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DZAWIL ARHAM'S LEGACY: The Urgency of Clear Arrangement in the Compilation of Islamic Law

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Abstract: This study discusses the inheritance of dzawil arham (distant relatives) in the Compilation of Islamic Law (KHI) in Indonesia, which is identified as not regulated in existing regulations. Although KHI regulates the distribution of inheritance in detail for the closer heirs, the lack of clarity regarding inheritance rights for dzawil arham creates legal uncertainty in the implementation of inheritance distribution. This research aims to examine the importance of clearer arrangements regarding the inheritance rights of Dzawil Arham in KHI to provide legal certainty and justice for all related parties. Through a qualitative approach and normative analysis, it was found that more specific and detailed regulations regarding dzawil arham were needed so that the distribution of inheritance could be fairer and more equitable. This study recommends that KHI accommodate clearer rules related to the inheritance rights of dzawil arham, to ensure justice in the application of Islamic inheritance law in Indonesia.

Keywords: *Inheritance, Dzawil Arham, Compilation of Islamic Law, Distribution of Inheritance, Legal Certainty*

Introduction

In Islamic inheritance law, the distribution of inheritance after a person dies is strictly regulated based on the provisions of the Qur'an and Hadith. Inheritance in Islam is generally arranged for heirs who have a direct blood relationship with the heir, such as children, parents, siblings, and so on (Saebani, 2009). However, in some cases, there are other groups of relatives who also have the right to inherit the heir's property, known as dzawil arham. Dzawil arham is a distant relative who is not included in the category of main heirs in Islamic law, such as cousins, uncles, aunts, and so on.

The problem that often arises in the family after one of the family members dies is about his or her legacy (Kuncoro, 2015; Rahim, 2021). Who has more rights and how much of the property must be received by each relative (heir) who is left behind, often the problem ends in a dispute that causes a fracture in family relations between relatives (heirs). The vulnerability of inheritance issues to the integrity and harmony in a family makes it necessary to study the discipline of inheritance law at an urgent (important) level, to maintain and save the integrity of family relations in a family.

Disputes between family members arising from the distribution of the deceased's inheritance are caused by the practice of distributing inheritance that is not by the provisions of inheritance that have been stipulated in Islamic law so that in this practice it will give birth to disputes and inheritance disputes that will end in the trial of the Religious Court (Abdillah & Anzaikhan, 2022; Husain & Ilyas, 2020; Muhammad Nasir, 2021; Prodjodikoro, 1996; Saputri, 2023).

To avoid inheritance disputes in the family, everyone is required to know and understand the concept of Islamic inheritance, including the rights of the deceased from his inheritance and the obligations of the heirs to the deceased's estate as well as the method of determining the status of the heirs and the amount of shares that have been determined according to the status of his heirs, or everyone who does not understand the law of inheritance is required to submit and obey the the decision/result of the distribution that has been determined by what has been regulated in the Islamic law regulations contained in the legislation.

The law of inheritance classifies relatives into 3 three groups, namely dzawil furudh, ashabah, and dzawil arham. Three of these groups are only 2 two groups that are entitled to the deceased's legacy, namely the dzawil furudh and ashabah groups, according to the number of fiqh scholars (Nasution, 2012). As for 1 (one) group, namely dzawil arham, the scholars of jurisprudence, there is ikhtilaf (difference) in understanding the nash-nash contained in the Qur'an and hadith about their legal status, whether they are entitled as inheritance experts and receive part of the deceased's legacy. Among the scholars of jurisprudence, there is ijtihad that considers that grandchildren with the status of dzawil arham get a share of the heritage, and on the other hand, there are also jurists with ijtihad that grandchildren with the status of dzawil arham do not have the right to a share of the deceased's heritage.

The differences among fiqh scholars about the position of dzawil arham in Islamic inheritance law and the lack of explanation of dzawil arham in laws and regulations (Law No. 1 of 1974 and the Compilation of Islamic Law) are encouraged by the differences in customs and culture of Indonesians and Arabs in family relations which has the opportunity for different settlements regarding inheritance with the opinions of many scholars. This is what makes the researcher interested in discussing this research (Botu dkk., 2023; Kamarusdiana & Sofia, 2020).

