



The Position of the Daughter Hinders Full Siblings

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Abstract. The Development of Indonesia inheritance law in regard to the position of daughters hinders full siblings to get inheritance becomes a big deal of discussion in this study, by reason of there are different perceptions between fiqh and jurisprudence. Several decisions of the Supreme Court decided the position of daughters can hinder full siblings to have inheritance rights such as Supreme Court Decision Number 86K/AG/1994 dated July 20, 1995, Number 184K/AG/1995 dated 30 September 1996, Supreme Court Decision Number 327K/AG/1994 dated February 26, 1998. This study aims to analyze the position of the daughter as barrier to full siblings not being able to inherit the property of the heirs. Some questions arise, do those decisions give justice and what is the main legal perspective making those decisions? The method used in this study is juridical normative with library research. The object of this study is the position of the daughter capacity to hinder full sibling to get the inheritance.

Keywords: Daughter · Hinder · Full Siblings

1 Introduction

Islamic Inheritance Law is the law that regulates the transfer of ownership as an inheritance to the heirs, determines who is entitled to become heirs and how many the share of each. Al-Quran has set about who is entitled and how many the share will be received by each heir. However, it is not uncommon for what is stated in the Qur'an to have different interpretations among scholars, so several groups in the Islamic inheritance system, namely the *Ahlussunnah teachings* with a patrilineal pattern and the Hazairin teachings with a bilateral pattern.

The difference interpretation will conduct to the determination of the heirs and the parts that will be obtained by each heir [1].

Based on the background that has been described above, the author interested to explain more of this study based on the problem: the position of the daughter hinders full siblings to get inheritance.

2 Research Methods

This study uses a juridical approach which studies law as a norm system. The data research carries on secondary based on primary data approach in which studies about

concepts, law principles regulations as well as related with this study. Data technique collection in this study uses library research. Data analysis is conducted qualitative. Deductive reasoning is used to conclude the conclusion in this study.

3 Results and Discussion

3.1 Hijab in Islamic Inheritance

According to the language of hinder (*hijab*) means a veil, a wall, an obstacle. Whereas according to the term is to prevent or block certain people to accept a share of inheritance or reduce their share. *Al-Hajb* in Arabic means a barrier or inappropriate.

In Arabic language, the word *hajib* means 'worker' or 'security door', due to the barrier to enter the place certain without permission to use meet the rulers or leader. So, shape *isim fa'il* (subject) for the word *hajaba* is *hajib*, and form *isim maf'ul* (object) is *great*.

The meaning of *al-hajib* according to the term is a person who prevents others to get inheritance, and *al-mahjub* means people who are hindered to get an inheritance. According to faraidh scholars, *al-hajb* is to deny the right of heirs to accept inheritance whole or part caused by other heirs who are entitled to it [2].

According to Muhammad Iqbal [3] divides *Al-hujub* of two parts, namely:

3.1.1 Al-Hijab Bil Washfi

Al-Hajb bill washfi means the group of people are hindered (*hajb*) to get inheritance a whole, or their inheritance rights are denied. Basically, the group of people who are hindered to accept inheritance property are the group of heirs.

The barrier to accept inheritance property according to faraidh scholars because of the position or the value however the causes, pillars and conditions accepted. At first an heir has a right to get inheritance property, but in another condition the heir in appropriate to get it.

3.1.2 Al-Hijab Bi Ash-Shakhshi

Al-Hajb bi ash-Shakhshi *Al-hajb bi ash-Shakhshi* that is fall right inheritance somebody because there are others who are more entitled for accept it. *Al-hajb bi ash-syakhshi* divided two:

1) Hajb herman

Hajb herman is a barrier to get full inheritance right. For example, paternal grandfather is hindered by father, grandchild is hindered by daughter/son, paternal siblings are hindered by full siblings, grandmother is hindered by mother, and furthermore.

2) Hajb nuqshan.

The hajb nuqshan (reduction of rights) is a barrier of the inheritance right to get full share for get most part. For example, the barrier mother right, be get 1/3 (one third) to 1/6 (one-sixth) because of the existence of descendants. Likewise with the share of father who has 1/4 (one fourth) to 1/8 (one-eighth) because of descendants [4].

