



Unification of Islamic Inheritance Law Against the Plurality of Indonesian Muslims

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Abstract. Indonesia as the largest Muslim country has variations in the application of inheritance law. However, this diversity in practice has not met the needs of the Muslim community, which tends to be plural, causing high inheritance disputes in the Religious Courts. This paper aims to determine the extent of the controversy over the understanding of Islamic inheritance in Indonesia's Muslim plurality society. In addition, to measure the reasons for differences in understanding and the implications of differences in understanding of Islamic inheritance in the Indonesian Muslim plurality society. The method used in this study uses a socio-legal study approach by conducting a textual study. The object of study in this research is Islamic inheritance law in a pluralistic Muslim society in Indonesia. The results show that the form of controversy is influenced by the point of view to guide, choose or not to use Islamic inheritance law as the basis for implementation. The reasons for the differences in understanding are education, region and occupation. Meanwhile, the implications of these differences in understanding are doubts about the fairness and benefits of inheritance distribution and the increasing inheritance disputes in Indonesia.

Keywords: Unifikasi · Hukum Waris Islam · Pluralitas Muslim

1 Introduction

The diversity of Islamic values in society is one of the causes of social problems. The diversity of religious teachings in Islam itself has various numbers of adherents even though they are both Muslim. This is due to the many tribes, cultures and customs. In addition to pluralism, the rapid changes in society also affect new problems in the practice of inheritance distribution itself. As Robertson's opinion says that social change is the alteration of patterns of culture, social structure and social behavior overtime. The point is that social change is a change that consists of how the culture applies to society, the structure that exists in society and how people behave.

Basically humans cannot stop at a certain point. This means that humans will continue to experience changes either fast or slow, big or small. Changes that are not ready to be accepted by the community in an area can cause new problems to emerge. The community's unpreparedness in accepting change is marked by regulations that are not yet able to meet legal needs as the changes occur. So that it also increases inheritance disputes in Indonesia.

In case of Indonesia, there has been an increase in inheritance disputes from 2019 to 2021. In 2019 there were 113 cases of inheritance disputes. In 2020 there were 124 inheritance disputes. In 2021 there will be 138 inheritance disputes. In addition, the settlement of inheritance disputes can be carried out in the Religious Courts and District Courts so that there is an imbalance in the settlement of inheritance disputes in Indonesia. Thus, a single guideline is needed in resolving inheritance disputes in Indonesia.

This research aims at three things. First, to find out the form of the Controversy on Understanding Islamic Inheritance in Muslim Society. Second, to find out the causes of differences in understanding in the division of inheritance among the Muslim community. Third, to see to what extent the implications of differences in understanding of Islamic inheritance in Indonesian Muslim communities are.

A search on previous research that has a relationship with this research was carried out by Abdul Mufid with the title Reconstruction of Inheritance Law in Indonesia from the Perspective of Religious Pluralism. The focus of this research study lies in the source of Islamic law, namely the Compilation of Islamic Law that does not clearly regulate the object of the recipient of inheritance who has changed religion [1]. Furthermore, research conducted by Adelina Nasution with the title Pluralism of Inheritance Law in Indonesia. This study describes the problems in the distribution of inheritance even though Islamic law has indirectly been included in national law [2]. The next research was carried out by Andi Nuzul with the title Efforts to codify inheritance law bilaterally with a pattern of differentiation in a pluralist society [3]. This study discusses the dominance of female heirs equated with the position of inheritance from the male line as applicable in the customary inheritance system.

This research is motivated by the statement that the sources of inheritance law in Indonesia have not been able to provide clear guidelines in the application of Indonesian Muslims who tend to be plural. The number of inheritance disputes in Indonesia as shown in the graph above shows the imminent ratification of new inheritance guidelines for inheritance dispute resolution institutions, both government and non-government. The goal is to reduce the number of inheritance problems in the community. This study will describe some facts regarding the community's response to the existing inheritance law.

