DELAYS ON DISTRIBUTION OF INHERITANCE AS WISE AS FROM THE PERSPECTIVE OF POSITIVE LAW AND FIQH LAW ACCORDING TO ULLAMA IN ACEH

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ABSTRACT
this research describes the delay in distribution of inheritance according to positive law and fiqh law according to ulama in aceh. the purpose of this research is education and advocacy for the community. according to postive law and fiqh law, inheritance is an absolute right of the heirs which should be distributed immediately after paying off the debts and inheritance of the heirs, but because the distribution is not hastened, it has a negative impact on the heirs. delays in dividing inherited assets result in loss of rights and changes in the value of inherited assets. this phenomenon often occurs in society in general, especially the people of aceh tamiang regency. this type of research is field research where the main source is the results of field interviews. the results of this research based on the perspective of positive law and fiqh law are: 1) the impact of delays in the distribution of inheritance, namely: the occurrence of family problems/breakdown of ties between heirs, which can result in loss of property value, as well as abuse of some heirs because of their rights. not fulfilled. 2) the views of the aceh tamiang ulama regarding postponing the distribution of inheritance are divided into three laws, namely: obligatory postponement, permissible postponement, and haram postponement. these three laws are adapted to the situation that occurs if the distribution of inheritance is delayed due to doubts regarding the lineage and/or doubts about whether or not heirs are obligated for life until there is a determination of the lineage and/or heirs from the court. likewise, delaying the distribution of inheritance due to doubts due to the actual pregnancy or doubts regarding gender (khunsa) is mandatory so that the status of both is clear. if you postpone the distribution of inheritance, if you get the approval of all the rightful heirs and are mu'tabar in giving permission and administering it according to sharia law, then it is permissible. if delaying the distribution of inherited assets creates injustice for the heirs or results in losses and a decrease in the value of the assets, then the law is haram.

keywords: postponement, inheritance, positive law and fiqh

1. INTRODUCTION
Islam recognizes how urgent it is to protect property, even worship must have wealth, just as people who pray must have wealth to buy clothes to cover their genitals, buy water for ablution, so do zakat and hajj, they need assets to be able to fulfill them. Even though wealth is not the main goal, it is part of the means that must exist for the realization of the main goal, namely worship. The existence of wealth in human life is actually expected to be a means to get closer to God as well as a test for humans. As the word of God in the letter Al-Taghabun 64:5
Surely your wealth and your children are only a trial (for you), and with Allah a great reward.

Basically, the wealth that exists in humans belongs to Allah, while humans are only limited to the right to manage and use it according to Allah's commands, not to be used for immorality, and not to be managed for things that are harmful. In addition to Allah regulating how to manage Allah also regulates how to obtain it, namely in a lawful way as in the Zahir verse, there are at least 4 places in the Koran where Allah condemns the act of consuming or obtaining wealth in vanity, namely Q.S. Al-Baqarah/2:188, Q.S.Al-Nisa/4:29, Q.S. Al-Nisa/4:161 and Q.S.Al-Taubah/9:34. The four of them are criticisms in different contexts, the point is that under any circumstances Allah forbids tyranny in obtaining them. As Allah says: (Q.S. Al-Baqarah/2:188)(Khasanah, Muhajir, and ... 2022)

And do not eat wealth among you in vanity, and (do not) bribe the judges with that wealth, with the intention that you can eat some of other people's property by sin, even though you know.

There are many ways to get wealth, both by trading, working, farming, mining and many other types of businesses that can obtain wealth, including by inheritance. Shari'a regulates the mechanism of inheritance known as the science of "Mawaris" or "Faraid" this science is a branch of fiqh science in which the mechanisms for conditions, pillars of barriers and procedures for dividing inheritance are in accordance with the Al-Quran and Assunnah, as well as the Ijtihad of Friends / Cleric. As the word of God in the sura: (Q.S. Al-Nisa/4:11)

Allah prescribes (obliges) you regarding (the distribution of inheritance for) your children, (namely) the share of a son is equal to the share of two daughters. And if the children are all girls whose number is more than two, then their share is two-thirds of the assets left behind. If she (daughter) is only one, then she gets half (of the assets left behind). And for both parents, the share of each is one-sixth of the assets left behind, if he (the deceased) has children. If he (the deceased) does not have children and he is inherited by both his mother and father (only), then his mother gets one third. If he (the deceased) had several brothers, then his mother got one sixth. (The distributions mentioned above) after (fulfilled) the will he made or (and after paying) his debts. (About) your parents and your children, you do not know which of them is of more benefit to you. This is Allah's decree. Indeed, Allah is All-Knowing, All-Wise."(Fitriyani 2020)

