

THE PRACTICE OF ISLAMIC INHERITANCE LAW AGAINST THE RIGHT OF INHERITANCE OF PARENTS TO THE INHERITANCE OF THEIR CHILDREN WHO DIED FIRST IN THE MUSLIM COMMUNITY OF JATINOM VILLAGE, KLATEN REGENCY

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ABSTRACT

This study aims to determine the practice of Islamic inheritance law on the inheritance rights of parents over the inheritance of their children who died first in the Muslim community of Jatinom Village, Klaten Regency. The nature of the study is descriptive analytical. This type of research is qualitative. The data source used uses data collection techniques through direct interviews with the public, namely interviews with several Religious Leaders and Resource Persons. Legal requirements to review this research are documents or literature on inheritance law. The results showed that the division of inheritance law against parents' inheritance rights over the inheritance of their children who died first in the Muslim community in Jatinom did not all use the Islamic inheritance law system even though they were Muslims. The reasons parents are not entitled to bequeath their children's inheritance are: 1) Parents cannot inherit their children's inheritance because they are blocked by grandchildren; 2) The deceased at the time of death was still young so did not leave much inheritance; 3) Incomprehension of heirs related to the rules in the division of heirs. The conclusion of this study is that the practice of Islamic inheritance law in the Muslim community of Jatinom Village, Klaten Regency, is not only guided by Islamic inheritance law, but also civil law and customary law which are still used by some communities as a legal choice in dividing inheritance.

KEYWORDS- Right to bequeath, parents, estate, children.

1. INTRODUCTION

Death is a destiny that cannot be changed by human effort, nor bargained with prayer. Death is also a legal event because it has a legal effect, namely the emergence of inherited property that must be transferred to the living. The transfer of property from a deceased person to a living person is called the law of inheritance [3].

By the time that division of inheritance arrives, it is prone to conflict. This happens often because the division is not in accordance with the rules about inheritance that already exist and causes divisions that are considered unfair or some feel disadvantaged and not infrequently there are also those who cause family divisions. Therefore, Islam makes such complete provisions about heirs starting from who is entitled to be the heir and the amount of division of each heir in the Qur'an.

The transfer of property occurs after the death of the heir, taking effect by itself in accordance with the principle of Islamic law, namely the principle of *ijbari*. The heirs get their share in accordance with Allah's provisions contained in Al-Q your'an and have been arranged clearly and in detail. Even so, inheritance problems are still rife in society. This happens because inheritance law is often ignored and seems underestimated by many people and is considered unimportant to explore.

The law of inheritance is a rule that regulates material rights and is very important to study because it concerns the right of ownership and the provisions that Allah has stipulated in the Qur'an [9]. This as one of the parts of the family law (al-ahwalus syahsiyah) is very important to study so that in the implementation of the division of inheritance there is no mistake and can be carried out as fairly as possible.

Terdapat three types of inheritance law systems used in Indonesiasia when the division of inheritance arrived namely Islamic inheritance law, customary inheritance law, and civil inheritance law or western inheritance. The three legal systems have principled differences, for example between Islamic inheritance law and customary heir law, different in terms of the family system, the definition of inheritance, the inheritance of heirs, the heirs' share, the institution of replacing heirs and the grant system. Especially for Islamic inheritance law is regulated in the Qur'an, hadith and ijthad, while customary inheritance law according to Betrand Ter Haar is the process of forwarding and transferring material and immaterial wealth from derivative to derivative [21]. Legal pluralism in Indonesia has established different inheritance law systems [6].

The existence of Islam in Indonesia has influenced many local customs. Including matters related to inheritance issues. For people who uphold the teachings of the Islamic religion, then he will continue to consisten with his belief to distribute inheritance through Islamic means (faraidh). However, not a few people still use the methods of implementing the distribution of inheritance according to customary law and local customary habits. So this is the problem of society, on the one hand, the provisions of faraidh are Islamic law that must be implemented, on the other hand the community does not trust and use the law of faraidh . Actually, Muslims in Indonesia already have special regulations on this heritage issue that have been listed in the Compilation of Islamic Law (KHI). However, not all make KHI a reference in the division of inheritance.

Shafii said that a Muslim is forever bound to carry out Islamic law wherever he is, both in the jurisdiction that enacts Islamic law and in the jurisdiction that does not enforce Islamic law. For Muslims (Muslims) who are aware of their obligations, solving the issue of inheritance is a religious obligation. The religious obligations in s thismaksudnya are the obligations of the assasion exercised by a person according to the lines of his religious provisions.

