



## LEGAL ANALYSIS OF WIFE'S INHERITANCE RIGHTS TO HUSBAND'S PROPERTY IN ISLAMIC INHERITANCE LAW (STUDY OF DECISION NUMBER 2563/PDT.G/2023/PA.Mdn)

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### Abstract

*This study aims to analyze the legal position of the wife regarding the husband's inherited property from the perspective of Islamic inheritance law, with a case study on Decision Number 2563/Pdt.G/2023/PA.Mdn. The focus of this study is to examine how Islamic inheritance law regulates the wife's rights to the husband's inherited property after the husband dies, and how religious courts apply these legal provisions in resolving inheritance disputes. The research method used is normative juridical with a case approach. The data analyzed include primary legal materials in the form of the Qur'an, Hadith, and related laws and regulations, as well as secondary legal materials in the form of Islamic legal literature and expert doctrines. In addition, this study also examines court decision documents to understand the legal considerations used by the panel of judges. The results of the study show that in Islamic inheritance law, the wife has the right to a certain portion of the husband's inheritance, which is specifically regulated in the Qur'an, Surah An-Nisa verse 12. However, the husband's inherited property that is not included in the category of joint property remains part of the inheritance that must be divided according to the provisions of faraidh law. In Decision Number 2563/Pdt.G/2023/PA.Mdn, the panel of judges decided that the wife is entitled to a portion according to the provisions of faraidh, while still considering the status of the property as inherited property that is not mixed with joint property. This study provides an important contribution in strengthening the understanding of the application of Islamic inheritance law in Indonesia, especially regarding the rights of wives to their husbands' inherited property. In addition, the results of this study can be a reference for legal practitioners, academics, and the community in understanding and resolving inheritance disputes fairly and in accordance with sharia.*

**Keywords:** *Islamic inheritance law, wife's rights, husband's inherited property, faraidh, Religious Court Decision.*

### A. INTRODUCTION

Islam is a perfect religion, which regulates all aspects of the lives of its creatures, both physically and spiritually. Islam also understands the situation and condition of humans very well, therefore there is no activity of human life in this world that is missed by the teachings of Islam. As social beings, humans need friends to interact and realize what they want. In Islam it is also called mu'amalah (which regulates social life).

Marriage is an act created by God Almighty to live a good life in nature. Marriage does not only occur between humans, but also between plants and animals. As humans are rational beings, marriage is one of the common cultural characteristics in accordance with the development of human culture in community life. In simpler societies, the culture of marriage is simple, closed, and closed, but in modern societies, the culture of marriage is modern and wide open.

Marriage is a form of sacred behavior, because in marriage there is a relationship that is not only based on physical ties, but also spiritual ties. In Islamic law, marriage is not just a relationship between husband and wife, a change of status, and an effort to satisfy human biological needs, but marriage carries a dimension of worship. In addition, marriage is a sacred and noble thing, worshiping Allah Subhanahu Wa Ta'ala, and emulating the Sunnah of the Prophet Shalallaahu Alaihi Wassalaam and carried out with sincerity and responsibility. Marriage in Law Number 1 of 1974 concerning Marriage in conjunction with Law Number 16

*Muhammad Yaasir Syauiqii Pohan, Hasim Purba, Utary Maharany Barus*

of 2019 concerning Amendments to Law Number 1 of 1974 concerning Marriage in the provisions of Article 1 states that marriage is a physical and spiritual bond between a man with a woman as husband and wife with the aim of forming a happy and eternal family (household) based on the belief in the Almighty God.

One form of relationship between fellow human beings is the emergence of marriage. Islamic law as a unified legal system, also regulates marriage. The marriage system determines the family system, the family system determines the inheritance system. With the existence of marriage, a form called family emerged. The definition of family in Islam will determine the position in the inheritance system.