In Indonesia, the inheritance of dzawil arham has been regulated in the Compilation of Islamic Law (KHI), but the arrangement is still somewhat vague and not detailed. KHI provides that if there is no main heir, then dzawil arham is entitled to a share of the inheritance. However, the existing rules are insufficient to provide legal certainty in the distribution of inheritance between dzawil arham. This creates ambiguity in inheritance practices, which can lead to injustice and disputes between families.

In addition, the arrangement of the inheritance of Dzawil Arham that has not been detailed in the KHI also causes differences in interpretation between various parties in society, both in terms of family, community, and law enforcement. In many cases, these issues are often resolved through customary or family deliberations without reference to clear legal guidelines. This creates inequality

in inheritance distribution and often has the potential to create tension within the family.

With these conditions, this study aims to highlight the urgency of a clearer arrangement in arrangement of dzawil arham inheritance in the Compilation of Islamic Law. This research will also examine how the inheritance of dzawil arham should be regulated to be fairer, transparent, and by the principles of Islamic law, as well as provide recommendations for improving the inheritance law system in Indonesia. With a more systematic arrangement, it is hoped that a fairer distribution of inheritance can be achieved and reduce the potential for conflicts that often occur in families related to inheritance issues.

Research Methodology

This study uses a qualitative approach with a normative analysis method. The main data sources in this study consist of two types, namely primary and secondary data.(Anggito Albi & Johan Setiawan, 2018; Hasibuan dkk., 2022; Hasibuan & Rahmawati, 2019; Judijanto dkk., 2024). Primary data sources include legal documents, such as texts from the Compilation of Islamic Law (KHI), which regulates the distribution of inheritance and the arrangement of inheritance of dzawil arham. In addition, legal decisions and fatwas issued by religious and legal authorities in Indonesia, such as the Supreme Court and the Indonesian Ulema Council (MUI), related to inheritance, are also used as primary sources. Secondary data sources include books, journals, scientific articles, and research results related to Islamic inheritance law, which in particular examine the inheritance of dzawil arham and its application in the Indonesian context. Data collection was carried out through literature studies and document analysis. The data analysis in this study uses normative qualitative analysis techniques (Khilmiyah, Akif, 2016; Salam, 2023).

Results and Discussion

The opinion of fiqh scholars on the position of dzawil arham in the heirs

There are differences among fiqh scholars related to the status and position

of dzawil arham. The differences among the fiqh scholars also occurred among the companions of the Prophet Saw. The scholars of Islamic jurisprudence and the companions gave birth to 2 two opinions, (Dian, 2006) Namely:

a. The first opinion is that relatives who have the status and position as dzawil arham do not have the right to the deceased's legacy, whether it is caused by the existence of ashhabul furudh or ashabah or not. The first opinion is that even if there is no ashhabul furudh or ashabah, then the deceased's heritage is handed over to the baitul mal, which then the baitul mal will distribute the heritage of the deceased to the needs of Muslims in general. This means that the first opinion of mandang baitul mal is more entitled than dzawil arham to the deceased's legacy. Among the scholars of jurisprudence and companions who hold the first opinion, these are Imam Shafi'i, Imam Malik, Ibn Abbas, and Zaid bin Tsabit.
b. The second opinion is that relatives who have the status and status as dzawil arham have the right to the deceased's legacy. The right of inheritance to the dzawil arham is provided that there is no ashhabul furudh, and or ashabah. If the deceased leaves the estate by leaving a relative who only has the status of dzawil arham, then in this case, the relative who has the status and position of dzawil arham is more entitled than the baitul mal in obtaining the deceased's legacy. Because after all, it cannot be denied, even though they do not have a relationship as close as ashhabul furud and ashabah. Relatives who have the status and position of dzawil arham also have a family relationship with the corpse, thus giving them more priority than the baitul mal. Among the scholars of jurisprudence and companions who hold the opinion of this second opinion are Ahmad bin Hambal, Imam Abu Hanifah, Ali bin Abi Talib, Umar bin Khathab, and Ibn Mas'ud.

