

# Inheritance\_CONFLICT\_IN\_ISLAMIC\_LAW.pdf

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**Submission date:** 24-Sep-2022 12:53PM (UTC+0700)

**Submission ID:** 1907693329

**File name:** Inheritance\_CONFLICT\_IN\_ISLAMIC\_LAW.pdf (119.2K)

**Word count:** 2040

**Character count:** 10941

Inheritance CONFLICT IN ISLAMIC LAW  
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**Article Info**

Enter:06/07/2021  
Revision:18/08/2021  
Accepted:28/08/2021  
Rise:30/08/2021

**Keywords:**

Conflict, inheritance, Islam

**Kata Kunci:**

Konflik, waris, Islam

P-ISSN: 1412-310X

E-ISSN: 2656-3797

DOI : 10.33061

**Abstract**

Conflicts between heirs also often occur because of the natural attitude of humans who do not want to give in and want to win themselves, in order to get the largest share of the inheritance among other families. **Problem Formulation** How is inheritance conflict in Islamic law **The purpose** of this research is to find out inheritance conflict in Islamic law.

**The method** used in this study is a sociological juridical approach, namely an approach to the problem through legal research by looking at the legal reality in practice, then connecting it with the facts that exist from the problem to be examined.

The problem of the distribution of inheritance has become a phenomenon that often occurs in society from the past until now. Because the distribution of inheritance is very sensitive. Often a conflict in the midst of the family. However, people who are Muslim apply to the Islamic Inheritance Law, the point is that inheritance issues can trigger the rift in family relationships. This happens if the distribution of the inheritance is not in accordance with the rules and signs that have been set by Allah in the Qur'an

**Abstrak**

Konflik antar ahli waris juga sering terjadi karena sikap alamiah manusia yang tidak mau mengalah dan mau menang sendiri, agar mendapatkan bagian harta waris yang terbanyak di antara keluarga lainnya. Rumusan Masalah Bagaimana konflik waris dalam hukum islam Tujuan penelitian Untuk mengetahui konflik waris dalam hukum islam.

Metode yang digunakan dalam penelitian ini adalah metode pendekatan yuridis sosiologis yakni pendekatan terhadap masalah melalui penelitian hukum dengan melihat kenyataan hukum tersebut dalam praktek, kemudian di hubungkan dengan fakta-fakta yang ada dari permasalahan yang akan diteliti

Permasalahan tentang pembagian harta waris sangat menjadi fenomena yang sering terjadi dalam masyarakat dari dulu sampai saat ini. Dikarnakan pembagian harta warisan sangat sensitif. Seringkali menjadi konflik di tengah-tengah keluarga. Namun masyarakat yang beragama islam mengaju kepada Hukum Kewarisan Islam, Intinya persoalan waris bisa menjadi pemicu keretakan hubungan keluarga. Hal ini terjadi apabila pembagian harta waris tersebut tidak sesuai aturan dan rambu-rambu yang telah ditetapkan Allah al-Quran.

I. INTRODUCTION

Conflicts between heirs also often occur because of a selfish attitude that wants to

win alone in getting the largest or best share of the inheritance. In any society, religion tends to influence in various aspects of life, so it is natural that Islamic law is difficult to deny its existence among Javanese people. Therefore, for the Javanese, the passage of legal pluralism between Islamic and customary law is difficult to avoid, even this pluralism has been taken for granted.<sup>1</sup>

The division of inheritance in Indonesia has been regulated in three sources of law, namely Islamic Law, Civil Law, and Customary Law. For heirs who are Muslim, the distribution of inheritance is subject to Islamic Law guided by the Compilation of Islamic Law, while non-Muslims can choose between Customary Law or the Civil Code. Settlement of disputes with Islamic law is carried out through the Religious Courts as regulated in Law Number 3 of 2006 concerning Amendments to Law Number 7 of 1989 concerning Religious Courts. Meanwhile, for dispute resolution based on the sources of the Civil Code and Customary Law, it is carried out through the District Court. Although the authority of the Religious Courts has been confirmed by the amendment of Law Number 3 of 2006 concerning the Religious Courts. However, is it true that the General Court of Justice no longer has the authority to receive, examine, and decide cases of inheritance disputes for people who are Muslim. This paper is intended to explain the legal basis that can be used by the General Courts to receive, examine, and decide cases of inheritance disputes in the Muslim community after the amendment of Law Number 3 of 2006 concerning the Religious Courts, and at the same time explain the weaknesses in Law Number 3 2006 concerning Religious Courts<sup>2</sup>

Actually, to avoid potential inheritance disputes in the future, everyone can prepare it by making a will and or grant while still alive. In Article 171 letter (f) the Compilation of Islamic Law, defines a will as the gift of an object from the testator to another person or institution which will take effect after the testator dies. This will is made while the testator is still alive and handed over to the recipient after the testator dies.

The word inheritance comes from the word *اثرو-ثرو* which means inheritance. ... Inheritance according to Islamic law is the law that regulates the transfer of assets left by someone who dies and the consequences for his heirs. Inheritance is one of the religious teachings that have been recommended to be carried out in accordance with applicable rules. The obedience of Muslims 1 Sayyid Sabiq, to the teachings that have been set in

<sup>1</sup> Moh. Zeinudin, fikri. *Studi Komparatif Tentang Aspek Ontologi Pembagian Waris Menurut Hukum Islam Dan Hukum Adat* J 6 a, Jurnal Unifikasi, ISSN 2354-5976 Vol. 3 No. 2 Juli 2016 hal 2.