Marriage is a recommendation from Allah SWT which aims to unite two families who generally have different backgrounds. The unification of two families in Islam begins with a contract or alliance. According to Abu Zahrah in his book *al-Aḥwalal Syakhsiiyah* quoted by Amiur Nurudin and Azhari Akmal Tarigan that the contract in a marriage gives rise to legal consequences in the form of halal sexual intercourse between a man and a woman, besides that marriage also means helping each other and giving rise to rights. and obligations between the two.

The consequences of marriage on the property of husband and wife according to the Civil Code are mixed property in Article 119 of the Civil Code, property acquired during the marriage becomes joint property including all marital property, namely property that already exists at the time of marriage, property acquired during the marriage. The marriage agreement must be made in writing, and made before the marriage takes place, and comes into effect from the time the marriage takes place. The agreement is attached to the marriage certificate and is an inseparable part of the marriage certificate, and the marriage agreement is made with mutual consent or will, made in writing, approved by a civil registry officer, and must not conflict with the law, religion and morality.

Inheritance is a variety of rules regarding the transfer of property rights of a deceased person to his/her heirs. In other terms, inheritance is also called *fara'idh*, meaning a certain portion that is divided according to Islam to all those who are entitled to receive it. The property brought by the husband and wife and the property obtained by each as a gift or inheritance, is under the control of each as long as the parties do not determine otherwise. If discussing the issue of property in marriage, then basically the property obtained during the marriage becomes one, becomes joint property. Article 119 of the Civil Code states that "the wealth of each person brought into the marriage is mixed into one".

The legal source used as a basis for inheritance matters is the Qur'an, namely Surah An-Nisa verse 33:

It means: For each (male and female) We have appointed heirs for what their parents and close relatives left behind. Those to whom you have sworn allegiance, give them that share. Indeed, Allah is the Witness of all things.

The verse confirms that every child has the right to obtain his/her rights as an heir and has determined each portion of the property that is intended for him/her. A child in the womb if its existence is known before or after the testator dies, can also be categorized as an heir. However, if the child dies before birth, then the child is considered to have never existed and is not an heir.

Judging from the case example in decision Number 2563/PDT.G/2023/PA. Mdn, That the Plaintiff filed a Lawsuit for Inheritance of Mal Waris with his letter dated October 11, 2023 which was registered at the Medan Religious Court clerk's office with Case Register Number 2563/Pdt.G/2023/PA.Mdn dated October 12, 2023 whose *posita* and *petitum* are as follows:

1. That Plaintiff I (Samiah) is the biological mother of the deceased Jino and the biological father of the deceased Jino is named Ziro, who has a son named Jino and the deceased is

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- their respective sibling (Plaintiff II), Bela (Plaintiff III), Nadine (Plaintiff IV) and Nada (Plaintiff V);
2. That the husband of Plaintiff I and the biological father of the deceased Jino who was also the biological father of Plaintiff II, Plaintiff III, Plaintiff IV and Plaintiff V named Nada died on August 31, 2022 in a Muslim state due to illness;
  3. That the biological child of Plaintiff I named Jino has married a woman named Popy, SH on Sunday, June 11, 2023 in accordance with the Marriage Certificate Extract Number: 1271181062023016 issued by the Marriage Registrar (PPN) at the Religious Affairs Office (KUA) of Medan Perjuangan District, Medan City on June 12, 2023;
  4. That from the marriage of Plaintiff I's biological child named Jino with Defendant (Popy, SH) they have not been blessed with offspring/children;
  5. That the biological child of Plaintiff I named Jino and the Defendant's husband died on 20-07-2023 in a Muslim state due to illness;
  6. That the age of marriage between Plaintiff I's biological child named Jino and the Defendant was only 1 (one) month old and had not had sexual intercourse, married on June 11, 2023 after the marriage contract, the wedding party and in the early hours of the morning Plaintiff I's child named Jino fell ill and was taken to the hospital in Medan after being treated for several days, then taken for treatment to Malaysia after being treated for several days in Malaysia was taken back to Medan and was finally treated at the Haji Adam Malik General Hospital Medan and the biological child of Plaintiff I and the Defendant's husband breathed his last/died on July 20, 2023; the judge's verdict is as follows: the personal property/property of the deceased Jino in dictum number 4 above becomes a heirloom or inheritance after the Heir's debt is paid; Determining the share of each heir of the deceased Jino is as follows: Jino as the biological mother receives  $1/6$  ( $12/72$  x inheritance); Ziro as the biological brother receives  $14/72$  x inheritance; Bela as a biological sister gets  $7/72$  x the inheritance; Nadine, as a biological sister, gets  $7/72$  x the inheritance; Nada, as a biological brother, gets  $14/72$  x the inheritance; Nada, SH, as wife received  $18/72$  x inheritance.