2 Method

The object of study chosen in this study is Islamic inheritance law in a pluralistic Muslim society in Indonesia. The author is interested in researching the object of this study because inheritance is a problem faced by every family wherever they are. Indonesia as a large country with the majority of the population being Muslim but having different backgrounds is certainly not the same in applying Islamic inheritance law because it is influenced by the environment or the different habits of each region. This phenomenon has implications for the emergence of controversy over the application of Islamic inheritance law among the Muslim plurality community itself and leads to the issue of the unification of national inheritance law.

The type of research used in this research is socio-legal. This type of research was chosen because of the need to explain the problem of the object of study more meaningfully [4]. Socio-legal studies conduct textual studies, articles in legislation and policies

can be critically analyzed and explained their meanings and implications for legal subjects. In the socio-legal approach, the author also uses legal data in the form of the Compilation of Islamic Law (KHI), Jurisprudence, and scientific articles related to the object of study. The selection of socio-legal as a type of research uses social science only as a methodological domain. Substantially and analysis is in the realm of legal science.

The research process begins with the selection of the object of study, followed by the selection of informants and other data collection. After the information and data are collected and deemed sufficient, data analysis will then be carried out to find research results. Furthermore, the results of the study will be presented in the form of a description in the form of words.

The data collection carried out in this study was carried out by selecting 5 informants from different backgrounds and regions. The five informants were chosen because they have similarities as well as differences. The similarities are that all of them are Muslim. Meanwhile, the difference between the five informants lies in their educational background (Bachelor to Master), occupation (Teacher, Lecturer, Private Worker, Village Apparatus), and location or place of residence (Rural, Urban). The five informants were deemed sufficient to represent the Muslim plurality community in Indonesia.

The data analysis method uses legal interpretation techniques, namely in the form of grammatical interpretation which interprets the text according to its daily use, systematic interpretation, namely by connecting a statutory text with the entire legal system, and interpretation of meaning (hermenetic), which is looking for meaning comprehensively in a text to find the principles contained in the text of the legislation in order to get results. After interpreting the law, the author will see how the implications of these laws and regulations for the selected informants are, and the extent of the influence of the diversity of informants on the implications that arise.

3 Result

3.1 Controversy Forms of Understanding Islamic Inheritance in Indonesian Muslim Pluralism Society

The form of controversy in the distribution of inheritance among the Muslim community in Indonesia can be seen in three ways. First, the Muslim community views that Islamic inheritance law is the right choice of law and is in accordance with the Shari'a. However, others argue that Islamic inheritance law is considered quite good. Second, for some Muslim communities, the application of Islamic inheritance law in their environment is still firmly held and implemented in accordance with the Shari'a. While other parts of Islamic inheritance law are still used by only a few people and are mixed with customary inheritance or agreements. Third, the understanding of Islamic inheritance law by the Muslim community has not been fully understood and only part of it is known, such as the distribution of inheritance for boys and girls.

The controversy over the understanding of inheritance law shows that the Muslim community in Indonesia comes from various backgrounds, both from place of residence and level of education. As an identity remains a Muslim or a Muslim, but in the daily life or way of life of the Muslim community is also influenced by other factors that lead to differences in understanding in the Islamic inheritance law system. This difference

in understanding certainly has an impact on both himself and his family as well as in society or social impact.

These findings explain that in the level of knowledge, the Muslim community knows that Islamic inheritance law is the right choice of law because it is based on sharia or Islamic values. But in practice, there are some people who do not apply Islamic inheritance law as a whole. This indicates that in applying Islamic inheritance law it is not enough just to know, but requires a deep understanding and belief in the community that Islamic inheritance law is the right choice of law and brings effectiveness in practice. Understanding and belief in applying Islamic inheritance law in Indonesia can at least be done by knowing the history and diversity of inheritance law itself.

3.2 Reasons for Differences in Understanding in the Distribution of Inheritance in Indonesian Muslim Plurality Society

Differences in understanding in the distribution of inheritance among the Muslim community are based on the following reasons. The first factor is educational background. The second factor is the residential environment, whether it tends to be located in urban or rural areas. The third factor is work or daily activities.

