

THE NATURE AND HISTORY OF INHERITANCE FROM THE ISLAMIC PRE ERA TO THE ISLAMIC ERA

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Abstract

This study aims to explore the history of inheritance from the pre-Islamic era to the Islamic era. The object of inheritance studies is very broad in scope when referring to the Qur'an and the Hadith, but this study limits the history of inheritance from the pre-Islamic era to the Islamic era. In this study, a pre-Islamic inheritance system was obtained, that minors and girls or women were not entitled to inheritance from the inheritance of people who died. They even thought that the widow of the deceased was considered an inheritance and could change hands from the father to his child. But after the Islamic era came it was determined that women and children were entitled to inheritance or inheritance, as confirmed in Surah An Nisaa verse 7. The method used in this study is the Librari reseach method (literature review), which uses some literature both speak Arabic or speak Indonesian. So it is suggested to further deepen the study of inheritance because over time there will emerge contemporary fiqh issues, especially in terms of inheritance.

Keywords: *The Nature, History, Inheritance, Islam*

Introduction.

Inheritance is a branch of syar'i science that is very urgent for us to study, both from its history and its content, because this knowledge has been confirmed by the Prophet that half of Science. But the knowledge that is most quickly abandoned, ignored, even in the trivial is the science of inheritance. So that there are so many phenomena in the wider community now, the occurrence of problems between children and fathers, between children and mothers or between children and children, this is because they do not know about the science of inheritance.

Then the author was inspired by the word of Allah in sura Al Fajr verse 19:

وَتَأْكُلُونَ التُّرَاثَ أَكْلًا لَّمًّا

And you eat the inheritance by mixing the mixture (the lawful and the false), (Qs. Al Fajr: 19)

The above verse is very cautious to us, do not reach us including the group in it that consumes inheritance or inheritance, so that from our possessions, we are not able to distinguish between halal property and treasure that is unclean or unclean.

So by exploring this inheritance study, we can make a

fortress in ourselves, our families and even in the wider community, which is to make the fortress not to consume property in error, because we already understand the science of inheritance.

The Nature of Inheritance

Inheritance in Arabic is called al-miras is a form of masdar (infinitive) from the word *waritsa-yaritsu-wirtsan-miraatsan* which means the transfer of something from one person to another, or from one people to another people, or the transfer of property of someone who has died to someone another one ¹.

According to Syaifuddin Masykur that inheritance in Arabic is called al-miras is a form of masdar (infinitive) from the word *waritsa-yaritsu-wirtsan-miraatsan* which means the transfer of something from one person to another person, or from one group to another group, or moving it in the form of either wealth, knowledge, honor and so on ².

As for the term, inheritance is the transfer of ownership rights of a person who dies, to his heirs who are still alive, whether that is left in the form of assets (money), land, or anything in the form of legal legal ownership in a shar'i way. Another definition states that inheritance is the transfer of the wealth of a person

¹Inheritance Jurisprudence, Practical Inheritance Distribution Method, (2018), Dr. H. M. Athoillah.M.Ag, Yrama Widya Publisher, p. 1.

² Ilmu Faraidh, Distribution of Inheritance, (2016), Ust. Saifuddin Masykur, Santri Salaf Press, Lirboyo, p. 8.

who dies to one or several people along with the legal consequences of one's death on property ³.

Inheritance in Pre-Islamic Period (Jahiliyah Period)

The Jahiliyah Arabs are a people who wander, raise livestock, trade and love to fight. Their lives, to some extent, depend on the spoils of war from the nations or tribes they have conquered. They also traded spices as far as the land of Sham. This we can see from the light of Quraysh verses 1-2:

لَا يَلْفُ فُرَيْشٌ
وَالصَّيْفُ
إِلَيْهِمْ رَحْلَةَ الشِّتَاءِ

Because of the custom of the Quraysh, (ie) their travel habits in winter and summer (Qs Qurays: 1-2)

The verse above can be understood that the Quraysh used to travel mainly to trade in the land of Sham in summer and to Yemen in winter. on that trip they received security guarantees from the rulers of the countries in their path. this is a great favor from their Lord. therefore naturally they worshiped the God who had given them that favor.

Arabs in the period of Jahiliyyah, before the arrival of

Islam, who were entitled to inheritance were only a group of men, women were not entitled, men also had a condition that was an adult who was still a child and had no right ⁴.

