

**Distribution of Inheritance According to Mawaris Islamic Jurisprudence Law  
in the Compilation of Islamic Law**

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**Abstract:** This study aims to identify and analyze the effectiveness of inheritance distribution and the factors influencing it based on *Fiqh Mawaris* as regulated in the Compilation of Islamic Law (KHI) at the Sengkang Religious Court, Class I A. This research employs an empirical legal approach that utilizes primary legal materials obtained through direct observation and interviews with respondents involved in the inheritance distribution process at the court. The results of this study indicate that: the effectiveness of inheritance distribution according to *Fiqh Mawaris* within the framework of the Compilation of Islamic Law at the Sengkang Religious Court, Class I A, is realized only after a final and binding court decision has been issued; and the factors affecting the effectiveness of inheritance distribution include the appropriation of the plaintiff's rights by other heirs, differences in perception among heirs, and unequal division of inheritance shares where certain heirs receive more than others. Based on these findings, it is recommended that the Sengkang Religious Court enhance public awareness and socialization regarding the principles of *Fiqh Mawaris* and the Compilation of Islamic Law to minimize disputes among heirs and to ensure that inheritance distribution is carried out in accordance with Islamic justice principles and legal provisions.

**Keywords:** *Inheritance; Islamic Law; Compilation of Islamic Law;*

## **A. INTRODUCTION**

Islamic law is a set of norms and provisions derived from Allah SWT. As a law established by Allah, all Muslims are obligated to obey it as a form of obedience and faith in Him.[1] One concrete example of Allah's law is the regulations governing human relations, including the management of inherited property. These provisions are known as Islamic inheritance law, which is part of civil law and falls within the scope of family law. In practice, inheritance issues often become a source of conflict among family members, especially when the distribution of assets is not carried out in accordance with sharia provisions.[2] The Qur'an and Sunnah, as the primary sources of Islamic law, provide clear and detailed guidelines regarding the distribution of inheritance to heirs. This is affirmed in the Word of Allah SWT: "Allah instructs you concerning your children: for the male, a share equal to that of two females..." (Qur'an, Surah An-Nisa: 11).

However, with the changing times and the complexities of social society, Muslim scholars and intellectuals, including the Companions, Tabi'in (followers of the Prophet), and Imam Mujtahidin (mujtahidin), are expected to find new approaches to the application of inheritance law to remain in line with the basic principles of justice in Islam.[3] In this context, the concept of radd, which refers to the return of remaining inheritance to the remaining heirs, and the concept of 'aul, which refers to the reduction of the inheritance share when the inheritance is insufficient to cover all heirs' shares, are known. These concepts demonstrate the flexibility of Islamic jurisprudence (fiqh), which is continually updated by Islamic thinkers to adapt to social conditions.[4]

Wealth plays a vital role in human life because it serves as a means of fulfilling basic needs such as food, clothing, and shelter. Furthermore, wealth also has instrumental and spiritual value, including as a means of achieving prosperity, as a means of economic transactions, and as a means of doing good deeds for the afterlife through zakat, sadaqah, and the pilgrimage.[5] Thus, Islamic law not only regulates kinship relations through marriage but also regulates the transfer of a person's assets after death through the inheritance law system, known in Arabic as 'ilm al-farā'idh. The science of farā'idh is a branch of Islamic law that regulates the fair distribution of an individual's inheritance in accordance with sharia provisions.

Islamic inheritance law primarily aims to uphold the principles of justice and social balance among heirs. Through provisions established in the Quran, Sunnah, and the consensus of scholars, the Islamic inheritance distribution system seeks to prevent economic disparities within families and to avoid conflicts that could damage kinship ties. The distribution of inheritance assets is not simply a matter of material distribution; it also reflects moral and spiritual values in upholding the rights of fellow family members. Therefore, the implementation of inheritance law cannot be separated from the dimensions of faith and obedience to the provisions of Allah SWT.

Furthermore, the application of Islamic inheritance law also has important social and societal dimensions. In the context of modern society, where family structures are increasingly complex and property ownership is increasingly diverse, the application of inheritance law often gives rise to interpretive issues. Differences in understanding of inheritance shares, the status of heirs, and distribution procedures frequently become sources of disputes within families. Therefore, the existence of religious courts plays a crucial role in ensuring that the implementation of inheritance law is carried out in accordance with the principles of sharia justice and legal certainty as stipulated in the Compilation of Islamic Law (KHI).