3.2 The Position and Rights of Daughter in Islamic Inheritance Law

3.2.1 Daughter Position

Daughters are heirs who have blood ties to testator without intermediaries, because they are the group of *ashāb al-furūd* heirs. Daughters must come first to have inherit rights more than full siblings (*asaba*). Daughter's position is considered closer to their relatives which is the group of *asaba*. Daughters are the group of family who must be given of inheritance property even their positions are more priority than the others because they can be hindered.

If a daughter inherits with a son, she will receive (half) of the share obtained by a son. These provisions are based on the intent of Q.S. al-Nisa': 11: "*for men (given) a share equal to the share of two daughters*". The granting of two to one inheritance rights (2:1) for men and women who are equal in accordance with their respective responsibilities in the family. The granting of two to one is based on sharia law called a *qhat'i* [5].

If a daughter does not inherit with a son, the daughter's share is 1/2 (half), and more than one daughter will get 2/3 (Surah al-Nisa': 11). The share of daughters can change depending on the circumstances of the family structure that receives the inheritance, it can be indicated that daughters may be subject to reduction at any time (*hijāb al-nuqsān*), in this case a reduction because the share of daughter changes from a definite share (*al-fard*) to a fixed share (*al-fard*) to be the rest (*tasīb*). In addition to daughters sometimes being reduced to a share (*mahūb bi al-nuqsān*), she is also sometimes a barrier to heirs in obtaining inheritance. For example, daughters become *hājib* for the share that the mother who gets inheritance, i.e. from 1/3 to 1/6. Then, the position of daughters as a barrier in obtaining the mother's share was agreed upon by faraid scholars.

3.2.2 Inheritance Rights of Daughters

Al-Qur'an Surah An-Nisa' verse 11 has clearly and firmly stated about the rights of daughters in inheritance law, namely if she herself gets 1/2 (half) share and if she has more than one then her right is 2/3 (two thirds) of the share. The provisions regarding the rights or share of inheritance for daughters in Surah An-Nisa' verse 11 are not a problem, especially regarding the granting of rights/shares to unmarried daughters, because textually the legal rules are regulated in these verses. The Qur'an is very clear and unequivocal.

Article 176 of the Compilation of Islamic Law stipulates the portion of children's inheritance rights as follows:

The children of the heirs receive the inheritance from the inheritance of the heir (their parents) in the amount of:

children heir accepts treasure legacy from relic heir (parents) of:

- 1/2 (half) part, if only a daughter, together with father, mother, widower or widow.
- 2/3 (two thirds) share, if two daughters or more together with father, mother, widower or widow
- When daughter together with son, then they become *ashobah* (receive whole inheritance property there are no father, mother, widower or widow), if one of them exists

(father, mother, widower or widow) son together with daughter will be *ashobah bil-ghoir* (receive whole the rest of inheritance property after issued the share of other heirs), under provision the share of son is double (2:1).

3.3 The Interpretation of Walad's Words and Inheritance Rights

3.3.1 Interpretation of Walad Words

Interpretation the word of walad in the Qur'an is closely related to inheritance rights of full siblings. The Qur'an mentions two verses about *kalalah*, namely the Qur'an Surah An-Nisa verse 12 and verse 176. These two verses describe the position and rights of full siblings inheritance. Al-Quran Surah An-Nisa verse 12 states:

"If someone dies, both male and female, who does not leave children, but has a brother (only one mother) or one sister (only one mother), then the share of each brother is one-sixth. If there are more than one mother of one, then they are allied with one third..."

Surah An-Nisa verse 176 reads:

"They ask you for a fatwa (about *losing*). Say: Allah gives you a fatwa regarding *kalalah*, namely if someone gives you a fatwa regarding *kalalah*, namely if someone dies and has no children and has a sister, then his sister's share of the female is half of the property left behind and her male brother inherits the entire property, if the heir has no children; but if there are two sisters, then the second share is two-thirds of the property left by the heir. And if the heirs left consist of brothers and sisters, then the share of a brother is as much as the share of two sisters. Allah explains this law to you so that you do not go astray. And Allah is All-Knowing of all things".

