

The Position of Women's Heritage Rights in the Context of Islamic Heritage in Indigenous Mandailing in Sipirok District, Tapanuli Selatan Regency

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Abstract

This study aims to analyze the legal aspects of the Position of Inheritance Rights of Girls in the Context of Islamic Inheritance in Indigenous Mandailing in Sipirok District, South Tapanuli Regency. This research is empirical normative namely research by looking at existing conditions in the field by linking the source of Islamic Law and the legal source of Regulations in force in the Republic of Indonesia. The benefits to be received from the results of this study are to determine the Position of Inheritance of Girls in the Context of Islamic Law and Regulations in Indonesia and the Position of Inheritance of Girls in the Context of Islamic Inheritance in Mandailing Customs in Sipirok District, South Tapanuli Regency, the results of the study stated that In Islamic Inheritance Law strongly recognizes the position of the daughter in receiving inheritance with a strong legal basis in accordance with the al-Qur'an. In Islamic Inheritance Laws, a daughter has a position as Nasabiyah's heir so that she has the right to receive inheritance. In the Mandailing customary inheritance law in Sipirok Mandailing Natal, the position of a daughter is considered as an heir when a male heir is found, but if the girl is a mere woman, the woman is not entitled to inheritance from her parents. The distribution of inheritance in the Mandailing Inheritance law in Sipirok Mandailing Natal uses local customary law, as a basis for the distribution of inheritance which is still being realized in the Community.

Keywords

inheritance rights, woman,
Mandailing culture



I. Introduction

Islamic Inheritance Law is a law that regulates everything related to the transfer of rights and / or obligations on one's property after he dies to his heirs. Three main elements are interrelated namely heir, inheritance and heir. Inheritance is basically an inseparable part of law, while law is part of the basic aspects of Islamic teachings. Inheritance is one of the studies in Islam that is specifically studied within the scope of inherit fiqh.

The specialization of study in Islamic law indirectly shows that the field of inheritance is one of the important fields of study in Islamic teachings. Even in the Qur'an, the problem of inheritance is discussed in detail and in detail. This is nothing but to prevent disputes between family members related to the inheritance of family members who have died.

Inheritance law regulates what must happen with the property of someone who has died, in other words regulating the transfer of assets left by someone who has died and the consequences for the heir. Basically, the rights and obligations in the field of wealth law can be inherited. Sometimes the property of a dead man is not divided as long as there are widows and children who are not yet mature. Usually the distribution of inheritance is done later when the children are adults, and one by one leaves their homes and build their own household bonds. But there is also the distribution of property between the heirs starting when the parents (heirs) are still alive, usually done when their children set up their own household, so they are given capital for it, the goods given (granted) at this time, will also be counted at the time then the distribution of inheritance is done.

The problem of inheritance distribution in the majority of people in Indonesia is generally carried out in a family atmosphere. But often also, regarding the distribution of inheritance is a dispute between the heirs, especially if they each feel dissatisfied with their portion of inheritance. Therefore, if there is a dispute in the distribution of inheritance, it is usually resolved first by deliberation and family. However, if this method does not work, there is often the problem of inheritance disputes that continue in the case of a lawsuit filed in court.

One of the customs in North Sumatra Province is the Mandailing custom in Sipirok District, South Tapanuli Regency. In the case of inheritance for daughters who do not have siblings at all are deemed not to have inheritance rights from the inheritance owned by their father, in general, girls who are entitled to inherit and or who are heirs are when together with sons just boy. But that does not mean in this case the daughters do not get anything from the parents' property. Girls are usually given valuable property when they get married. In this case, Islam named the gift with a gift. From several pre-research cases that have been carried out, against Mandailing indigenous people in Sipirok district, South Tapanuli Regency, there are several cases that the daughter's inheritance is blaming the inheritance object of her parents' inheritance which after the death of her biological father, the inheritance object is controlled and managed by her father's siblings with basic because the daughter does not have a sibling. On that basis also his father's siblings stated that the daughter was not entitled to the inheritance object inherited from her parents.