## **B. FORMULATION OF THE PROBLEM**

1. What is the Position of the Wife in the Islamic Inheritance System?
2. What are the Wife's Inheritance Rights for the Husband's Inheritance in Islamic Inheritance?
3. What is the Judge's Legal Consideration in Decision Number 2563/ Pdt.G/2023/PA. MDN Regarding the Wife's Inheritance Rights to the Husband's Property?

## **C. DISCUSSION**

### **1. The Position of the Wife in the Islamic Inheritance System**

#### **a. Understanding Inheritance Law**

In terms of language, the word Mawarits is the plural of mirats, (irts, wirts, wiratsah and turats which are interpreted as mauruts) is "the inheritance of a deceased person which is passed on to his heirs." The person who leaves behind is called muwarits. While those who have the right to receive the inheritance are called warits.

Mawarits is one of the important things that must receive special attention from every Muslim. The law of studying the science of mawarits is fardlu kifayah. The Prophet Muhammad SAW motivated his people to study and teach it as mentioned in many hadiths. One of them is:

Meaning: "Learn the science of faraidh (Mawarith), and teach it to people. Because it is half of knowledge, and it will be forgotten, and it is the first knowledge that will be removed from my people.

Inheritance is a variety of rules regarding the transfer of property rights of a deceased person to his heirs. In other terms, inheritance is also called *fara'idh*, meaning a certain portion that is divided according to Islam to all those who are entitled to receive it.

According to legal terminology, inheritance can be interpreted as a law that regulates the distribution of inheritance left by heirs, knowing the parts received from the inheritance for each heir who is entitled to receive it. In this case, the *fuqaha* define the meaning of inheritance with knowledge with which it can be known who inherits, who does not inherit, the amount received by each heir by means of its distribution.

**b. Basics of Inheritance Law**

Islamic law has established provisions regarding inheritance that are very good, wise and fair. Regulations relating to the transfer of property belonging to a person left behind after death to his/her heirs, both female heirs and male heirs. These inheritance laws are based on:

1) Al-Quran QS. An-Nisa 7

أَوْ مِنْهُ قَلٌّ مِمَّا وَالْأَقْرَبُونَ وَالنِّسَاءَ وَاللِّسَاءَ وَالْأَقْرَبُونَ وَالْوَالِدَانَ تَرَكَ مِمَّا نَصِيبٌ لِلرِّجَالِ مَفْرُوضًا نَصِيبًا كَثِيرًا

Meaning: For men there is a right to a share of the inheritance of both parents and their relatives and for women there is a right to a share (also) of the inheritance of both parents and their relatives, whether it is little or much, according to the portion that has been determined.

**c. Conditions and Pillars of Inheritance Law**

In Islam there are 3 (three) pillars of inheritance, namely:

- 1) Heir, namely a person who has died either in essence or legally. It is said legally, because the person who died was based on a judge's decision due to several reasons or considerations.
- 2) Inherited assets, namely assets left by someone who has died, which can be inherited by heirs. In the Al-Quran, inherited assets are referred to as *tarakah*, which is translated as inherited assets, but not all inherited assets can be inherited. Assets that can be inherited are assets that are clean, free from all ties with other people, including *tajhiz*, debts and wills.
- 3) Heirs, namely people who will receive inheritance from the testator, due to the existence of a basis or cause for inheritance, either due to kinship or marriage or due to other reasons.