In the case of the distribution of inheritance they hold fast to the customs that have been passed down by their ancestors. According to the applicable provisions, that minors and girls or women are not entitled to inheritance from the inheritance of the deceased. They even thought that the widow of the deceased was considered an inheritance and could change hands from the father to his child.

There are three kinds of causes for inheritance during Jahiliyyah:

Relationship between relatives (القراة)

Kinship is not considered sufficient for inheritance and the most important is the man (the adult) is physically strong to fight or defend and defend the family and tribe (tribe) from attacks by other parties. Thus, the heirs of the Jahiliyyah era from the group of relatives consisted of ⁵:

- a) Boy
- b) Male siblings
- c) Uncle

³ Mawaris, Islamic Inheritance Law, (2017). Dr. Aunur Rahim Faqih, Sh., M.H., UII Press Yogyakarta, p.4.

⁴ Sayyid Sabiq, Fiqhus Sunnah, Volume III, Darul Fathi Lil I'lamil Arabi Publisher, Cairo, 1414 H-1994, p. 345.

⁵Lajnah Min Kulliyah Syariah Jamiatul Azhar, (2015), Ahkamul Mawarits Fil Fiqhi Islami, Matter of Arrislah Addauliyah, Ain Syams, p. 5.

d) Uncle's son.

Even in the distribution of inheritance (inheritance), they adhere to the sistem left by their ancestors, that children and women are not entitled to inheritance. bequeathed to her husband's heir ⁶.

While women and children are not entitled to inheritance or inheritance, but this rule has been canceled in Surah An Nisaa verse 7.

لِّلرِّجَالِ نَصِيبٌ مِّمَّا تَرَكَ الْوَالِدَانِ
وَالْأَقْرَبُونَ وَلِلنِّسَاءِ نَصِيبٌ مِّمَّا
تَرَكَ الْوَالِدَانِ وَالْأَقْرَبُونَ مِمَّا قَلَّ مِنْهُ
أَوْ كَثُرَ ۚ نَصِيبًا مَّفْرُوضًا (النساء :
٤٧)

For men there is a share of the inheritance of the mother and father's relatives, and for women there is a share of the inheritance of the mother and father, either a little or a lot according to the predetermined portion. (Surat An Nisaa: 7)

Presence of Pras Setia (المخالفة)

People who have the commitment of Pras Setia with the dead are entitled to get a quarter of their inheritance. The promise of pras Setia has just happened and has legal force, if both parties have made a consent and agreement. Sayings (oaths) that can be used include:

دمى دمك وهدمى هدمك حربى
حربك وسلمى سلمك وترثنى وارثك
واطلب بى
واطلب بك وتعقل عنى واعقل عنك

It means "my blood is your blood, my bloodshed is your bloodshed, you have inherited my treasure, I have inherited your treasure, you are sued for your blood because of your actions towards me, I am also charged with my blood because of my actions towards you and you are required to pay fines in lieu of my life. .

The adoption of children (Adoption / التبني)

Adoption of a child (adoption) can be seen from two sides, namely by joining a child to him as a legitimate child, although it is known that the child is someone else's child, so that his rights are also clearer. Likewise adoption is to make someone who is not his child like his own child in matters of supervision and education, without including his nasab and not like a child, the latter is an honorable act and kindness such as caring for or caring for a child afraid of missing because his parents have died, or because both parents are absent or because of infidelity, this is not

⁶ Dr. Muammar M. Bakry, Lc.MA, Basic Accounting Mawaris, the print of the JogyaKarta Kata Field, 2015, p. 1.

prohibited in shari'ah, even the law is sterile (sunnah), because it is part of the chapter rahmah and helps each other.

The first adoption above is a custom that prevails in the Arab Jahiliyah society, even though the child clearly has his own parents. The adopted child has the same rights as the rights of biological children, for example nasab and inheritance⁷.

In fact, we all know that Rasulullah Saw happened when *Zaid bin Harithah* was kidnapped from his family, then sold as a budah, then bought by Hakim bin Huzam, then taken by Sayyidatina Khadijah Ra, and gave to Muhammad Rasulullah Saw, then Zaid bin Haritha became a slave of the Prophet. When Zaid's family found out his son was in Mecca, then met together with Rasulullah Saw then Rasulullah did not necessarily give the child to his family but he was given the choice of "joining the family or staying with Rasulullah" apparently Zaid still chose to be with Rasulullah SAW, so the Rasulullah glorified Zaid, so he gave his name with a nasab according to what developed in the Arab nation, namely Zaid bin Muhammad, and there was tabnnahu (adopted children)⁸. So the thing about

adoption to the family of the Prophet himself, then down the verse that prohibits adoption as follows:

وَحَلَائِلُ أَبْنَائِكُمُ الَّذِينَ مِنْ أَصْلَابِكُمْ

(and forbidden to you) the wives of your biological children (son-in-law); (Surat An Nisaa 23).