The results show that the education factor plays an important role in the level of Muslim understanding of Islamic inheritance law. Informants with a higher education level (Strata-2) tend to have a good understanding as well as believe that Islamic inheritance law is the right choice because it is based on sharia. Meanwhile, informants who live in urban areas have a less broad understanding of Islamic inheritance law and their understanding is limited to sharia only (according to Islamic law). This is different from rural communities which are still culturally consistent in applying Islamic inheritance law in their environment, both because of understanding and culture or tradition. Another factor is work, which shows that work as a teacher (teachers and lecturers) tends to understand the inheritance law system better than work as a private employee.

These factors indicate that Indonesia as a Muslim-majority country has different views and understandings in viewing the Islamic inheritance law system. These differences more specifically indicate the diversity of educational backgrounds of the Muslim community, and the uneven distribution of locations. Considering the coverage area of Indonesia is classified as a country with a large area.

3.3 Implications of Different Understanding of Islamic Inheritance in Indonesian Muslim Plurality Society

Differences in understanding in the distribution of inheritance among the Muslim community certainly have implications both in social and legal aspects. The first implication is related to the fulfillment of a sense of justice for the heirs and the community. For Muslim communities who do not have a good understanding of the Islamic inheritance law system, they tend to feel that inheritance distribution cannot create a sense of justice and has the opportunity to open conflicts among heirs or families. The second implication is that it has the potential to increase the number of inheritance dispute cases that enter the court if they cannot be resolved amicably.

Creating a sense of fairness for each heir is the biggest implication. Even though Islamic inheritance law in Muslim communities is believed to be in accordance with the Shari'a and is considered appropriate as an inheritance system, the results show that in its implementation, if the implementation of inheritance distribution is not accompanied by good communication and carried out in good faith, the opportunity for inheritance disputes is still open. In the Muslim community who are culturally in rural areas, if the dispute cannot even be resolved by village elders or family elders, of course the last resort is through the courts. This can be seen in the number of inheritance disputes registered on the mahkamahagung.go.id page. nationally in the last three years. In 2019, there were 69 Islamic inheritances that were decided by the religious courts (level I) from all regions in Indonesia, in 2020 there were a decrease of 17 disputes over Kabul at the first level, and in 2021 there was an increase again, namely as many as 29 disputes involving registered at the level I religious courts of all religious courts in Indonesia.

This finding confirms that inheritance law is basically a private law that relates personally. In practice in the community, to avoid inheritance disputes involving family or heirs, the results show that the existence of Islamic inheritance law in Muslim societies has not been fully used and only part of it is still consistent. This is driven by the fulfillment of a sense of justice for each heir and for the effective distribution of inheritance divided by agreement. This implication can indeed reduce the opportunity for inheritance disputes, but on the other hand there are indications of the inconsistency of the Muslim community to stick to the Shari'a in terms of inheritance law.

4 Discussion

4.1 Controversy Forms of Understanding Islamic Inheritance in Indonesia's Muslim Plurality Society

The Muslim community sees that Islamic inheritance law is the most ideal guideline to be used as the basis for inheritance distribution [5]. For some Indonesian Muslim communities who think that the recommendation for the distribution of inheritance based on Islamic values contains a reward value even though the calculation is quite mathematical [6]. Although the notion of inheritance law is not stated in the Civil Code, the procedure for regulating inheritance law itself is regulated by the Civil Code. Meanwhile, based on presidential instructions No. 1 of 1991 (Compilation of Islamic Law) inheritance law is the law that regulates the transfer of ownership rights to the inheritance of the testator and then determines who is entitled to become the heir and its parts. As written in Article 171–214 of the Compilation of Islamic Law, the division of inheritance law is based on Islamic values [7] as article 176 of the Compilation of Islamic Law:

If there is only one girl she gets half of the share, if two or more of them together get two-thirds of the share and if the daughter is together with the son then the share of the son is two to one with the daughter.

Explicitly the division of inheritance gives two parts for men and one part for women. This means that the teachings of Islamic inheritance which place the position again at one level above women. As stated in the letter an-Nisa verses 11–12 clearly describes that the rights of male heirs are greater than the rights of female heirs.