**d. The Position of the Wife in Islamic Inheritance Law**

A person as a member of a particular society has rights and obligations as well as legal relationships. These rights and obligations and legal relationships will not simply disappear with the death of the person concerned, but will continue until there is a resolution. The issue of inheritance will arise immediately after a person dies. Inheritance law contains provisions regarding inheritance issues. So it is a law that regulates the assets of a deceased person, which designates who will manage the assets, or who will be the heirs.

Husband or wife: if a husband dies, then the wife with children who are not yet adults, tends not to be divided into inheritances even though this is not in accordance with Islamic law which emphasizes not to delay the division of inheritance so that the inheritance is not mixed with the rights of others. Therefore, as long as she does not remarry, the wife controls the assets in the marriage for the benefit of the children who still need guidance and care. This action is considered practical and functional by society for the wife and children. In fact, inheritance is not only the right of the wife or husband and children because parents if they are still there, for example,

have the same position as the wife or husband and children to obtain inheritance. Therefore, the way out that is taken if the children are still small is to appoint a guardian for the children who are not yet able to carry out their rights and obligations. This is the way out provided by the compilation of Islamic law Article 184, namely not by not dividing the inheritance. This does not mean that the wife is not an heir, because if the wife remarries, she can act as the heir of her deceased husband. Her share is the same as the child's share. If the wife who is left behind is old, then her share must also be in accordance with the situation and condition. Parents usually no longer have much desire or need for property, either for consumption or production. The most important need is only health care and maintenance, so they do not receive a share of the inheritance like their children receive. However, the wife has the right to enjoy the property in the family by (a) the wife follows one of her children (b) the wife may receive a certain share of the property, but is limited in using and enjoying it, until she dies.

## **2. The Wife's Inheritance Rights for the Husband's Inheritance in Islamic Inheritance**

The assets of a husband and wife, or what is often known as marital assets, are assets that are used or intended for to meet daily needs in household life. This wealth is sometimes already owned by the husband or wife before they get married or is obtained after the marriage bond.

According to Sayuti Thalib in his book entitled Indonesian Family Law, defines marital assets as assets obtained during the marriage outside of gifts or inheritances. What is meant is assets obtained through their respective efforts during the marriage. According to Drs. Abdul Manan, SH, M.Hum. that joint is assets obtained during the marriage and without questioning whose name it is registered in.

From the quote above, it can be concluded that assets in a marriage are assets obtained either individually or jointly by the husband and wife during the marriage without questioning whose name they are registered in and assets obtained by each party as a gift or inheritance are under the control of each party.

Sayuti Thalib explained that for the assets of a husband and wife, there is a possibility of syirkah, namely the mixing of assets obtained by the husband or wife. Assets that can be made into syirkah are assets brought in, assets from each person's business or livelihood, and assets from each person based on a will, inheritance, or gift. Among the ways in which syirkah occurs are:

- 1) By way of written or oral agreement, before or after the marriage contract. Whether the agreement is for property brought, property earned, or property obtained from a will, inheritance and gift.
- 2) Regulated by law or statutory regulations which state that property obtained through the efforts of one or both husband and wife during the marriage period is joint property or partnership property. As stated in Article 35 Paragraph (1) of Law Number 1 of 1974 concerning Marriage, namely "Property obtained during marriage becomes joint property."

In the Compilation of Islamic Law (KHI) Chapter XIII Articles 85-97 there are regulations regarding joint property in marriage, namely: Article 85: The existence of joint property in marriage does not preclude the possibility of there being property owned by each husband or wife.

Article 86:

- 1) Basically, there is no mixing between the husband's and wife's assets due to marriage.