As explained above in the second opinion, Dzawil Arham has the right to the deceased's share of the estate by stipulating 2 (two) conditions (Rahman, 1971):

a. The absence of ashabul-furudh or ashabah.

All jurists agree that as long as there is still one relative who occupies the position or status as an ashabul-furudh or ashabah, then for them, relatives

who have the status of dzawil arham do not have the right to share the deceased's legacy. If there is a residual property after the deceased's estate is divided to fardh ashhabul-furudh and after receiving the remaining share by the provisions, then the settlement in the matter is through radd, so that the remaining property can be divided completely without leaving any remainder. Prioritizing the radd method in the distribution of inheritance to ashhabul-furudh must be prioritized rather than giving a portion of the deceased's inheritance to dzawil-arham. In this case, there is no difference of opinion among friends and fiqh scholars in this matter. The same applies to the dzawil-arham when they are confronted with the ashabah. So the relative who has the status of dzawil-arham does not have the right to the deceased's share of the estate. Because the deceased's legacy will be divided and will be accepted by the ashabah, whose position functions to spend the rest of the inheritance. The existence of both ashhabul furudh and ashabah together in the heirs, or one of the two themselves, then the relative who has the status of dzawil-arham does not have the right to receive a share of the deceased's inheritance (Rahman, 1971).

b. Dzawil-arham with one of the couples.

In addition to the absence of ashhabul furud and ashabah, dzawil-arham has the opportunity to get a share of the deceased's inheritance with the second circumstance, namely if the ashhabul-furudh consists of only one husband or wife along with dzawil-arham as the heirs. In this condition, the deceased's legacy is divided by the way the husband or wife takes the fardh first, then the rest of the deceased's legacy after the departure of the husband or wife is divided to dzawil-arham. Giving allotments to dzawil-arham and from the rest of the property takes precedence over meradd-kan to one of the husbands or wives (Rahman, 1971).

Based on the explanation above, the researcher argues that dzawil-arham has a kinship relationship with the deceased; this kinship relationship cannot be denied, so that if a relative has the status and position of dzawil arham, then 2 (two) main factors underlie the dzawil-arham, namely: the relationship of nasab (family relations) and the second is the absence of heirs of dzawil furudh and ashabah. These two factors are the basis that a relative of the

deceased can be said to be dzawil arham. If there is a nasab relationship, it is a relationship that can be based on the existence of a blood relationship between a person and the deceased. As long as a person has a blood relationship or kinship without anyone wearing a hijab (without anyone else being closer to the deceased), (Wahid, 1961) Then that person is more entitled to the deceased's heritage than anyone else. This opinion is based on the evidence found in the Qur'an 8:75: "A person who has a kinship is partly entitled to his neighbor (than those who are not relatives) in the Book of Allah". The eighth verse of Surah Al-Anfal describes a person as an heir because of blood and kinship relations, especially his position in the deceased's inheritance, compared to those who are not from the deceased's relatives (R. Usman, 2009).

Dzawil Arham's Legacy in Indonesia

In 1946, through laws and regulations in Egypt, the concept of a mandatory will was born. Compulsory wills in Egypt were born to resolve legal issues that occurred among legal experts about the position of grandchildren who were crowned by their sons (Al Amruzi & Sarmadi, 2014). Compulsory wills in Egypt are only given to the grandchildren of the deceased whose parents (grandchildren) died first rather than the deceased (grandfather) who in the opinion of many fiqh scholars, the grandson has the status of dzawil arham and according to the provisions of the fiqh mawaris will be hijab by the father's brother, which causes the grandson not to get the right to a share of the deceased's (grandfather's) legacy. The concept of a mandatory will in Indonesia is regulated in the Compilation of Islamic Law, in Article 209: paragraph 1) The inheritance of an adopted child is divided based on Articles 176 to 193 mentioned above, while adoptive parents who do not receive a will are given a mandatory will of up to 1/3 of the will of their adopted child. 2) Adopted children who do not receive a will are given a mandatory will of up to 1/3 of the inheritance of their adoptive parents.