“Allah has prescribed for you the distribution of inheritance for your children. That is, the share of a son is equal to the share of two daughters; and if the children are all girls more than two, then for them two thirds of the property left; if the daughter is alone, then she gets half the property and for two parents, for each one-sixth of the property left behind, if the deceased has children; if the person who dies has no children and he is inherited by his parents, then his mother gets a third; If the deceased has several siblings, the mother gets one-sixth. The division is after the fulfillment of the will he made or after the debts of your parents and your children have been paid, you know which of them is closer to you in benefit. This is a decree from God. Verily, Allah is All-Knowing, Most Merciful. And for you (husband and wife) half of the property left by your wives, if they do not have children, if your wives have children, then you will get a quarter of the property left behind after their wills have been fulfilled or after the debt has been paid.. The wives get a quarter of the property that you leave if you do not have children, then the wives get an eighth of the property that you leave after fulfilling your will or after paying your debts. If a person dies, both male and female, who has neither left father nor son, but has only one brother or sister, then each of these two types of brothers gets one-sixth of the property. But if there are more than one mother of one, then they are partners in that third, after fulfilling the will made by him or after paying the debt by not giving harm to the heirs. Allah decreed this as a true Shari’a from Allah and Allah is All-Knowing and Most Forbearing” (QS an-Nisa [4]: 11–12).

The verse above is part of the Qur’an which explains the share of each heir among the people who are entitled to inherit based on the amount of the inheritance and the condition of the person who is entitled to the inheritance. Islam emphasizes the basic principle of dividing inheritance for men and women based on their shares. For Muslims, carrying out the provisions of inheritance law is part of teaching because it is a form of human manifestation of God. However, this is at the point of practice itself in society. The Indonesian people are known to be diverse with various rules that are enforced to the rules formed from culture and customs, including traditional heritage. Based on this, it can be interpreted that the ownership of responsibility attached to men is considered to be greater than that of women [8]. The inherent responsibility is a living for himself, a living for his wife and children. Meanwhile, women do not have the same responsibilities as men [9]. Even though women get half the share of men, based on Islam, women have placed a higher position in the status of women compared to the jahiliyah period which did not give them inheritance rights. This is sometimes accepted and strongly guided by some Indonesian Muslim communities.

However, some other Muslim communities are of the opinion that Islamic inheritance law is considered quite good. While other parts of Islamic inheritance law are still used by only a few people and are mixed with customary inheritance or agreements. This is due to the movement of Islamic teachings that creatively connect with diverse social forms [10]. Islamic inheritance law based on the verses outlined in the Qur’an is more inclined to patrilineal values that give more dominance to men. Meanwhile, in the Indonesian context, patrilineal values have not been fully accepted by the Indonesian people as a whole [11].

Munawir Sjadzali is a character who is quite critical in responding to the inheritance distribution of two to one or half for women from the male share. This figure proposes the

existence of women who sometimes for some areas in Indonesia get more domination than men. This means that there is a cultural influence that allows mixing of inheritance in an area to occur [12].

The diversity of the application of Islamic inheritance law in Indonesia in the past was influenced by receipt values since the Dutch era. There are at least three legal theories in the application of Dutch inheritance law which cause the application of inheritance law to vary. First, the *Recetio* and *Complexu* Theory which was raised by Cristian Van den Berg in 1845 [13]. This theory means that the law follows a person's religion. If the indigenous population embraces Islam, then Islamic inheritance law will affect the practice of inheritance distribution [14]. Second, the *recetio* theory is the answer to the first theory. The theory raised by Snouck Hurgronje in 1857 states that the law that applies to Indonesian Muslims is customary inheritance law [13]. This theory indirectly ignores Islamic values which were the previous guidelines and even triggered the decline of Islamic politics at that time. Third, receipt exit becomes a theory that is hard enough to respond to Snouck's theory. Snouck's theory is considered the devil's theory because it tends to turn off the implementation of Islamic inheritance law that has been in effect in the previous era. Based on this, Muslim scholars (Hazairin) [15] stated that Snouck's theory was destroyed along with the emergence of the independence of the Republic of Indonesia. Until that time the natives guided many laws, including customary inheritance law, Islamic inheritance and western law.