II. Review of Literature

2.1 Understanding Inheritance and Inheritance Law

The word inheritance comes from Arabic, the word "*Al-Miraats*" in Arabic is a *masdar* form of the word: *Waratsa-Yaritsu-Irtsan-amiratsan*. Understanding *Mirats* according to language is the transfer of something from one person to another or from one people to another people.¹

Inheritance according to the term is the transfer of ownership rights of the deceased person to the living heirs, both those left behind in the form of assets, gardens or sharia rights.²

Amir Syarifuddin said that the meaning of inheritance in Arabic is the relics left by someone who died. Inheritance law is also called *Faraidh* which means a certain division.

¹ Ash-Shabuni, *Hukum Waris Islam*, (Surabaya : Al-Ikhlash, 1995), p. 49.

² *Ibid.*, p.49

Faraidh lafadz is the *jama* '(plural form) of *Faraidh lafadz* which means *Mafrudhah*, which is the same as *Muqaddarah* which is a clearly defined part.³

The *fuqaha* defines Islamic inheritance law as a science by which we can know people who receive heirlooms, people who do not receive heirlooms, as well as the levels received by each heir and how to share them. The definition emphasizes in terms of people who inherit, people who do not inherit, the amount of the portion received by each heir, and how to distribute inheritance to the heirs.⁴

Muhammad Asy-Syarbini also believes that inheritance law is the science of *Fiqh* linked to the distribution of heirlooms, knowledge of the methods of calculation that can convey to the distribution of heirlooms and knowledge of the mandatory parts of inheritance for each owner of heirlooms.⁵

Article 171 Compilation of Islamic Law states that inheritance law is a law that regulates the transfer of ownership rights to the inheritance (*tirkah*) of the heirs, determines who is entitled to become an heir and how much each part of it.

The position of inheritance law is very much found in the Qur'an and the hadith of the Prophet Muhammad. Some verses commonly used by scholars become the basis of inheritance law, including:

a. Surat an-Nisa verse 11

Allah instructs you concerning your children: for the male, what is equal to the share of two females. But if there are [only] daughters, two or more, for them is two thirds of one's estate. And if there is only one, for her is half. And for one's parents, to each one of them is a sixth of his estate if he left children. But if he had no children and the parents [alone] inherit from him, then for his mother is one third. And if he had brothers [or sisters], for his mother is a sixth, after any bequest he [may have] made or debt. Your parents or your children - you know not which of them are nearest to you in benefit. [These shares are] an obligation [imposed] by Allah. Indeed, Allah is ever knowing and Wise.

b. Surat An-Nisa verse 12

And for you is half of what your wives leave if they have no child. But if they have a child, for you is one fourth of what they leave, after any bequest they [may have] made or debt. And for the wives is one fourth if you leave no child. But if you leave a child, then for them is an eighth of what you leave, after any bequest you [may have] made or debt. And if a man or woman leaves neither ascendants nor descendants but has a brother or a sister, then for each one of them is a sixth. But if they are more than two, they share a third, after any bequest which was made or debt, as long as there is no detriment [caused]. [This is] an ordinance from Allah, and Allah is Knowing and Forbearing.

c. Surat An-Nisa verse 176

They request from you a [legal] ruling. Say, "Allah gives you a ruling concerning one having neither descendants nor ascendants [as heirs]." If a man dies, leaving no child but [only] a sister, she will have half of what he left. And he inherits from her if she [dies and] has no child. But if there are two sisters [or more], they will have two-thirds of what he left.

³ Amir Syarifuddin, *Hukum Kewarisan Islam*, (Jakarta : Kencana Prenada Media Group, 2008), p. 5.

⁴ Rachmad Budiono, *Pembaruan Hukum Kewarisan Islam di Indonesia*, (Bandung : Citra Aditya Bakti, 1999), p.1.

