

Legal Analysis of the Implementation of Maqashid Syariah in Inheritance System in Indonesia

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Abstract— This study aims to analyze the implementation of Maqashid Syariah in the inheritance system in Indonesia. Maqashid Sharia is a fundamental principle in Islamic law that aims to safeguard five main things: religion (hifdzud-din), soul (hifdzun-nafs), intellect (hifdzul-aql), heredity (hifdzun-nasl), and property (hifdzul-maal). In the context of inheritance law, these principles are a guide in regulating the distribution of inheritance in order to create justice, balance, and benefits for the heirs. Given that Indonesia has an inheritance law system that is derived from Islamic law, it is important to examine the extent to which the principles of Maqashid Syariah have been implemented in these rules. This study uses a juridical-normative method with a conceptual and legislative approach. Primary data is obtained from the Compilation of Islamic Law (KHI) and regulations related to inheritance law in Indonesia, while secondary data is collected from various scientific literature on Maqashid Sharia and Islamic law. The analysis was carried out to examine the relationship between the prevailing inheritance law norms and the principles of Maqashid Sharia, especially in the aspects of property protection (hifdzul-maal), justice for heirs, and how the value of maslahat is reflected in religious justice practice in Indonesia. The results of the study show that although the provisions of the inheritance law in Indonesia have incorporated the basic principles of Maqashid Sharia, there are several challenges in its implementation. One of the main problems is the imbalance in the protection of the rights of female heirs, which is still a debate in the practice of inheritance law. In addition, it was found that there is a gap between normative rules and social reality, where cultural and customary factors often affect the distribution of inheritance, thus potentially hindering the achievement of substantive justice. This study recommends strengthening the principles of Maqashid Sharia in the inheritance system through the revision of inheritance law policies that are more inclusive and fair. This study also encourages collaboration between scholars, legal practitioners, and the government to strengthen the integration between Islamic law and national law, so that the principles of benefit and justice can be applied more effectively in inheritance practices in Indonesia.

Keywords : Maqashid Sharia, Inheritance Law, Justice, Islamic Law in Indonesia.

I. INTRODUCTION

Inheritance law is an integral part of Islamic law which has an important role in maintaining the fairness of the

distribution of a person's inheritance after death. In Islam, the distribution of inheritance has been regulated in detail in the Qur'an, especially in Surah An-Nisa verses 11, 12, and 176. This arrangement aims to ensure that the rights of heirs are fulfilled and to avoid disputes that could damage family relationships. The fair distribution of inheritance also reflects obedience to God's law and the practice of the principle of social justice. In this context, inheritance law is a means to maintain family harmony and build a stable society based on Islamic values¹. In the view of sharia maqashid, inheritance law aims to protect the interests of individuals and society. Maqashid sharia is the philosophical foundation of Islamic law that is oriented towards the maintenance of five main goals: religion (al-dīn), soul (al-nafs), reason (al-'aql), heredity (al-nasl), and wealth (al-māl). Inheritance law directly supports this goal, especially in maintaining wealth and social balance. For example, the distribution of inheritance that has been regulated by sharia aims to avoid injustice and conflict between heirs. With the foundation of sharia maqashid, inheritance law not only prioritizes formal justice but also seeks the benefit of the people².

Law is a set of rules or norms created by authoritative and applicable authorities in a society to regulate human behavior, maintain order, protect common interests, and provide justice³. Indonesia is a country of law, so all its people are obliged to comply with the existing legal rules. The existence of the law and compliance with the law are in principle useful for maintaining the tranquility of community life. In Indonesia, Islamic inheritance law is implemented through the Compilation of Islamic Law (KHI) which was promulgated through Presidential Instruction Number 1 of 1991. KHI is the main guideline in resolving inheritance disputes for Muslims in the Religious Court. One of the provisions in the Islamic inheritance law that is applied is the division of inheritance with a ratio of 2:1 between men and women as stipulated in the Qur'an. However, in practice, many families who complete the distribution of inheritance based on deliberation for consensus, often deviate from sharia provisions in order to maintain family harmony⁴. Although Islamic inheritance law already has a strong legal basis, its application in Indonesia faces various challenges. One of the main problems is the low understanding of Islamic

¹ Al-Qur'an Surat An-Nisa ayat 11-12.

² Asi-Sayati, *Al-Muttafi Ashul al-Shari'ah* (Beirut: Dar-ul-Ma'rifah, 1997), Hallam. 12.