This verse implies the rights and conditions for inheritance that should be obtained by the heirs, but the phenomenon that occurs in society is just the opposite. In distributing inheritance, especially in Aceh Tamiang Regency, the concept of custom or adat is usually used, the distribution of inheritance is based on the agreement of the heirs, by dividing it equally. If there is disagreement then involve religious leaders to be resolved by faroid.
Inheritance problems are not only limited to their distribution, they are even a big problem and often occur in Aceh Tamiang Regency, namely delaying the distribution of inheritance for an indefinite period of time. The world before the inheritance was shared. Syamsul Rizal, as the Head of the Islamic Sharia Service, confirmed this, there are often cases where delays occur. "If the distribution of inheritance has been delayed, there will definitely be problems in the future," he explained. He added, almost all the problems that arose regarding inheritance were the result of delays. Cases like this have also occurred in one of the villages in Rantau District, precisely in Kampung Landuh, as explained by Helmi as Datok Penghulu of Kampung Landuh, he explained what had happened to residents who were chaotic within the family due to delays in the distribution of inheritance. There are many phenomena of conflict in the distribution of inheritance due to delays in the distribution and misunderstanding of the people about Islamic teachings, based on this the author is interested in conducting research with the title "Views of the Aceh Tamiang Ulama on Postponement of the Distribution of Inheritance" (Basri 2020).

2. RESEARCH METHODOLOGY

In this study, the authors used qualitative legal research and normative legal research, namely what we know as library law research, namely legal articles conducted by researching based on materials sourced from the literature. The data sources used by the author of the article in this writing include primary legal materials (binding legal materials), namely the applicable laws and regulations relating to the issues in this article. Secondary law, namely legal material that provides a description of primary legal material, among others; commentaries, general books, journals, documents and other references related to this article. Tertiary legal materials, namely legal materials that provide instructions and explanations of primary and secondary legal materials, such as dictionaries and other reference materials that support the writing of this article. As for the data collection technique in writing this article, the authors used library research or literature study, while the data analysis technique used was a qualitative comparative technique, namely providing a comparative review of fiqh and positive law on existing problems. (Nasrullah Kartika MR and Noor 2014)

3. RESEARCH AND DISCUSSION

Reasons for Postponement of Inheritance Distribution

Based on the author's information and analysis, the things behind the delay in the distribution of inheritance are: A form of respect for one of the living parents. Take care of the feelings of parents and senior heirs who are still alive. Parents' orders to postpone the distribution of inheritance as long as he is still alive. Confusion about inheritance rights because of the complicated chronology regarding the origins of business capital originating from inherited assets that have not been distributed. There is concern that there will be a sale of inherited assets if they are distributed where according to the customary assumption that inherited assets are “hot treasures. The heirs are not old enough/not competent to obtain inheritance, but when the age and skill limits are reached, the inheritance rights are also not distributed; and Detention based on the agreement of all heirs so that it becomes a memento and a place to stop/gather on special days. (Wahyuni 2018)

The Impact or Consequences of Postponing the Distribution of Inheritance

The impact arising from the postponement of the distribution of inherited assets which includes aspects of family relations and assets. When viewed from the aspect of
family relations, the impact of this delay is the loss of family relations/loss of family harmony. There was a prolonged dispute, even to the point where there was mutual slander and even physical fighting. Sentenced "child of disobedience" by the mother or father who delays the distribution of inheritance, is aimed at children who ask for distribution of inheritance. Considered greedy for asking for the distribution of inheritance. Claims of greedy children, are not good, because they ask for a share of the inheritance. If from the aspect of assets the impact arising from the delay in the distribution of inherited assets is that the inherited assets are not recorded because one of the parties is selling, utilizing etc. The inheritance runs out because one of the heirs uses it and doesn't want to be responsible. Mastery with a claim that there is a contract of sale and purchase of inherited assets. Unilateral control of property. The house where he lived was damaged and his property was taken by one of the heirs as a barrier to the distribution of ownership rights to the house. The value of the property decreases with time. It is difficult to complete because some of the heirs have died while the inheritance has shifted to the descendants of the heirs.

Views of Aceh Tamiang Ulama on Postponement of Distribution of Inheritance

What is meant by Aceh Tamiang Ulama here are religious leaders including the Aceh Tamiang Ulama Consultative Council, District/Border Preachers, Board of Islamic Boarding School Leaders and Academic Ulama, from several elements of the Ulama the Author received the following explanation:

a. Ust. Syahrizal Darwis, MA (Chairman of MPU Aceh Tamiang) explained:

