

Application of inheritance practices from a maqashid sharia perspective a case study of banyuputih kidul jatiroto lumajang village

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ABSTRACT

The transitional process of modernity had an impact on a significant change in the order of life. Including the distribution of inherited property by the Islamic community in Indonesia. In agrarian times, the concept of inheritance was by the intentions of shari'a. Meanwhile, the division of inheritance in the present era no longer refers to the rules of Islam itself. But in many ways that it develops in society. Then, what is the perspective of maqashid Sharia in responding to the inheritance practices of the current era? This research uses empirical descriptive qualitative methods with a case study approach in the context of field data analysis. The use of a structured semi-interview method can produce data that has high validity to a problem. The results of the study can be concluded that the application of the practice of dividing inheritance in Banyuputih Kidul Village is to divide the inheritance before the heir dies (grant), dividing the inheritance property over the heir's will before death (will), and dividing inheritance equally between men and women from the deliberations of elders following hereditary customs.

ABSTRAK

Proses transisi modernitas berdampak pada perubahan tatanan kehidupan yang signifikan. Termasuk pembagian harta warisan oleh masyarakat islam di Indonesia. Pada zaman agraris, konsep waris sesuai dengan maksud syari'. Sedangkan pembagian harta waris di era sekarang tidak lagi mengacu pada aturan islam itu sendiri. Tapi pada banyak cara yang berkembang di masyarakat. Lalu, bagaimana perspektif maqashid Syariah dalam menanggapi praktik waris era sekarang tersebut. Penelitian ini menggunakan metode kualitatif deskriptif empiris dengan pendekatan studi kasus dalam rangka analisis data lapangan. Penggunaan metode semi wawancara terstruktur dapat menghasilkan data yang memiliki validitas tinggi terhadap sebuah masalah. Hasil penelitian dapat disimpulkan bahwa penerapan praktik pembagian harta warisan di Desa Banyuputih Kidul adalah membagi harta waris sebelum pewaris meninggal dunia (hibah), membagi harta waris atas wasiat pewaris sebelum meninggal dunia (wasiat), dan membagi harta waris sama rata antara laki-laki dan perempuan dari hasil musyawarah sesepuh mengikuti adat yang sudah turun temurun.

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I. PENDAHULUAN

Inheritance law is one part of Islamic civil law and the smallest part of family law in human life. The law of inheritance is closely related to the scope of human life. For all men shall experience the event of the law of nature, which is death. As implied in the Qur'an surah al-Imran: 185. Inheritance is the result of the death of one of the families who left the estate, both movable and

immovable, both in the form of objects that belonged to him and his rights. The settlement of rights and obligations as a cause of death of a person is governed by Islamic civil inheritance law and is common to non-muslims. The exercise of inheritance has indeed become a decree of Allah in the Qur'an which is implied in the verses on inheritance that claim verse 180 of surah al-Baqoroh.

So, the Qur'an provides provisions for the inheritance of the heir with a good purpose. Namely, so that there are no conflicts in the future between families. Because the issue of inheritance is a very crucial issue, there is a range of misunderstandings and it is also very complicated in discussion and practice. It has always been one of the main subjects in Islamic law. However, with inheritance issues are sensitive and even tend to make families warring and scattered. Not infrequently a family is destroyed and hostile to each other. Killing each other also sometimes occurs, when one of the heirs wants to control the other heir's share or because the parts are uneven, then judged unfairly by fellow brothers. Based on the reasons for this injustice, the inheritance law as above is considered to be incompatible with the present day and unfair between men and women. Moreover, the shifting responsibilities of women who have the same roles and daily needs.

