

Legal Cultural Degradation: A Review of the Socio-Juridical Impact of the Suspension of Inheritance

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Abstract.

Sociological facts that occur today based on the Study of Pinrang Class 1B Religious Court Decisions in 2011-2014, delays in the distribution of inheritance can cause internal conflicts by heirs. This study was conducted to determine the impact caused by the suspension of inheritance distribution, but also to determine the role of religious courts in resolving the suspension of inheritance. This research method is carried out by taking data / decisions in religious courts as well as interviews of resource persons and presenting in qualitative form with juridical-normative and theological-syar'i approaches. The results of this study show that: First, the impact of the suspension of inheritance distribution not only damages the composition of the shares to the heirs but also mixes the ownership of several people into the ownership / control of one person, the mixing of joint property and inheritance for a long time, and the increasing cost of litigation becomes another loss for the parties, while the social impact causes harmony in family life to be disharmonious as a result illustrates a bad precedent for legal culture. Second, the settlement of the case of postponement of inheritance by the Judge is carried out by examining the lawsuit filed, determining the divided estate, then determining the heirs, determining the number of heirs' shares and finally distributing the inheritance in accordance with the provisions in the Compilation of Islamic Law. Recommendation, the need for clear and concrete rules to provide limits on deferrals given to families to divide inheritance, this is done so that there is no lasting suspension that causes property to mix, and heirs die first before being divided.

Keywords: *Impact, Suspension, Legacy, Legal Culture*

1. INTRODUCTION

The universality of Islamic law indicates that its presence is not reserved only for one particular ethnicity, class, race or place, but is reserved for all human beings. Islam has a reach and range beyond the limits of a certain time and space. As a consequence of its universal characteristics, Islam entrusts adaptability to the locality of the society in which it is accepted. Even in this Islam has given important principles regarding rational development in the effort of adaptation to its new environment.¹ As for inheritance, it is not spared from the teachings stipulated in the Qur'an and Sunnah, as well as the number of shares that must be obtained. The division of inheritance is a familiar thing in family life and every family expects the division process to run peacefully without delay.

Islam is a religion that highly upholds peace, order and security. Peace or *islah* is highly recommended in Islam. So that all forms of actions that lead to disputes that cause *mudharat* can be avoided. In line with this, the division of inheritance that should make the lives of heirs better and more prosperous, the distribution of inheritance must also be divided fairly and wisely in accordance with the provisions of Islamic law and not delay the distribution of inheritance for various reasons that ultimately cause internal conflicts between fellow heirs. Meanwhile, if there is a conflict when the distribution of inheritance can be submitted to the Religious Court for Muslims.

The competence of the Religious Court as one of the judicial institutions to resolve inheritance cases based on Islamic law, forces conflicting communities to submit it to the court as a last resort if the family path cannot be taken. The presence of courts and laws is a commitment of the state to bring conflict resolution among the community, therefore the court is not only expected to regulate but also be able to bring justice to its seekers, especially on the issue of distribution of inheritance.

Cases of postponement of inheritance in some places, prove that there are still many areas where the application of inheritance law (division of inheritance) is still carried out before ulama, kiyai ustadz, master teachers, and / or local religious leaders with a simple and familial atmosphere. In fact, some people discuss the division of inheritance is a taboo and rarely done immediately after the heir dies, because one of the widowers or widows is still alive and eventually delayed and causes mild or severe conflicts.² But this can cause disputes between heirs, because the determination of the division of inheritance is only done by custom, which can cause disputes in the future between heirs.³ The purpose of inheritance distribution in Islam is to provide a sense of security and justice to heirs with a clear division and based on the principle of balance of roles and closeness.⁴

It can be seen from the sociological facts that occur today based on the Study of the Pinrang Class 1B Religious Court Decision 2011-2014 delays in the distribution of inheritance can cause internal conflicts by heirs, many negative impacts occur if there is a delay in the distribution of inheritance and this can be a prolonged conflict because it requires a long time in the settlement process, In addition, if this continues, it will become a new habitual pattern in the distribution of inheritance that causes losses to several parties who become heirs. Therefore, the community needs to be given an understanding of the function of the court which is still circulating stigmatized as a scary place and does not bring solutions to disputes in the family, especially in the distribution of inheritance. This study not only knows the impact caused by the suspension of inheritance distribution, but also to determine the role of religious courts in resolving the suspension of inheritance.