The scholars and companions had different opinions about *kalalah*, because the Messenger of Allah did not explain the meaning of *kalalah*. Abu Bakr Ash-Siddiq argues that *kalalah* is someone who dies, there is no father and no children, while Umar argues, *kalalah* is a person who has no children.

Majority scholars give opinion that *kalalah* is someone who dies without leaving son and father. The child (*walad*) is specifically only sons or grandsons from the lineage of sons, because sons prevent or hinder their brothers while daughter do not hinder their brothers [6]. This opinion is popular among Islamic jurists and according to the commentator *al-Qurtubi* in his commentary book *al-jami "li ahkam al-Qur'an*, this opinion comes from the majority scholars".

In contrast to the interpretation of Ibn Abbas, what is meant by the word '*walad*', (children) in the verse includes boys and girls, in line with the opinion of the Zahiri school that the word walad (child) and its cognate are used in the Qur'an is not only for sons but also for daughters. For example in QS. An-Nisa' (59): verse 11, Allah says by using the word '*aulad*', (the word jama' from the word '*walad*' which means "God obliges for you about '*aulad*' (your children), for a man men (is) like a daughter's share". The word '*walad*' according to this interpretation includes sons and daughters, each of whom is walling the heir's brother to get or inherit the inheritance of the heir [7].

According to Hazairin [8], *kalalah* is a person who dies not leaving an heir of children in general. The definition of a child (*walad*) denotes a boy as well as a girl.

According to Hamka [9] *al-walad* includes boys and girls as well as descendants through the male line.

Muhammad Syahrur [10] explains the meaning of *kalalah* is someone who dies without leaving heirs to children, both sons and daughters, as well as grandchildren, both grandsons and granddaughters, and also does not have a father and mother, grandfather or grandmother, so that he does not distinguish between a boy and a girl.

3.3.2 Full Siblings Inheritance

The inheritance rights of full siblings in the Qur'an are regulated in Surah An-Nisa verses 11, 12 and 176. Verse 11 states "... If the person who dies has no children and he is inherited by his mother and father, then his mother gets 1/3 (one-third), if the deceased has several siblings, then his mother gets 1/6 (sixth)...".

Furthermore, verse 12 states: "... If a person dies, both male and female in a state of 'defeat', and he has a brother or sister, then the share of each of them is 1/6 (one-sixth). If they are more than one person, then the union will get 1/3 (one third) of the share...". Siblings referred to in this verse are brothers and sisters [11].

While verse 176 states: "... They ask you for a fatwa (about *lose*). Say:" Allah gave you a fatwa 'about *lose* (i.e.): if a died,' and he does not have children and sister, then for the sister the girl that half from property he left behind, and his brother captivating (all) treasure sibling female), if he does not have child. But if the sisters are two, then both of them two third for the property. And if they are brother and sister then for the male is as much as the share of the sister.

The majority scholars consider brother and paternal brother as *ashobah (bi nafsi)*, all male heirs from the male line includes brothers are positioned as *ashobah bi nafsi*, according to the hadith of Ibn Abbas [12]: "*Alhiqu al-faraidha bi expertha, fama baqiya fa li rajulin hall testicles*" (Give share that to every expert inheritance, and the rest for close male). _ Based on this hadith, Jumhur Ulama stipulates all male heirs from the male line as *ashobah bi nafsi* so that they do not have a certain part. The male heirs get the remaining share after the heirs who get a certain share take their respective shares. Consequently, the heirs of *ashobah* can get a large share, or get a small share or even not get a share at all because there is no remaining property after the share of property is given to the heirs who get it based on the portion. Brothers of the same mother and father are seen as more important than brothers and sisters, so brothers and sisters can hinder the brothers and sisters, but brothers and sisters even though their position is the weakest, but brothers and sisters of the same mother and father are not hindered just.

According to the majority scholars, sister and paternal sister is 1/2 (half) if alone, 2/3 (two thirds) if two or more, *ashobah (bil ghair)* if together with *mu'ashib* (brother of equal status) and *ashobah (ma'al ghair)* if with daughters and/or with granddaughters from the male line, plus a share of 1/6 (one-sixth) as a complement to 2/3 (two thirds) if it is a joint inheritance between sisters and paternal sister.