³ Fauzan "Juridical Review of the Granting of Remission to Prisoners in Tanjung Gusta Class I Prison in Medan" (2021)

⁴ Presidential Instruction Number 1 of 1991 concerning the Compilation of Islamic Law in Indonesia.



inheritance law. Many people prefer customary law or informal settlement in the distribution of inheritance. In addition, legal dualism in Indonesia—between Islamic law, customary law, and civil law—causes overlap in the application of inheritance law. As a result, there is often legal uncertainty and potential conflicts among heirs⁵. To overcome this obstacle, more intensive education is needed about the importance of Islamic inheritance law and how its application is in accordance with sharia maqashid. Inheritance law in Islam not only functions as a mechanism for the distribution of wealth, but also as a tool to maintain justice and harmony in society. In Indonesia, the existence of KHI as a guideline for Islamic inheritance law provides a clear legal framework, although it still needs to be strengthened in terms of public understanding and law enforcement⁶. With this step, Islamic inheritance law can be an effective solution in managing inheritance fairly and based on religious values.

Problem Formulation

1. Is the inheritance law in Indonesia in accordance with the purpose of sharia (maqashid sharia)?
2. How is the concept of sharia maqashid implemented in inheritance law in Indonesia?

Research Objectives

1. Analyzing the Application of Maqashid Sharia in Inheritance Law in Indonesia from a Juridical Perspective. Islamic inheritance law in Indonesia has been accommodated in the national legal system through various regulations, such as the Compilation of Islamic Law (KHI), which is the main guideline for Muslims. From a juridical perspective, the application of sharia maqashid in inheritance law aims to achieve justice, protect the rights of heirs, and maintain family harmony⁷.
2. Recommendations for the Development of Inheritance Law Oriented to Sharia Maqashid To ensure that inheritance law is more oriented towards sharia maqashid, it is necessary to strengthen regulations that take into account the sociocultural context of Indonesian society⁸.

II. LITERATURE REVIEW

Definition of Maqashid Sharia in Islamic Law

Maqashid sharia is the main goal that Islamic sharia aims to achieve in every aspect of human life. Etymologically, maqashid means "goal" or "target," while sharia refers to the "way" or "rule" set by Allah SWT. In Islamic legal terminology, maqashid sharia refers to the goals

of sharia in protecting and maintaining the benefits of mankind, both in this world and the hereafter⁹. This goal includes efforts to prevent harm and maximize benefits (jalb al-masalih wa dar' al-mafasid). The understanding of sharia maqashid is an important foundation in the development of Islamic law that is dynamic, relevant, and in accordance with the context of the times, without abandoning the principles of sharia.

Hifz ad-Din (Safeguarding Religion)

The first pillar of maqashid sharia is hifz ad-din, which means safeguarding religion. This pillar aims to ensure religious freedom and protect humanity in carrying out worship without interference or threats¹⁰. In Islamic law, various rules such as the obligation to pray, fast, and zakat are set to support this pillar. In addition, the prohibition of apostasy and blasphemy is part of the protection mechanism for religion as the main foundation of human life. Through hifz ad-din, Islamic sharia ensures that the spiritual aspect is the top priority that must be maintained in order to achieve harmony in life.

Hifz an-Nafs (Keeping the Soul)

The second pillar is hifz an-nafs, which is to protect the life and safety of the human soul. Islam teaches that every soul has a very high value, as affirmed in the Qur'an: "Whoever kills a human being... it is as if he had killed all mankind" (QS. Al-Ma'idah: 32)¹¹.³ In this context, Islamic law establishes strict sanctions against murder, violence, and life-threatening acts. This pillar also encourages the fulfillment of basic needs such as food, health, and security, all of which are part of efforts to preserve human life.

Hifz al-'Aql (Safeguarding Reason)

Hifz al-'aql, or guarding the intellect, emphasizes the importance of education, thought, and prohibition against things that impair the functioning of the intellect, such as the consumption of alcohol or narcotics¹². Islam encourages its people to seek knowledge and use reason to understand the signs of Allah's greatness. Within the framework of the law, the rules governing education and the prohibition of actions that damage the human intellect become the real implementation of this pillar. By maintaining reason, Islam provides space for the advancement of science and technology that remains in accordance with religious values.