2. METHOD

This research is a "*qualitative field research*" or field research with the location of the Pinrang Class 1B Religious Court. Data sources are obtained from research of decisions related to data problems obtained from literature in the form of books containing legal norms, both Shar'i norms and laws and regulations governing Islamic inheritance in Religious Courts as well as interviews of resource persons to take views or The judge's opinion on the matter under study.⁵ After the data collection , data examination, marking, data preparation and systematization (*systematizing*) based on the subject matter and sub-problems will be carried out and then analysis with adjustments to the subject matter studied with a juridical and theological approach to syar'i.⁶

3. RESULT AND DISCUSSION

3.1 Impact of Deferral of Inheritance on Family Harmony.

The distribution of inheritance that should make the lives of heirs better and more prosperous, then the distribution of inheritance must also be divided fairly and wisely in accordance with the provisions of Islamic law and not delay the distribution of inheritance for various reasons that ultimately cause internal conflicts between fellow heirs. Below are some of the social and juridical impacts arising from the delay in the distribution of inheritance from several judgment analyses at the Pangkep Regency Religious Court, namely:

3.1.1. Control of Property by One Family Member (Heir)

Control of property by one family member (heir) can occur due to a long delay in the distribution of inheritance, as in case No. 35/pdt. G/2012/PA.PRG. in this case one of the parties controls the estate that has not been divided among the other heirs.

That because the object that became is still a joint property (*gono-gini*) between the deceased La Emba Bin Latola and I Rabi Bint Labadaru which has never been divided between the deceased La Emba Bin Latola and I Rabbi Bint Labadaru, likewise the property of the object of dispute which is part or right of the deceased La Emba Bin Latola has never been divided into inheritance legally according to the law of inheritance between the legal heirs of the deceased La Emba Bin Latola are the plaintiffs and defendants.

Although plaintiffs I, II, III, IV, V, VI and VII have tried to contact and meet either directly or with intermediaries relatives and local government, with the intention of the plaintiffs, namely that the defendants are willing and willing to divide the property of the object of dispute and give and deliver to the plaintiffs the plaintiffs who are part or rights of the plaintiffs in a deliberative and familial manner properly, However, the Defendant did not want to and even the Defendant was angry with the Plaintiff, so that the efforts of the Plaintiffs did not bear fruit. It is thus clear, that the defendant is deliberately harming the plaintiffs.

3.1.2. Mixed Between Heritage Property and Common Property

Departed inheritance may also result in a mixture of inheritance and joint property owned by the testator and heir, as in case No. 683/pdt. G/2013/ PA.PRG. The object of dispute is joint property (*gono-gini* property), where the property has never been divided into heirs to all heirs. In the chronology it is stated that there is no

good faith to immediately divide the inheritance to heirs so as to cause disharmony between children and parents, even responded unreasonably by the Defendant and even the Defendant was angry.

3.1.3. Change of Inheritance Status to Personal Property by One Party

This change in status from inheritance to property can occur due to a long delay in the distribution of inheritance, so that one of the heirs controls the estate and can make it a personal property for himself. As in the case filed in the Pinrang Religious Court class 1B with case Number 081 / pdt. G/2013/PA.PRG. The plaintiff took the initiative to invite to talk and deliberate well and familiarly with him, so that the defendants were willing and willing to divide the estate of the deceased. However, the plaintiffs were improperly responded to by defendants I and II with various pretexts and absurd arguments, and even the defendants were angry with us plaintiffs.

Changes that are not accompanied by the inheritance process first cause an impact on the ownership status of the property, as a result if the inheritance that is not distributed is then sold and one of the heirs objects in the future, the sale and purchase contract becomes legally problematic and includes unlawful and even sinful acts because the property actually belongs to orphans.⁸

3.1.4. Requires Considerable Costs in the Case of Litigation Settlement.

Settlement of inheritance disputes carried out by litigation requires a lot of costs, ranging from the process of registering cases to the implementation of decisions decided by judges, especially if there are parties who feel dissatisfied and make appeals and cassation legal remedies, this requires more costs and a lot of time for the process, as in case Number 35 / pdt. G/2012/PA. Prg. On the first level requires a fee of Rp. 1.891.000,00. Meanwhile, if it is resolved in a familial and peaceful manner, it certainly does not require much cost or may not even exist.

3.1.5. Disharmony of Family and Economic Life

Not infrequently cases of delays in the distribution of inheritance bring quarrels that result in heirs quarreling and beating each other, causing a break in friendship and not greeting each other and not attending each other's events.⁹

The economic impact of delaying the distribution of inheritance is that the financial revolve around only one person and the property cannot be used properly, besides sometimes the property owned by only one person is not managed and not economically productive.¹⁰

This also happened in Langsa City, the negative impact of delaying the distribution of inheritance caused conflicts both mild and severe, breaking friendships, reducing the rights / shares of certain heirs, heirs did not get their rights because they died first.¹¹ Some of the factors are caused by: there is no deliberation, one parent is still alive, the child is considered unable to cultivate inheritance, the property is managed together, and there is a lack of knowledge of Islamic inheritance.¹²

3.2 Islamic Law's View on the Case of Postponement of Distribution of Inheritance

The Qur'an has specified in detail the share of each heir if there has been someone who has died and left relics, shortly after there is a death then immediately gives rise to inheritance rights for all heirs because in Islam adheres to the principle of *ijbari*. Each of them has been normatively able to know the amount of rights of the part that belongs to it. So that if there is a delay in the distribution of inheritance, it is tantamount to withholding the rights of others where the order contains an order that is mandatory.

