stated in the general explanation of sub 2 fourth paragraph is not in sync with chapter III article 49 paragraphs (1) and (3) of Law no. 7 of 1989. However, the description of the duties and authorities of the Religious Court as contained in article 49 paragraphs (1) and (3) of Law Number 7 of 1989 is clear.

2. Analysis of sociological approaches to social factors.

The sociological approach in question is an approach or method whose discussion of an object is based on empirical facts in society. Related to this can be seen in two things, namely; level of knowledge of the community, level of knowledge of related officials, and level of public perception.

a. The level of knowledge of the people

According to Kurchinsky in the book *Legal Theory* by Rusli Efendy et al explained that there are 4 factors that are very closely related to community compliance with the law, namely: (1) knowledge of regulations, (2) knowledge of the content of regulations, (3) attitudes towards certain legal rules and (4) legal behavior (Efendi, 1991: 77).

b. The level of knowledge of the relevant apparatus

The level of knowledge of the relevant officials is considered to know enough about the Islamic Law of Inheritance so in this case the level of knowledge of the apparatus on inheritance issues is no problem, although it is still very necessary to increase insight and knowledge about the Law of Islamic Inheritance.

c. Level of public perception

The community level is the direct response (acceptance) of the community which can be seen from the attitude of the community regarding the Islamic Law of Inheritance which has been regulated in the Compilation of Islamic Law. So in this case the level of community implementation in terms of inheritance distribution is still very parity, depending on which conditions the community needs, depending on the agreement of each person concerned, whether they choose the division according to Islamic law, or whether they choose customary law, or civil law.

Thus the implementation of Islamic inheritance law in the city of Makassar is very ineffective, so in this case it is very necessary for firmness from the government, religious leaders, Islamic community leaders to always socialize to the community in order to practice Islamic teachings in the midst of the community, especially about the implementation of Islamic inheritance law in the city of Makassar.

CONCLUSION

Based on the discussion stated above, the following conclusions can be drawn:

1. The implementation of inheritance law among the Muslim community of Makassar City varies greatly, some distribute and hand over property to each of their children in the form of grants strengthened by a statement letter, some through deliberation or compromise for the sake of creating peace and benefit in the family environment, some resolve their inheritance with an Islamic inheritance law approach, and some through the assistance of religious courts, Both through mediation and through the decision of the Pengu-Dilan, and of course there is also in its own way regardless of the rights of other heirs.
2. The implementation of Islamic inheritance law in Makassar City has not been fully implemented, this is influenced by factors, namely; the substance of the law, the level of knowledge of the community, the level of knowledge of the apparatus, the level of public perception, the level of customs (legal culture) of the community and the level of legal awareness of the community

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