

The Implementation of the Compilation of Islamic Law on Inheritance Law: A Study in Sleman Regency

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ABSTRACT

This paper is the research results on the implementation of Compilation of Islamic Law (CIL) on inheritance law in the Sleman Regency, Special Region of Yogyakarta, in 2019. This study aims to determine the extent of the implementation efforts and uncover some factors hindering the implementation efforts. The type of research used was qualitative, with a qualitative descriptive analysis approach describing the reality under study. Meanwhile, this research's findings revealed that in the inheritance implementation based on CIL in Sleman Regency, Special Region of Yogyakarta, several differences were still found in interpretations of inheritance law, there were internal family conflicts related to inheritance due to differences in education levels, and the court administration system has not been fully organized with both good and time inefficient.

I. Introduction

Islamic law as a social institution has two functions, i.e., social control and new values and processes of social change. In the first function, Islamic law is placed as God's law, apart from social control and social engineering of the existence of a community. Meanwhile, the second control is that law is more of a historical product, which is a justification to some extent for demands for social, cultural, and political change. Therefore, in this context, Islamic law must accommodate the people's problems without losing its basic principles (Rofiq, 2001). Otherwise, Islamic law will fail to function.

On the other hand, inheritance is a science revealed by Allah SWT, detailed in the Qur'an, so it does not need much further interpretation. It signifies that the science of inheritance/faraid becomes crucial because it is explained in detail in the Qur'an, in contrast to other sciences that are only discussed in general. Until now, in Indonesia, there is no national inheritance law yet. Thus, inheritance law can use various inheritance systems in Indonesia, including the inheritance law

system according to the Civil Code, customary law, and Islamic law. It is because there is no national legal stipulation regarding the implementation of inheritance law. For this reason, the researcher is interested in examining how the implementation of inheritance law in the Special Region of Yogyakarta in particular and in Indonesia in general.

In general, Djatnika (1990) concluded that the application of the conception of Islamic law in Indonesia in people's lives is carried out by adjusting to Indonesian culture, the results of which are sometimes different from the results of *ijtihad* on the application of Islamic law in other Islamic countries, such as those found in buying and selling, leases, inheritance, endowments, and grants. Similarly, the Islamic law application is conducted through jurisprudence in the Religious Courts (PA). In the Religious Courts outside Java, Madura, and South Kalimantan, many Islamic laws have become positive laws, which have become competition for Religious Courts. Meanwhile, in Java and Madura, there is still a small part

of the Islamic law that becomes positive law (Djatnika, 1990: 254).

Further, Indonesia's implementation/application of inheritance law can be called difficult or easy. It is because the diversity of customs and religions allows different choices for the inheritance law application. However, inheritance itself is closely related to the distribution of property and money, which is arguably sensitive. According to the Deputy Chief Justice of the Supreme Court for Non-Judicial Affairs, Syamsuhadi, the issue of inheritance in practice is quite complicated. As a result, inheritance disputes sometimes must be resolved until the last legal remedy, namely reconsideration (PK). Syamsu also explained that, in essence, the inheritance issue is a civil matter whose lawsuit is based on the parties' request. Likewise, the choice of law can choose the Religious Court for Islamic law or the District Court for inheritance outside Islam or custom (Gie, 2005)

As the development of the Islamization process in Indonesia has never reached a decisive point, so is the development of Islamic law. Based on the description above, the researcher is interested in conducting research by raising a title: "Implementation of the Compilation of Islamic Law (CIL) on Inheritance Law in the Sleman Region, Special Region of Yogyakarta, in 2019."

In this case, the Compilation of Islamic Law is inseparable from the institution of the Religious Courts because the Religious Courts are social institutions with the authority to examine, adjudicate, and decide cases submitted by people who feel that their rights have been harmed by others (Article 49 of Law Number 7 of 1989 concerning Religious Courts).

Furthermore, one of the figures who came up with the idea of the need to make a Compilation of Islamic Law in Indonesia was Bustanul Arifin. These ideas are based on several considerations. First, for applying Islamic law in Indonesia, among other things, there must be clear laws that law enforcement officials and the community can implement. Second, non-uniform perception of Sharia causes the following things: a. Non-uniformity in determining what is called Islamic law (*maa anzalallahu*); b. Not getting

clarity on how to run the Sharia (*Tanfiziyah*); c. The prolonged result is the inability to use the paths and tools available in the 1945 Constitution and other laws (Ali, 2006).