In the Qur'an, hadith and KHI contain various rules related to inheritance and ijthad of the scholars [16]. This does not guarantee the conformity of the theory (rule) with its reality because in society there are still various problems in its division. One of the problems that occurs is the non-fulfillment of the right of parents to obtain their children's inheritance, even though both in the Qur'an, and KHI have been assigned each part, and belong to the ashbabul furudh class which is not hindered by other heirs from obtaining a share of the inheritance, however, the reality that occurs is not in accordance with the existing rules, which are contained in Article 177 of the KHI, it is stated that the father gets one-third (1/3) share if the heir does not leave the child, if there is a child, the father gets one-sixth (1/6) share. As for the mother's part, it is contained in Article 178 of the KHI that the mother gets one-sixth (1/6) if there are children or two or more relatives and if there are no children or two or more relatives, then she gets one-third (1/3) of the share after being taken by the widow or widower if together with the father.

According to Islamic law, parents as heirs are absolute, because parents are one of those who are not hindered at all in terms of obtaining heirs. However, they can be hindered in terms of reducing the share of inheritance they will receive, known as the nuqhsan hijab. Even the father can act as ashabah (receiving the rest), as long as the heir does not leave the sons and grandsons of the sons.

As in the Klaten Regency area, there is a village called Jatinom Village which is located in Jatinom Village, Jatinom District, Klaten Regency. Historically, Jatinom was formed by a cleric named Ki Ageng Gribig as an Islamic broadcaster, as the center of the spread of Islam during the Mataram kingdom led by Sunan the Great. Jatinom people take great care of the history, teachings and culture of Islam left by Ki Ageng Gribig. This is evidenced by the existence of cultures or traditions or also relics with Islamic nuances until now. For example, there is a Yaqowiyu cultural tradition that is still carried out by the Jatinom people every month of Safar and is always followed and visited by thousands of people from various regions.

Community life in Jatinom, Klaten Regency, in dividing inheritance, parents (mother and father) have no right to bequeath or be closed by widows/widowers and descendants (children). This actually conceptually causes problems, both in terms of Customary Law, Islamic Law and Civil Law. Departing from this, the researcher conducted a study entitled Islamic Inheritance Law Practice against the Inheritance Rights of Parents Whose Children Died First in the Jatinom Muslim Community of Klaten Regency.

The purpose of this study is to find out the practice of distributing inheritance to parents whose children died first in the Jatinom Klaten Muslim community and find out the reason why parents do not get a share of the inheritance of their children who died first.

Many previous studies have examined inheritance practices in an area, but none have examined inheritance practices in Jatinom village, Klaten. This makes researchers interested in conducting this research and hopefully the results of this research can provide benefits for the development of inheritance law in Indonesia.

2. RESEARCH METHODS

The type of research in this research is empirical legal research, namely legal research carried out by examining primary data and supported by secondary data in the form of reports obtained at the research location and other library materials [10]. According to Soerjono Soekanto, the empirical legal research studied at first was secondary data, to then continue research on primary data in the field or on the community [18].

This research uses qualitative research methods, that is, research that uses verbally stated data intended to understand the phenomenon of what the subject is experiencing. Qualitative research methods were developed to uncover the symptoms of people's own lives and given their conditions without being intervened by researchers or naturalistic [4]. In this study, the authors determined which data or legal materials had the quality of the data, which legal materials were relevant and had something to do with the research material. That way, in an analysis with this qualitative approach, what is important is data quality.

The nature of the research based on the problems that have been presented is descriptive. Descriptive research aims to describe precisely the properties of an individual, state, symptom or a certain group or to determine the spread of a symptom or to determine whether or not there is a relationship between a symptom and other symptoms in society [2].

To obtain the necessary data, researchers used the method of direct interviews with family interviewees who distributed the inheritance of the deceased child first, the village government and local community religious leaders. In addition, researchers also search for data through document studies. In this case the researcher uses secondary data from the regulations of the Act, books, the internet and documents relating to the problem under study.

The data analysis technique in this study is to use an interactive analysis model (interactive model of analysis). Analysis in qualitative research consists of three main components, namely: data reduction, data presentation and drawing conclusions with their verification [20].

3. RESULT AND DISCUSSION

1. History and Overview of Jatinom Village, Klaten.

Jatinom was founded by an Islamic broadcaster named Ki Ageng Gribig in the 1480s [22]. The origin of the name Jatinom dates back to the collapse of the Majapahit kingdom in 1478 AD due to a civil war that occurred between the king's family and the emergence of an Islamic kingdom in Java that opposed the Majapahit kingdom. Ajaran-the teachings given by Kyai ageng Gribig are still being instilled between generations. This is a clear proof of Ki Ageng Gribig's success in spreading Islam to the Jatinom community.

