

Takharuj in the Distribution of Inheritance and its Legal Consequences from the Compilation of Islamic Law

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ABSTRAK

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This article is about Takharuj in the Distribution of Inheritance and Its Legal Consequences From the Compilation of Islamic Law. There are 2 sub problems in this article, namely, 1) What are the views of Articles 183 and 189 of the KHI regarding Takharuj in the distribution of inheritance and 2) What are the legal consequences if the heirs are postponed according to KHI. Furthermore, the articles raised aim to find out the views of the Compilation of Islamic Law, especially Articles 183 and 189 regarding the concept of Takharuj in inheritance distribution and examine the legal consequences that arise if the heirs who were originally recipients of the inheritance are then postponed. The author uses the type of library research which is descriptive qualitative, using data collection techniques by reading various kinds of information from library materials and related journal websites and then citing both direct and indirect quotes. The source of data used by the author is secondary data while the data analysis techniques that the author uses are, data collection, data reduction, data presentation and conclusions. So it can be concluded from the results of the author's article that based on the information in Articles 183 and 189 of the KHI, the distribution of inheritance in a takharuj as in the KHI is termed a peace agreement which is legal if the heirs divide their assets voluntarily through deliberation as for the consequences. The law that arises is that the heir who withdraws the other heirs gives a reward to the heirs who are postponed.

1. Introduction

One thing that is certain and will be experienced by humans is death. This can neither be rejected nor changed by anyone except Allah swt. It is undeniable that death has legal consequences, one of which can lead to problems as to how the rights and obligations of the deceased are concerned. Also what about the rights and obligations of the people left behind. Islamic law is the law of Allah, and as Allah's law, it demands obedience from Muslims to carry it out as a continuation of their faith in Allah swt. belief in the existence of God requires belief in all the attributes and nature of God. God's rule regarding human behavior itself is a form of God's iradat and therefore obedience to God's rules is a manifestation of faith in God.

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Among the rules that govern the interaction between human beings that are set by Allah are the rules regarding inheritance, namely property and possessions that arise as a result of death. The inheritance of someone who has died requires rules regarding who is entitled to receive it and how much and how to get it. Humans often forget the problem of property, that wealth is a trial that must be accounted for in the future. The peak of the human treasure trial occurred at the time he died. How far can he educate his children in terms of inheritance distribution. With the death of a person, all obligations in principle do not transfer to other parties.

The procedure for the distribution of inheritance in Islam has been regulated as well as possible. The Qur'an explains and details the laws relating to inheritance rights in detail without ignoring the rights of anyone. The part of each heir, both male and female heirs, has its provisions in the Qur'an. However, there are some opinions which argue that the distribution of inheritance may be carried out without following the provisions in the Qur'an which distribution is carried out through deliberation between families. The division is known as the division of inheritance in takharuj.

Takharuj is an agreement made by the heirs to resign (remove) one of the heirs as a recipient of the inheritance by giving achievements, both achievements that come from the property of the person who resigns, or from the inheritance to be distributed. The division by takhāruj is an effort to end a dispute or dispute between the heirs peacefully based on agreements between the two parties. Therefore, each heir voluntarily divides it peacefully in accordance with the agreement of each party concerned, even if it is considered valid if among the heirs who give up and abort their rights in the distribution of the inheritance to be handed over to other heirs,

This takharuj division of inheritance is studied in the Compilation of Islamic Law, but it is termed a peaceful distribution of inheritance, the compilation of Islamic law is one of the efforts to positivize Islamic law as one of the recognized legal systems of existence. KHI is in effect based on Presidential Instruction Number 1 of 1991. Then followed up by Decree of the Minister of Religion of the Republic of Indonesia Number 154 of 1991 dated July 22, 1991. Regarding the issue of Islamic inheritance in Indonesia, it has been regulated in the Compilation of Islamic Law and KHI has become a law book in the judiciary. Religion, because the implementation in religious courts has agreed to make it a guideline in litigation in court. The Compilation of Islamic Law governing inheritance consists of 23 articles, from article 171 to article 193.

Based on this background, researchers are interested in knowing more about the concept of inheritance in the form of takharuj and the legal consequences if the beneficiary resigns.

2. Literature review

Takharuj is peace between the heirs by issuing some of them as beneficiaries of the inheritance, with certain rewards from the inheritance or other.

Legal consequences are all consequences arising from a legal action. Legal action is an action or action taken to obtain a desired result and is regulated by law. So, legal consequences are the source or origin of the birth of rights and obligations for the legal subject concerned. For example, the legal consequences that arise when entering into a sale and purchase agreement, leasing, making a will, etc. Legal consequences according to Soeroso are a result of actions taken, to obtain the results expected by legal actors.

The Compilation of Islamic Law (KHI) is a summary of various legal opinions taken from various books written by fiqh scholars which are used as references in the Religious Courts to be processed and developed and compiled into one legal set.