From the description of the research background above, the writer formulated the problems: How is the implementation of the Compilation of Islamic Law (CIL) on inheritance law in Sleman Regency, Special Region of Yogyakarta? Also, what factors hinder the implementation of the Compilation of Islamic Law (CIL) on inheritance law in Sleman Regency, Special Region of Yogyakarta?

II. Review Related Literature (bold, 11 pt)

In Indonesian legal literature, the word "inheritance" is often used or inheritance. The word comes from Arabic but in practice is more commonly called "Pusaka". In Arabic legal literature, you will find the use of the word *Mawaris*, the plural form of the word *Mirats*. Verb form *Waratsa*, *Yaritsu* and *masdar* word *Mirats*. Rasulullah SAW in the matter of inheritance uses the word *faraid* and does not use the word *Mawaris*. In a hadith narrated by Ibn Abbas, the Messenger of Allah. Say "Learn the Qur'an and teach it to others. Also learn *faraid* and teach people" (H.R. Ahmad) (Kuzari, 1973).

In the Compilation of Islamic Law (CIL) in Indonesia, Islamic inheritance law is the law that regulates the transfer of ownership rights to the inheritance (*tirkah*) of the heirs, determining who is entitled to become heirs and how much of each. As a country with a majority Muslim population, it is possible that many community members use the system Islamic law. But along with the development of the times, characterized by advances and technological principles in law Islam continues to progress rapidly and always follows changing times for the benefit of the people in the world. Without differentiate between men and women (Maryati Bachtiar, 2012).

The legal principle in Islamic inheritance does not look at differences between men and women, all the heirs are both male and women have the same rights as heirs. But only the comparison is different. It's in the law Islamic inheritance that is emphasized is balanced justice, not equal justice as fellow heirs.

Because of this principle which often becomes a polemic and debate that sometimes cause disputes among the heirs.

Today women fight for their rights to be equal with men. Because in this day and age the roles of women and men are almost the same in running the family economy. Women who were previously only dichotomized as co-winkings who only served in household affairs had experienced a shift in values along with the changing times. Even a woman becomes the backbone of the economy in her family.

This shift in the roles of men and women is what women demand for their rights according to the role of women in the family, so that Islamic inheritance law must also be able to accommodate people's needs for laws that can provide justice for women today. Where there is a difference in the calculation of the distribution of Islamic inheritance law. Where men get more shares than women.

III. Research Methodology

Theoretically, this research will be one of the guides in maximizing the implementation of the Compilation of Islamic Law (CIL) on inheritance law in Sleman Regency, Special Region of Yogyakarta. Also, it is hoped that this research will contribute ideas for future research.

Meanwhile, this research practically informs the public about inheritance law in Sleman Regency, Special Region of Yogyakarta. Specifically, for relevant agencies and the government, this study provides information on the implementation of inheritance law in Sleman Regency, Special Region of Yogyakarta. It is also expected that in the future, the government can be more active in supervising the implementation of the Compilation of Islamic Law, especially regarding inheritance law in Sleman Regency, Special Region of Yogyakarta, and become material for consideration and recommendations to the government in evaluating policies.

The type of research used was qualitative, with a qualitative descriptive analysis approach, describing the reality that the author examined as a series of activities or processes of conducting proper information in the life of

an object. It was associated with problem-solving, both from a theoretical and practical point of view and a juridical-normative approach, i.e., research conducted by examining library materials or secondary legal data. This research focused on implementing the Compilation of Islamic Law on inheritance in Sleman Regency, Special Region of Yogyakarta.

Research materials require research sources called legal materials, both primary and secondary. In this study, the materials used were library research and field research supporting research in writing this scientific paper. Then, respondents' determination was based on non-random or purposive sampling, meaning that not all elements in the population were sampled. Sample selection was based on special characteristics related to the research problems.

Meanwhile, the research tool was through literature study, in which the author studied, processed, and examined legal materials, both literature and legislation related to this research, to obtain the correct theoretical basis. In addition, interviews are a way of obtaining information by directly asking respondents. The researcher also used the guided interview method and employed a list of open-ended questions (interviews based on unlimited questions). With a list of open-ended questions, the respondents were expected to respond to questions in accordance with their opinions and relevant knowledge within the scope of the problems being studied to obtain accurate data.