The sentence "Your child Candidate" can be understood this sentence which shows that there are children not from biological children, namely adopted children. And Allah SWT intends to forbid (forbid) the adoption which is a custom that has developed among the Jahiliyah Arabs, so Rasulullah SAW canceled it⁹.

People who have been adopted (adopted by children) by the dead are entitled to inheritance, such as offspring of the dead. In all cases, he is considered and treated as a biological child and is administered to his adopted father, not to his biological father. Even the famous among the ignorance that this adoption system makes one of the prohibitions of marriage, which is forbidden for adopted children to marry the adoptive mother, even though she is in a state of muthallaqah (tertalaq), as in

⁷Athiyyah Shaqr, *Fatawa wa ahkam Lil Mar'atil Muslimah*, printed by Maktabah Wahbah Cairo, 2002. Pg 225.

⁸ Muhammad Mutawalli Sya'rawi, *Nasha'ih Lil Mar'til Muslimah "Maktabah Taufiqiyyah Cairo p. 98.*

⁹ Muhammad Mutawalli Sya'rawi, *Nasha'ih Lil Mar'til Muslimah "Maktabah Taufiqiyyah Cairo p. 98.*

forbidden female biological children who adopt it ¹⁰.

As with inheritance on the basis of kinship ties, inheritance on the basis of the promise of *presetia* and adoption must also be an adult male. Because, their tendency to hold the promise of *presetia* is the encouragement of mutual willingness to defend each other's body and soul. This goal is undoubtedly impossible to be realized if those who hold the *Prasetia* promise are still children or women. And their desire to adopt a child is also aimed at maintaining the pedigree and maintaining and developing the wealth they have.

Then we can understand that the adopted child is that even though he is considered his own child, he is still the law as someone else, does not become a *mahram* and cannot inherit, the adoptive parents' property remains the right of their heirs ¹¹.

Inheritance in Early Islam

In the early days of Islam, the strength of the Muslims was still very weak, because of their small numbers. To deal with the powerful Quraysh polytheists, Rasulullah SAW. asking for help from residents

outside the city of Mecca who are understanding and sympathetic to their struggle in eradicating polytheism.

As for the causes of inheritance in early Islam there were several kinds:

- a) Relationship between relatives (القرباة)
- b) The adoption of a child (التبني)
- c) The Existence of Hijrah (from Mecca to Medina)
- d) Brotherhood between the Muhajirin and the Ansar (الهجرة و الموقعة)

Inheritance in the Later Islamic Period

After the *aqeedah* the Muslims grew stronger, and each other among them had fostered a sense of mutual love, if their love for the Messenger of Allah. it is very attached, the development of Islam is more advanced, the followers are increasing, the Islamic government is stable, the causes of inheritance are based only on adult males and exclude children and women, as practiced by the *Jahiliyah* has been canceled by the word of Allah Almighty¹²:

¹⁰Lajnah Min Kuliyah Syariah Jamiatul Azhar, (2015), *Ahkamul Mawarits Fil Fiqhi Islami, Matter of Arrislah Addauliyah*, Ain Syams, p. 5.

¹¹H.Sulaiman Rasjid, *Islamic Fiqh*, Sinar Baru Algesindo print, 60th edition, 2014, page 348.

¹²Dr. Muhammad Juni Beddu, MA., *Fiqh Mawaris Complete Compilation of Islamic Law (KHI)*, Second Edition, Yogyakarta Word Field Publisher, 2020, p. 13.

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أَوْ كَثُرَ ۚ نَصِيبًا مَّفْرُوضًا (النساء :
٧).