*Muhammad Yaasir Syaouqii Pohan, Hasim Purba, Utary Maharany Barus*

- 2) The wife's property remains the wife's right and is fully controlled by her, likewise the husband's property remains the husband's right and is fully controlled by him.
- 3) In this article, it is emphasized again that the existence of marriage does not cause the mixing of assets. Each party, both wife and husband, still has full rights to their assets. This provision provides an understanding that the assets brought by the husband and wife into the marriage remain their respective assets as long as there are no other provisions in the marriage agreement.
- 4) Inherent property in the Great Dictionary of the Indonesian Language is defined by two words, namely "Property" and "Property". "Property" is goods (money and so on) that become wealth or property of a person, tangible and intangible wealth that is valuable and according to law is owned by the company. While "Property" is the property itself that is brought into a marriage that is not joint property. It can be concluded that inherent property is goods or money and so on owned by a person brought into a marriage.

According to Anshary MK, the assets brought in can be in the form of inheritance, gifts, or wills, which are received by each husband and wife from their parents or relatives.

Explanation of Article 36 paragraph 2 of Law Number 16 of 2019 amending Law Number 1 of 1974 concerning marriage then Junto Article 87 paragraph 2 of the Compilation of Islamic Law explains that, "Wives have full rights to carry out legal actions against their respective personal property". They are free to determine their property without interfering to sell it, give it away, or mortgage it. Also, no legal assistance is needed from the husband to take legal action against his personal property. There is no difference in legal capacity between husband and wife in controlling and taking action against their personal property.

Regarding the form of personal property or property brought in, this is in line with what has been explained in Article 35 paragraph (2) of the Marriage Law. This provision applies as long as the husband and wife do not determine otherwise in the marriage agreement before the marriage contract is carried out. The property that becomes the personal property of the husband or wife is:

Brought-in property, namely property that existed before their marriage took place,

Property acquired by each spouse during the marriage but limited to acquisitions in the form of gifts, grants and inheritances.

Apart from this type, all assets immediately become joint assets in marriage. Personal ownership of inherited assets in Islam is concluded from the QS. An-Nisa' verse: 32, namely: "And do not be jealous of what Allah has given to some of you more than to others. (Because) for men there is a portion of what they earn, and for women (too) there is a portion of what they earn, and ask Allah for some of His bounty. Indeed, Allah is All-Knowing of everything."

### **3. Legal Considerations of the Judge in Decision Number 2563/ Pdt.G/2023/PA. MDN Regarding the Wife's Inheritance Rights to the Husband's Property**

The verdict in the verdict regarding the inheritance above is as follows: Granting the Plaintiffs' lawsuit, Determining that the deceased Jino died on July 20, 2023 due to illness while a Muslim; Determining the heirs Samiah (biological mother/Plaintiff I); Nadine Plaintiff II); Bela Plaintiff III); Ziro Plaintiff IV); Nada Plaintiff V (biological sibling/ (biological sibling/ (biological sibling). WITH the various evidence listed, the wife of the deceased received a share of 18/72 of the inheritance, where the property was inherited property.

*Muhammad Yaasir Syauiqii Pohan, Hasim Purba, Utary Maharany Barus*

So by using the knife of analysis of the theory of justice, it is expected to answer the third problem formulation where it is expected that the judge's legal considerations in the wife's inheritance decision can provide justice in accordance with Islamic law. Namely with section 6.6. Popy as a wife receives  $18/72$  x the inheritance.

The word justice is an Indonesian word derived from the word al-'adlu. In the Qur'an the word al-'adlu is mentioned more than 28 times. Some of them were revealed by Allah in the form of command sentences and some in the form of news sentences. The word al-'adlu is put forward in different contexts and different directions, so it will provide different definitions according to the context and purpose of its users.

In terms of justice, it means placing something in its place, time, position, level without any attitude of reducing or exceeding. According to al-Jurjani, justice is steadfastness in the path of truth and abandoning all forms that can damage religion. Abdurrahman Sa'di stated, "Allah's justice includes the rights of Allah and His servants, justice which fulfills rights perfectly by carrying out Allah's obligations towards His servants in matters of rights to property and souls. According to Wahbah Zuhaili, justice is carrying out every obligation, both from aqidah and sharia, and interacting with humans by fulfilling mandates, not doing wrongdoing, acting in a balanced manner, and behaving correctly.

