



Inheritance rights of daughters according to Islamic inheritance law (analysis of the decision of the supreme court of the republic of Indonesia number 86k/Ag/1994)

Bahirah Safriadi¹, Azhari Yahya², Zahratul Idami²

¹ Student, Faculty of Law, Syiah Kuala University, Banda Aceh, Indonesia

² Lecturer, Faculty of Law, Syiah Kuala University, Banda Aceh, Indonesia

Abstract

The Supreme Court Decision Number 86K/AG/1994 states that a daughter alone becomes *ashabah bi nafsih* (residuary beneficiaries in their own right) or the sole heir who can exclude her uncle from the inheritance. This decision caused a polemic in the community because, according to the majority of Muslim scholars, a daughter cannot exclude her uncle from the inheritance. The position of daughter and her uncle are both heirs. This decision is used as jurisprudence by other judges in deciding inheritance disputes between daughters and their uncles, which are considered to cause injustice in deciding inheritance cases. This study uses a normative juridical method by examining laws and regulations, judge's decisions, and Islamic legal doctrine regarding the position of inheritance rights for daughters in Islamic law. This study aims to elucidate position of inheritance rights of daughters who inherit together with relatives according to the view of muslim scholars, position of inheritance rights of daughters who inherit with relatives in Compilation of Islamic Law, and analysis of Supreme Court Decision of the Republic of Indonesia No. 86K/ AG/ 1994. Based on the results of the research, it was found that the legal considerations of the judges in decision Number 86K/Ag/1994, which made daughters *ashabah bi nafsih*, were in accordance with the interpretation of Ibn Abbas regarding the verse of *kalalah* in the surah An-Nisa verse 176, where the word "walad" is generally interpreted includes sons and daughters. However, the opinion of the majority of scholars states the opposite, that girls are *zawil furudh* (those who have been fixed a specific share of inheritance in the Quran) and are not *ashabah bi nafsih* and are not able to exclude their siblings. After an in-depth study, it was found that in the case of inheritance in decision No. 86K/Ag/1994, the judge made a legal discovery that violated the provisions of the majority of scholars (*jumhur ulama*). The uncle had committed tyranny against his niece by controlling the inheritance unilaterally for a very long period and not sharing it with her as the heir. So that after reviewing the evidence and philosophical deepening of the case, the judge decided to hand over all the assets to the niece through a grammatical interpretation method on the meaning of the word "walad" in Surah An-Nisa verse 176 in the form of *radd* (the excess or remaining inheritance that is returned to all heirs). Such decisions cannot be made uniformly with all inheritance disputes because such decisions are only applied to certain cases to create a sense of justice.

Keywords: inheritance rights, Islamic law, judge's decision

Introduction

Inheritance law is legal provisions relating to someone who dies and the legal consequences arising related to material things. Nationally, there are three inheritance provisions that apply in Indonesia, namely western/civil inheritance law, Islamic inheritance law, and customary inheritance law. Western inheritance rules only apply to Chinese and European groups; Islamic inheritance rules bind followers of the Islamic religion, while customary inheritance provisions apply to some groups of native Indonesian people. Customary inheritance provisions are inheritance rules that have been in society for a long time. They are not even in writing but live in the behavior or actions of society.^[1]

Inheritance law, as one of the rules stipulated in Islamic law, in general, is a law that regulates the process of transferring rights/obligations to heirs over a person's assets after death. In Islamic legal literature, the distribution of inheritance is known as the science of "faraidh" as in the hadith narrated by Ibn Abbas, that the Prophet said: "Learn and teach the Al-Quran to others, also learn *faraidh* and teach it to others". Inheritance and *faraidh* are studies of the distribution of assets of people who have died according to the number of shares that have been determined.^[2]

Inheritance issues, according to Islamic law, are regulated in *fiqh*. In the terminology of western law, this *fiqh* is also called Islamic Law or Islamic jurisprudence, which refers more to *fiqh* and sharia law. This is in line with the Islamic thought that Islamic law and sharia law cannot be separated. In addition to *fiqh*, in Islamic law, there are several other legal products, namely the fatwa (legal ruling on the point of Islamic law) of the Islamic jurists, court decisions by judges, and statutory regulations.^[3]

The Compilation of Islamic Law (KHI) is one of the legal products in Indonesia which is intended for Muslims by Presidential Instruction No. 1 of 1991, which is the reference for Islamic civil law, one of which regulates inheritance law.^[4] Article 171 letter c of the Compilation of Islamic Law explains that an heir is a person left behind by a predecessor with ties of blood or marriage, Muslim, and not hindered as a recipient of the inheritance.