For men there is a share of the inheritance of the mother and father's relatives, and for women there is a share of the inheritance of the mother and father, either a little or a lot according to the predetermined portion. (Surat An Nisaa: 7)

The reasons for inheritors based on the promise of Prasetia were also canceled by the word of Allah SWT:

وَلِكُلِّ جَعَلْنَا مَوَالِي مِمَّا تَرَكَ الْوَالِدَانِ
وَالْأَقْرَبُونَ وَالَّذِينَ عَقَدَتْ أَيْمَانُكُمْ
فَاتُّوهُمْ نَصِيبُهُمْ إِنْ اللَّهُ كَانَ عَلَى كُلِّ
شَيْءٍ شَهِيدًا (33)

for each inheritance from the assets left by the mother and close relatives, we make the heirs. and (if there are) those whom you have sworn allegiance to, then give them their share. Surely Allah witnesses all things (Qs An Nisa 33).

Whereas inheritance based on adoption is canceled by the word of God:

مَا جَعَلَ اللَّهُ لِرَجُلٍ مِّنْ قَلْبَيْنِ فِي
جَوْفِهِ ۚ وَمَا جَعَلَ أَرْوَاجُكُمْ الَّتِي

تُظْهِرُونَ مِنْهُنَّ أُمَّهَاتِكُمْ وَمَا جَعَلَ
أَدْعِيَاءَكُمْ أَبْنَاءَكُمْ ۚ ذَلِكُمْ قَوْلُكُمْ
بِأَفْوَاهِكُمْ ۚ وَاللَّهُ يَقُولُ الْحَقَّ وَهُوَ
يَهْدِي السَّبِيلَ . اذْعُوهُمْ لِأَبَائِهِمْ هُوَ
أَفْسَطُ عِنْدَ اللَّهِ ۚ فَإِنْ لَّمْ تَعْلَمُوا آبَاءَهُمْ
فَاِخْوَانُكُمْ فِي الدِّينِ وَمَوَالِيكُمْ وَلَيْسَ
عَلَيْكُمْ جُنَاحٌ فِيمَا أَخْطَأْتُمْ بِهِ وَلَكِنْ مَا
تَعَمَّدَتْ قُلُوبُكُمْ وَكَانَ اللَّهُ غَفُورًا
رَّحِيمًا

God has never made two hearts in one's body; and He did not make your wives you worship, that is your mother, and He did not make your adopted children your biological children (that is) only your words in

your mouth and Allah is telling the truth and He is showing the way (the true). Call them (adopted children) by (using) the names of their fathers; That is more just in the sight of Allah, and if you do not know their fathers, then (call them as) your brothers and sisters in your religion, and your beginning, and there is no sin upon you for what you err, but there is sin) what your heart wills. and is Allah is Forgiving, Most Merciful. (Surah al-Ahzab: 4-5)

From the description above, it can be understood in the rules of Islamic inheritance, that those who are entitled to receive inheritance are not limited to men who are adults, but also children, both men and women.

And in the inheritance of Islam there is no recognition of the promise of *presetia* as it prevailed at the beginning of the migration of the Prophet. Likewise the adoption of the child (adoption) of Islam's inheritance rules has removed it. So by applying Islamic law in inheritance the customary law or custom of the Jahiliyah period, is considered *mansukh* (erased) no longer valid.

Then it becomes the determination of the *fuqaha* that men and women or a *muthallaqah* (widow), they are entitled to inheritance, even children who are still in the womb must be counted in *uqaddarah* (whether he is a male or a woman who will be born)¹³

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Thus it can be understood that among the causes determined by *Fuqaha* to get an inheritance, namely

فى أسباب الموارث يقول صاحب
الرحبية:
أسباب الميراث الورى ثلاثة كل
يفيد ربه الورثة

¹³ H.Sulaiman Rasjid, Islamic Fiqh, Sinar Baru Algesindo print, 60th edition, 2014, page 168.

نكاح وولاء ونسب ما بعدهن للموارث سبب

From *matan Rahbiyah* above, it can be understood that the cause of inheritance can be grouped into 3, but the authors breastfeed according to the portion of inheritance power.

Heirs due to hereditary relations (القربة) or kinship (النسب)

The heirs whose kinship to *muwaris* are based on blood relations. Namely the *nasab* relationship that gave rise to between heirs and heirs, one of the most powerful causes of inheritance.

The *nasabiyah* heirs consist of 15 men and 10 women, all 25 of whom¹⁴. From the *Nasabiyah* heirs above, if grouped according to their kinship level are as follows:

1. *Furu al-waris*, the heirs of the offspring of the dead, or the branch group (*al-bunuwwah*). This group is the closest, and those who take precedence receive inheritance. The heirs of this group are: daughters, grandchildren of the male line, boys and grandchildren of the male line.
2. *Usul al-waris*, the heirs of the ancestors of the dead. Its position is after the *furu'al-heir* group.