In the Compilation of Islamic Law (KHI) it is explained regarding the meaning of inheritance law as stated in Article 171 letter (a), namely the law that regulates the transfer of ownership rights over the inheritance (tirkah) of the testator and determines who has the right to be an heir and their respective portions.[6] In simple terms, an heir can be interpreted as someone who leaves property at the time of his death, while an heir

is a family member who has the right to replace the ownership of the testator's property due to a relationship of lineage, marriage, or other reasons that are valid according to Islamic law.[5] Thus, Islamic inheritance law not only functions as a legal instrument in the distribution of property, but also as a means of maintaining justice, harmony, and balance in family life after someone's death.

### **B. METHOD**

This study employs an empirical legal research method, which serves to examine law in its actual application (*law in action*) and to analyze how legal norms function within society and relevant institutions. Empirical legal research aims to obtain a factual understanding of how the law operates in practice, rather than merely studying it from the perspective of written regulations. The data for this research were obtained from field observations and interviews conducted at the Sengkang Religious Court, Class I A, involving parties directly related to inheritance distribution cases. The primary legal materials used in this study include interview results, court decisions, and case administration documents that reflect the practical implementation of *Fiqh Mawaris* and the Compilation of Islamic Law. Furthermore, the data were analyzed using a qualitative analytical approach, which involves describing and interpreting the findings in a narrative and descriptive manner. This method allows for the systematic and logical presentation of the research results, thereby providing a comprehensive understanding of the effectiveness of inheritance distribution according to *Fiqh Mawaris* in the Compilation of Islamic Law and enabling the formulation of relevant conclusions.

### **C. DISCUSSION**

#### **1. Legal Views on Inheritance Distribution According to Mawaris Islamic Jurisprudence Law in the Compilation of Islamic Law at the Sengkang Religious Court Class IA**

The Compilation of Islamic Law (KHI) is a written legal source that serves as the primary guideline for judges in Religious Courts in resolving cases related to Islamic family law. The KHI contains 229 articles governing various aspects of Muslim life, including marriage, inheritance, and waqf. Within the entire KHI, inheritance law is a crucial element, playing a central role in maintaining justice and harmony in family relationships after death. However, the KHI's inheritance law provisions are relatively brief, consisting of only 23 articles, and are often considered insufficient to address the complexities of inheritance issues that arise in society.

Systematically, Book I of the KHI regulates Marriage Law, comprising 170 articles with highly detailed provisions. This area also has a stronger legal basis, namely Law Number 1 of 1974 concerning Marriage, with Government Regulation Number 28 of 1975 as its implementing regulations. Meanwhile, Book II discusses Inheritance Law, containing only 23 articles, a relatively small number considering the complexity and diversity of inheritance issues that frequently arise in society. Islamic inheritance law in the Compilation of Islamic Law (KHI) contains basic principles, such as

determining who is entitled to be an heir, the share of each heir, and the mechanism for transferring rights to inherited property (tirkah). However, in practice, the interpretation and implementation of these articles often require judicial interpretation by judges to align with local social and cultural conditions.

Furthermore, Book III of the KHI contains 15 articles governing waqf, the legal act of an individual donating a portion of their property for the benefit of worship or the public good. Although the provisions regarding waqf are already contained in the KHI, these regulations are strengthened by Law Number 41 of 2004 concerning Waqf, which was further elaborated through Government Regulation Number 42 of 2006 as its implementing regulations. The existence of these laws and implementing regulations demonstrates that aspects of Islamic law, such as marriage, inheritance, and waqf, are continually being refined to adapt to developments in national law and the needs of modern society.

Thus, it can be said that the Compilation of Islamic Law serves as a bridge between normative Islamic law and the national legal system, which is expected to provide legal certainty and substantive justice for Muslims in Indonesia, particularly in resolving inheritance matters, which often give rise to differing interpretations within the community.