The heirs, both male and female, are people who have an inheritance relationship and are still alive at the death of the person who bequeaths his property.^[5] Inheritance in Islam is inseparable from the rules of Islamic law. Therefore, the existence of inheritance law must be explained in a factual form. In the implementation of inheritance law, before it is

formally resolved in court or with state law authorities, inheritance law must reflect a sense of kinship as one of the principles of Islamic civil law.^[6]

In Islam, the determination of the division of inheritance is stipulated clearly in Surah An-Nisaa, which can be summarized into six percentage parts, namely half (nisf), one quarter (rubu'), one-eighth (tsumun), two-thirds (tsulutsani), one third (tsulus)) and one-sixth (sodus).^[7] Islamic law provides inheritance rights based on a stipulation from Allah SWT as part of the provisions of the sharia that cannot be changed.

In Islam, one of the people who is designated as *dzawil furudh* is the daughter. *Dzawil furudh* is the heir whose share has been determined. While the remaining assets will be obtained by the heirs, who are classified as *ashabah*. If the heirs consist of a man and a woman, then the man gets a share equal to two women in the matter of spending the remaining assets.

The distribution of inheritance for Muslims in Indonesia refers to the Compilation of Islamic Law (KHI). KHI was formed in 1991 and officially legalized by Presidential Instruction Number 1 of 1991 and the Decree of the Minister of Religion Number 154 of 1991.^[8] According to Article 176 of the Compilation of Laws, the daughter's share is the same as in the Al-Quran.

For Muslim communities, references to inheritance distribution go back to the rules of Islamic law or KHI. However, in practice, the judges of the Supreme Court of the Republic of Indonesia issued decisions that violated the existing regulations, as in Decision Number 86K/AG/1994 with the ruling that girls spend assets without giving a penny to their guardians in this case, her uncle.

In the case, the judge decided that a daughter alone can exclude another guardian (hijab hirman) so that she can own all assets because this decision is in line with the opinion of Ibnu Abbas, who interprets the word "walad" in Surah An-Nisa verse 176 as a child in general, whether sons or daughter.

This decision is jurisprudence which can be used as a judge's consideration afterward in deciding cases with similar issues. This has led to inconsistencies in the judge's decisions. Some judges at the first instance of the Religious Courts and the appellate level under the Supreme Court have decided differently from this opinion by following the opinion of the Jumhur Ulama (the majority of Muslim scholars). This can lead to different reactions among justice seekers, the daughter, and the uncle.

This research is an analysis using various approaches to examine the law, namely the rules of Islamic law, including the Compilation of Islamic Law (KHI) and applied law (Jurisprudence) regarding the position of inheritance rights of daughters in statutory regulations and Islamic law provisions, and Supreme Court jurisprudence Number 86K/AG/1994, which provides full inheritance rights for daughters. In KHI, no rule states that daughters can exclude uncles in terms of receiving an inheritance, and the opinion of majority of scholars does not include daughters in the group of parties who can hijab (exclude) uncles. So, in this case, the judge has deviated from the existing legal provisions as applied in the Supreme Court decision Number 86K/AG/1994.

Research Method

The research method in this paper is normative legal research which is doctrinal legal research, namely legal research using secondary data.^[9] The position of daughters in receiving the inheritance is analyzed based on several regulations that govern it, in the form of Islamic law, the Compilation of Islamic Law (KHI), related laws and regulations, and compared with the Jurisprudence of the Supreme Court of the Republic of Indonesia Number 86K/AG/1994.