The privilege of the Islamic inheritance law system where on the principle of inheritance due to death is that immediately after the funeral procession of a person's death, the right of distribution of inheritance is open to each heir to the heir's estate. At that time the emotional relationship between the heirs was still healthy, the object of the inheritance was still clear in number, it was clear who controlled it, and no party was felt to have taken much interest from the inheritance, such a situation could encourage the settlement of the division of inheritance peacefully and familiarly, so that the door to quarrels and disputes that would reduce the bond of affection could be minimized.

The Holy Prophetsa said, there is an order to accelerate the distribution of inheritance controlled by one heir or anyone else to all other heirs who are entitled to receive it.

..... أَلْحِقُوا الْفَرَائِضَ بِأَهْلِهَا, فَمَا بَقِيَ فَهُوَ لِأَوْلَىٰ رَجُلٍ ذَكَرَ.

Means:

Give the Faraidh (designated portion) to the rightful and give the rest to the male of the nearest male lineage.¹³

Based on this hadith, the obligation to distribute his legal inheritance *must be muaqat yang muwassa'* i.e. events carried out after the heir dies, where the execution is carried out whenever possible. However, if there are strong allegations such as inheritance property is not conveyed to the heirs because they may die first before getting their inheritance rights, there are tyrannies and conflicts and disputes between heirs, urgent economic needs, then the legal distribution of inheritance must be carried out immediately (*fauriyah*) then it is haram to postpone.¹⁴

According to the *jumhur* and some Ashab Shafi'i, Malikiyah, Hanabilah and Hanafiyah that *shigat amar* or the command in the nash of the Qur'an and hadith is basically a demand to be carried out immediately, in accordance with the rule "*The original law contained in the command is to demand to be done immediately*".¹⁵ This indicates that good works must be done immediately. Especially if the delay proves to bring harm. However, delays in the division of inheritance can be done to purify the property from debts, wills and / or property in a state of civil dispute or heirs in a state of *mafqud* (lost), or on the basis of mutual agreement that brings benefit.¹⁶ In addition to the existence of *udzur syar'i* which does not allow the distribution of inheritance to be carried out immediately, namely children or heirs still in the womb, multiple gender heirs, and or missing.¹⁷

In contrast to Islamic law, some communities in the Palangkaraya area, for example, make a habit of delaying the distribution of inheritance, this is done as an implementation of the will of their elders not to divide the inheritance for 1000 days after the heir dies, as a result on several occasions it causes problems in terms of differences of opinion regarding the share of property and does not cause division.¹⁸

3.3 Settlement of Suspension of Division of Property and Creation of Legal Culture

Regarding the distribution of inheritance, the KHI does not mention to immediately carry out the distribution. Only mentioned about the order of obligations carried out by heirs after the heir dies, Article 175 KHI states that the obligations of heirs to heirs are: 1. Managing and completing the burial of the body; 2. Settle the debts of the testator; 3. Finalize the will; 4. Divide the estate to the rightful heirs. Both the nash and the normative-juridical rules include the division of inheritance as an obligation and in parallel with the obligation to pay debts and wills, so that the distribution of inheritance is also an activity that must be synchronized, in accordance with the mandatory meaning contained in the nash and the article, because the law of origin of the obligation must be moved. Especially if the resolution is in the nature of eliminating severe conflicts, then based on the principle of benefit and leaving harm, the distribution of inheritance must be accelerated and not delayed.¹⁹

The settlement of cases of delays in the distribution of inheritance that occurs is through the litigation process, namely through the Religious Court institution which has relative authority in resolving Mal Waris cases, as in the Religious Court Law Article 1 paragraph (1) of Law Number 50 of 2009 concerning the Second Amendment to Law Number 7 of 1989 concerning Religious Courts. Religious Courts are courts for people of Muslim faith.