After that, the data obtained in the form of primary and secondary data were then processed and analyzed using qualitative analysis (a writing procedure that produces descriptive data analysis, i.e., what is stated by the respondents in writing or verbally and real behavior, researched and studied as a whole).

Moreover, this research focused on the reality regarding implementing the Compilation of Islamic Law (CIL) related to inheritance. Meanwhile, the location of this research was carried out in Sleman Regency, Special Region of Yogyakarta. Meanwhile, the sources of information who were asked for explanations and responses in this study were the Head of the Religious Courts of Sleman Regency, the people of Sleman Regency, and

religious leaders who were experts in the field of inheritance.

In connection with the research approach above, the data collection technique used in this study was field research, carried out by visiting directly to the research object, namely the Office of the Head of the Religious Courts in the Sleman Regency. This research was conducted through a series of activities, such as observation, i.e., direct observation of the research object on the data in the Sleman Religious Court. Then, interviews were conducted with the question and answer with parties related to the research problems, involving the Head of the Sleman Religious Court, the community, and community leaders.

Then, the data analysis technique used to process the information obtained was to examine all available data from various sources, from interviews, observations made in the field, and others. Data reduction was then carried out by summarizing the core, process, and statements from the sources that need to be maintained. Next was compiling data units. The data units that were still obtained separately were then categorized and grouped into one. After the data were obtained and became one, an examination of the validity of the existing data was performed, and then the data interpretation was conducted in processing the temporary results under this research method.

IV. Results and Discussion

According to the Great Dictionary of the Indonesian Language, implementation is the execution or application. Meanwhile, according to Susilo (2007), implementation is an application of ideas, concepts, policies, or innovations in practical action to impact changes in knowledge, skills, values, and attitudes.

Miller and Seller (1985) defined the word implementation with three approaches: first, implementation is defined as an activity. Second, it is an effort to improve the interaction between teacher developers and teachers. Third, implementation is something separate from the curriculum components. According to Muklir (1981), implementation

is essentially a way for a policy to achieve its goals. Policies will only be dreams or good plans stored neatly in the archives if they are not implemented.

Thus, it can be concluded that implementation is an execution of a policy so that there is a change in knowledge, attitudes, skills, and values following predetermined goals. Furthermore, in the legal sense, a compilation is a legal book or collection book containing descriptions, certain legal materials, legal opinions, or legal rules. In this case, the process of composing the Compilation of Islamic Law is not easy. There are two reasons why the Compilation of Islamic Law was compiled. First, per the regulatory function of the Supreme Court of the Republic of Indonesia on the running of justice in all judicial environments in Indonesia, especially within the Religious Courts, it is necessary to hold a Compilation of Islamic Law (CIL), which has so far made positive law in the Religious Courts. Second, to achieve this goal to improve the smooth implementation of tasks, synchronization, and orderly administration in Islamic law development projects through jurisprudence, it is deemed necessary to form a project team whose composition consists of officials from the Supreme Court (MA) and the Ministry of Religion of the Republic of Indonesia.¹

From these two considerations, a rule or law is drawn up, i.e., the Compilation of Islamic Law (CIL). It is vital since the Compilation of Islamic Law (CIL) is closely related to the condition of Islamic law in Indonesia. As Zarkasyi stated, until now, there has not been an agreed understanding of Islamic law in Indonesia. There are various assumptions about Islamic law, each of which looks at it from a different point of view (Zarkasyi, 1985: 3).

In addition, the term compilation is taken from the word "*compilare*" (Dutch), which means to collect together, such as collecting regulations scattered everywhere. Later, it was developed into "compilation" in English and then used in Indonesian to become "*kompilasi*". In a legal sense, a compilation is a legal book or a collection of books containing descriptions or certain legal

¹ *Ibid*, hal.15

materials.² The Indonesian Islamic Law Compilation was established in 1991, which does not explicitly state the meaning of compilation and compilation of Islamic law. The legal materials referred to were processed through certain processes and methods and then formulated in the form of laws. This law was then enacted through a Presidential Decree to be further used by judges of the Religious Courts in examining, adjudicating, and deciding a case as a guideline.