⁵ *Ibid.*, p.2

If there are both brothers and sisters, the male will have the share of two females. Allah makes clear to you [His law], lest you go astray. And Allah knows of all things.

d. Surat An-Nisa verse 7

For men is a share of what the parents and close relatives leave, and for women is a share of what the parents and close relatives leave, be it little or much - an obligatory share.

e. Surat An-Nisa verse 33

And for all, we have made heirs to what is left by parents and relatives. And to those whom your oaths have bound [to you] - give them their share. Indeed Allah is ever, over all things, a Witness.

f. Al-Ahzab verse 6.

The Prophet is more worthy of the believers than themselves, and his wives are [in the position of] their mothers. And those of [blood] relationship are more entitled [to inheritance] in the decree of Allah than the [other] believers and the emigrants, except that you may do to your close associates a kindness [through bequest]. That was in the Book inscribed.

In terms of carrying out inheritance law, there are several conditions that can be carried out in harmony and inheritance law. Rachmad Budiono stated that among the inheritance law can be carried out are as follows:⁶

a. Death of the Heir

What is meant by dying here is that both real death (true), hukmi death (according to the Judge's Decision) and taqdiri death (according to allegations). Without certainty, that the testator dies, the inheritance must not be distributed to the heirs.

b. The life of an heir

The life of an heir must be clear, at the time the heir dies. The heir is a substitute to control the inheritance left by the testator. The transfer of rights is obtained through inheritance. Therefore, after the heir dies, his heir must be truly alive.

c. Knowing the status of Inheritance

In order for someone to inherit the property of a deceased person, the relationship between the two must be clear. For example, husband-wife relationship, parent-child relationship and sibling relationship, siblings, one father and one thousand.

Hasbiyallah in his book entitled Easy Learning of Inheritance states that there are several pillars that must be fulfilled in the distribution of inheritance. The pillars of inheritance are divided into three:⁷

- 1) *Muwarrits*, namely people who inherit their assets or deceased who left their property.
- 2) *Al-Warits* or heirs, namely people who are declared to have a kinship either because of blood relations or because of marriage or because they are freeing slaves.
- 3) *Al-Mauruts* or *Al-Mirats*, which is the inheritance of the deceased after the cost of maintaining corpses, paying off debts and carrying out a will.

⁶ Rachmad Budiono, *Opcit.*, p. 8

⁷ Hasbiyallah, *Belajar Mudah Ilmu Waris*, (Bandung: PT. Remaja Rosdakarya 2007), p.12.

The law stipulates that not all heirs are entitled to get the assets left by the testator. The Compilation of Islamic Law insists that to be able to inherit someone must be an heir seen from the Islamic religion that is known from the Identity Card or recognition or practice or testimony, if a newborn or a child is immature then classified as a religion with his father or the environment. Furthermore, a person is prevented from becoming an heir if by the decision of a judge who has permanent legal force, convicted of being accused of murdering or attempting to kill or torturing the heir's weight, or blamed defamatorily has filed a complaint that the heir has committed an offense threatened with sentence 5 years of imprisonment or a heavier sentence.⁸

Ahmad Rofiq stated that there were several things that prevented an heir from obtaining inheritance. These obstacles are:⁹

a. Servant or Slavery

A servant does not get any inheritance from all his family who died while he was a slave. Because everything that belongs to a slave directly belongs to his master. Either the slaves are *qinnun* (pure slaves), *mudabbar* (slaves who have been declared free if their master dies), or *mukatab* (slaves who have carried out a release agreement with their master, with conditions agreed by both parties). Thus, all types of slaves are rights inheritors and rights to inherit because they do not have property rights.

b. Murder

The Fiqh scholars agree, that Murder cannot accept inheritance from the time of *tabi'in* to the time of *mujtahid*. As for the basis of the *fuqaha* in accordance with the words of the Prophet Muhammad, which means: "From Abi Hurairah, from the Prophet Muhammad, he said killing could not inherit" (H. R. AL-Tirmizi).

