

Wife's Inheritance Rights Due to Husband's Division with Raj'i Divorce According to Islamic Law

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Abstract: Inheritance law is the law that regulates the transfer of property from the heir to the heirs and determines who the heirs are and determines the share of each. One of the reasons for the occurrence of mutual inheritance is the existence of a valid marital relationship between husband and wife. However, when husband and wife are divorced or divorce occurs, it will create a new law. That is, when the wife is in a state of raj'i divorce and then the husband dies while the wife is still in the Iddah period, the wife still gets the inheritance rights from the husband who died. Meanwhile, when the wife is divorced three times or divorced ba'in, the scholars of madzab agree that the wife does not get inheritance from her husband who dies even though it is still in iddah. Except for talak ba'in which the husband inflicts when he is sick, which intends to avoid giving the wife an inheritance, the scholars of madzab agree that the wife still gets the inheritance from her ex-husband.

Keywords: Raj'i divorce, Ba'in divorce, inheritance, husband, wife.

I. INTRODUCTION

Marriage aims to realize domestic life forever in achieving eternal happiness for husband and wife. Husband and wife are united in a sacred and strong bond. With a strong and cocoon agreement (Misaqan Galidlan) it is hoped that the household will become a happy and orderly peace, a place to pour out love between the two and be able to give birth to pious and pious offspring.

Marriage is an inner and outer bond between a man and a woman as husband and wife with the aim of forming a happy and eternal family (household) based on the One Godhead. (Mohd Idris Ramulyo, 2000: 43). Thus marriage is carried out in order to build a happy and prosperous family for the purpose of living with husband and wife forever.

In the perspective of Islamic law, marriage gives rise to the right to inherit between husband and wife. The legal basis is in the Qur'an surah al-Nisa 'verse 12: "And for you (husbands) is a half of the property left by your wives, if they do not have children. If they (wives) have children, then you will get a quarter of the property left by them after (fulfilling) the will they made or (and after paying) the debt. Wives get a quarter of what you leave if you have no children. If you have children, then the wives get one-eighth of the property you leave behind..." (Qur'an Surah al-Nisa': 12)

Marriage which is the cause of the emergence of inheritance law between husband and wife is based on two conditions,

namely, first, the marriage is legal according to Islamic law. The conditions and pillars in marriage must be met, in carrying out the marriage contract. Second, the marriage is still intact. That is, husband and wife are still bound by the ties of marriage when one of them dies. If one of the parties dies, while the marriage bond has been broken in the condition or state of talak raj'i while the woman is still in the iddah period. Women who are undergoing a period of iddah talak raj'i still have the status of a wife with all the legal consequences, except for sexual relations (according to the majority of scholars) because the legality of sexual relations has been finalized by divorce. (Moh Muhibbin, et al, 2009:73-74).

In married life, husband and wife are certainly not always smooth and smooth in navigating it, but of course there are also obstacles and obstacles that stand in their way. Household problems can not be separated from the various family factors that are in it. Between husband and wife there must be mutual understanding and mutual understanding when differences arise. The husband as the head of the household must be able to provide protection to his wife, behave and act wisely, can guide and educate his wife and children, and can be a good partner to his partner. In other words, you can do ma'ruf in your family association.

Basically divorce is prohibited by religion, as the words of the Prophet Muhammad SAW: "*Abghadhu al-halali ila Allah al-Thalaq*". Therefore, in domestic life, it is expected to maintain and avoid divorce, because divorce is a lawful act but is displeased by Allah SWT.