Based on this background, the author wants to reveal how inheritance practices are carried out in Banyuputih Kidul Village, Jatiroto District, Lumajang Regency. From the results of the study, the author then conducted an analytical study through the perspective of maqashid sharia which is the basic joint of Islam in looking at a problem on the impact it has on mankind. The word heir comes from the arabic al-Mirats, in arabic it is the masdar form of the word waritsa-yarits-wirtsan-miratsan. Its meaning according to language is the transfer of something from one person to another. Or from one person to another. Whereas in legal terminology, inheritance can be interpreted as a law that regulates the division of inherited property left by the heirs, knowing the parts received from the relics for each heir who is entitled to receive it. Inheritance according to Islamic law is a law that regulates the transfer of property left by a deceased person as well as the consequences for his heirs. According to Sayyid Sabiq, Faraid according to syara' is a predetermined part for heirs, a science that (addresses the matter) is called inheritance science or faraidl science.

The pillars of the division of inheritance and the conditions for receiving inheritance are as follows: First, the heir has actually passed away. Whether death (death) is essential, that is, the death of a person who can be known without having to go through proof, that a person has died, or died hukmi, is the death of a person who is juridically determined through a judge's decision to be declared dead. This can happen in. the case of a person who is declared missing (al-mafqud) without knowing where and how he is. Secondly, the heir is actually still alive when the heir dies, or by the judge's ruling, it is declared alive at the time the heir dies.

Thus, if two people who have inheritance rights from each other die together, it cannot be known who died first, then between them. there is no inheritance. For example, people who died in a flight accident, drowning, fire, and so on. Thirdly, it is known that there is a cause of inheritance on the heirs, or in other words, it can be known that the heirs concerned are entitled to inheritance. This third condition is mentioned as a necessary affirmation, especially in court even though it has generally been mentioned in the causes of inheritance.

In inheritance, there is such a thing as the Barrier of Inheritance, such as different religions between heirs and heirs, murders except, murder for the caliphate, Murders committed by persons who are not capable of performing legal acts, Murders committed out of duty, and Murders for 'defending themselves or protecting themselves. Then it has the nature of slaves both perfect (qinn) and partial, apostates or non-muslims, and dl or legal turnaround. In addition to this inheritance, there is also the right to inheritance, such as family relationships or, relationships due to marriage, and relationships between the master and his slave.

To examine this case, the author uses the sharia maqashid theory which is the plural form of al-maqshud which means purpose, so al-maqashid al-shari'ah can be interpreted as the purpose of sharia. Ulama' ushul fiqh defines maqashid asy-shari'ah with the meaning and purpose that the shari'a desires in enforcing the law for his servant (man). Every law created by Shari'a must contain benefits for the servant of God, both worldly and ukhrawi benefits. Therefore, every mujtahid when going to enact the law must rely on the purposes of the shari'a in enforcing the law, so that the law he will establish is in accordance with the benefit of mankind. Especially on the issue of inheritance where the Indonesian governing body makes inheritance laws based on the Qur'an and The hadith is then packaged in KHI (Compilation of Islamic Law) with the main purpose as a form of obedience to the rules of Allah and then the fullness of mutual benefit.

Abdul Wahab Khalaf argued that the main purpose of the law that has been established by Allah Almighty is to realize the benefit of man, namely by fulfilling all his needs, both primary (dlaruriyyat), secondary needs (hajiyyat), and tertiary needs (tahsiniyyat) and eliminating vice, meaning bringing profit and rejecting monasticism. It is undeniable, that maslahah is an attempt to formulate philosophically the relation of the text to the context of religious life. Etymologically, maslahah means profit, enjoyment, harmony, and well-being or everything that can bring goodness. According to al-Ghazali, the purpose of Syara' which is used to create human benefit is to realize the maintenance of 5 basic principles, namely: Maintaining religion (din), Nurturing the soul (nafs), Maintaining reason (aql), Nurturing offspring (nasab), and Maintaining property (mal). To get a complete picture of the ranking of maqashid al-Sharia, the following will explain the five points of benefit based on the level of importance or needs of each.