Results and Discussion

The Islamic rules regarding the inheritance rights of daughters if they are together with relatives of the deceased person are mentioned in Surah An-Nisaa verse 176 regarding the problem of *kalalah*, namely the heir who does not leave parents and children and what is left is only relatives. The word "walad" which means child, in verse 176 differs from the views of the scholars in interpreting it. Some scholars argue that the meaning of "child" in this verse is only for the son. Meanwhile, the daughter with her uncle can also receive an inheritance. Then the majority of scholars make a difference regarding the daughter cannot exclude the relatives of the deceased from inheritance. The decision was that all relationships were excluded with the presence of sons, while the presence of daughters could only exclude the relatives from the mother's side.

In Tafsir Ath-Tabari, it is found that Ibn Abbas interprets *kalalah* as those who leave neither father nor children and only leave relatives.^[10] According to Ibn Abbas, the term *walad* in verse 176 of Surah An-Nisa includes sons and daughters. This is because the word *walad* means child, as, in Surat An-Nisaa verse 11, Allah says, which means: "*Allah obliges you about "awlad" (your children), for a son (is) like the share of two daughters*". *Awlad*, in verse 11, is general, both sons and daughters. Based on this argument, the word *walad* in verse 176 of surah An-Nisaa also includes sons and daughters.^[11] This is proof that a daughter can exclude her deceased father's relatives.

In the Compilation of Islamic Law (KHI), inheritance law is generally guided by the principles of Islamic law based on the appropriate arguments of the Quran and guided by the opinion of the Jumhur ulama (majority of muslim scholars), namely the views of the *madhab* (a school of thought within Islamic jurisprudence) scholars who are followed by the majority of society. For example, the inheritance rights of a son are proportional to the inheritance rights of two daughters. The closest male relative gets the *ashabah* (heirs whose shares are not determined but can get all the assets or the remaining assets after the assets are divided among the *dzawil furudh* (those who have been fixed a specific share of inheritance in the Quran). KHI also stipulates several rules outside Islamic law, including obligatory wills and substitute heirs. In KHI, according to the provisions of Islamic jurisprudence, relatives get an inheritance if the deceased does not have children. The majority of Muslim scholars believe that the child in question is the son. So, sons can *hijab* (exclude) their uncles. The majority's opinion implies that the relatives will only get an inheritance if the deceased does not have sons. They will get an inheritance if the deceased only leaves daughters. Some contemporary Islamic scholars in Indonesia are of the opinion that such regulations can lead to gender bias.^[12]

KHI is structured according to the general rules in Article 181 and Article 182, namely that the inheritance of relatives depends on the existence of children. KHI does not describe the meaning of children in detail; it only mentions sons or sons and daughters. The word *walad* in *fiqh* has a different view among scholars. This seems to confuse some judges in determining inheritance dispute decisions. Uncles are only excluded by sons, according to the opinion of the majority of scholars, or by sons and daughters, according to the interpretation of Ibn Abbas. On the other hand, article 176 KHI stipulates that if a daughter is alone, she will receive half of the inheritance. In practice, it is found that there are judges' decisions regarding inheritance cases that refer to *fiqh* (Islamic Jurisprudence) books to protect the public interest and realize the benefit of ensuring justice for the parties.

This case concerns two brothers, Amaq Irawan and Amaq Nawiyah. Amaq Nawiyah passed away and left a brother and daughter named Le Putrahimah as heirs. The assets left behind are 2 plots of 6 hectares of land operated as plantations. When Amaq Nawiyah passes away, the land was managed by his brother, Amaq Irawan. Then, Amaq Irawan died in 1930. Amaq Irawan's wife and children manage the two plots of plantation land. After they all died, Le Putrahimah could control the plantation inherited from his father. Meanwhile, Amaq Irawan's grandson did not accept it because he felt he also had rights over the inherited land. Then a lawsuit was filed with Mataram Religious Court regarding the distribution of inheritance.

The legal decision of the First-Degree Court (Mataram Religious Court) was decision No. 85/Pdt.G/92/PA.Mtr, which decided that the judge rejected the lawsuit and revoked the stipulation of collateral confiscation against the object of dispute. At the Appellate Level at Mataram Religious High Court, the judge decided that the distribution of inheritance was determined according to legal provisions, namely decision No. 19/Pdt.G/1993/PTA.Mtr. It states that the collateral object of the dispute is legally confiscated as an inheritance that has not been distributed. Then, the share of the heirs, namely Amaq Irawan or biological brother, and Le Putrahimah or daughter as the recipient of the inheritance, is determined, with the entire estate divided into two parts. Half for the brother and half for the daughter.