Judging from the perspective of Islamic law, divorce can be seen in terms of the number of divorces handed down, or in terms of the manner in which divorce occurs, then divorce can be distinguished or divided into two types:

- a. Raj'i divorce, which is a divorce that still allows the husband to refer to his ex-wife without a new marriage contract. Namely the first and second divorces that will be imposed on the wife who has been interfered with and not at the request of the wife accompanied by a ransom (*iwadh*).
- b. Ba'in divorce, which is a divorce that does not allow the husband to refer to his ex-wife, except by entering into a new marriage contract. Meanwhile, there are two kinds of talak bain, namely small ba'in divorce (*sughra*) and large ba'in divorce (*kubra*). (Akhmad Azhar Basyir, 1999: 80)

Most people understand that if there has been a divorce between husband and wife, it is as if everything has been broken up, including the right to inherit from her ex-husband who has died. In terms of the study of Islamic law, there are various types of divorce, as mentioned above, there are Raj'i divorces and there are *bai'in* divorces. Meanwhile, *bai'in* divorce is divided into two more, namely *bai'in sughra* divorce and *ba'in kubra* divorce. In the case of *raj'i* divorce during the *iddah* period, essentially the wife who has been divorced is still the husband's wife.

In relation to this author's title, the divorce discussed is *raj'i* divorce, namely the first divorce and the second divorce that the husband gives to his wife. When the husband divorces his wife by *raj'i* divorce, then the wife has a waiting period or *iddah*. During the *iddah* period the wife is not allowed to remarry another man, In the author's observation, most people understand that if there has been a divorce or divorce between a husband and wife, it is as if everything has been broken, including the right to inherit the right of inheritance from her ex-husband who has died. In terms of the study of Islamic law, there are various types of divorce or divorce, as mentioned above, there are Raj'i divorces and there are Bai'in divorces. Meanwhile, the *bai'in* divorce is divided into two more, namely the *bai'n sughra* divorce and the *ba'in kubra* divorce. In the case of *raj'i* divorce during the *iddah* period, essentially the wife who has been divorced is still the husband's wife.

In relation to this author's title, the divorce discussed is *raj'i* divorce, namely the first divorce and the second divorce that the husband gives to his wife. When the husband divorces his wife by *talak raj'i*, then the wife has a waiting period or *iddah*. During the *iddah* period the wife is not allowed to remarry another man, because it is hoped that during this *iddah* period when both have realized their respective mistakes and then to form a household again, then this husband and wife are the most entitled to reconcile during the *iddah* period. The *iddah* period is not over.

Regarding inheritance rights when the husband and wife relationship has broken up or a divorce occurs and the wife is still in the *iddah raj'i* period when the ex-husband dies, then what about the inheritance rights of the divorced wife? So here the author will examine the inheritance rights of the wife who was divorced by *Raj'i* for the husband who died.

II. RESEARCH METHOD

The research method used is socio legal by conducting library research related to legal principles, legal rules and legal norms. In addition, field research was also carried out to obtain primary data relating to the Inheritance rights of the wife talked by *raj'i* husband in the view of Islamic Law.

A. Discussion.

1. Definition of Islamic Inheritance Law

The definition of inheritance law has been conveyed by many experts and is also formulated in the Compilation of

Islamic Law. In the Compilation of Islamic Law the definition of inheritance law is as follows:

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. (the Compilation of Islamic Law article 171 letter a)

According to Ahmad Zahari, inheritance law is a law that regulates the transfer of ownership rights to inherited assets from the heir to those who are entitled to receive it (heirs), how much each share is, when and how the transfer is carried out according to the provisions and instructions of the Qur'an. 'an and Hadith, and the *ijtihad* of the experts. (Ahmad Zahari, 2008: 27)

Meanwhile, Hasbi Ash-Shiddiqi defines that inheritance law is a science with which we can know who receives the inheritance, who does not receive the inheritance, as well as the levels received by each heir and how to share it. (Hasbi Ash-Shiddieqy, 1973: 18)

From some of the definitions above, the author can conclude that Islamic inheritance law is the law that regulates the transfer of property rights from the heir to heirs who are still alive when the heir dies, and also regulates how each heir receives a share according to Islamic law.