In principle, inheritance is an absolute right for heirs, so delaying the distribution of inheritance means delaying the rights of other people, blocking the rights of other people, so the law is unlawful. As the fatwa of the Aceh Ulama Consultative Assembly Number 3 of 2023 concerning Postponement of the Distribution of Inheritance in the Perspective of Islamic Law, Positive Law and Acehnese Customs. In the fatwa it can be classified that the law on delaying the distribution of inheritance is divided into three, sometimes it is obligatory, mubah and unlawful. If delaying the division of inheritance due to doubts caused by obvious pregnancy or doubts on the sex (khunsa) is obligatory so that the status of both is clear. If delaying the distribution of inheritance is based on the agreement of all heirs and it is managed according to syari'i law, then the law of such a delay is permissible/mubah. If delaying the distribution of inheritance that oppresses some of the heirs or causes damage and reduces the value of assets, then the law of such a delay is unlawful. The background of these three laws is the frequent occurrence of family problems in the community due to delays in the distribution of inherited assets and can result in loss of property value, the property itself and the injustice of some heirs. The purpose of the Shari'a is to protect five important things, one of which is protecting wealth, besides that, leaving evil is more important than maslahah, as is the rule of ushul.(Fitriyani 2020)

b. DR. Mustafa Abdussalam (Head of Islamic Boarding School. Manarul Islam) he explained:

In principle, there is no explicit order for the division of inherited assets to be distributed immediately, the main thing is that all heirs know their rights. hastening the distribution of inheritance can be interpreted as a joint step to determine the share of each heir to the existing inheritance. If each heir already knows their share, the next step is the technical problem of dividing the inheritance object. One case allows inheritance to be divided immediately at that time. However, there are not a few cases in the distribution of inheritance where the inheritance is difficult to immediately divide for various reasons. More specifically, the postponement of the distribution of legal inheritance may be provided that
each heir knows each other's rights, no one is wronged and there is an agreement to postpone the distribution.

c. Ust. Baharudin, M.H.I (Head of the Syari'ah Department of STAI Aceh Tamiang Explains:)

Even though there is no argument that explicitly forbids delaying the distribution of inheritance, if you use the Maqasid Syari'ah approach, it can be assumed that delaying the distribution of inheritance has a negative impact, so I conclude that delaying the distribution of inheritance is haraam. (Wahyuni 2018)

d. Ust. Ahmad Nabawi (One of the Da'I) he explained:

In Islamic Inheritance Law, several principles are recognized, one of which is the Ijbari principle. The principle of Ijbari means that when someone dies, the rights of each heir immediately apply without having to depend on the will of the heir. Thus, when someone dies, that is after completing all matters related to the costs of managing the body (tajhizmayyit), debts and wills. Then the inheritance becomes the absolute right of the heirs.

The Ijbari principle contains absolute values, this can be interpreted that the heirs already know how many inherited shares they will acquire, so that under no circumstances will their rights change. This indicates that all actions on inherited assets will not affect the amount of a person's inheritance rights even though there are several possibilities that must be postponed. Delaying the distribution of inheritance is legal by looking at the extent to which the heirs agree to the delay. It is limited to regulating, not "dewingend" or absolute. The heir fully has the power over his rights so that it is possible for him to do anything about the property he inherited. In addition, the Shari'a allows for a postponement of the distribution of the inheritance in some cases such as a missing person, in this case the scholars agree to justify the postponement until the status is actually known whether he is still alive or dead. Apart from cases where the delay is justified by the Shari'a, that is, after the rights of each heir are clear, then there is no longer any reason for delaying the distribution. Thus, the inheritance must be paid immediately.

It is another case if you take another alternative by transferring the function of the inheritance based on the will or agreement of all the heirs. As an analogy in this case, where the heirs agree to make the inheritance into syirkah property where they invest with the inherited property so that the heirs act as guarantors for shares in it. However, if no agreement is found in the delay, then there is no reason for some of the heirs to postpone the distribution. Islamic Inheritance Law also focuses on hastening the division of inheritance which aims to bring about the benefit of family and kinship relations. In other words, any action outside the essence of the verses of inheritance, such as delaying the distribution of inheritance, is an act that is not justified because it can interfere with the rights of other people. There are several principles of fiqhiyah that are compatible with responding to this problem.

4. CONCLUSION

The impact of delaying the distribution of inherited assets, namely: Family problems/disconnected friendship between heirs, can result in loss of property value, and injustice to some heirs because their rights are not fulfilled. The views of Aceh Tamiang Ulama on delaying the distribution of inheritance are divided into three laws, Postponing
the distribution of inheritance due to doubts about lineage and/or doubts about whether or not the heirs are alive or not is mandatory until there is a determination of lineage and/or heirs from the court. Likewise, delaying the distribution of inheritance due to doubts caused by real pregnancy or doubts about gender (khunsa) is obligatory so that the status of both is clear. While postponing the distribution of inheritance, if it gets the approval of all the heirs who are entitled and mu'tabar in giving permission and it is managed according to syar'i law, it is mubah/ permissible. As for delaying the distribution of inherited assets which results in the injustice of the heirs or results in damage and a decrease in the value of the assets, then the law is unlawful.

REFERENCES