Jatinom is the name of a village as well as a sub-district in Klaten Regency, precisely located in the southeast of the city of Klaten with a distance of about 9 kilometers.

The interview with Sri Rahayu's mother as the Head of Jatinom Village was conducted on November 14, 2022 at around 14.00 WIB. He conveyed that the practice of inheritance sharing in the Jatinom Village community refers to state law or in this case the Kelurahan in determining heirs guided by civil law (Civil Code). Regarding the right of a parent to the estate of his child who died first, what is seen is whether the heir leaves offspring or not. When the heir dies by leaving the offspring, then the rightful heir is the spouse and his descendants, then the parent of the heir is not entitled to heir to the inheritance. However, when the heir dies without leaving offspring, then the rightful heir is included in the II group which is the parent and brother of the heir.

Mr. Adnan is a religious leader of Jatinom village as well as the khatib of Alit Mosque which is a mosque left by Ki Ageng Gribig which is very much loved by the Jatinom people. The interview with him was conducted at his home on November 21, 2022 at around 16.00 WIB. He said he did not know exactly about the practice of sharing heritage in the Muslim community of Jatinom village. This happens because people in Jatinom still have

views if talking about heritage issues is still considered taboo to be told to people outside the family itself. Even so, he believes that the practice of sharing inheritance in the Jatinom community is carried out in accordance with what has been regulated in the Al-Quran. This is based on the fact that he has been asked several times for opinions by other residents regarding the division of inheritance and he gave opinions according to the division of inheritance according to Islam (Islamic inheritance law).

Mr. Agus is the head of RT. 02, RW. 03 Jatinom Village as well as figures aged in Jatinom Village. The interview was conducted on December 3, 2022, at around 09.00 WIB. According to Mr. Agus, the practice of dividing the heritage of the Jatinom community in its division uses religious law. This is based on the fact that the Jatinom community is a society that upholds Islamic values. He said that in Jatinom, he often conducts meeting activities by inviting speakers to give lectures according to the specified topics of Islamic law including inheritance.

Mrs. Musiyem is one of the residents of Jatinom Rt.02 village aged 60 years. The interview with Mrs. Musiyem was conducted on November 20, 2022 at around 10.00 WIB. Mrs. Musiyem and her late husband had one daughter aged 1 (one) year. The only child passed away in 2019 due to illness at the age of 28 (twenty-eight) years. Musiyem's mother's son has one daughter-in-five daughter and is also the only granddaughter of Musiyem's mother. At the time of death, Mrs. Musiyem's son left a piece of land and a building in the form of a residential house which later became an inheritance. According to his statement, the division of inheritance began with talks between the son-in-law and the mother and then asked for the opinion of local religious leaders. At that time, Musiyem's mother was given advice and direction by the Religious leader in accordance with the Islamic legal system sourced from the Quran. However, he and his son-in-law after deliberations determined that the inheritance was entirely for Musiyem's mother's grandson. In August 2021, the mother and daughter-in-law went to the Notary office to take care of the name of the land certificate and finally gave it to Mrs. Musiyem's grandson.

Mrs. Siti is a resident of RT village. 05 Jatinom Village is 68 years old. The interview with Siti's mother was conducted on November 20, 2022 at around 13.00 WIB. Mrs. Siti is a parent whose child has died first. He said he had 2 (two) sons, all of whom had families. In 2015, Siti's mother's first child died in an accident and left behind a wife and 1 (one) daughter aged 4 (four) years. The deceased died leaving behind property in the form of savings money, one car vehicle, one motor vehicle and a residential house now occupied by his wife and children. Some of the property has been used for purposes during the deceased's illness and the management of the body. The ownership of the residential house belongs to the wife or daughter-in-law of Mrs. Siti. The car is sold by the wife, the proceeds from the sale of the car are used to build a laundry or laundry business and fulfill the wife's daily life and children's school needs. Because the deceased died leaving behind his wife and children/descendants, the heirs are the wife and children, while the deceased's mother is not entitled to bequeath because it is hindered by the deceased's children and wife.

Mrs. Saminem is a resident of RT village. 02 Jatinom Village is 63 years old. The interview with Safenem's mother was conducted on November 20, 2022 at around 19.00 WIB. He has 1 (one) son, is married and has no grandchildren. In 2017, his only child died of illness. The deceased died leaving behind a savings estate, garden land and house building land for the occupancy of his son and wife and a car vehicle. Mrs. Saminem claimed to be given money by her daughter-in-law whose amount did not want to be mentioned and the money was used by Saminem's mother to buy daily necessities and save because her husband was dead.