The share of maternal brother and maternal based on An-Nisa paragraph 12 is of 1/6 (one-sixth) if there are one person and 1/3 (one third) if two or more heir.

Maternal brother/sister can appear as heirs if the testator dies in Kalalah referres to in Surah An-Nisa verse 12, because if the situation is in kalalah maternal brother/sister will be hindered male and female heirs.

3.4 Daughter Hinders Full Siblings

Differences understanding of *walad* conduct different implications for full sibling inheritance rights. The opinion of the majority scholars who interpret the word of *walad* in QS. An-Nisa verse 176 limited to sons, does not include daughters, has placed full siblings inheritance, full siblings can get inheritance together with daughter. Full siblings only hindered by son as a heir. If testator left only one daughter, full siblings can have inheritance together with daughter.

Based on the opinion of Ibn Abbas that the sisters of the testator cannot inherit if the testator leaves son or daughter. He made an analogy with the condition of the mother's barrier nuqsan for having children. Mother gets $\frac{1}{3}$ (one-third) to $\frac{1}{6}$ (one-sixth) because the testator has children, the children are not distinguished whether they are male or female. And the state of being hindered husband from $\frac{1}{2}$ (half) to $\frac{1}{4}$ (quarter) and the barrier the nuqshon of wife from $\frac{1}{4}$ (quarter) to $\frac{1}{8}$ (one-eighth) because of the child, and also it cannot be differentiate whether the the barrier is a son or a daughter [11]. This understanding was also followed by Ibn Hazm which states that there is no difference between sons and daughters when placing the husband or wife's share with regard to the presence of children. The construction of thinking used by Ibn Hazm is followed by Shia who state that, sons and daughter will hinder the full siblings of the testator brothers and sisters.

Daughters hinder the full siblings of the testator mean to expand the fiqh theory about the position of daughters. The position of daughters as heirs who hinder the testator of the full siblings will have implications for several inheritance laws, including: (a) Eliminating the position of the brother as *ashobah* together with daughters as the heirs; and (b) Eliminate *ashobah terminology ma'al ghair* when the daughter together with the testator full sibling [13].

3.4.1 The Loss of Brother Full Siblings as Ashobah When Daughter as Inheritance

The solution of inheritance cases, when the heirs consist of the daughters and the brothers can be understood through several solution refers to the time of the Prophet, both those resolved by the Prophet himself and by his companions when the Prophet was still alive.

Several stories of the Prophet quoted by Purwosusilo [13] provide lessons about the position of daughters as heirs with the heir's full siblings. Even the beginning of the revelation of the inheritance verse also shows the rights of full siblings to inheritance with daughters. Rasulullah gave $\frac{2}{3}$ (two thirds) of the share for the three daughters of Aus, $\frac{1}{8}$ (one-eighth) for Aus' wife (Ummu Kujjah) and the rest for Aus' brother. The application of this law was also carried out on the heirs of Sa'ad ibn Rabi', Rasulullah gave $\frac{1}{8}$ (one-eighth) to Sa'ad's widow, $\frac{2}{3}$ (two-thirds) of the share to Sa'ad's son and the rest to Sa'ad's brother.

Mua'adh ibn Jabal once solved the problem of inheritance by giving half the share to daughters and the other half to sisters when he served in Yemen when the Prophet was still alive.

3.4.2 The Loss of the Term Ashobah Ma'al Ghair When a Daughter is with a Sister

According to the majority scholars, sisters are entitled to a share of *ashobah* if together with her *mu'ashib* in this case a brother, that is, every woman who has furud but in accepting it as an *ashobah* needs someone else and she is in alliance with him to accept the *ashobah*.

Sisters are entitled to share *ashobah ma'al ghair* when inheriting together with daughters, while daughters are not allied in receiving the *ashobah share*, it means that the daughter of the heir receives the share according to her portion.

Example of a sister receiving *ashobah bill ghair*: A person dies leaving an heir, the husband gets a share of, brothers and sisters get the rest or *ashobah bill ghair* with the provisions of 2 to 1.