2. Basic Islamic Inheritance Law

Talking about the legal basis of Islamic inheritance, of course, we cannot be separated from the sources of Islamic teachings, namely the Qur'an, the Sunnah of the Messenger of Allah, and also the results of *ijtihad* of Islamic law scholars.

a. Al-Qur'an

Provisions that regulate directly and in detail regarding inheritance issues are in the Qur'an. In the Qur'an there are verses that explicitly and in detail explain that both men and women have the right to inherit property from the deceased. This can be seen in the letter *al-Nisa* 'verse 7, which means more or less as follows: "For men there is a right to share in the inheritance of their parents and relatives, and for women there is a right to share (also) from the inheritance from their parents and relatives, either a little or a lot according to a predetermined share."

Besides that, it is also explained about the part for children and for parents in *Surah al-Nisa* 'verse 11. And similarly for the husband and wife part it is explained in verse 12. While the parts in a state of defeat are in verse 176 of *Surah al-Nisa* ' also.

b. Al-Sunnah.

Imam Bukhari collected the hadith about the law of inheritance as many as 46 hadiths. While Imam Muslim mentions the hadith about inheritance as many as 20 traditions. (Ahmad Rofiq, 2000: 379). The hadiths that explain inheritance include:

- 1) Hadith narrated by Muttafaq 'alaih or narrated by Bukhari and Muslim, which means: "The Prophet Muhammad SAW said: "Give certain portions to those who are entitled. And the rest for men who are more important (near kinship) "
- 2) "Muslims have no right to inherit non-Muslims, and unbelievers have no right to inherit Muslims". (Muttafaqun alaih)
- 3) "The Prophet SAW decided the share of daughters in half, granddaughters of the male line one-sixth to complete two-thirds, and the rest for sisters". (Narrated by Bukhari)
- 4) "Male heirs are closer to the heirs and are more entitled to the rest of the inheritance, after the share of heirs who have certain parts is taken". (Narrated by Bukhari and Muslim)

b. *Ijtihad*

Although the Qur'an and the Sunnah of the Prophet have provided detailed provisions regarding the distribution of inheritance, other matters require the *ijtihad* of Islamic jurists. Especially the problem of inheritance cases that had never appeared at the time the Prophet was still alive. For example on the issue of *radd* and *'aul*, in which there are differences of opinion, in line with the results of the *ijtihad* of each friend, *tabi'in* or *ulema'*. (Ahmad Rofiq, 2000: 382)

III. CAUSES OF MUTUAL INHERITANCE

Islam was revealed to perfect the previous teachings, both during the Jahiliyah period and in the early days of Islam. If in the past the causes of inheritance consisted of: blood ties (*al-qarabah*), pledge of allegiance (*al-hilf wa al-mu'aqadah*), and adoption (*al-tabanni*) or adoption, then continued in the early days of Islam. , the three causes are still being carried out, plus the migration and brotherly ties between the *Muhajirin* and *Ansar*. (Ahmad Rofiq, 2000: 398).

However, after Islam was revealed perfectly, then what was continued was only the first, namely the cause of *al-qarabah*, while the other causes were abolished. According to Sayid Sabiq, a person can inherit inheritance due to three things, namely because of kinship or lineage, because of marital relations, and because of *wala'* (slave liberation). While some other experts say there are four, namely added because of the relationship between Muslims. (Moh. Muhibbin, et al., 2009: 72)

According to Ahmad Rofiq, the factors that cause mutual inheritance are as follows:

a. *Al-Qarabah*

Al-Qarabah or blood ties, namely all heirs who are related by blood, whether male, female, children are given the right to get a share according to the closeness of their kinship. Even babies who are still in the womb have the same rights as adults. However, in Islamic inheritance law, the provisions apply that the closer heirs can cover or veil the distant heirs, according to the provisions of the Qur'an and *al-Sunnah*.