2. The Practice of Dividing Inheritance for Parents abag of Inheritance of Their Children Who Died First di Jatinom Village, Klaten Regency.

Every living person will experience a death event. Death for man is a legal event. One of the legal consequences arising from the occurrence of such a legal event is the continuation of the rights and obligations of a person who dies and it is governed by the law of inheritance [14].

In the context of positive law, in Indonesia, there are three legal systems that apply at once or commonly referred to as legal pluralism, namely the Civil Inheritance Law, the Customary Inheritance Law, and the Islamic Inheritance Law. According to Otje Salman, the law of inheritance that lives in Indonesian society is influenced by five variables, namely customary inheritance law, Islamic inheritance law, social structure factors, social process factors, and legal politics [17]. According to John Griffiths, legal pluralism is the presence of more than one rule of law in a social environment [8]. The three inheritance law systems undergo different developments and institutional processes.

The institutionalization and development of Islamic inheritance law is pursued through national legislation, with the promulgation of Law Number 7 of 1989 concerning Religious Justice (Religious Justice Law) which has been amended by Law Number 3 of 2006 and the issuance of Presidential Instruction Number 1 of 1991 concerning the Compilation of Islamic Law (KHI). Through this national legislation, it turns out that it does not provide clarity on the rule of law that should be in solving the problem of inheritance. This can be seen in Article 49 paragraph (1) of Law Number 3 of 2006 concerning Amendments to Law Number 7 of 1989 concerning the authority of the Religious Court in examining, deciding and resolving inheritance issues as well as the section Weighing letter b of Presidential Instruction No. 1 of 1991 which reads: "that the Compilation of Islamic Law in letter a by Government Agencies and by the public who need it can be used as a guideline and solve problems in that area.". So, Islamic inheritance law used or not is a matter of independent choice of law for Muslims. Hypothetically, it can be said that Indonesians are welcome to choose which inheritance law to use because there is no guarantee of legal certainty. Therefore, legal certainty is needed so as not to create loopholes that give the opportunity to disobey existing rules [15].

The practice of inheritance distribution in Jatinom Village does not only refer to Islamic inheritance law. This can be seen from the information of several speakers, the practice of inheritance distribution in Jatinom Village is guided by the three applicable inheritance law systems. As stated by the Jatinom Village Head, that the village leaves one-third of it to the community to choose the inheritance law system that will be used in the practice of dividing the original inheritance agreed upon by all family members. In contrast to the opinion of Mr. Adnan, a Jatinom religious leader, explained that he believed that the Jatinom community in distributing inheritance was guided by Islamic inheritance law, namely the law of Allah which is based on the Qur'an and Hadith. In addition, in the opinion of Mr. Ali as the Head of rt in Jatinom Village also said that the practice of distributing inheritance to the Jatinom community is carried out based on Islamic religious law.

In the jatinom legal system order, the three legal systems can be accepted by each Jatinom community. That in the division of inheritance of the Jatinom village community is not only guided by one rule of law but the three legal systems can apply which both regulate inheritance. Although the three legal systems can apply in one order of society, there must still be harmonization of the legal system, in order to ensure legal certainty in social life, disorganization and a sense of unprotected. In such a perspective the issue of legal certainty will be perceived as a necessity that can only be realized through the harmonization of the legal system. Harmonization in law is to include adjustment of regulations per law, government decrees, decisions of judges, legal systems and legal principles with the aim of enhancing legal unity, legal certainty, fairness and comparability, legal usefulness and clarity, without obscuring and compromising legal pluralism [7].

The practice of dividing inheritance in Jatinom is carried out by deliberation between the family and all heirs. So that all heirs know the rights and shares of each heir with a fair result. Another effort is that if from the deliberations there are parties who feel aggrieved, the family can ask for help from local religious leaders to provide understanding in the distribution of inheritance using the provisions of the faraidh law. As the agreement has been stipulated in Article 183 of the KHI which states that "The heirs may agree to make peace in the division of the estate, after each is aware of its share."

As for when the other heirs feel aggrieved by the agreed decision, can file a claim with the local Religious Court, then the property will be divided according to the existing rules and all relatives who are entitled to be heirs will have their share including parents. Because this is the authority of the Religious Court under Article 49 of the Religious Court Law which is in charge and has the authority to examine, decide and settle cases in the first instance between persons who are Muslims in the fields of: marriage, inheritance, wills, grants, waqf, zakat, infaq, shadaqah, and sharia economy.