Hifz an-Nasl and Hifz al-Mal (Safeguarding Offspring and Property)

The last pillar includes hifz an-nasl (guarding offspring) and hifz al-mal (guarding property). Hifz an-nasl aims to protect the family's destiny and honor through marriage rules, the prohibition of adultery, and the protection of children's rights¹³. On the other hand, hifz al-mal ensures the protection of assets through the prohibition of theft, fraud, and zakat obligations aimed at distributing wealth fairly. These pillars complement each other in forming an Islamic legal system that not only focuses on the aspect of worship, but also on the social and material welfare of mankind.

⁵ Harun Nasution, *Islam Reviewed from Various Aspects* (Jakarta: UI Press, 1985), p. 120.

⁶ Abdulkadir Muhammad, *Islamic Inheritance Law* (Bandung: PT Citra Aditya Bakti, 2005), p. 85.

⁷ Muhammad Amin Suma, *Islamic Family Law in Indonesia* (Jakarta: Prenadamedia, 2019), 76.

⁸ Nur Syam, *Maqashid Syariah: A Progressive Approach in Islamic Law* (Surabaya: Pustaka Ilmu, 2021), 112.

⁹ Jasser Auda, *Maqasid Al-Shariah as Philosophy of Islamic Law: A Systems Approach* (London: IIIT, 2008), 12

¹⁰ Ibn Ashur, *Treatise on Maqasid al-Shariah* (London: IIIT, 2006), 15

¹¹ Al-Qur'an, Surah Al-Ma'idah: 32.

¹² Yusuf al-Qaradawi, *The Lawful and Prohibited in Islam* (Cairo: Al-Falah Foundation, 1994), 219.

¹³ Wahbah Zuhaili, *Al Fiqh al-Islami of Adillatuh* (Damascus: Dar al-Fikr, 1985), 442.

The Law of Inheritance in Islam

Inheritance law in Islam is one of the branches of law that is regulated in detail by sharia. The term inheritance comes from the word *al-mirath*, which means the transfer of a person's property rights to his heirs after death.¹ In Islam, the division of inheritance aims to distribute inheritance fairly in accordance with the provisions of Allah SWT. This inheritance law includes who is entitled to receive the inheritance, the proportion that must be received by each heir, and the procedure for the distribution of the property. This shows Islam's concern for social justice and economic balance in society.

Legal Basis of Inheritance According to the Qur'an, Hadith, and Ijma Ulama

The basis of inheritance law in Islam is based on the Qur'an, Hadith, and *ijma ulama*. The Qur'an explicitly explains the law of inheritance in several verses, such as Surah An-Nisa verses 11-12 and 176, which regulate the proportion of inheritance distribution to heirs, both male and female.² In addition, the hadith of the Prophet PBUH emphasizes the importance of fulfilling the rights of heirs, as in the narration of Bukhari which states that Allah has given the right to everyone who is entitled to inheritance¹⁴. Furthermore, *ijma ulama* strengthens this legal basis through the consensus of ulama regarding the technical details of inheritance distribution that are adjusted to the context and needs of the community.

The Principle of Justice in the Distribution of Inheritance According to Islam

The principle of justice is the core of Islamic inheritance law. Islam establishes the division of inheritance based on the needs and responsibilities of each heir, with a certain proportion between men and women. For example, men usually receive twice as much as women because they have financial responsibilities in the family¹⁵. However, this principle does not indicate injustice, but rather reflects a fair division in accordance with social roles and obligations in Islam. In addition, Islam provides flexibility through grants or wills, so that the needs of heirs who are more in need can be prioritized without violating the provisions of sharia.

The Philosophy of Inheritance Law in Islam

Islamic inheritance law aims to maintain family and community harmony through a fair and planned distribution of property. By dividing inheritance according to the provisions of *sh'a'i*, Islam prevents conflicts between heirs, and ensures that wealth does not accumulate in a few individuals. This philosophy is in line with *maqashid sharia* which is oriented towards the preservation of property (*hifz al-mal*) and the protection of offspring (*hifz an-nasl*).¹⁶ Therefore, Islamic inheritance law is an important instrument in creating social balance and ensuring the continuity of family life. In the modern context, Islamic inheritance law remains relevant with certain adjustments to the needs of society. This includes the use of technology in recording

inheritance documents, dispute resolution through sharia-based mediation, and strengthening public education on the importance of understanding inheritance law. Thus, Islamic inheritance law is not only a guideline in the distribution of wealth, but also a solution to complex social problems, such as economic inequality and family conflicts.