Article 171 of the Compilation of Islamic Law states: [8]

- a. Inheritance law is the law that regulates the transfer of ownership rights of inheritance (tirkah) from the testator, determining who is entitled to be an heir and what portion each person will receive.
- b. An heir is a person who, upon death, or who is declared dead by a Muslim court decision, leaves behind heirs and inheritance.
- c. An heir is a person who, at the time of death, is related by blood or marriage to the testator, is Muslim, and is not legally prevented from becoming an heir.
- d. Inheritance is the property left by the testator, including both property and rights.
- e. Inheritance is the property brought by the testator plus the portion of joint assets after being used for the testator's needs during illness until death, funeral expenses (tajhiz), debt payments, and gifts to relatives. A will is the gift of an object from the testator to another person or institution that will take effect after the testator's death.
- f. A gift is the voluntary, unpaid gift of an object from one person to another living person for their possession.
- g. An adopted child is a child whose daily living expenses, education costs, and other expenses are transferred from their biological parents to their adoptive parents based on a court decision.

- h. Baitul Mal, the Islamic Religious Treasury, not only contains teachings on faith and various things that must be done in the context of worshipping Allah, but also contains rules regarding interactions between individuals in the world, known as mu'amalat in its general sense, including rules regarding inheritance distribution.

As a manifestation of their faith, Muslims are obligated to obey and implement these various rules (including inheritance law). Some of these Islamic rules align with their traditional practices, making it easier for them to abandon the old and embrace the new. Others differ, leading to challenges and adjustments in their implementation. This can lead to family relationships that, initially happy and harmonious, eventually end in rifts. This is evident in Decision No. 51/Pdt.G/2019/PA.Skg.

Decision No. 51/Pdt.G/2019/PA.Skg concerns an inheritance case in which the plaintiffs are siblings and the defendants are siblings. In the decision, the defendants never shared their deceased parents' inheritance, and therefore, the plaintiffs are demanding that the defendants distribute the inheritance fairly. The subject of the inheritance dispute is as follows:

1. A plot of land and a shophouse building located at Jln. Tenri Sau, No. 20, Siwa Village, Pitumpanua District, Wajo Regency, with an area of 150 M, based on a Certificate of Ownership in the name of H. Jawade (deceased), with the following boundaries: To the north, it borders the shophouse owned by H. Paille; To the south, it borders the house owned by Hj. Ani / H. Sudirman (Store Benteng); To the west, it borders the house owned by H. Hadia (parents of the Plaintiffs and Defendants); To the east, it borders Jalan Tenri Sau; Hereinafter referred to as the object of dispute I.
2. A plot of land and a building at Burung Swallow located at Jln. Umi, Siwa Village, Pitumpanua District, Wajo Regency, with an area of + 240 M, based on a Certificate of Ownership in the name of Hj. Hadia (deceased), with the following boundaries: To the north, it borders Jalan Umi; The south side borders H. Muh. Ami (Kembang Melati Shop); the west side borders an empty plot of land owned by H. Hamid; the east side borders a shophouse owned by Hj. Ani/H. Sudirman (Benteng Shop); hereinafter referred to as object of dispute II.
3. A plot of land and a building belonging to Burung Swallow, located on Jl. Cempeda, Siwa Village, Pitumpanua District, Wajo Regency, with an area of approximately 160 square meters, based on a land ownership certificate in the name of H. Jawade (deceased), with the following boundaries: The north side borders an empty plot of land owned by H. Ambo Wellang; the south side borders Jalan Cempeda; the west side borders a shophouse owned by H. Tappa (Tempe Shop); the east side borders a shophouse owned by Uztas Rusdi, SE; hereinafter referred to as object of dispute III.
4. A plot of land and a building located on Jl. Kelapa, Siwa Village, Pitumpanua District, Wajo Regency, with an area of + 240 M, based on the Certificate of Ownership in the name of H. Jawade, with the following boundaries: North side borders the house

owned by Bakhri / Nadi; South side borders Jalan Kelapa; West side borders the house owned by H. Lasi; East side borders the house owned by H. Masda Mulia; Hereinafter referred to as the object of dispute IV. after the late H. JAWADE and the late Hj. HADIA (the parents of the Plaintiff and Defendant) died, the assets left behind as described until now have never been and or have never been divided either amicably or according to Islamic Inheritance Law, and the Plaintiffs have repeatedly come to the Defendant with the intention of asking for their share, but the Defendant has not paid attention and does not want to hand over and or give to the Plaintiffs what is their right.