Through the laws in Egypt and the Compilation of Islamic Law, it can be understood that the concept of a mandatory will is an effort to give the deceased's inheritance to someone who is not entitled to the inheritance; therefore, other

heirs are obstacles to the granting of the inheritance. With these conditions, the concept of a mandatory will emerged as a solution in giving part of the deceased's inheritance to people who are hindered, such as the heirs of dzawil arham, or people who do not have a nasab relationship, such as adopted children.

The group of people who are entitled to receive an obligatory will is walidain or aqrabin who do not get or receive inheritance. The heir of the walidain or aqrabin has the right to receive a mandatory will. If the will is classified as dzaul arham, then he has the right to be given a mandatory will. This happens in Egypt, while in Indonesia, it is given through the concept of a substitute heir or aqrabin, whose status is dzawil arham, more important than baitul mal. The opinion that Dzawul Arham is entitled to inheritance is Ali, Ibn Sirrin, Shuraih Al-Qadhi, Ibn Mas'ud, Atha, Imam Abu Hanifah, and Imam Ahmad bin Hambal. This opinion is based on the narration of the Qur'an, which in this case is explained by Fatcturrahman; The sentence "ba duhum biba dhin fi kitabillah.", means "ba dahum hall bimiratsi ba dhin fima kataballahu wahakam bihi.", namely some other relatives according to the provisions and decrees of Allah (H. S. Usman & Somawinata, 2002). This explanation does not mean that some relatives are more important than others, with the consequence of the law that it excludes relatives who have the status and position of dzaul arham from the definition of relatives in general.

Jumhur mufassir thinks that the provisions of Q.S al-Anfal verse 75 are the penasakh of another verse contained in the Qur'an which discusses inheritance-mepusakai, which is based on the bond of the promise of prefidelity in verse 33 of Surah An-nisa. With this interpretation, the researcher argues that the inheritance rights of the relatives of the deceased are absolute and general, not limited only to the heirs of ashhabul furudh and ashabah. But also to Dzawil Arham. Therefore, a person/relative who has determined the status of his heirs should refer to and base it on a general provision, namely, in the sentence al-arham. Thus, the share of dzawil arham over the inheritance should be given by the provisions regulated by the Qur'an, and not provide a new legal settlement by stipulating a law that is not found in the Qur'an.

The scholars of jurisprudence think that dzawil arham is entitled to the inheritance of the deceased, as explained earlier, namely by stipulating two conditions:

1. There is no ashhabul furudh and ashabah at all
2. If only with your husband or wife.

If dzawil arham experiences as the first condition, then dzawil arham receives from all the deceased's legacy; in this case, giving a part of the inheritance to dzawil arham is more important than giving it to baitul mal.

And if the dzawil arham experiences the second condition, then in this condition, the deceased's inheritance is divided in the way the husband or wife takes the fardh first, then the rest of the deceased's inheritance after the issuance of the husband's or wife's fardh is divided among the dzawil-arham. Giving allotments to dzawil-arham and from the rest of the property takes precedence over meradd-kan to one of the husbands or wives.

Furthermore, if in practice it is found that more than one relative has the status of dzawil-arham, then 3 (three) principles are the basis for the division (H. S. Usman & Somawinata, 2002):

First, the principle of al-qarabah, this principle is based on the closest nasab encounter between the dzawil-arham and the deceased. Among the relatives with the status of dzawil-arham, the closest relationship of his fate with the deceased is the one whose position in receiving a share of the inheritance is preferred.

Second, the basis of tanzil, this basis is based on the placement of the relatives of the deceased to the status of heirs, which makes the reason for the relationship of the nasab with the deceased relative and its successor, if the relative is still alive. If the degree of dzawil arham has a long relationship, it should shift step by step until it reaches the position of the heir of the mudla bihi, who will occupy his position. Relatives with the status of dzawil-arham, and about their position, whether or not they are entitled to receive a share of the deceased's estate, how much of the share of the heritage will be received, depends on the position of the mudla bihi occupied by their position.