In terms of the line that connects the lineage between those who inherit and those who inherit, they can be classified into three groups, namely: 1) *furū'* is the descendant (branch) of the deceased, 2) *ushul*, namely the ancestor (principal or origin) that causes the existence of the deceased. dead, 3) *Hawasyi*, namely the family that is connected to the deceased through a sideways line, such as brothers, uncles, aunts, and their descendants without discriminating between men and women. (Moh. Muhibbin et al., 2009: 72-73)

Kinship relations in Islamic inheritance are explained in the word of Allah which means more or less as follows: "For men there is a right to share in the inheritance of their parents and relatives, and for women there is a right to share (also) from the inheritance from their parents and relatives, either a little or a lot according to a predetermined share." (Surat *al-Nisa'*: 7)

b. *Al-Muusaharah (marital relationship)*

A legal marriage between a man and a woman, both according to the law of religion and belief as well as state law, causes an inherited relationship, if one of the spouses dies. To find out the existence of the marriage, it can only be proven through the Marriage Certificate issued by the Marriage Registrar.

The legal basis for marital relations as the cause of mutual inheritance is the word of God, which means:

"And for you (husbands) half of the property left by your wives, if they do not have children. If your wives have children, then you will get a quarter of the property left by them after their will has been fulfilled or (and) after the debt has been paid. Wives get a quarter of what you leave if you don't have children. If you have children, then the wives get one-eighth of the property that you leave after fulfilling your will or (and) after paying your debts...". (Surat *al-Nisa'*: 12)

c. *Relationship Cause Al-Wala'*

The cause *wala'* relationship is an inheritance-inherited kinship according to law that arises from freeing slaves, even though there is no blood relationship between them. However, nowadays the relation of *wala'* is only found at the level of discourse. Because slavery no longer exists, even if it does exist it is no longer recognized, especially in Indonesia, therefore in the Compilation of Islamic Law it is not discussed at all.

The relationship *wala'* occurs due to the efforts of a slave owner who voluntarily frees his slave. Thus, the slave owner changed the status of the person who was originally incapable of acting, to become capable of acting to take care of, own and conduct transactions with his own property. In addition, he is also capable of taking legal action in return for the pleasures that have been given to his slaves. (Moh. Muhibbin et al, 2009: 74)

The legal basis for this *wala'* is according to the hadith of the Prophet Muhammad, which means: "The right of *wala'* is

only given to people who have freed (his) slaves". (Narrated by Bukhari and Muslim).

1. Inheritance rights of the wife whose husband Raj'i divorced in Islamic law

The wife who is divorced by her husband will have legal consequences that befall the wife and also the husband. And the wife who has been divorced will be called a widow, while the husband who divorces his wife will be a widower. The mention of a widow in sunnah fiqh due to divorce uses the term *mutallaqah* (a woman who is divorced), while a widow due to her husband's death in the *faraidh* chapter, she still has the status of a wife by using the term *zaujiah*. The position of the widow in the *fiqh sunnah* in the *faraidh* chapter, is one of the groups of people who have certainty as *ashab al-furudh* which cannot be prevented by any group of heirs. Provided that the wife or widow is still in a state of legal marriage. (Misbahul Munir, 2017: 124).

The basis that is used as the law of husband and wife inheritance or the law of inheritance of husband and wife inheriting each other is the Qur'an letter an-Nisa 'verse 12: "And for them (wives) get a quarter of what you (husbands) leave if you do not have children. If you have children, then for them (wives) get one-eighth of the property that you leave behind."

Based on the description of the verse above, it can be understood that a widow still has the right of inheritance as a wife, by having two provisions, namely:

- 1) The wife is entitled to a quarter of the inheritance of her husband, if the husband who dies does not leave a child, either the child from himself or from his previous wife.
- 2) The wife is entitled to one-eighth of the inheritance, if the husband who dies has children, whether the child is from himself or from another wife. (Sayid Sabiq, 1995: 352)

In the case of a divorced or divorced wife, this can be seen from the type of divorce, there is *raj'i* divorce and there is *ba'in* divorce. If the wife is divorced by *raj'i* divorce, then her status is still as a wife according to *syar'i* law, because the *iddah* or waiting period is still the responsibility of her husband, if the divorce is carried out on the initiative of her husband and not because of *li'an* or *khuluk*, dependents The husband is in the form of a living, housing, clothing and food. During the period of *iddah*, the woman may not be proposed to, let alone married to someone else. (Miftah Faridh, 2004: 150).