Dalam general explanation of the Religious Justice Act states "that the parties before litigation consider choosing what law is used in the division of inheritance, declared abolished". According to Mr. Agus as the head of rt as well as a religious leader in Jatinom, he said that in the Jatinom community, the practice of dividing inheritance in the event of a dispute can be resolved by deliberation with the help of mediation by religious leaders or figures aged in Jatinom village. The division of inheritance is carried out immediately after the heir dies, some are carried out after a few years after the heir dies. It adjusts the condisi of the heirs. Although neither the Quran nor the hadith have nash shari'ah which commands when to distribute the inheritance, it depends on the maslahat of each.

From the results of research to several speakers from Jatinom Village, namely parents positioned as heirs of their deceased children, in terms of inheritance did not get rights as stipulated in surah An-Nisa verse 11,

namely for two fathers, for each one-sixth of the property left behind, if the deceased has children, if the deceased has no children and he is inherited by his mothers alone, then his mother gets one-third, if the deceased has several relatives, then his mother gets one-sixth, those divisions after fulfilling the will he made or after the payment of his debts. The ignorance of a family regarding the division of inheritance is a major factor in the incompatibility between theory and reality.

3. The Reason Parents Did Not Get Their Children's Inheritance yang Died First di Jatinom Village, Klaten Regency.

In the case of inheritance, according to Islamic law the parents bequeath together with the child of the heir. The position of the parents is placed as heirs who need to be respected and glorified and has been set out in Sura An-Nisa Verse 11, which means: "And for two mothers and fathers, for each one-sixth of the property left behind, if the one who is in the same place has children; if the deceased has no children and he is inherited by his mother and father (only), then the mother gets one-third; if the deceased had several relatives, then the mother gets one-sixth."

One of the reasons why parents have the right to become heirs in Islamic inheritance law is because parents are included in the heirs of nasabiyah, namely heirs whose inherited relationship is based on blood relationship, namely the relationship of the child with the parents or the parents with the child who can both inherit from each other.

As well as those included in the heirs of the sababiyah namely: widows or widowers. In Article 174 of the KHI, it is stated that if all heirs exist, then those who are entitled to receive inheritance are only: children, fathers, mothers, widows or widowers. This is included in the principle of ijbari in the Compilation of Islamic Law described in Article 171 part c, an heir is a person who at the time of death has a blood relationship or marital relationship with the heir, is Muslim and is not hindered by law to become an heir.

From several sources, it can be seen that the position of parents over the inheritance of their children who died first was seen from the presence or absence of heirs' descendants. If the heir dies without leaving a child, the heirs are parents and relatives, if the heir leaves the child then the heir is the heir's child and the widow/widower. Some of the reasons parents are not entitled to bequeath their children's inheritance are: the family's incomprehension of religion, especially regarding the law of faraidh, the property of the deceased child is joint property or gono-gini obtained during the marriage.

Based on this analysis, Islamic law is not fully used as a guideline in dividing inheritance, especially in terms of the position of parents as heirs to the property of their children who died first in Jatinom Village. By not being used as a guideline in the division of inheritance, the purpose of Islamic law cannot be achieved, namely to maintain: religion, soul, reason, descendants and property. Likewise, the principles of Islamic law, one of which is creating benefits for mankind

4. CONCLUSION

The practice of inheritance distribution in Jatinom Village, Klaten Regency, still has legal pluralism (the enactment of more than one applicable legal rule) and the community can choose the legal system that will be used as a guide in dividing inheritance. Some use customary law, civil law and Islamic inheritance law. The reasons a parent is not entitled to bequeath the estate of his deceased child first, namely; (1) The heir dies by leaving offspring, (2) The property of the married heir is the joint property of the spouse, so the parents are not entitled to the property and (3) The heir's ignorance of Islamic religious law, especially the faraidh law in the division of inheritance. The legal provisions of society regarding inheritance law are still considered lacking, according to Islam if the child dies first, then the position of the parents is included in the heirs, but in fact the parents are not entitled to bequeath the inheritance of their deceased child first. So that parents do not acquire what they are a part of. There is legal awareness and adherence to the beliefs adopted so that the position of parents as heirs can get the right to inherit their children's property. As in the Islamic rule of inheritance law that places parents bequeathing with the child. Because the reason for being able to inherit one of them is a blood relationship such as a child with parents or vice versa.

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