Third, the principle of rahmi, this principle is based on the concept of the womb (affection). The principle of rahmi emphasizes that every relative left behind by the deceased is not justified by differentiating the position and amount of their share. Because in terms of relationships, it may be that the deceased is closer in his kinship relationship with the first dzawil arham, but emotionally in his daily life while still alive, he is closer and more connected to the second dzawil arham. Therefore, it is based on the principle of rahmi that Dzawil arham is entitled to the same share.

Various opinions and principles about the settlement of Dzawil Arham as a tea were presented. The researcher agreed with the concepts and ideas offered by Prof. T. M. Hasby Ash-Shiddieqy, as an effort to resolve when the walidain occupied the position of dzawil arham in several ways, namely (H. S. Usman & Somawinata, 2002):

1. By determining the share of each heir, which is included in the recipient of the will, replacing the position of his deceased parents according to the level of the recipient.
2. By determining the amount of the beneficiary's share of the obligatory will with the amount of the share that should be received by the parents is a maximum of 1/3 share or one-third of the tirkah is received if the receipt exceeds the maximum limit.
3. Giving excess tirkah after the recipients of the mandatory will are taken to the heirs according to their respective share levels.

As for relatives who fulfill the position of dzawil arham, priority is given in giving rights to heritage property or inheritance rather than the baitul mal. Thus, the status of Dzawil Arham can be taken into account, and its position is guaranteed when there is a distribution of inheritance. Giving dzawil arham from the deceased's estate (heirs) with certain conditions and prioritizing it over baitul mal is a legal ijtihad that is more by the Indonesian context, and besides that, there is no explanation of the status, position, and settlement of dzawil arham in its entirety in its jurisprudential normative law, namely the Compilation of Islamic Law.

The concept of inheritance of dzawil arham (distant relatives who are not included in the main heirs) in Islamic inheritance law is one of the aspects that still does not receive enough attention in legal practice in Indonesia. The Compilation of Islamic Law (KHI), which regulates Islamic inheritance in Indonesia, although it provides a fairly good legal basis for inheritance between the main heirs (such as children, parents, and siblings), has not provided adequate arrangements regarding inheritance for dzawil arham (Shihab, 2000). Thus, this journal discusses the urgency of a clearer legal arrangement related to the inheritance of dzawil arham in KHI to achieve justice and legal certainty in society.

Dzawil arham inheritance refers to the inheritance rights given to distant relatives of the heirs who do not fall into the category of heirs mentioned in the Qur'an. This includes relatives such as cousins, uncles, aunts, and so on. In the Islamic legal system, if there is no legitimate primary heir, dzawil arham is entitled to receive a share of the inheritance, although the proportions and terms are not always clear. This confuses the practice of inheritance law in Indonesia, because there are no definite guidelines regarding who falls into the category of dzawil arham and how much inheritance they should receive (Haries, 2019; Yani, 2016).

KHI, as a source of positive law in Indonesia, has indeed regulated in detail the inheritance for the main heirs listed in the Qur'an, but does not provide clear guidance on inheritance for dzawil arham. In the KHI articles that regulate inheritance, it is not explicitly explained how to distribute inheritance if there is only Dzawil Arham as the only party who has the right. This is a legal loophole that has the potential to cause injustice in the distribution of inheritance. KHI does mention that Dzawil Arham is entitled to a share of the inheritance, but does not provide clear parameters regarding the provisions of the amount or the way of fair distribution (Zuhri, 2010).

A clearer arrangement related to the inheritance of Dzawil Arham in KHI is very important, considering the inheritance law problems that often arise in practice. There is uncertainty about who is entitled to receive the inheritance and how much of the share must be received makes the inheritance distribution

process not run fairly and efficiently. In many cases, the division of inheritance between heirs who are not directly related by blood to the heir often leads to dissatisfaction and protracted legal disputes.