In this case, his rights are equal to that of a wife, when her husband dies, she gets a share of the property left by her husband. The legal basis is in the letter al-Baqarah verse 228, which means more or less:

"Women who have been divorced should refrain from (waiting) three times of *quru'*. They should not hide what Allah has created in their wombs, if they believe in Allah and

the hereafter. And her husbands have the right to refer in the waiting period if they (husbands) want *islah*. And women have rights that are balanced with their obligations according to the right way. However, husbands have one level of advantage over their wives. And Allah is Mighty, Most Wise." (Surat al-Baqarah: 228)

Based on the word of Allah in the letter ath-Thalaq verse 1, it means:

"O Prophet, when you divorce your wives, then you should divorce them when they can face their *iddah* (which is reasonable) and calculate the time of the *iddah* and fear Allah, your Lord. Do not take them out of their homes and do not leave them (permitted) unless they are doing an obvious abomination. Those are the laws of Allah, so indeed he has wronged himself. You don't know that maybe Allah will make something new after that." (Surat Ath-Thalaq: 1)

Sheikh Qudamah in his book *al-Mughni*, explains the issue related to a man divorcing his wife by divorce which the husband can refer back to during his *iddah*, then the right to inherit between the two has not been lost as long as it is still in the *iddah* period. Either divorce is imposed when the husband is sick or healthy. (Misbahul Munir, 2017: 125)

According to Wahbah az-Zuhaili in his book entitled *al-Fiqh al-Islamiy wa Adillatuhu* explains that the wife can inherit her husband if he is still in the *iddah* of *Raj'i* divorce, because there is a husband and wife relationship that still exists in *raj'iy* divorce as long as it is still in the marriage period. *iddah*. This is agreed upon in the *fiqh* and Egyptian law. (Misbahul Munir, 2017: 125).

A wife who is divorced with *talak ba'in*, which is dropped when the husband is in good health, then the husband suddenly dies, then the wife who is left dead cannot receive the inheritance from her ex-husband. This *ba'in* divorce is like a triple divorce, or the wife asks her husband to divorce himself by paying a ransom (*khulu'*), or the wife during the *iddah Fasakh* (announcement of marriage) is not an *iddah* divorce, so the wife is not entitled to inherit from her ex-husband. (Adeng Septi Irawan, 2020: 9)

As for the woman who divorced *ba'in*, she cannot inherit even during the *iddah*, if her husband is mentally ill, because there is no intention of her running away from giving him an inheritance. It is different if the husband is metallic when his wife is seriously ill because he wants to avoid inheritance from her, this is what is known as avoidance divorce. So in this case the wife still gets the inheritance.

According to the Hanafi Madzab, if the husband dies, as long as his *iddah* has not expired, it is an attitude for the husband to cancel his intention. Regarding this, according to the Maliki school of thought, the wife continues to inherit even though her *iddah* has expired and she has married another man to give the impression that the woman was once the wife of the deceased. (Misbahul Munir, 2017: 125)

The giving of inheritance to the wife who was divorced by her husband with the intention and purpose of avoiding giving an inheritance is based on the narration of Abu Salamah who said: "Abdurrahman bin Auf divorced his wife three times while he was sick. Then Uthman ibn Affan gave the wife the right of inheritance after the end of her iddah. (Az-Zuhaili 2011: 347)

All madzabs agree, except for the Shafi'i school, giving inheritance rights to this woman who was divorced because of the bad intention of the husband, namely wanting to avoid giving inheritance to his wife. According to the Shafi'i school, the wife who was divorced by Ba'in did not get the right of inheritance even though the iddah was still for other reasons. Because the state of talak ba'in breaks the husband and wife relationship which is the cause of inheritance. (Misbahul Munir, 2017: 125).