In Article 171 concerning Inheritance Law in CIL (Islamic Law Compilation), it is stated (Abdurrahman, 1992):

1. Inheritance law regulates the transfer of ownership rights to the inheritance (*tirkah*) of the testator, determining who is entitled to become heirs and how much of each share.
2. A testator is a person who, at the time of death or declared dead based on a court decision, is Muslim, leaving heirs and inheritance.
3. An heir is a person who, at the time of death, has a blood relationship or marital relationship with the testator, is Muslim and is not prevented by law from becoming an heir.
4. Inheritance is assets left by the testator, both in the form of objects that are theirs and their rights.
5. Legacy is inherited property plus part of the joint property after being used for the testator during an illness until death, the cost of managing the corpse (*tajhiz*), paying debts, and giving gifts to relatives.
6. A will is a gift of an object from the testator to another person or institution that will take effect after the testator dies.
7. Grant is the giving of an object voluntarily and without compensation from someone to another person who is still alive to be owned.
8. An adopted child is a child who, in daily life, education costs, and others, shifts the responsibilities from his original parents to his adoptive parents based on a court decision.
9. Baitul Mal is a religious treasure hall.

The Religious Court is a judicial institution (an institution that implements the laws established by the state). Meanwhile, Article 20 Law Number 18 of 2011 stipulates that the Judicial Commission has the following duties to maintain and uphold the honor, dignity, and behavior of judges (Komisiyudisial, 2018):

- a. Monitoring and supervising the behavior of judges,
- b. Receiving reports from the public regarding violations of the Code of Ethics and Code of Conduct for Judges,
- c. Conducting verification, clarification, and investigation of reports of alleged violations of the Code of Ethics and the Code of Conduct of Judges in private,
- d. Deciding whether the reports of alleged violations of the Code of Ethics and the Code of Conduct of Judges are true or not,
- e. Taking legal steps and/or other steps against individuals, groups of people, or legal entities that degrade the honor and dignity of judges.

Specifically, in the Special Region of Yogyakarta, judicial institutions implement the Compilation of Islamic Law, consisting of five districts: 1. Yogyakarta Municipal Religious Court, 2. Bantul Religious Court, 3. Sleman Religious Court, 4. Kulonprogo Religious Court, and 5. Gunungkidul Religious Court. Of the five institutions of the Religious Courts, the researcher wanted to reveal how the implementation of the Compilation of Islamic Law related to inheritance is in Sleman Regency, Special Region of Yogyakarta.

From the results of interviews with the Religious Courts in Sleman Regency, several things were revealed as follows. Implementing the Compilation of Islamic Law (CIL) on inheritance at the Religious Courts of Sleman Regency began with the promulgation of the Compilation of Islamic Law on inheritance in 1991. Since then, the enactment of the Law on CIL has been used as applied law. Before 1991, inheritance law was still Fiqh-oriented, namely *fiqh faraid* (*faraid* law) based on the Qur'an Surah An-Nisa: 11, 12, 13, and 176. There was no legal basis in

² *Ibid*: hal.12

the form of law before 1991. It does not mean there was no law, but the law determination was based on the Qur'an. At that time, when deciding cases regarding inheritance, the judges were based on the Qur'an.

At the Religious Court of Sleman Regency, the case was initially decided based on Islamic law, marriage, inheritance, and waqf. The government composed the Compilation of Islamic Law because deciding on the same case could have a different impact because each was based on the understanding of different Fiqh experts or interpreters. The Fiqh expert's opinion used was the one the judge concerned believed. Thus, the judges were oriented towards the opinion of the Fiqh experts they follow/madhab. There are madhabs of Shafi'i, Hambali, and others, which have the potential for different decisions in the same case. With the Compilation of Islamic Law, it becomes a unifying tool for judges in deciding a case. The Compilation of Islamic Law is also considered the applicable law in Indonesia, which becomes a reference for judges in deciding a case so that differences in the same case can be minimized.

In Sleman Regency, the problem often complained about by the community related to inheritance problems is that the inheritance has not been divided according to Islamic law; in Javanese terms, it is raised or pointed. Who is this land for, and who is that land for; there is no certificate as proof of ownership/still letter C. Hence, when appointing inheritance, some children feel it is unfair because the distribution is usually the same. There are also cases where the children migrate, so land management is handed over to neighbors. A problem arises when the children come home because the agreement is only based on word of mouth.