To support their petition, the Petitioners have submitted the following documentary evidence and witnesses:

Documentary Evidence: Original family tree in the name of ... prepared by Petitioner I Ridwan, dated October 26, 2014, acknowledged by the Head of Pangaliali and the Head of Banggae District, Majene Regency, and coded P1. Original Death Certificate in the name of ... Number 468.3/LPA/28/X/2014 dated October 20, 2014, issued by the Head of Pangaliali, Banggae District, Majene Regency, and coded P2. Original Death Certificate in the name of Yerang (biological father of ...) Number 468.3/LPA/29/X/2014 dated October 27, 2014, issued by the Head of Pangaliali, Banggae District, Majene Regency, and coded P3. Photocopy of Family Card in the name of Rabiah Number 7605011503084264 with family members being Applicant I named Ridwan NIK 760501107960002 dated November 21, 2011 issued by the Population and Civil Registration Service of Majene Regency, postmarked and sufficiently stamped has been matched with the original and found to be a match, then given the code P4. Photocopy of Savings Book in the name of ... at BNI Bank Mamuju Branch, account number: 0088216791 dated October 1, 2013, with a closing balance of Rp 13,337,600 as of September 30, 2014, issued by BNI Sub-district Office, Majene, postmarked and sufficiently stamped, matched with the original and found to be correct, and then assigned the code P5.

After explaining several explanations regarding the inheritance dispute, the Judge issued the following legal considerations (as stated in Decision No. 51/Pdt.G/2019/PA.Skg):

Considering, that regarding whether or not the Petitioners are legally prevented from becoming heirs of the deceased ..., based on Article 173 of the Compilation of Islamic Law, a person is prevented from becoming an heir if, by a legally binding judge's decision, they are convicted of: Being accused of murdering or attempting to murder or seriously assaulting the testator, and; Accused of slander for filing a complaint alleging that the testator had committed a crime punishable by 5 (five) years imprisonment or a heavier sentence.

Considering, that from the statements of the Petitioners' witnesses, it is clear that the Petitioners never committed the acts referred to in Article 173 of the Compilation of

Islamic Law above, because based on the statements of the two witnesses, the deceased ... died on ... in ..., because .... Supreme Court of the Republic of Indonesia.

Considering, that therefore there is no reason whatsoever to prevent the Petitioners from being determined as heirs of the Deceased .... Considering, that based on the aforementioned considerations, the Petitioners' request to be determined as heirs of the Deceased ... can be granted As in the statement above, the Author interviewed one of the Judges at the Sengkang Religious Court regarding the views of decision No. 51 / Pdt.G / 2019 / PA.Skg. According to Abu Rahman Baba as a Judge of the Sengkang Religious Court class 1A stated that in the decision there were several heirs where the inheritance object was in the form of a plot of land and a shophouse for swallow nests. If the settlement of this inheritance dispute cannot be resolved through mediation then it must be brought to the Court to seek justice. The case where the plaintiff sued the defendant because the inheritance from his parents' inheritance was never given even though according to the plaintiff he also had the right to receive the inheritance. For this reason, in the settlement using Mawaris Fiqh by looking at several pieces of evidence submitted by the plaintiff. The evidence submitted by the plaintiff proved that the plaintiff also had rights in the inheritance, so the defendant had to share it fairly or according to the decision of the inheritance judge.

The Clerk of the Sengkang Religious Court Class 1A also responded to the decision no. 51/Pdt.G/2019/PA.Skg. According to Staramin, one of the Clerks at the Sengkang Religious Court Class 1A, stated that what the Plaintiff did was appropriate because the evidence shown by the plaintiff was very proven and had rights in the inheritance. According to the Author of the statement above, if the settlement of the above case cannot be resolved through mediation, it needs to be brought to court to obtain justice and legal certainty. To see the size of the heirs' share is regulated in Articles 176 to 191 of the Compilation of Islamic Law. From articles 174, 181, 182 and 185, it can be seen that the heirs consist of: Male heirs, namely father, son, brother, uncle, grandfather and husband. Female heirs, namely mothers, daughters, sisters, grandmothers, and wives. Heirs who are possible as substitute heirs are, for example, grandchildren of sons or daughters.[9] From the explanation of heirs according to the KHI, it can be concluded that the requirements to be an heir are: having a blood relationship or marital relationship; being Muslim. Regarding the Islamic religion for these heirs, it is further regulated in Article 172 of the KHI: "An heir is considered to be Muslim if it is known from an identity card or confession or practice or testimony, while for newborns or minors, the religion is according to their father or environment."

There is no legal barrier to becoming an heir. As for the heir's life at the time of the testator's death, as required by the jurists, it is not apparent in this provision, and in the author's opinion, this needs to be emphasized.