¹⁴MUhammad Ali Asshabuni, Inheritance Law in Islam, SENja Publisher,, print I, 2015, pp. 44-45

They are: father, mother line grandfather, mother line grandfather, mother line grandmother and line father grandmother.

3. Al-Hawasy, the heirs of the sibling group including 12 uncles and their descendants, namely: biological sisters, fathers sisters, sisters of a thousand, siblings of siblings, brothers sons of father, brothers of a thousand, sons of siblings, fatherly brothers, biological uncle, father of uncles, biological sons of uncle and sons of uncles father.

Heirs due to marital relations (النكاح)

Heirs related to inheritance arises because of marital relationships That is a marriage that is done on a legal contract. Either his wife is intervened or not. If one of them dies, either husband or wife, he will continue to inherit one another. As for if there is a thalaq before it is intervened, it does not inherit each other and there is no iddah count, as the Word of Allah SWT in Qs Al Ahzab: 49:

يَا أَيُّهَا الَّذِينَ آمَنُوا إِذَا نَكَحْتُمُ
الْمُؤْمِنَاتِ ثُمَّ طَلَقْتُمُوهُنَّ مِنْ قَبْلِ أَنْ
تَمْسُوهُنَّ فَمَا لَكُمْ عَلَيْهِنَّ مِنْ عِدَّةٍ

تَعْتَدُونَهَا فَمَتَّعُوهُنَّ وَسَرَخُوهُنَّ
سَرَاحًا جَمِيلًا

O you who believe, if you marry women who believe, then you divorce them before you mix them. So it is not necessary for them to be iddah for you whom you ask to perfect them. Then give them mut'ah and release them in the best way (Qs Al Ahzab: 49)

Meanwhile, if there is a thalaq after being interfered with, it will inherit each other while it is still in the iddah state, but if it has left the iddah period, it will not inherit each other again.

Fuqahaa requires marriage as one of the reasons for inheritance that is a legal marriage, so it does not include a fasid marriage, such as marrying a milk sister, which she does not know except after mixing a husband and wife, her marital relationship must automatically in fasakh without thalaq, so there is no inheritance relationship ¹⁵.

Heirs for freeing slaves (الولاء) ¹⁶.

Namely inheritance inheritance due to kinship according to the law arising from freeing slaves, even though there is no blood relation between them ¹⁷.

That is the relationship between the employer and his slave who has been free. Then this

¹⁵Dr. Muhammad Bakri Ismail (1418 H / 1997), Fiqhul Wadhi, pp. 616 - 617

¹⁶ Fiqhul Wadhi, p. 617.

¹⁷Dr. Aunur Rahim Faqih, Mawaris Hukum Waris Islam, UII press Yogyakarta, 2017, page 42

relationship is called the relationship wala¹⁸.

Heirs whose heir relations arise because they liberate slaves. Whoever frees the slave, then the slave dies and he has inheritance, then the freer has the right to the condition, the slave does not have a stronger heir such as husband (wife) or relatives.

The origin of the cause of inheritance is because of this in the Bukhari and Muslim hadith which reads:

أَنَّ رَسُولَ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ قَالَ: (إِنَّمَا الْوَلَاءُ لِمَنْ أَعْتَقَ)

Meaning: The Prophet said: Verily Al Wala is for those who are free.

Ahmad Bisry Syakur added, in his book among the conditions, namely, the similarity of the Islamic religion, not the heretical flow of Islamic teachings¹⁹.

Conclusions.

From the explanation above, it can be concluded that in the pre-Islamic era, it was very sad because according to the applicable provisions, that minors and girls or women were not entitled to inheritance from the inheritance of people who died. They even thought that the widow of the deceased was

considered an inheritance and could change hands from the father to his child.

However, with the existence of the Islamic era, then Islam confirms and stipulates according to the Koran Annisaa: 7, which explains that for men there is a part of the inheritance of the mother and father's relatives, and for women there is a part rights (also) from the inheritance of the mother and father and relatives, either a little or a lot according to the predetermined portion. Thus Islam greatly values both minors, girls, women and widows.

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¹⁸Ust. Saifuddin Masykur, Ilmu Faraidl, Santri Salaf Press Publisher, 2016, page 14

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