Inheritance Law in Indonesia

Inheritance law in Indonesia is an important part of the national legal system that regulates the distribution of a person's inheritance after death. In the Indonesian context, inheritance law is influenced by three main legal systems, namely Islamic law, customary law, and Western law (Civil Code).¹⁷ These three systems coexist and are applied according to the religious background and customs of the community. This pluralistic approach reflects the diversity of cultures and beliefs in Indonesia, but it also poses challenges in its uniform implementation.

Inheritance Law Regulation in Indonesia

Indonesia has several regulations that regulate inheritance law, including the Compilation of Islamic Law (KHI) for Muslims, the Civil Code (KUH Perdata) for non-Muslims, and customary law that applies locally¹⁸. The KHI, established through Presidential Instruction No. 1 of 1991, provides specific guidance for Muslims, while the Civil Code refers to rules adopted from Dutch colonial law. On the other hand, customary law remains relevant to a particular indigenous community, even if it is not written, as it reflects local cultural values.

Dualism in the Inheritance Law System in Indonesia

Dualism in the Indonesian inheritance law system arises due to the existence of several legal systems that apply simultaneously. This often leads to legal uncertainty, especially in cases where there is a conflict between customary law and Islamic law¹⁹. For example, the distribution of inheritance carried out according to customary law can be different from the principle of justice regulated in the KHI. This dualism requires judges to make fair and wise adjustments according to the context of the case and the needs of the parties to the dispute.

Challenges in the Implementation of Dualism in Inheritance Law

Dualism in inheritance law also faces other challenges, such as the lack of public understanding of their rights and obligations in the distribution of inheritance. In addition, the difference between the principles of customary law that is communal and Islamic law that is textual-based often triggers family conflicts²⁰.⁴ The role of religious courts and mediation institutions is important in resolving inheritance disputes peacefully, without ignoring the formal legal aspects and customary values that live in society. To overcome the problem of dualism, efforts are needed to harmonize the inheritance law system in Indonesia through an integrative approach. This step involves synchronizing regulations, educating the public about inheritance law, and increasing the

¹⁴ Sahih Bukhari, Kitab al-Farid, Hadith No. 6731.

¹⁵ Yusuf al-Qaradawi, *The Lawful and Prohibited in Islam* (Cairo: Al-Falah Foundation, 1994), 211

¹⁶ Jasser Auda, *Maqasid Al-Shariah as Philosophy of Islamic Law: A Systems Approach* (London: IIIT, 2008), 67

¹⁷ Mochtar Kusumaatmadja, *Customary Law and the Indonesian Legal System* (Bandung: Alumni, 2002), 87

¹⁸ Compilation of Islamic Law, Presidential Instruction No. 1 of 1991, Articles 171-214

¹⁹ Euis Nurlaelawati, *Modernization, Tradition, and Identity: The Kompilasi Hukum Islam and Legal Practice in Indonesia* (Amsterdam: Amsterdam University Press, 2010), 45

²⁰ Hilman Hadikusuma, *Customary Inheritance Law* (Bandung: Citra Aditya Bakti, 1993), 112.

capacity of judges to understand various legal systems²¹. Thus, the inheritance law system in Indonesia is expected to provide justice and legal certainty for the entire community without overriding cultural diversity and beliefs.

III. METHOD

This study uses a qualitative research method with a descriptive-analytical approach. This method aims to systematically describe how sharia maqashid is applied in the inheritance law applicable in Indonesia, both through the analysis of normative regulations such as the Qur'an, Hadith, Compilation of Islamic Law (KHI), and other laws and regulations, as well as through the study of its implementation practices. A descriptive approach is used to describe the existing inheritance law structure, while an analysis is carried out to evaluate the extent to which the principles of sharia maqashid, such as religious protection (hifz ad-din), soul (hifz an-nafs), intellect (hifz al-'aql), descent (hifz an-nasl), and property (hifz al-mal), are integrated in the system. This research focuses on collecting secondary data through the study of legal documents and academic literature, which is then analyzed to provide recommendations for the harmonization of national inheritance law with the concept of sharia maqashid in a more relevant and contextual manner.

IV. RESULT AND DISCUSSION

The Concept of Maqashid Sharia in Inheritance Law

Maqashid sharia is the main goal that Islamic sharia wants to achieve to bring benefits and avoid harm to mankind. In the context of inheritance law, maqashid sharia serves as the basis for designing a system of property distribution that is not only fair but also provides benefits for heirs and society in general²². This concept includes the protection of five main aspects: religion (hifz ad-din), soul (hifz an-nafs), reason (hifz al-'aql), heredity (hifz an-nasl), and property (hifz al-mal). Islamic inheritance law is designed to support a balance between spiritual and material needs in family life, while maintaining social stability through the organized distribution of wealth.