**2. Factors Influencing the Effectiveness of Inheritance Distribution According to the Compilation of Islamic Law at the Sengkang Religious Court Class IA**

Islam not only teaches faith and various acts of worship to Allah, but also provides guidelines for how individuals interact with each other in this world, known as *mu'amalat*, including how to distribute inheritance.[10] As a manifestation of their faith, Muslims are required to follow and implement these regulations, including those concerning inheritance law. Some Islamic regulations align with their existing practices, making it easier for them to abandon old ways and embrace new ones. However, others differ, leading to challenges and adjustments in their implementation.

This is what triggers family relationships that initially run happily and harmoniously, only to end in rifts. According to Abu Rahman Baba, Judge of the Sengkang Religious Court Class 1A, the underlying factors that led the plaintiffs to file their lawsuit at the Sengkang Religious Court Class 1A are as follows: The Plaintiff's Rights Were Taken by Other Heirs.[11] Based on the lawsuit filed by the plaintiff (the heir's biological child) against the defendant (the heir's biological child / plaintiff's sibling) with case number 51 / Pdt.G / 2019 / PA.Skg filed a lawsuit with one of the reasons "that the object of the dispute in this case is controlled by the defendant where the plaintiff has tried to resolve this case amicably with the defendant but was unsuccessful and therefore the plaintiff filed this lawsuit with the Court." This is also one of the factors that occurs in a family regarding inheritance issues. Where the heirs feel Their rights were taken or controlled by other heirs, thus causing harm to them. Based on this, the injured party filed a lawsuit with the Sengkang Class IA Religious Court. There were differences in perception among the heirs. [12]

Differences in perception or understanding are nothing new in society, but rather are considered commonplace. However, what happens when these differences in perception arise regarding inheritance distribution, causing serious problems for the heirs? [13] Therefore, this matter requires serious handling to resolve. Therefore, this could be one of the reasons for the plaintiffs to file their lawsuit with the Sengkang Class IA Religious Court.

The Existence of Heirs Who Take More Than Others The rights of heirs in Islamic inheritance laws are basically stated in a certain amount or portion with a definite number. The definite number is stated in the Qur'an, as the main source and reference for inheritance law. [14] The portion according to the definite number is referred to in the books of Islamic jurisprudence as *faridhah* with the plural form "*faraid*". However, heirs who do not understand the issue of *faraid* will have difficulty in knowing the portion they receive, so they take more than they should. [15] According to Abu Rahman Baba as a Judge of the Sengkang Religious Court Class 1A, "efforts are made in accordance with the procedures for litigation in the Court." Namely through the stages in litigation in the Sengkang Religious Court Class IA. Finally, according to Staramin as the Clerk of the Sengkang Religious Court Class 1A, he said that "it is given an

understanding/understanding or resolved according to each division." Providing a clear understanding is very necessary in order to know what portion each heir should receive without damaging family relationships due to a lack of understanding.

#### **D. CONCLUSION**

Effectiveness of inheritance distribution according to Fiqh Mawaris law in the Compilation of Islamic Law at the Sengkang Class IA Religious Court, it can be concluded that the effectiveness of the implementation of inheritance distribution is only realized after a court decision has permanent legal force. After the decision is made, the defendant is obliged to immediately carry out the distribution of inheritance assets in accordance with the provisions stipulated in the decision. The factors that influence the effectiveness of inheritance distribution according to the Compilation of Islamic Law at the Sengkang Class IA Religious Court include: (1) the takeover of the plaintiff's rights by other heirs; (2) differences in perception and interpretation between heirs regarding their respective portions; and (3) the existence of imbalance in the implementation of distribution, where some heirs receive a larger portion than others. These factors indicate that the effectiveness of the implementation of Islamic inheritance law does not only depend on the court's decision, but also on the legal awareness and good faith of the parties involved. To increase the effectiveness of the implementation of inheritance distribution, it is recommended that the Religious Court carry out continuous supervision of the implementation of the decision until the inheritance distribution process is truly completed. In addition, the government together with the Religious Courts need to increase socialization and legal counseling activities regarding inheritance distribution mechanisms based on the Compilation of Islamic Law to the community, both in urban and rural areas, in order to create a more equitable understanding of the law and achieve substantial justice in every inheritance dispute resolution.

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