At the Cassation Level at the Supreme Court, the cassation submission was based on Mataram Religious High Court's legal considerations, which stated that the inheritance dispute's object had not been distributed because, since 1957, the land had been registered as belonging to Le Putrahimah or the Cassation Petitioner. The next reason is Mataram Religious High Court is considered wrong in applying the law because it makes relatives *ashabah*. The Supreme Court, at the cassation level, handed down the Supreme Court decision No. 86K/AG/1994 with the ruling annulling Mataram Religious High Court decision and stipulating that the brother of the deceased did not get a share because the deceased left a daughter, namely the Petitioner.

The legal consideration in this decision is that the Supreme Court Judge believes that the deceased's sibling is excluded by the presence of children except for the husband, wife, and parents. This interpretation is in accordance with the views of Ibn Abbas, who interprets "walad" in verse 176 of Surah An-Nisaa concerning *kalalah*, which includes both sons and daughters.

At the cassation level, the panel of judges gave their opinion that Mataram Religious High Court was wrong in determining the law when Amaq Irawan was designated as *ashabah*, with the remaining half of the inheritance being distributed to Le Putrahimah. Le Putrahimah's position as the heir should not be equal to the brother of the deceased as the heir. The cassation effort is in accordance with Article 30 paragraph (1) letter b of Law No.5 of 2004 concerning Amendments to Law No.14 of 1985 concerning the Supreme Court, namely being able to cancel decisions at other court levels due to misapplication of law or violation of applicable regulations. The facts in the case show that the Mataram Religious High Court decision contradicted or violated the applicable inheritance law.^[13]

The Supreme Court found that the land area of 2 Ha as the object of the dispute had been in the custody of the family of the deceased's brother for a very long time without being shared with the child of the deceased. In legal considerations, the Supreme Court Panel of Judges believes that children, both sons and daughters, can exclude the heirs except for parents, husbands and wives by the interpretation of Ibn Abbas.

Based on this description, the legal consideration of the Supreme Court judges was the use of a grammatical interpretation method, namely interpreting provisions by describing the meaning of a rule according to a common language. Judges make legal discoveries to provide decisions that satisfy a sense of justice by understanding and exploring legal values that live in society. In this case, the meaning of the word "walad" in Surah An-Nisaa verse 176 is interpreted to mean "children" in general, including sons and daughters, with the aim of justice.

Meanwhile, on the other hand, there is the opinion of the Jumhur Ulama which states that the inheritance rights of daughters cannot exclude the rights of the deceased's brother for the inheritance. This opinion basically cannot cancel the judge's decision. However, returning to the opinion of the Jumhur Ulama, in the Supreme Court Decision Number 86K/Ag/1996, the judge's decision contradicted the provisions on inheritance in the Qur'an. However, it must also be reviewed from the side of the course of the case, which is special a case in the sense that the judge in certain cases can make legal discoveries. This is in accordance with the provisions of Article 5 of Law No.48 of 2009 concerning Judicial Power which states that judges are obliged to explore, follow, and understand the legal values and sense of justice that live in society.

The judge's legal discovery in this case also follows the Islamic jurisprudence provisions regarding *Istihsan*, namely laws that depart from general provisions with exceptions and are only applied to certain cases that require other legal considerations to realize *syara'* objectives. However, the judge is obliged to explain the reason for using the law outside the law that is usually applied to similar cases in accordance with the provisions of Article 30 paragraph (2) of Law No. 5 of 2004 concerning Amendments to Law No.14 of 1985 concerning the Supreme Court.

The Supreme Court decision No. 86/K/Ag/1994 did not elaborate on the reasons for the legal considerations which followed the views of Ibn Abbas and set aside the opinions of the Jumhur Ulama. This is a weak point that can lead to ongoing problems in the application of the law by subsequent judges. In essence, the Supreme Court's decision has tried to fulfill a sense of justice in the midst of a diverse society.