<sup>2</sup> Ilham Thohari, *Konflik Kewenangan Antara Pengadilan Negeri Dan Pengadilan Agama Dalam Menangani Perkara Sengketa Waris Orang Islam*, Unversum Vol. 9 No. 2 Juli 2015 | 173-188.

Islam itself. Inheritance itself means inheritance given to living heirs<sup>3</sup>.

conflicts related to the distribution of inheritance vary, ranging from ordinary misunderstandings to not accepting the results of the distribution of inheritance which lead to lawsuits in court.

In addition to causing sadness for those left behind, not infrequently, the departure of beloved family members forever leaves disputes among heirs regarding the distribution of inheritance. The conflicts ranged from ordinary misunderstandings to not accepting the results of the distribution of inheritance which led to lawsuits in court. Therefore, the division of inheritance sometimes causes conflict in the family. In order not to become a problem in the future, there is nothing wrong with using Islamic law to resolve disputes, especially for Muslims.

Launching a book entitled "The Division of Inheritance According to Islam" by Muhammad Ali Ash-Shabuni, there are at least six different types of inheritance distribution in the Qur'an. That is half, quarter, one-eighth, two-thirds, one-third, and one-sixth.

## RESEARCH METHODS

The method used in this study is a sociological juridical approach, namely an approach to the problem through legal research by looking at the legal reality in practice, then connecting it with the existing facts of the problem to be examined.

## DISCUSSION

In terms of inheritance, humans are more concerned with their lusts than following God's rules, either because of misunderstanding or because they consider the provisions of the distribution of inheritance according to God to be unfair. As the difference in inheritance rights between men and women, two to one," said the President Director of the Surabaya Islamic Civilization Center, Fathur Rosy, last weekend. So, he took the initiative to hold inheritance training to avoid family conflicts. According to him, inheritance is good. according to Islamic law and Javanese customary law globally consists of two types of property, namely original property and joint property. In general, to be called an inheritance, the property in question must have been cleared of various interests of the heir. The difference in Islamic law is that

<sup>2</sup> Muhammad Shofwanul Mu' minin, Konflik Keluarga Akibat Pembagian "Harta Waris" dengan Hibah Perspektif Kompilasi Hukum Islam, ]

all assets Inheritance, whether originating from original property or joint property, can be accounted for to pay off the interests of the heir, but according to customary law, inheritance that can be accounted for in the interests of the testator is only for the type of joint property<sup>4</sup>. According to Islam, a grant is a transfer of ownership rights to an object without compensation from one person to another.<sup>1</sup> If someone gives his property to another person to be used but without ownership rights, then it is called a loan. Likewise, if someone gives something goods, money, services, etc. which is done without any compensation in return as happens in trade, even though it is possible to still expect reciprocity, it is called a gift.<sup>5</sup> Injustice in the distribution of inheritance occurs when the distribution is not based on the provisions of Allah SWT. This is what triggers disputes and conflicts, because they do not carry out what Allah has commanded in terms of inheritance,” he explained. Whereas the word of Allah SWT in Surah al-Anfal verse 73 has warned that if you do not carry out what Allah has commanded, there will surely be chaos on earth and great damage. Fathur said that the inheritance case had received attention after Law Number 7 of 1989 concerning the Religious Courts was enacted. In this Law, the Religious Courts are authorized to handle marital disputes, inheritance, wills, grants, endowments and sadaqah. However, the settlement of inheritance disputes for Muslims is still subject to a legal selection process (option rights), namely the right to choose the legal system desired by the litigating parties as a legal reference that will be applied in the settlement of a case. to be resolved in the General Court or in the Religious Court<sup>6</sup> Inheritance training is a challenge in itself. Because people tend not to use faraid science in the distribution of inheritance. In addition to many who have difficulty understanding this science, it is also considered unattractive and incompatible with human rights. Especially for people who are actively declaring the ideology of women's emancipation. The provisions of Allah are certain, and the distributions have been determined in detail, fair and all wisdom in this case is Allah. Allah himself has directly arranged the portions of the heirs. He did not leave it to the closest angels or apostles. Allah has explained each part of the heirs to be one-half, one-fourth, one-eighth, two-thirds, one-third and one-sixth. This is very different from other laws, such as prayer, zakat, fasting, hajj and others whose texts are global.<sup>7</sup>

<sup>4</sup> Moh. Zeinudin, fikri Op cit

<sup>5</sup> Muhammad Shofwanul Mu'minin , Opcit.

<sup>6</sup> Ilham Thohari, Op, cit

<sup>8</sup>

<sup>7</sup> Amin Husein Nasution, Hukum Kewarisan: Suatu Analisis Komperatif Pemikiran Mujtahid Dan Kompilasi Hukum Islam (Jakarta: PT Raja Grafindo Persada, 2012), 52-53

## CONCLUSION

The problem of the distribution of inheritance has become a phenomenon that often occurs in society from the past until now. Because the distribution of inheritance is very sensitive. Often a conflict in the midst of the family. However, people who are Muslim apply to the Islamic Inheritance Law, the point is that inheritance issues can trigger the rift in family relationships. This happens if the distribution of the inheritance is not in accordance with the rules and signs that have been set by Allah in the book of the Qur'an

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