The scholars agree that murder is a barrier to inheritance, so they disagree about the types of killings that are a barrier to inheritance. In the case of accidental killings, the scholars differed in opinion.

c. Different religion

Islam stipulates that there is no inheritance relationship between Muslims and infidels even though there are relationships that cause inheritance, but if there is a will then the will is mandatory, while inheritance rights between the two remain unobstructed, because religious differences cause obstruction of inheritance rights. *Fuqaha* scholars argue based on the words of the Prophet Muhammad which means: "Muslims cannot inherit the property of infidels and infidels cannot inherit the property of Muslims". (H. R. Al-Bukhari and Muslim).

While different schools or schools of Islam, according to the agreement of the jurists, are not a barrier to inheritance, because they are still fellow Muslims.

The three acts above are considered as a barrier to get a part of the inheritance, it is intended to provide punishment for the perpetrators of the killings and as a shock therapy for other communities.

2.2 Heritage and Expertise Property

Inheritance is the property of a deceased person with the criteria of property being divided into parts.

⁸ Lihat pasal 172-173 Kompilasi Hukum Islam

⁹ Ahmad Rafiq, *Fiqih Muwaris*, cet Ke-1, (Jakarta: Raja Grafindo Persada, 1993), p. 33-34.

Fathur Rahman defines inheritance is anything left by a deceased person who is justified by the *Shari'a* to be damaged by his heirs.

Inheritance according to most Islamic jurists is all property left by someone who dies in the form of movable or fixed objects, including goods / money borrowed and also goods that have to do with the rights of others, for example, mortgaged goods as collateral for the debt when the testator is still alive.

Hanafi adherents give three opinions related to inheritance (*tirkah*), namely:

- 1) *Tirkah* is property left by the deceased that is free from ownership rights of others. In this opinion what can be said *tirkah* is anything that includes; (1) material and characteristics that have material value and (2) material rights. This is the most famous opinion of adherents of the Hanafi school of thought.
- 2) *Tirkah* is the remaining assets after the maintenance costs and debt repayment are taken. So in this opinion the so-called *tirkah* is inheritance to carry out the will and assets that must be given to the heirs.
- 3) *Tirkah* is every asset left by the deceased. Therefore, according to this opinion, what is meant is that it includes objects related to the rights of others, maintenance costs, payment of debts, carrying out a will and acceptance to the heirs.

Adherents of the Maliki School define behavior as a right that can be divided and determined for those who are entitled to receive it after the death of the owner of that right.

Adherents of Syafi'i Madzhab define *tirkah* is everything that belongs to someone when they are still alive and left after death, whether in the form of assets, rights, or special things. Likewise with all property rights that came after his death, which was the result of his efforts while he was still alive.

Adherents of the Hambali school of thought define *tirkah* as the right left by the deceased, which is referred to as inheritance.

Some of the opinions above provide understanding that what is meant by *tirkah* is what is left by a dead person which includes property, properties that have material values and permanent rights which are justified by the *Shari'a* to be inherited.

Heirs are people who are entitled to inheritance because they have a relationship with the heir, in the form of a kinship, marriage or other relationship.

Article 171 paragraph (c) KHI states that: "Heir is a person who at the time of death has a blood relationship or marital relationship with the testator, is Muslim and is not hindered because of the law to become an heir".

Hilman Hadikusuma stated that the heirs are: "People who are entitled to inherit inheritance". This means that the person has the right to continue the possession and ownership of the inheritance or has the right to have a predetermined portion of the inheritance distribution among the heirs. The heirs can be children, grandchildren, fathers, mothers, uncles, grandparents. Basically, all heirs have the right to inherit except because of the behavior or a legal action carried out by the heir is very detrimental to the heir.