Conclusion

It can be concluded that the word "walad" in verse 176 of Surah An-Nisaa found differences in the scholars' interpretation. According to Jumhur Ulama, including scholars of the Islamic school of thought, the word "*walad*" means sons. Thus, the son's position can exclude the siblings of the deceased. The daughter with the deceased's siblings can also get the inheritance. In the Supreme Court Decision No. 86K/AG/1994, according to the provisions of the law on the Supreme Court No. 14 of 1985 Articles 50 and 51 paragraph (2), the judge annulled the decision on Mataram Religious High Court and decided by making a legal discovery using the grammatical interpretation method that the daughter can exclude the brother of the deceased from the inheritance. The Supreme Court's opinion follows the interpretation of Ibn Abbas regarding the word "walad" in Surah An-Nisaa verse 176. Although not described in the KHI, this decision is only applied to certain cases to create a sense of justice, where the inheritance has been controlled for a very long time by the heir's relative and is not handed to her. Therefore, to achieve justice, judges can depart from general rules to produce decisions to fulfill the parties' sense of justice.

References

1. Iman Jauhari, dan Muhammad Ali Bahar, *Hukum Waris Islam T. (Islamic Inheritance Law)*, Yogyakarta, Deepublishing, 2021, 10.
2. Achmad Kuzari H. *Sistem Asabah Dasar Pemindahan Hak Milik atas Harta Tinggalan (The Basic Ashabah System for Transferring Property Rights to Remaining Assets)*, Daral-jal, Beirut, 1973, 168.
3. Maryati Bachtiar, *Hukum Waris Islam dipandang dari Perspektif Hukum Berkeadilan Gender (Islamic Inheritance Law is seen from a Gender Equitable Legal Perspective)*, *Jurnal Ilmu Hukum*, 3(1), 42.
4. Yusuf Somawinata, *Hukum Kewarisan dalam Kompilasi Hukum Islam (Inheritance Law in Compilation of Islamic Law)*, *Jurnal Al-Qalam*, 2009:26(1):136.
5. Subchan Bashori, *Al-Faraidh; Cara Mudah Memahami Hukum Waris Islam (Al-Faraidh; Easy Ways to Understand Islamic Inheritance Law)*, Nusantara Publisher, Jakarta, 2009, 9.
6. Afidah Wahyuni, *Sistem Waris dalam Perspektif Islam dan Peraturan Perundang-Undangan di Indonesia (Inheritance System in Islamic Perspective and Legislation in Indonesia)*, *Salam: Jurnal Sosial dan Budaya Syar'i*, 2018:5(2):148.
7. Teungku Muhammad Hasbi Ash-Shiddieqy, *Fiqh Mawaris: Hukum Pembagian Warisan Menurut Islam (Fiqh Mawaris: The Law of Inheritance Distribution According to Isla)*, Pustaka Riski Putra, Semarang, 2010, 57.
8. Dedi Supriyadi, *Sejarah Hukum Islam, dari Kawasan Jazirah Arab sampai Indonesia (History of Islamic Law, from the Arabian Peninsula to Indonesia)* Pustaka Setia, Bandung, 2007, 387.
9. Sujono dan Abdurrahman, *Metode Penelitian Hukum (Legal Research Methods)*, Renika Cipta, Jakarta, 2003, 56.
10. Ath-Thabari, Abu Ja'far Muhammad bin Jarir, *Tafsir Ath-Thabari*, Translator: Ahmad Affandi, Jakarta: Pustaka Azzam, 2008:6:561.
11. Satria Efendi M Zein, *Problematika Hukum Keluarga Islam Kontemporer, Analisis Yurisprudensi dengan Pendekatan Ushuliyah (Contemporary Islamic Family Law Problems, Jurisprudence Analysis with Ushuliyah Approach)*, Jakarta: Kencana, 2010, 303.
12. Euis Nurlaelawati, *Problematika Hukum Kewarisan Islam Kontemporer di Indonesia (Problems of Contemporary Islamic Inheritance Law in Indonesia)*, 1st edition, 1st print, Jakarta: Badan Litbang dan Diklat Kementerian Agama RI, 215.
13. Yahya Harahap M. *Kekuasaan Mahkamah Agung Pemeriksaan Kasasi dan Peninjauan Kembali Perkara Perdata (Powers of the Supreme Court, Examination of Cassation, and Review of Civil Cases)*, 2nd print, Jakarta: Sinar Grafika, 2008, 328.