In the conception of the Compilation of Islamic Law, widows are a group of heirs who are entitled to inherit property from their husbands, because of their marital relationship. In the law of inheritance, the widow's share is a quarter, if the husband who dies does not leave children, whether the child is the result of marriage with his former wife or with his current wife. Likewise, the widow will get one-eighth if the husband leaves the child, both from the previous marriage and from the current marriage. (Compilation of Islamic Law Article 180)

IV. CONCLUSION.

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 heir. In inheritance law there will be a transfer or inheritance, there must be elements, the heir (who dies), heirs, and there is property left behind.

One of the causes of mutual inheritance is the existence of kinship or kinship or blood relations, marriage or marriage relations, and relations to free slaves (*wala'*). However, the latter is just a discourse, because today there is no slavery on earth.

While the marital relationship when one dies, the one who lives longer, both husband and wife will get the inheritance rights of the deceased. However, when a husband and wife have divorced or divorced, there are several opinions on this. Among them:

- a. If the divorce that occurred was *raj'i* divorce, one or two divorces, then when the husband who was mentally divorced died while the wife who was divorced *raj'i* is still in the iddah or waiting period, then the wife still gets the inheritance rights from her ex-husband. This is because *raj'i* divorce is essentially the status of the wife is still the husband's wife. Because the right to refer is her ex-husband.
- b. Meanwhile, when there is a *ba'in* divorce, triple divorce, then the wife who is divorced is not entitled

to inherit rights even though it is still in the iddah period. However, the scholars of madzab are of the opinion that the wife who divorced Ba'in when the husband was sick with the intention of the divorce was dropped so as to avoid giving the wife an inheritance, thus the wife gets the inheritance rights from her ex-husband even though Ba'in divorced. In order to avoid the evil intentions of the husband.

REFERENCE

- [1] Ali, Zainuddin, 2006, Hukum Perdata Islam di Indonesia, Jakarta, Sinar Grafika
- [2] Ash-Shiddiqy, Hasbi, 2010, Fiqih Mawaris Hukum Pembagian Warisan menurut Syariat Islam, Semarang, PT. Pustaka Rizki Putra
- [3] Basyir, Akhmad Azhar, 2007, Hukum Perkawinan Islam, Yogyakarta, UII Press.
- [4] Faridh, Miftah, 2004, Masalah Nikah dan Keluarga, Jakarta, Gema Insani.
- [5] Muhibbin, Moh., 2009, Hukum Kewarisan Islam Sebagai Pembaruan Hukum Positif di Indonesia, Jakarta, Sinar Grafika.
- [6] Ramulyo, Mohd Idris, 2000, Hukum Perkawinan, Hukum Kewarisan, Hukum Acara Peradilan Agama dan Zakat Menurut Hukum Islam, Jakarta, Sinar Grafika.
- [7] Rofiq, Ahmad, 2002, Fiqih Mawaris Edisi Revisi, Jakarta, PT. Raja Grafindo Persada.
- [8] Rofiq, Ahmad, 2000, Hukum Islam di Indonesia, Jakarta, PT. Raja Grafindo Persada.
- [9] Sabiq, Sayyid, 1995, Fiqh Sunnah, Kairo, Dar al-Fath, Vol. III.
- [10] Suma, Muhammad Amin, 2005, Keadilan Hukum Waris Islam Dalam Pendekatan Teks Dan Konteks, Jakarta, PT. Raja Grafindo Persada.
- [11] Zahari Ahmad, 2008, Hukum Kewarisan Islam, Jakarta, Sinar Grafika.
- [12] Kompilasi Hukum Islam, 1991.