4.2 Reasons for Differences in Understanding of Inheritance Distribution in Indonesian Muslim Plurality Society

Differences in understanding in the distribution of inheritance among the Muslim community are based on the following reasons. The first factor is educational background. Education indirectly brings a person to a change in attitude and thinking [16]. Education tends to contribute to certain values in a person. This can be interpreted that education has an important role in the development of a person. Therefore, the distribution of inheritance in a family that has a good background will affect the way of thinking and how to respond to the distribution of inheritance in the family. In addition, knowledge about the application of inheritance law which is not only based on Islamic inheritance law is also a trigger in the distribution of inheritance in the family [17].

The environment in which you live has an influence on the issue of inheritance distribution. Therefore, the territory becomes the determinant in placing the position of inheritance law [17]. In general, the territory of Indonesia is divided into two categories, namely the urban category and the rural category. The two categories have different patterns and ways of life. The way of life in meeting the needs of life is also different. In addition, for the city community to apply Islamic values, it tends to have many challenges because of the easy access to information and new cultures [18]. When compared with backgrounds in rural areas, there will be fewer foreign cultures that influence the perspective on inheritance distribution so that sometimes there is a mix of Islamic and customary inheritance distribution [19]. In general, customary inheritance law is plural, as is the number of ethnic and ethnic groups [20]. In addition, the implementation of the lineage system also causes the application of inheritance to be more diverse [21]. Pengaruh susunan kekerabatan yang berbeda juga mengikat pemberlakuan waris adat.

The development of customary inheritance became more varied along with the development of the codification of Islamic inheritance law and western inheritance law. The social conditions of the Indonesian Muslim community are also the cause of differences in understanding of Muslim plurality in Indonesia.

The third factor is work or daily activities. A person's work or daily activities affect a person's income. At the same time, income has grown which is sometimes not unlimited to have an unlimited number of assets. At this level then affect a person's daily needs. Therefore, the presence of a lot of inheritance will affect the assets that will be obtained by the heirs. Likewise, the assets received by the heirs of the heirs can indirectly meet their daily needs.

4.3 Implications of Different Understanding of Islamic Inheritance in Indonesian Muslim Plurality Society

Islamic inheritance law system for some people is not an inheritance system that can create a sense of justice. This condition has the opportunity to open conflicts among heirs or families. Munawir explained that the two-to-one system for some people has not really been able to answer the problem of justice and benefit. This can be seen in several areas such as Sumatra, Kalimantan and Sulawesi which tend to apply the kinship system on the maternal line. The concept of two to one is a construction of understanding in the Arab era of jahiliyah that overrides the position of women [22]. In fact, the condition needed by the community at this time is the adjustment of literacy sources based on the contextual fair concept so as to avoid potential inheritance disputes among Muslims in Indonesia.

Indonesia itself has issued Law Number 7 of 1989 concerning Religious Courts [23]. The law is given the authority to adjudicate inheritance disputes although the potential implications of increasing the number of inheritance dispute cases that enter the courts can be more visible if they cannot be resolved amicably.

5 Conclusion

The application of Islamic inheritance law in Indonesia has a different style compared to other types of law. Although the implementation of Islamic inheritance law in Indonesia is in the country with the largest number of Muslims, it does not mean that it is free from polemics originating from the Muslims themselves. As a country with a fairly high level of plurality of adherents of faith, it is possible to have various problems and controversies regarding the application of Islamic inheritance law in a country with the largest Muslim population in the world.

This paper shows that there are forms of controversy that are influenced by the point of view to guide, choose or not to use Islamic inheritance law as the basis for implementation. The reasons for the differences in understanding are education, region and occupation. Meanwhile, the implications of these differences in understanding are doubts about the fairness and benefits of inheritance distribution and the increasing inheritance disputes in Indonesia.

This study still has limitations in the aspect of data that is sampled on a small scale by mapping conflict cases in previous studies. Therefore, further studies are needed with larger data scales using sharper analysis. This study suggests that Indonesia needs a standard guide such as the Inheritance Law in determining and enforcing inheritance law for Indonesian Muslims. This is due to the diversity of adherents of Islam and religious backgrounds so that the practice of inheritance distribution cannot be separated from the possibility of conflict. Therefore, it is necessary to dig deeper into the unification of Islamic inheritance law in order to minimize the bad impact in the distribution of inheritance.

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