Elaboration of the Purpose of Maqashid Sharia in Maintaining Justice and Family Welfare

In Islamic inheritance law, maqashid sharia aims to maintain justice among heirs. This principle of justice is applied by dividing the inheritance based on the needs and responsibilities of each party²³. For example, men often get a larger share than women because they have the obligation to provide for their families. This does not indicate discrimination, but rather reflects proportional justice in accordance with social roles. In addition, maqashid sharia ensures the welfare of the family by preventing conflicts between heirs through clear and detailed provisions in the Qur'an and Hadith²⁴. Thus, the inheritance law not only aims

to divide property, but also maintains harmonious relationships in the family.

Analysis of the Relevance of Maqashid Sharia to the Distribution of Inheritance

The distribution of inheritance in Islam is very relevant to the sharia maqashid because it prioritizes maslahat (benefits) for heirs without violating the principle of justice. The provisions of distribution, such as in Surah An-Nisa verses 11-12, show how Islam establishes rights specifically to prevent injustice²⁵. In addition, maqashid sharia emphasizes the importance of maintaining hifz al-mal or the preservation of property so that wealth is not concentrated only on certain individuals. This distribution system ensures a more equitable distribution of wealth in society, thus supporting the economic stability of families and communities. Inheritance law based on sharia maqashid also functions as an instrument of social protection. With the equitable distribution of inheritance, this law prevents the emergence of economic disparities among family members. For example, through the provisions of wills and grants, sharia maqashid allows the granting of special rights to family members who are more in need, such as orphans or relatives who do not have income²⁶. This shows that maqashid sharia does not only focus on the distribution in accordance with formal provisions, but also pays attention to the humanitarian aspects and individual needs.

Challenges in the Implementation of Maqashid Sharia in Inheritance Law

Although the principle of sharia maqashid is very relevant, its application in inheritance law in Indonesia faces various challenges. One of them is the existence of a dual legal system, namely customary law, Islamic law, and Western law (Civil Code). In some cases, these three systems result in differences in interpretation and conflicts in the distribution of inheritance²⁷. Therefore, it is necessary to harmonize the law that not only refers to formal norms but also considers sharia maqashid as the main guideline. To increase the relevance of inheritance law to sharia maqashid, there needs to be wider education to the public about the importance of sharia maqashid principles. In addition, regulations such as the Compilation of Islamic Law (KHI) need to be reviewed to be more adaptive to the needs of modern society without overriding the goals of sharia. With this approach, inheritance law is expected to be an instrument that is not only fair but also contributes to the welfare of the family and society at large.

Application of Inheritance Law in Indonesia

Inheritance law in Indonesia has a pluralistic approach that reflects the cultural and religious diversity of the community. There are three main legal systems that apply, namely Islamic law, customary law, and Western civil law (Civil Code).²⁸ This legal system is applied based on the religious background and customs of the individual concerned. For Muslims, inheritance law is specifically

²¹ Jasser Auda, *Maqasid Al-Shariah as Philosophy of Islamic Law: A Systems Approach* (London: IIIT, 2008), 56

²² Jasser Auda, *Maqasid Al-Shariah as Philosophy of Islamic Law: A Systems Approach* (London: IIIT, 2008), 22

²³ Wahbah Zuhaili, *Al Fiqh al-Islami of Adillatuh* (Damascus: Dar al-Fikr, 1985), 409

²⁴ Al-Qur'an, Surah an-Nisa: 11-12.

²⁵ Yusuf al-Qaradawi, *The Lawful and Prohibited in Islam* (Cairo: Al-Falah Foundation, 1994), 211.

²⁶ Euis Nurlaelawati, *Modernization, Tradition, and Identity: The Kompilasi Hukum Islam and Legal Practice in Indonesia* (Amsterdam: Amsterdam University Press, 2010), 67.

²⁷ Hilman Hadikusuma, *Customary Inheritance Law* (Bandung: Citra Aditya Bakti, 1993), 115.

²⁸ Mochtar Kusumaatmadja, *Customary Law and the Indonesian Legal System* (Bandung: Alumni, 2002), 89.

regulated in the Compilation of Islamic Law (KHI), which was stipulated through Presidential Instruction No. 1 of 1991. KHI is the main guideline in resolving inheritance cases in religious courts. However, the application of inheritance law often faces challenges due to differences in interpretation between customary law, civil law, and Islamic law, especially in cases of family disputes.