III. Research Method

This research is Normative Empirical, namely research by looking at existing conditions in the field by linking the source of Islamic Law and the legal source of the Regulations in force in the Republic of Indonesia, specifically relating to the Position of Inheritance of Girls in the Context of Islamic Inheritance.

IV. Discussion

4.1 Position of Girl's Inheritance in the Context of Islamic Law and Legislation in Indonesia

Islam was actually born with a conception of human relations based on justice or the position of men and women. In addition to decision making, women in Islam also have wealth, this wealth including those obtained through inheritance or their own efforts.

Islam places women in the same position as men. The similarity can be seen from three things, which are as follows:

- 1) From its human nature. Islam gives a number of rights to women in order to improve the quality of humanity. These rights include: inheritance (Q.S. An-Nis': 11), testimony (Q.S. Al-Baqarah: 282), aqiqah (QS. Al-Isr': 23), and others.
- 2) Islam teaches that both women and men get the same reward for the pious deeds they make. Instead men and women get the same punishment for the violations they have committed.
- 3) Islam does not tolerate differences and unfair treatment between human beings.

In terms of the number of parts obtained when receiving rights, there are indeed inequalities, but that does not mean unfair, because justice in the Islamic view is not only measured by the amount obtained when receiving inheritance rights but is also related to usefulness and needs.

In general, it can be said that men need more material than women. This is because men in the teachings of Islam bear a double obligation, namely for himself and his family, including women. When related to the amount received with the obligations and responsibilities mentioned above, it will be seen that the level of benefits that men will feel is the same as what is felt by women. Although men initially received twice as much as women, a portion of what they received was given to women.

Article 176 of the Compilation of Islamic Law states that if only one child receives a half share, if two or more people jointly get two-thirds of the share, and if the daughter is together with a boy, then the share of a son is two to one with a daughter.

From the provisions as mentioned in Article 176, the Compilation of Islamic Law can be interpreted that legally, girls are entitled to inheritance. The position of the girl child does not get a barrier to the right to inherit as long as the position of the child does not violate the provisions as mentioned in article 173 of the Compilation of Islamic Law.

The Compilation of Islamic Law explicitly affirms that a person is prevented from becoming an heir if by the decision of a judge, who has permanent legal force, is convicted of:

- a. Blamed for killing or trying to kill or mistreat the heirs;
- b. Blamed on defamation for filing a complaint that the testator has committed a crime that is punishable by a sentence of 5 years in prison or a more severe sentence.

From the foregoing it can be seen that Islam recognizes the liberation from all forms of injustice, among those liberations is the liberation of women who in every chapter of history are always marginalized. However, the majority of people in Sipirok Mandailing Natal still uphold the values of traditional law that have been in effect since the days of the ancestors, especially regarding inheritance issues.

4.2 Position of Inheritance of Girls in the Context of Islamic Inheritance in the Mandailing Customary District in Sipirok District, South Tapanuli Regency

Basically, the daughter of the Mandailing Indigenous community in Sipirok district, South Tapanuli Regency is also an heir who has the right to inherit the inheritance. However, the right to inherit a daughter in the Mandailing Indigenous community in Sipirok district, South Tapanuli Regency must also consider the position of other heirs. Based on the results of research conducted on the residents of Bagas Lombang Village, Sipirok district, South Tapanuli Regency stated that in the Mandailing Adat in Sipirok district, South Tapanuli Regency, the position of the daughter as heir did not have the right to inherit the inheritance when the inheritance is derived from inheritance. The heir with the provisions of the daughter is not shared with the son.

In the case study conducted by this research, Fitri Siregar and Zuraidah Siregar were residents of Bagas Lombang Village, Sipirok district, South Tapanuli Regency who were the heirs (women) of Mr. Hilman Siregar. The object of inheritance from the parents of Fitri Siregar and Zuraidah Siregar (i.e. Alm. Hilman Siregar) which after the death of the late. Hilman Siregar, Inheritance objects located in Sipirok district, South Tapanuli Regency is controlled and managed by his father's siblings on the basis because Fitri Siregar and Zuraidah Siregar in their position as the daughter do not have male siblings.