As conducted by Ah.Soni Irawan and Ahmad Muzakki with the title "division of inheritance in families of different religions in Pancasila Village from the perspective of maqashid sharia Jasser Auda. The research, conducted by the author with Soni and Ahmad, generally discusses inheritance, and both use the maqashid sharia theory. However, the point of difference is that the author uses maqashid theory in general, while Soni and Ahmad's research uses jasser Auda's maqashid. As for the content of the content, the author is more specific to the inheritance practices carried out by the Banyuputih Kidul community in Lumajang, while Soni and Ahmad's research discusses the distribution of inheritance for inheritors who have religious differences. The results of the study are still returned to the original law, namely that it is not permissible to inherit each other in the distinction of a belief. It is because of this belief that it then becomes illat or gap and the barrier is prevented from inheriting each other.

Interestly this urgent problem is being studied. because each region has different traditions and customs. Moreover, its connection with the endless division of inheritance has become a discussion by academics with many elements discussed. Banyuputih Kidul Village as an area that does not adhere to the Islamic inheritance system is something that is very good to be studied more deeply, using the maqashid sharia theory. Then this becomes important to explore further and in-depth. Because they both have interesting things. The uniqueness of this research is the practice of inheritance that does not adhere to the Islamic system and is more of a practice that exists in the community in customs. Then such a practice, by setting aside the theory according to Islamic studies, is divided according to the perspective of maqashid sharia.

II. METODE PENELITIAN

The focus of this research is on how inheritance practices in Banyuputih Kidul Village, Jatiroto, Lumajang, East Java. To obtain valid data the author conducted a semi-structured method of interviews with several informants who could represent how exactly the existing inheritance practice is portrayed. The results of the research are then combined and analyzed using a sharia maqashid approach or perspective and with an empirical descriptive qualitative approach with field

case studies. The use of these methods can produce data that has high validity to a problem. From these results, the author then analyzes the maqashid sharia theory. The author chose the semi-interview method as a guideline, the purposive sampling method on the object of research and research that is empirical research or descriptive qualitative. The goal is that the author wants to raise the surface of how the real facts happened as validly as possible in reality. Then the author makes the results of the field research as primary data and the data generated from the library, such as scientific papers, journals, documents and so on is as skunder data. These two data are proof of the strength of a study. So that it can be used as a reference by all circles, both academics, legal researchers, and practitioners. The author hopes that previous researchers can continue this research object by peeling more sharply and accurately in different places and with different methods, in order to enrich scientific treasures and as a living archive and reference for all circles.

III. HASIL DAN PEMBAHASAN

In this discussion, the author will analyze and thoroughly review the application of inheritance practices that occur in Banyuputih Kidul Village and combine with the perspective of maqashidu asy-shari'ah based on research conducted by the author on several informants, such as Abdurrahman, Masykur, Ahmadi, Bukhari, and Qohhar, are as follows: first, the inheritance is divided before the death of the heir equally. This is done by almost all families with the aim of a superior maslahah so that there is no dispute in the future. Second, the inheritance is divided in a familial manner, with meetings presided over by the elders. The goal is that no one takes more, both male and female, older and younger relatives. Third, the system of division of inheritance here still uses the ancient old system that has been passed down for generations. Usually looking at the existing habits girls are made home by their parents. So they have no basis why they use the inheritance sharing system by dividing according to mutual agreement between families. Meanwhile, if the inheritance is divided before the heir dies, it cannot be said to be an heir but is said to be a grant or gift from parents or anyone who cannot fall into the category of inheritance.

Then indeed, seeing from the verses of the Qur'an why men get more shares than women's shares because a man's responsibility is more weighed by women with responsibility for wives and children, and the method or system in Banyuputih Village itself is still not running in totality. Hence, Munawar Syadzali argued to review the existence and effectiveness of the implementation of the division of inheritance according to Islam when applied in society. However, please note that the law of inheritance based on the Qur'an with certain parts is already qoth'i, meaning that it cannot be contested because it has postulated the Qur'an and al-Hadith and it cannot be changed for any reason because it does not speak furu' anymore because indeed the discussion about the division of inheritance has been going on since the Prophet, companions and so on. If you use the division of Islamic inheritance as mentioned above, those who are worried about the back of the day are afraid of conflicts between fellow families because so many conflict events that occur when taken care of are backgrounded by inheritance, so Banyuputih Kidul village uses the division of inheritance in a familial manner.