Evaluation of Inheritance Law in the Compilation of Islamic Law against the Principles of Maqashid Sharia

KHI, as the main regulation for Muslims in Indonesia, has adopted most of the principles of maqashid sharia in inheritance law. Principles such as justice and balance are pursued through the distribution of inheritance regulated in Articles 176-193 of the Criminal Code²⁹. KHI affirms the rights of every heir based on the provisions of the Qur'an and Hadith, thus maintaining justice based on sharia. However, further evaluation shows that the implementation of sharia maqashid in KHI still needs to be improved, especially in providing flexibility for certain socio-economic contexts. For example, some heirs may need a more flexible mechanism to tailor the division to the specific needs of the family.

The Principle of Maqashid Sharia in Inheritance Law

Sharia maqashid in inheritance law aims to protect the rights of heirs, maintain family harmony, and ensure a fair distribution of property³⁰. This principle includes the protection of five main aspects: religion (hifz ad-din), soul (hifz an-nafs), reason (hifz al-aql), heredity (hifz an-nasl), and property (hifz al-mal). In the context of inheritance law, sharia maqashid plays an important role in ensuring that the distribution of inheritance is not only based on textual provisions, but also considers the benefits or benefits of the family. This creates a legal system that is not only formal justice but also substantive.

Identification of Challenges in the Implementation of Inheritance Law based on Maqashid Sharia

The implementation of inheritance law based on sharia maqashid in Indonesia faces various challenges. One of them is the conflict between customary law and Islamic law, where customary law tends to prioritize a collective inheritance system based on a certain family line, while Islamic law emphasizes individualism in the division of inheritance³¹. In addition, public awareness of inheritance rights is often low, leading to violations of the principles of sharia maqashid justice. Another challenge is the limited capacity of judges in applying sharia maqashid contextually, considering that each inheritance case has unique characteristics that require a flexible approach.

The Role of the Court in Implementing Maqashid Sharia in Inheritance Law

Religious courts play a strategic role in ensuring that Islamic inheritance law is applied in accordance with sharia maqashid. In many cases, the judge has the authority to adjust the distribution of inheritance based on the needs of the heirs

without ignoring sharia principles³². Mechanisms such as mediation are also often used to reach an agreement that is more beneficial to all parties involved. However, the role of the court requires more intensive training support related to sharia maqashid so that judges are able to understand the socio-economic context of the community more deeply. To increase the relevance of inheritance law to sharia maqashid, more adaptive regulatory reforms are needed. The KHI can be revised to allow more room for *ijtihad* in the distribution of inheritance, especially in situations that are not explicitly regulated by the text³³. In addition, public education about inheritance law needs to be improved so that they understand their rights and obligations in accordance with sharia. With these steps, inheritance law in Indonesia can become an instrument that is not only legally fair but also relevant to modern needs.

Contextualization of Inheritance Law

The law of inheritance in Islam has a strong basis in the sharia to distribute inheritance fairly in accordance with the provisions of Allah SWT. However, in Indonesia, inheritance law is not only based on Islamic teachings, but is also influenced by customary law and national law³⁴. The contextualization of inheritance law is important so that existing rules can be relevant to the conditions of multicultural and pluralistic Indonesian society. This approach requires a deep understanding of the principles of sharia maqashid, which is the main goal of sharia in maintaining social justice and balance, as well as its application in harmony with local customary values.

Case Study: Implementation of Inheritance Law in Family Conflict in Indonesia

Cases of inheritance conflicts in Indonesia often occur due to differences in the applicable legal system, namely Islamic law, custom, and national law. For example, in the Minangkabau community which adheres to the matrilineal kinship system, inheritance is generally only given to women in the family³⁵. This is contrary to Islamic law which grants inheritance rights to all heirs, both male and female, in a certain proportion. Conflicts usually arise when family members who hold Islamic sharia principles demand the distribution of inheritance according to the Qur'an, while the other party adheres to local customs. This case shows that there is a tension between customary traditions and sharia provisions that often trigger disputes among family members. In addition to differences in legal systems, inheritance conflicts can also be caused by low public understanding of inheritance rights. Many parties do not know their rights and obligations according to the provisions of the law, so the distribution of assets is often not in accordance with the principle of justice³⁶. In some cases, female heirs or orphans are often overlooked in the distribution of inheritance, especially in certain indigenous communities that prioritize inheritance to the male side. This injustice is not only

²⁹ Compilation of Islamic Law, Presidential Instruction No. 1 of 1991, Articles 176-193.