Since 1991, the Compilation of Islamic Law (KHI) which has *de facto* and *de jure* become the main guide generally for judges within the Religious Court in resolving inheritance law disputes submitted by justice seekers. The composition in the IHL that regulates inheritance is contained in Book II which consists of IV Chapters and 44 articles, namely from article 171 to article 214. Includes: General provisions (Chapter I Articles 171), heirs (Chapter II Articles 172-175), the size of each heir's share, (Chapter III Articles 176-191), aul and rad (Chapter IV Articles 192-193), wills (Chapter V Articles 194-209), and Grants (Chapter VI Articles 210-214). Settlement of Cases of Delay in the Distribution of Inheritance that occurs in the settlement process must refer to and pay attention to the rules applicable in the Compilation of Islamic Law as the source of Law used in the settlement of every dispute in the Religious Court, including cases of inheritance disputes that occur.

The process of resolving inheritance disputes is: *first*, the Judge must pay attention to the location where the dispute occurred, because if the location of the conflict is not included in the territory of the Court where it is located, the case must be rejected, because it is not in accordance with the relative competence of the court, then after seeing the relative competence, it must be checked that whether the case filed by the plaintiff is indeed true Inheritance disputes or not, after that it is seen whether the person who makes the lawsuit in the Religious Court is the person who is entitled or not because if the person who makes the lawsuit is a person who has nothing to do, the lawsuit can be rejected by the court. *Next*, the Judge is to examine the lawsuit filed, determine the divided estate, then determine the heirs, determine the number of heirs' shares and finally distribute the inheritance in accordance with the provisions in the Compilation of Islamic Law. *Finally*, after the Judge has carried out all these processes, every heir who is entitled to a share of the estate must submit to and implement the contents of the decision determined by the panel of judges in his decision, because the decision has permanent legal force, and punish the losing party in the trial to pay the costs of the case used during the trial process.

Based on interviews with several judges in the Pangkep district religious court that, the settlement of inheritance disputes due to delays should indeed be carried out in the Religious Court, because what has been decided in the Court in the trial will be binding on all parties and it is demanded that the implementation, agree or not agree with one of the parties, must still be implemented, but in the Religious Court, Before the trial process is carried out, mediation is first held to find out what each party really wants, in order to achieve peace between the parties. However, the case of delay in the distribution of inheritance has characteristics that are difficult to resolve, because inheritance cases are basically petitions not lawsuits so there should be no conflict in them, but this case is different because this case is brought to religious courts with disharmonious family conditions so that often judges have difficulty mediating and not infrequently the estrangement is tapered because one party feels It is unfair with a verdict that only wants to control the inheritance unilaterally.²⁰

Meanwhile, the community in practice also often makes grants as an alternative to the division of inheritance and even through this, inheritance can be divided even though the heir has not passed away. This alternative grant, can also be used to eliminate the practice of delays in the community in dividing inheritance without going through the litigation process. Juridically, grants are allowed in article 211 of the KHI which states that "grants from parents to their children can be counted as inheritance".²¹ For example, in the pattae community in Polewali, grants are used as an alternative distribution of inheritance before the heir dies under the pretext of being arable property in the form of land used to meet his needs, especially for his children who have just married, the grant property will later become an inheritance to his children after his parents die.²²

The suspension of inheritance distribution in Indonesia is generally carried out for these reasons, namely: 1. 1. One of the abandoned fathers or mothers is still alive; 2. The heirs are not yet adults; 3. Unmarried heirs; 3. Lack of understanding of inheritance division; 4 Tradition/cultural factors.²³ The traditional factors inherent in society led to the degradation of legal awareness of the juridical division of inheritance and Islamic law which tended to experience long delays. This will have the effect of creating a legal culture that is contrary to juridical wishes which sociologically if the parties are not aware and feel innocent for delaying even though there is a court decision, then this sets a bad precedent for the legal culture.²⁴

4. CONCLUSION

The delay in the distribution of inheritance that occurs for years has the potential to cause disputes among fellow heirs and cause fraternal ties between them. Therefore Islamic law commands dividing the inheritance after other obligations are carried out as a signal so that it is immediately possible to distribute the heir's estate, this is done as a form of manifestation of Islamic law does not require long disputes between Muslims, especially in the family environment, on the contrary Islam strongly recommends respecting the rights of fellow brothers. Therefore, in the distribution of inheritance, Islamic law recognizes the principle of *ijbari* so that the distribution of inheritance is immediately carried out not only to distribute the rights of others but also as a way to eliminate prolonged conflicts caused by property. In addition, delaying the sociological distribution of inheritance even if it is already resolved through court rulings, will set a bad precedent for the creation of a legal culture.

Therefore, in this study, we recommend, the need for more massive socialization to the community to build legal awareness and the need for clear and concrete rules to provide limits on the deferral given to families to divide inheritance, this is done so that there is no lasting suspension that causes adverse effects on the delay.

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