Such division is a practice that the Qur'an does not formally encourage. Because the Qur'an fact has provided a brilliant concept for the survival of a good life in a family. But over time, there has been a shift in responsibility, public understanding, and awareness of the law. So that it has an impact on the desacralization of the law that has been standardized. If it clashes with the rule of *fiqh محكمة العادة* (custom can be made into law) then, the orientation of the rule is not contrary to sharia. Meanwhile, regarding the division of inheritance in Banyuputih Kidul Village, there is an element of taking other people's rights that are not their rights. As it relates to preserving property (Hifzh al-Mal) in the theory of maqashid sharia.

In terms of importance, maintaining a property can be divided into three levels, namely: First, maintaining the property at the dharuriyyat level, such as the stricture of the rules for property ownership and the prohibition of taking other people's property illegally. If this rule is violated, it will result in the threatened existence of property. Second, Maintaining property at the hajj level, such as ordered buying and selling by way of greetings. If this method is not used, it will not threaten the existence of property but will only make it difficult for someone who needs capital. Third, Maintaining property at the tahsiniyyat level, such as the provision to avoid fraud. Because it is related to morals and ethics in naming or business ethics. This will also affect the validity of the trade because at the third level this is also a condition for the existence of the second and first levels.

حُكْمٌ بِهِ وَعَلَّقَ الشَّرْعُ مَعَ الْعُرْفِ تَعَارُضَ لَوْ أَمَّا (أَحَقُّ يَتَقَدِّمُ فَهُوَ) قَالَ أَنْ إِلَى، وَالشَّرْعُ الْعُرْفِ تَعَارُضٍ فِي صَلِّ الْعُرْفِ عَلَى الشَّرْعِ فَيَقْدَمُ

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If this method is not used, it will not threaten the existence of property but will only make it difficult for someone who needs capital. The point is that the practice of inheritance in Banyuputih Village is not in accordance with the message of the Qur'an, but some of the practices are in accordance with the message and purpose of Shari'a. The maximum is the execution of a will, a method of grant by a parent to his child, with the aim of going back in the day. As for the division of inheritance by means of equal distribution after the death of the heir, it is factually good. Because it gives birth to maslahah for family relationships. But contrary to God's pesa. So this kind of practice needs to be followed by the division of property according to Islam, but it is divided equally on the basis of willingness and mutual agreement. But in practice it is not meant, as many scholars say, that the practice of inheritance is a science that is first forgotten and not practiced. Because if the division according to Islam cannot be realized by the public, then way of grants or wills is the way out.

IV. KESIMPULAN

Based on analysis and primary and under data that have been obtained by researchers from several informants through interviews, documentation, and observations on the research title: "Application of Inheritance Practice in Banyuputih Kidul Village, Maqashidu asy-Shari'ah Perspective". The researcher hereby concludes as follows: The system used in the distribution of inheritance in Banyuputih Kidul Village remains based on customary law that has been going on for generations with the following divisions: 1. The division is equal before the heir dies called a grant, 2. Looking at what the heir has supervised before the heir dies, 3. Joint deliberation between elders in a family by finding a way out for heirs, 4. Dividing the estate with equal share between male heirs and female heirs without the basis of Islamic religious rules but based on hereditary customs. The factors behind the division of inheritance in point 1 above are 1. Factors following customary law born from their ancestors so that they are still enforced by every family in Banyuputih Kidul Village, 2. Factors of lack of awareness from each society of certain and

prescribed laws, 3. Community factors that assess the division of inheritance practices according to customary law are more effective in minimizing the occurrence of conflicts within each family than the division of inheritance based on Islam, 4. The indifferent factor of certain laws to be enforced in the local community has been encapsulated in Islamic and civil law, 5. The factor of insufficient knowledge in certain societies regarding the actual division must be enforced equally and transparently. From there, all parties can understand that the development of the times is inevitable and the need for law in solving problems must be renewed. By not violating the existing rule of law. The maxims of sharia were then fulfilled, and there it gave birth to a *masalah* between families and to the One True Godhead.

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