Thus according to Mandailing culture in Sipirok district, South Tapanuli Regency, the right to inherit is Siblings (ucle) from Alm. Hilman Siregar (heir) is the one who has the right to control or become the heir of the inheritance from the late Alm. The Hilman Siregar. For this problem Fitri Siregar and Zuraidah Siregar also reported the problem to the Village Government and parents as local adat holders, from the explanation obtained that Fitri Siregar and Zuraidah Siregar in their position as daughters did not have the right to inherit their parents' inherited property because of Fitri Siregar's position and Zuraidah Siregar has no siblings.

For this problem Fitri Siregar and Zuraidah Siregar asked for help from the Legal Office of LBH FMMI LABUHANBATU to fight for what was their right. So based on the strength of the power of attorney there is an advocate from the Legal Office of LBH FMMI LABUHANBATU has invited several siblings from the deceased Hilman Siregar (heir), but because of holding firm the custom of Mandailing in Sipirok district, South Tapanuli Regency, he continues to uphold the customary provisions in the inheritance law

After investigating by way of mediation and persuasion efforts so that the siblings of the late Hilman Siregar (heir) by removing the daughter's rights 2/3 of the inheritance Alm. Hilman Siregar (Heir), but the siblings of the late Hilman Siregar (Heir) are also not willing to give on the grounds that the deceased Hilman Siregar (Heir) did not give a grant during his life to Fitri Siregar and Zuraidah Siregar so that he was not entitled to inherit because there was no child Male.

The same answer was also when the Legal Office of LBH FMMI LABUHANBATU made legal remedies in the form of an application formally addressed to the siblings of the late Hilman Siregar (heir), the siblings of the late Hilman Siregar (heir) also insisted with the same answer that because the parents of the girl child did not give Grant during his lifetime, then Fitri Siregar and Zuraidah Siregar in their position as daughters were not entitled to inherit because there were no sons.

After the Legal Office of LBH FMMI LABUHANBATU filed a lawsuit Malwaris Religious Court, based on an explanation from the Religious Court at the time of mediation, the Mediator stated that Fitri Siregar and Zuraidah Siregar in their position as girls were

entitled to get 2/3 of the inheritance of Alm. Hilman Siregar (Heir). In the end, based on the results of the Mediation, it was found that an agreement had been made in the *Vandading* Deed that Fitri Siregar and Zuraidah Siregar in their position as girls were entitled to get 2/3 of the inheritance of the Alm. Hilman Siregar (Heir).

After the existence of the *Vandading* Deed, based on interviews with religious leaders in Sipirok district, Mandailing Natal District, stated that the inheritance distribution that applies to the majority of the Mandailing Indigenous people in Sipirok district, Mandailing Natal District is almost the same as the Pre-Islamic tradition which considers boys more entitled the inheritance of their parents, while the daughter does not get the right to the inheritance of her parents.

V. Conclusion

In Islamic Inheritance Law strongly recognizes the position of a daughter in receiving inheritance with a strong legal basis in accordance with the Qur'an. In Islamic Inheritance Laws, a daughter has a position as *Nasabiyah's* heir so that she has the right to receive inheritance. Article 176 of the Compilation of Islamic Law states that if only one child receives a half share, if two or more people jointly get two-thirds of the share, and if the daughter is together with a boy, then the share of a son is two to one with a daughter.

In the Mandailing customary inheritance law at Sipirok Mandailing Natal, girls are considered as heirs if found by male heirs, but if girls are only women are not entitled to inheritance from their parents. The distribution of inheritance in the Mandailing Inheritance law in Sipirok Mandailing Natal uses local customary law, as the basis for the distribution of inheritance which is still being realized in the Community.

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