Justice in Islamic law is based on justice that has been determined by Allah SWT, because it is impossible for humans to know justice correctly and precisely. In Islamic law, faith precedes understanding, because it has been determined that everything determined by Allah SWT must be fair. So that justice in inheritance matters is carrying out Allah's command in inheritance matters by dividing it according to the rules that are in accordance with the Qur'an and Sunnah.

Justice comes from the word fair, according to the Indonesian Dictionary fair means not arbitrary, impartial, not biased. Fair mainly means that a decision and action are based on objective norms. Justice is basically a relative concept, everyone is not the same, fair according to one is not necessarily fair for another, when someone asserts that he is doing justice, it must of course be relevant to public order where a scale of justice is recognized. each scale is defined and fully determined by society in accordance with the public order of that society.

These values of justice must be a basis that must be realized in living together as a nation to realize the goals of the state, namely realizing the welfare of all its citizens and all its territories, educating all its citizens. Likewise, these values of justice are the basis for relations between nations in the world and the principles of wanting to create order in living together in relations between nations in the world based on the principle of freedom for every nation, eternal peace, and justice in living together (social justice). As with the division of inheritance contained in the court decision, it is hoped that it can provide comprehensive justice.

The concept of justice when analyzed, then in Islamic inheritance law adopts the concept of distributive justice (*justicia distributiva*) meaning a justice that is given to each person based on their services, or distribution according to their respective rights. Rights are given according to the obligations carried out. Likewise in the provision of inheritance portions between sons and daughters. Sons have the right to receive a larger portion of the inheritance, because the obligations they bear are also many.

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## **D. CLOSING**

### **1. Conclusion**

- 1) So if someone dies, his family replaces his position, has the same rights and obligations as the deceased should have. Replacing the place or position of the deceased is called inheriting. The assets that are transferred or inherited are only rights and obligations in the field of family law, or personal rights and obligations, for example; rights and obligations as a husband, likewise the rights and obligations of morality and manners cannot be inherited. The distribution of the wife's inheritance where the wife will get one-eighth of the inheritance if the husband dies and has children or grandchildren, whether the child is born from her own womb or from the womb of another wife.
- 2) Article 87:1. The inherited assets of each husband and wife are assets obtained by each as a gift or inheritance and are under their respective control, as long as the parties do not specify otherwise in the marriage agreement. 2. Husband and wife have rightsfully to carry out legal acts on each other's assets in the form of grants, gifts, alms or others.
- 3) The judge's legal considerations in the inheritance decision, as stated in the Decision Study Number: 2563/Pdt.G/2023/PA.Mdn, which when viewed from the verdict, there is a division of the wife's inheritance where the wife gets 18/72 of the joint assets during the marriage, where the deceased has assets but the wife does not get them, where when viewed, the assets are separated from the joint assets and the assets are assets that existed before the marriage took place.

### **2. Suggestion**

- 1) To all Indonesian people to understand about the division of inheritance so that there is no conflict during the division of the assets and can distinguish between assets brought in and assets jointly owned, because assets brought in are assets that existed before the marriage so that if there is a division of the wife's inheritance, what is divided is the joint assets during the marriage.
- 2) To the judges to give the fairest decision in this inheritance case so that no party is harmed, of course, because with the distribution according to Islamic law that is used, no one is harmed. a. There needs to be a legal force that regulates the status of property ownership for both wives and husbands in the inheritance laws that apply in Indonesia. There needs to be more detailed clarity for regulations regarding the status of family property ownership to make it easier for the public to understand the legislation regarding the status of property ownership in the family.
- 3) To the government, there is a need for socialization regarding the status of property ownership in the family in order to facilitate solutions based on justice in inheritance conflicts within the family for women who work to support the family economy. In the process of resolving inheritance conflicts for women who work to support the family financially, it is best for judges to be more progressive so that decisions based on justice can be obtained.



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