Example of a sister receiving *ashobah ma'al ghair*: A person dies, leaves an heir, husband gets a quarter, daughter gets a quarter, sister gets the rest (*ashobah ma'al ghair*).

This is what is debated, that according to Ibn Abbas as quoted by Fatchur [11] does not recognize the existence of *ashobah ma'al ghair*, because *ashobah* is the heir who gets the remaining part of the heir who gets it based on the portion. Meanwhile, if the sister is alone, she is not the heir of *ashobah*, like the brother who becomes *ashobah infatuation*. Sister designated as *ashobah bill ghair* when the other person who is the *mushib* is *ashobah infatuation*. Daughters are not heirs of *ashobah*. Because it's not justified if the sister becomes *ashobah ma'al ghair* with girls. If the sister is justified as the heir of *ashobah*, surely the sister will associate with the daughter for the rest of the inheritance.

Based on the interpretation of Anshary MK [14] on the letter An-Nisa verse 176 *a contrario*, a legal line can be drawn that if you inherit with your children (both sons and daughters) then you are totally hindered. From the provisions of the text it can be clearly stated that in fact there is no known *ashobah ma'al ghair* in Islamic heritage. Therefore, if the heirs only consist of daughters and sisters. So the property is entirely taken by the daughter by receiving based on the portion and raad. Meanwhile, sisters are completely veiled by girls.

4 Conclusion

The position of the daughter as a barrier inheritance of full siblings of testator due to the differences of interpretation of the meaning of the word '*walad*', which is generally interpreted as sons and daughters. The placement of daughters as heirs who hinders the testator of full siblings have implications for several inheritance laws, including: (a) Eliminating the position of brothers as *ashobah* together with daughters of the heirs; and (b) Eliminate *ashobah* terminology *ma'al ghair* when daughter is with sister.

Inheritance matters for Muslims must be resolved with Islamic law. Whereas in Islamic law there are many differences between the scholars in establishing a law, but in taking legal foundations that are more valid, the priority is given.

References

1. Budiono, R. (1999). *Pembaharuan Hukum Kewarisan Islam di Indonesia*. PT Citra Aditya Bakti.
2. Nasution, A. H. (2012). *Hukum Kewarisan*. PT Rajagrafindo Persada.
3. Ikbal, M. (2018). Hijab Dalam Kewarisan Perspektif al-Qur'an dan al-Hadits (Analisis Terhadap Perbedaan Fiqh as-Sunnah dan KHI) dalam. *Jurnal At-Tafkir*, XI(1).
4. Ash-Shabuni, M. A. (2013). *Hukum Waris Dalam Islam*. Fathan Prima Media.
5. Rasyid, I. (2016). Eksekusi Ab Intestato Warisan Dua Banding Satu: Rasionalisasi Surah Annisa Ayat 11. *DIKTUM: Jurnal Syariah Dan Hukum*, 14(2).
6. Kasrori. (1999). Kalalah. *Mimbar Hukum Aktualisasi Hukum Islam*, 44, X.
7. Khisni, A. (2011). Ijtihad Hakim Peradilan Agama Bidang Hukum Kewarisan dan Kontribusinya Terhadap Hukum Nasional dalam. *Jurnal Hukum No. edisi khusus*, 18.
8. Hazairin. (1967). *Hukum Kewarisan Bilareral Menurut Qur'an dan Hadits*. Tintamas.
9. Hamka. (1984). *Tafsir al-Azhar* (vol. IV, p. 318). Yayasan Nurul Islam.
10. Syahrur, M. (2004). *Metodologi Fiqih Islam Kontempore Judul Asli: Nawh usul Jadidah Li al-Fiqih al-Islami*. eLSAQ Press.
11. Rahman, F. (1983). *Ilmu Waris*. PT Al Ma'arif.
12. Hasby as-Shiddiqie, T. M. (1973). *Fiqhul Mawaris*. Bulan Bintang.
13. Purwosusilo, S. P. (2021). *Hukum Waris Di Indonesia Pergeseran Penerapan Hukum Waris Islam Dalam Putusan Hakim*. Pustaka Saga.
14. Anshary, M. K. (2013). *Hukum Kewarisan dalam Teori dan Praktik*. Pustaka Pelajar.

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