With a clearer and more comprehensive arrangement in KHI, the arrangement of the dzawil arham inheritance can be carried out more transparently and fairly. The authors of this journal emphasize that this arrangement not only provides legal certainty for the heirs but also reduces the social tensions that often arise in the family due to the uncertainty of inheritance rights. (Basyir, 2017).

One of the biggest challenges in the implementation of Dzawil Arham inheritance is the lack of public understanding and awareness of their rights in the inheritance. In many societies, inheritance is often settled customarily without regard to the more in-depth legal aspects, so the division of inheritance does not always reflect justice. This ignorance often leads to disputes involving parties who feel aggrieved. In addition, in some cases, distant relatives who are entitled to a share of the inheritance are often not recognized or considered to have no rights, even though they are legally included as heirs. This is related to the ambiguity in the KHI arrangement about who belongs to the category of dzawil arham and how they should receive their share of inheritance (Shihab, 2000).

Researchers offer several solutions to overcome problems in the inheritance of Dzawil Arham. Some of the proposed solutions include:

1. Changes and Adjustments of KHI: One of the most necessary steps is a review of the Compilation of Islamic Law (KHI), especially regarding the arrangement of the inheritance of dzawil arham. The KHI needs to be updated to accommodate clearer legal needs regarding who is entitled to receive inheritance, as well as the proportions and ways in which it is distributed. This will provide clearer guidelines for the community in carrying out the inheritance law (Basyir, 2017).
2. Determination of Clear Proportions: It is necessary to have a clear determination of the proportion of inheritance distribution for dzawil arham, which

can be formulated based on the closeness of kinship and the principle of justice. For example, if there is no main heir, Dzawil Arham can get a certain share that has been determined according to the provisions of Islamic law (Zuhri, 2010).

3. Inheritance Law Education: For the public to better understand their rights, it is important to conduct more massive education about Islamic inheritance law. This will help prevent injustice in the distribution of inheritance, as well as increase the legal awareness of the community (Shihab, 2000).
4. Legal Assistance: The provision of legal assistance for parties involved in the inheritance distribution process is also required. This is to ensure that the distribution is carried out fairly and by the applicable legal provisions, as well as to avoid illegal practices (Basyir, 2017).

Socially, a clearer arrangement of the dzawil arham inheritance will reduce the potential for tension and division in the family. A transparent and fair distribution of inheritance will not only maintain good relations between the heirs but also ensure that the rights of each party are protected. In this context, justice in inheritance is not only related to the division of property, but also to respecting the rights of individuals as part of the heir's extended family (Shihab, 2000).

Conclusion

In the context of Islamic inheritance law, the inheritance of dzawil arham has a very important role, but it is often a complex issue due to the lack of clear and detailed arrangements in the Compilation of Islamic Law (KHI). Therefore, there needs to be a clearer arrangement regarding the inheritance rights of Dzawil Arham so that there is no uncertainty in its implementation. A more detailed and specific arrangement of dzawil arham in the KHI will provide legal certainty and reduce the potential for disputes between heirs. This is very important to protect the rights of individuals who are entitled to inheritance and ensure fairness in the distribution of inheritance. Therefore, the urgency to clarify the provisions regarding the inheritance of dzawil arham in KHI is

an important step in realizing a fairer, transparent, and the principles of justice in Islam.

1. To academics in the field of Islamic law to continue to pay attention to the issue of inheritance, especially those related to differences of opinion among fiqh scholars related to inheritance law and especially those that intersect with the differences in cultural conditions that occur in Indonesia with the Middle East, so that they can apply laws that are more by the Indonesian context still refer to the opinions of previous scholars.
2. To the judge of the Religious Court in determining a decision refers to the Compilation of Islamic Law as the main reference, and ijtihad in matters that have not been regulated in the laws and regulations by considering the context to Indonesia which is more relevant.
3. To the government to continue to open the space and support academics to conduct research with various research assistance programs and open the door to research results from academics by making them a source when studying a legal issue in this country and when producing legal products that are by customary and cultural conditions and in line with the development of the times.

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