In inheritance law, when someone dies, the heirs should not wait too long in the inheritance distribution and do not have to wait 40 days and others. Here, the case of differences in education sometimes also triggers disputes in the inheritance distribution. It causes the decision on inheritance cases cannot be decided quickly and can also take a long time. If each heir understands religion, in which they give in to each other and do not question their

differences, it will be easier and quicker to resolve. What becomes long is when some heirs do not want to budge. Things which should be simplified are not so simple. It is what hinders the decision for a long time. Thus, here, the importance of inheritance science in resolving an inheritance case can be seen.

Also, the division of inheritance becomes a problem when some heirs feel they cannot accept the distribution. Thus, it is important to make a will for someone who will die not to trigger differences of opinion in the inheritance. In addition, family relations can be broken because the inheritance is distributed unfairly. The distribution must also consider the level of education among the heirs. In the Compilation of Islamic Law, wills to children can be considered an inheritance, and wills/grants to children who are not yet mature can also be considered an inheritance. Even if there is no will, a child can still inherit.

Moreover, the will cannot be more than one-third, and the will is allowed for other people unrelated to family. Furthermore, every lawsuit requires mediation to settle case. In the mediation process, if it is agreed upon and finished, it can be faster. Hence, the length and speed of the inheritance settlement depend on mutual agreement. Here, the person who becomes the mediator is a third party who can resolve the case.

Further, the Compilation of Islamic Law can still develop since it is influenced by understanding/interpretation. Concerning inheritance law, the people of the Sleman Regency were still relatively varied, depending on sociological conditions and the level of education. In this regard, disputes arise because of the level of egoism of each family member. In order not to become a dispute, the distribution of inheritance must be resolved immediately and not wait a long time. In the Sleman area, there were more petitioners' cases regarding inheritance than lawsuits. The difference between the petitioner and the lawsuit is that the petitioner only determines the heirs, and the case does not become a dispute, while the lawsuit is when the case becomes a dispute.

Opinions of Religious and Community Leaders

Some Islamic communities in Islamic areas in the distribution of inheritance have not referred to Islamic law. There are several factors that cause this, including:

1. Some people still adhere to Javanese customs from generation to generation, namely the *sepikul segendongan*, which is male 2 parts, female one part, some Javanese people consider men as the main responsibility in the family so they should get more shares.

2. Besides that, there are some people who adhere to the same, because they think it's more fair.

The third factor is that most people in Sleman do not have detailed knowledge of inheritance law according to Islamic law, its procedures, advantages and maybe disadvantages. (Sholeh: Takmir Baitul Muttaqin Mosque)

The context of the Javanese in general holds the principle of “*sepikul segendongan*”. From that, it can be seen the influence of Islamic inheritance law. But in general, people do not understand the details of the *faraid* distribution. Therefore, the application of inheritance law that is socialized through these recitations will make it easier for the Muslim community to calculate inheritance according to sharia. (Rahmat Fajri, Lecturer of UIN Sunan Kalijaga Ushuluddin Study Program).

Inheritance socialization is actually a shared responsibility of all components of society. Islamic organizations such as Muhammadiyah and NU of course also have responsibilities as part of Islamic da'wah. The interpretation of the teachings of inheritance by various scholars can indeed end with the compilation of Islamic law. It's just that the problem of compiling Islamic law does not have a coercive tool like the law. The other side is the practice of society that divides the wealth of parents before death as a grant. Legally, it cannot be blamed for not being included in the category of will or inheritance. (Moh. Mas'udi, head of the mejing Muhammadiyah branch)

V. Conclusion

From the research conducted, the researcher provides several conclusions and recommendations as follows:

1. Even though there is CIL, from the interpretation of the judges, sometimes there are differences in handling dispute cases in court, which in this case is related to inheritance cases.
2. Inheritance conflict cases sometimes cause internal family conflicts because the inheritance process is not yet rigid in a good administrative manner that can be a guide for all family members.
3. Differences in the education of family members are also one of the causes of inheritance conflicts in Sleman.
4. To avoid families from inheritance conflicts, forming a more systematic mediation team is necessary to handle various possible inheritance conflicts.
5. Courts need to resolve inheritance conflicts by setting settlement times more effectively and efficiently.
6. It is important to inherit property before the owner of the inheritance dies.
7. Further research is needed on sociological factors in inheritance issues in Sleman.
8. The Religious Courts Sleman have never socialized the Compilation of Islamic Law on inheritance.

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