3. Methodology

The type of research used by the author is library research which is qualitative descriptive. The data collection technique is in a way where data is collected by reading various types of information from library materials related to this research, then citing, both direct and indirect quotes. As for the data analysis technique, after data collection through library research, it was first checked and researched, to avoid errors and mistakes in the research, then data reduction, data presentation and conclusion drawing were carried out.

4. Results and Discussion

The Compilation of Islamic Law (KHI) is Indonesian fiqh compiled by taking into account the conditions that are the legal needs of Indonesian Muslims. Indonesian Jurisprudence, which was previously proposed by Prof. Hazairin, SH and Prof. TM Hasbi Ash-Shiddieqy has a type of Indonesian jurisprudence that is very attentive to the needs and legal awareness of the community, not in the form of a new school of thought, but uniting various jurisprudence in answering one fiqh issue that leads to the unification of schools in Islamic law. The compilation of Islamic law also accommodates various jurists' views and provisions that are sourced from the teachings of the Islamic religion which is the living law in society. The Compilation of Islamic Law consists of three books, each of which is book I: on marriage, book II: on inheritance, and book III: on waqf.

Regarding the distribution of inheritance in Islam, it has actually been stipulated in detail in the Qur'an and Hadith, the parts that have been assigned to the heirs are contained in faraid science, those who have the right to share the inheritance are called heirs of *zawil furud* and heirs of *'asabah*. However, in its implementation in society, it is possible for many people who do not use the Islamic inheritance system as stipulated in *farāid* science. One way that is often used in traditional customs is to distribute the inheritance through family deliberation. This method in Indonesia has legal force as regulated in Article 183 of the Compilation of Islamic Law.

4.1 The view of KHI Articles 183 and 189 regarding the Concept of Sharing Inheritance Takharuj

In Article 183 of the KHI it is explained that the problem of inheritance distribution can be resolved amicably after the heirs know their share. The text of Article 183 is as follows: "The heirs can agree to make peace in the distribution of inheritance, after each is aware of his share".

As for what is constructed by Article 183 there are two things, namely the occurrence of inheritance events and grants from the heir to the other heirs. The first construction is indicated by the clause "after each person is aware of and knows his part". By law, it means that the heirs have known their respective rights. The second construction is indicated by the clause "agreeing to make peace". Agree refers to an agreement, namely a grant agreement, namely a grant from one heir to another heir. It is as if this grantor has obtained the right of inheritance that is his right.

As explained in Article 183, the distribution of inheritance is valid if each heir voluntarily divides it in a way or by way of kinship in accordance with the agreement of the parties concerned. In fact, it is legal if any of the heirs give up or abort their rights in the distribution of the inheritance to be given to other heirs. Although with different backgrounds in dividing inheritance with a 1:1 system. On the one hand, they want the settlement of inheritance based on the provisions of the texts/*syar'i*, but in reality they divide the inheritance in a peaceful manner. Peace is something that is recommended in the Qur'an, which is contained in QS al-Hujurat verses 9 and 10. Peace is an effective way to reduce or avoid the occurrence of internal family conflicts due to the distribution of inheritance. Thus, although KHI justifies the possibility of settling the distribution of inheritance through peace, the settlement must be based on an agreement of free will, without any coercion from any party. Although the compilation of Islamic law is not widely recognized by various parties as statutory law, in the Religious Courts it has been agreed to make the Compilation of Islamic Law as a guidebook in litigation in court. Therefore, the Compilation of Islamic Law in the field of inheritance has become a legal book in the Religious Courts institution. With Article 183, the practice of dividing inheritance by way of deliberation has obtained legal standing. Article 183 is formed on the basis of habits in society which often share inheritance in a peaceful manner, namely by using a compromise approach with customary law, especially in anticipating the formulation of legal values whose texts are not found in the Qur'an. On the other hand, these values have grown and developed as customary norms and habits of the Indonesian people and bring benefit, order, and harmony in people's lives.

The distribution of inheritance does not have to be physically distributed. KHI has also regulated the distribution of inheritance in the form of agricultural land, as stated in Article 189.

Article 189 paragraph 1 "In this case, KHI regulates the distribution of inheritance in the form of agricultural land which is less than 2 hectares in area which must be maintained and used together, or by paying the price of land to those who are entitled (if they still want to be divided). , so that the land is still held by an heir only ".

Article 189 paragraph 2 "However, if the provision is not possible to implement, because among the heirs concerned there is a need for money, then the land may be owned by one or more heirs by paying the land price to the rightful heirs in accordance with each part".

One form of inheritance law reform in the Compilation of Islamic Law is the idea of optimizing inheritance which is used as a means to strengthen the family economy. In this case, KHI recommends that inheritance in the form of productive objects remains in its form like inheritance and the benefits or profits are divided among other heirs. Article 189 of the KHI states that the distribution of inheritance in the form of agricultural land with an area of less than 2 hectares must be maintained and used together or by paying the price of land to those who are entitled (if they still want to be divided), so that the land remains intact and can be productive. In this case,

The principle of Islamic inheritance law stipulates that inheritance is distributed to the rightful heirs based on their respective shares with various methods so that there is no remainder. However, the Compilation of Islamic Law in Indonesia adheres to a collective inheritance system. The collective principle is to protect the possibility of loss or decrease in economic value due to being given to the heirs who are entitled separately and to maintain the unity of the heirs. The division of inheritance collectively on the basis of considerations of benefit using the *istihsan* method. Although in the Compilation of Islamic Law, deviations from the principle of fragmentation of inheritance are limited to land, but based on a legal reason for this deviation is to maintain the economic value of the land.