³⁰ Jasser Auda, *Maqasid Al-Shariah as Philosophy of Islamic Law: A Systems Approach* (London: IIIT, 2008), 24

³¹ Hilman Hadikusuma, *Customary Inheritance Law* (Bandung: Citra Aditya Bakti, 1993), 118.

³² Euis Nurlaelawati, *Modernization, Tradition, and Identity: The Kompilasi Hukum Islam and Legal Practice in Indonesia* (Amsterdam: Amsterdam University Press, 2010), 69.

³³ Yusuf al-Qaradawi, *The Lawful and Prohibited in Islam* (Cairo: Al-Falah Foundation, 1994), 214.

³⁴ Mochtar Kusumaatmadja, *Customary Law and the Indonesian Legal System* (Bandung: Alumni, 2002), 93.

³⁵ Hilman Hadikusuma, *Customary Inheritance Law* (Bandung: Citra Aditya Bakti, 1993), 123.

³⁶ Yusuf al-Qaradawi, *The Lawful and Prohibited in Islam* (Cairo: Al-Falah Foundation, 1994), 217.

contrary to Islamic law, but also creates emotional tension that damages family harmony.

As a settlement effort, religious courts are often the main reference in inheritance dispute cases involving Muslims. However, custom-based mediation is also sometimes used to reach a peaceful agreement between the parties to the dispute³⁷. The challenge faced by religious courts is balancing the application of Islamic law with customary values that live in society. Therefore, it is important to ensure that the principles of sharia maqashid, which emphasizes justice and benefits, are the main foundation in resolving inheritance conflicts. This can be done through a more inclusive approach, paying attention to the needs of all parties involved, and prioritizing family harmony as the ultimate goal.

Other cases show how conflicts can be exacerbated by a lack of public understanding of inheritance rights. For example, in some families, female heirs are often overlooked in the distribution of inheritance, especially in certain indigenous societies that prioritize men as the primary beneficiaries of the inheritance.³ This injustice is contrary to the principle of justice set forth in Islamic law, where women have a clear right to a share of the inheritance, even though the proportions differ from those of men. This not only harms individuals but also damages family relationships, which should be a priority in the distribution of inheritance.

Religious courts are one of the institutions that often handle inheritance dispute cases in Indonesia, especially for Muslims. In practice, religious courts seek to apply the provisions of Islamic law while considering the local social and cultural context. However, it is not uncommon for this process to face challenges, such as pressure from the family to maintain customary traditions or a lack of documents to support heirs³⁸ claims. In a situation like this, judges are required to have a deep understanding of sharia maqashid in order to be able to make decisions that are not only in accordance with sharia, but also consider the benefits for all parties involved. Alternatively, customary and sharia-based mediation is also used to resolve inheritance conflicts peacefully. This approach allows the parties to the dispute to reach a mutually beneficial agreement without going through the often time-consuming and costly litigation process³⁹. However, this kind of mediation requires facilitators who understand both legal systems and have the ability to bridge the differences between customary and sharia. With an inclusive and justice-oriented approach, inheritance conflicts are expected to be resolved in a way that not only maintains family harmony, but also reflects the values of maqashid sharia.

The Impact of Inheritance Conflict on Family Harmony

Inheritance conflicts not only have an impact on the distribution of property, but can also damage relationships between family members. Prolonged disputes often lead to irreversible divisions.³ In addition, these kinds of conflicts

can hinder the efficient distribution of assets, thereby reducing the benefits of assets for those who need them. In the context of the wider community, unresolved inheritance conflicts also risk creating social tensions, especially if they involve indigenous communities that have strong collective values.

Solutions for Harmonization between Islamic, Customary, and National Law

Harmonization between Islamic law, custom, and national law is a major challenge that requires an integrative approach. One of the steps that can be taken is to strengthen the role of religious courts as mediators who understand the various applicable legal systems⁴⁰. In addition, revisions to the Compilation of Islamic Law (KHI) to accommodate certain customary values without ignoring the principles of sharia maqashid are also needed. The customary and sharia-based mediation approach can be an effective solution to resolve conflicts in a peaceful and beneficial way.