So the link between inheritance and Article 189 of the KHI is in terms of the distribution of inheritance in the form of agricultural land owned by more than one heir whose land area is less than 2 hectares. This is to maintain the integrity of the ownership of agricultural land so that it does not turn into the property of the State, then the land must be used for the common interest, and if one of the heirs transfers or surrenders his share (because he needs money), then it should be sold or transferred to another person. other heirs in accordance with the mutually agreed price so that the integrity of the land area of less than 2 hectares does not turn into the property of the State. Article 189 of this KHI actually refers to the government's defense provisions in Indonesia, in this case Government Regulation in Lieu of Law (PERPU) Number 56 of 1960 concerning the determination of the area of agricultural land in conjunction with Government Regulation Number 24 of 1997 concerning Land Registration. So the existence of the Compilation of Islamic Law has also been adjusted to the legal rules in Indonesia so that there is no conflict of law.

As stated in Article 189, if the assets to be distributed are in the form of agricultural land with an area of less than 2 hectares, the unity should be maintained, and the person concerned shall use it for the common interest. The goal is to maintain the unity of the assets, which, if divided, means that the assets can no longer be maintained as a continuous source of the family's economy.

The provisions of Article 189 of the KHI are an effort to avoid fragmentary ownership of agricultural land (as business capital among farmers), which can be one of the causes of endless poverty. The basic reason in this case is to avoid poverty and destitution of one of the heirs. So by maintaining the traditions, the error of one of the family parties can be avoided.

There are two possible reasons for KHI to allow the distribution of inheritance in a peaceful manner, namely:

a) The heirs have known their respective shares according to Islamic material law. If peace in the division occurs, it will definitely be based on certain considerations that are committed to the conditions of family relations, such as; one of the heirs obtains fewer shares than the other heirs, even though the intended heir is classified as a person who needs

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inheritance; and the inheritance to be distributed is a source of economy in the family, not only concerning the lives of the heirs but also relatives who are not entitled to the inheritance, and

b) Based on Islamic inheritance jurisprudence, most of the faradiyun scholars allow takharuj in the form of an agreement made by the heirs with the resignation of one of the heirs as the recipient of the share of the inheritance as a replacement.

4.2 Legal Consequences If the heirs are withdrawn

In the case of the distribution of takharuj inheritance, there are legal consequences for the heirs who are postponed. Legal consequences for the heirs who resign one of these heirs will give rewards to the heirs who are postponed and the part owned by the heirs who are postponed will be transferred to other heirs and the assets that have been given cannot be returned. This means that the heir is out of his position as an heir because one of the heirs asks for it and then he is willing to replace him. According to syara', this is permissible if all the heirs are happy.

The heirs who are deferred can make a peace agreement with the other heirs, that their share is given to one of the other heirs on condition that they receive enough money from their share of the property, which is adjusted to their respective share according to Article 189. Regarding the settlement of the distribution of assets inheritance based on deliberation and agreement of the heirs which is used as an effective solution in resolving the gap in the economic conditions of the heirs. Theoretically, heirs who get a larger share can hand over their share to heirs who get a smaller share and their economic conditions are poor.

Deliberation is part of the Islamic inheritance principle. Which plays a role as a medium in achieving the goal of inheritance distribution is highly prioritized. According to Imam Muchlas, takhāruj means both leaving a group, namely a peaceful deliberation between the heirs in which there are some members of the heirs who come out of the part of someone who receives the inheritance, then part of their rights are taken their place and position which will be replaced. by other heirs.

The heirs who are resigned and the heirs who resign can enter into an amicable agreement with the other heirs, that his share is handed over to the other heirs, but there is a stipulation that he only receives a portion of the money from his share of the property. The heirs who are postponed in the distribution of inheritance to the heirs who resign are considered non-existent. Deliberation is one of the principles of Islamic inheritance.

An heir who resigns from another heir must give some money or goods taken from his own, this means that the party who leaves gives his right to the inheritance which he will later receive to one of the other heirs. The right of the recipient is replaced with his own property, which basically includes the sale and purchase of inheritance rights.

5. Conclusion

Based on the information in Articles 183 and 189 of the KHI, the takharuj distribution of inheritance as in the KHI is termed a peace agreement which is valid if the heirs share their assets voluntarily through deliberation with the heirs concerned. As for the legal consequences that arise if the heirs are postponed, the heirs who resign the other heirs give a reward to the heirs who are postponed and the heirs who are postponed give their inheritance and the status of the heirs who are postponed is no longer the beneficiary of the inheritance as well as the assets. that has been given is irrevocable.

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