The Role of Education in Increasing Legal Awareness

Increasing public education about inheritance law is also an important factor in reducing conflicts. Many people do not understand their rights and obligations in the distribution of inheritance, so they are vulnerable to manipulation or misunderstanding⁴¹. The government, religious institutions, and traditional leaders can collaborate to organize comprehensive legal education programs. In addition, transparency in the recording of assets and legal documents also needs to be improved to minimize potential disputes.

Maqashid Sharia Approach to Conflict Overcoming

Maqashid sharia offers a holistic approach in resolving inheritance conflicts. By focusing on the benefit or common good, maqashid sharia can be a guideline in assessing the special needs and circumstances of each heir.⁴² This principle can be applied through mechanisms such as grants or wills that are adjusted to the family's conditions without violating sharia provisions. Thus, inheritance law is not only a formal rule, but also an instrument to maintain family harmony and welfare.

V. CONCLUSION

Conclusion

(1) Conformity of Inheritance Law in Indonesia with Sharia Objectives (Maqashid Syariah). In principle, inheritance law in Indonesia has reflected the purpose of maqashid sharia in maintaining justice and family welfare. However, its implementation has not been fully optimal, especially in the context of indigenous peoples who have inheritance traditions that are different from Islamic law. The dualism of the legal system and the low understanding of inheritance rights are often obstacles in ensuring that the sharia maqashid is fully achieved. Therefore, it is necessary to take steps to harmonize regulations, legal education, and more effective

³⁷ Euis Nurlaelawati, *Modernization, Tradition, and Identity: The Kompilasi Hukum Islam and Legal Practice in Indonesia* (Amsterdam: Amsterdam University Press, 2010), 78

³⁸ Euis Nurlaelawati, *Modernization, Tradition, and Identity: The Kompilasi Hukum Islam and Legal Practice in Indonesia* (Amsterdam: Amsterdam University Press, 2010), 78.

³⁹ Yusuf al-Qaradawi, *The Lawful and Prohibited in Islam* (Cairo: Al-Falah Foundation, 1994), 217.

⁴⁰ Euis Nurlaelawati, *Modernization, Tradition, and Identity: The Kompilasi Hukum Islam and Legal Practice in Indonesia* (Amsterdam: Amsterdam University Press, 2010), 75.

⁴¹ Yusuf al-Qaradawi, *The Lawful and Prohibited in Islam* (Cairo: Al-Falah Foundation, 1994), 219.

⁴² Jasser Auda, *Maqasid Al-Shariah as Philosophy of Islamic Law: A Systems Approach* (London: IIIT, 2008), 62

mediation approaches to ensure that inheritance law is not only applied normatively, but also reflects the benefits and substantive justice for all heirs.

(2) Implementation of the Concept of Maqashid Sharia in Inheritance Law in Indonesia. The concept of sharia maqashid is implemented in inheritance law in Indonesia through the rules listed in the Compilation of Islamic Law (KHI). KHI regulates the distribution of inheritance based on the provisions of the Qur'an and Hadith with the aim of maintaining justice, balance, and benefits for heirs. The principles of maqashid sharia, such as *hifz al-mal* (protecting property), are reflected in the arrangement of inheritance proportions which aim to distribute wealth fairly according to the roles and responsibilities of each heir. However, in practice, religious courts often have to balance sharia values with customary and national law to resolve conflicts that arise, showing challenges in harmonizing the implementation of sharia maqashid in a multicultural society.

Recommendations

(1) Carrying out inheritance law reform in Indonesia must be oriented towards sharia maqashid to ensure justice and benefits for all heirs. The government can revise the Compilation of Islamic Law (KHI) to be more inclusive of the socio-economic context of modern society without abandoning sharia principles. The reform should also consider flexibility in the distribution of inheritance through mechanisms such as grants or wills to suit the special needs of families⁴³.

(2) Conducting socialization and education about sharia maqashid in inheritance law needs to be improved to increase public understanding of their rights and obligations. The government, religious institutions, and community leaders can organize training programs or seminars that discuss the importance of sharia maqashid in ensuring the fairness of inheritance distribution⁴⁴.

(3) In the integration of sharia maqashid in positive law in Indonesia, it requires an in-depth study involving academics, legal practitioners, and government institutions. This study must evaluate the extent to which the principles of sharia maqashid have been accommodated in existing regulations, such as the KHI and related laws. This study can also provide recommendations for drafting new regulations or improving existing regulations to be more responsive to the needs of modern society⁴⁵.

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