

CHAPTER I

INTRODUCTION

1.1 Background of Research

Since ancient times, the distribution of inheritance for those left behind has been a general rule. However, before the advent of Islam, the distribution was not entirely fair. This is because there is no definite determination of who is entitled to inheritance.¹

As time progresses, the problems that arise are increasingly varied and developed. The solution also moves following the speed of progress in the method of *usul fiqh* and alternative *fiqh* that emerges.² Until now, some Muslim regions have applied their ways to solve problems in the field of inheritance distribution that are different according to the traditions and customs that apply in each region. Although various efforts have been made to solve inheritance problems, such as those listed in the codification of Islamic law as an example of the problem of joint property in this inheritance problem still leaves some problems.³

Therefore, understanding and deepening the science of *mawarits* or *faraidh* is very important and necessary in Islam. This is because learning these things can help in resolving disputes or dividing inheritance property properly and fairly in accordance with the standards set by Allah SWT. As we know that the provisions of the division of inheritance if left to human reason will never be completed.

¹Muhammad Thaha Abul Ela Khalifah, *Hukum Waris Pembagian Warisan Berdasarkan Syariat Islam*, ed. Ch.Al-Qois dan Fida Al-Hasyim, (Solo: Tiga Serangkai, cet.1, 2007): 3, <https://balaiyanpus.jogjaprovo.go.id/opac/detail-opac?id=24323>.

² Ahmad Juneidi, Lola Astari, Firda Mustikasar Firdaus, "Various Methods of Establishing Contemporary Islamic Law," *Ulumuddin: Jurnal Ilmu-Ilmu Keislaman* Vol.10, no. 1 (June 1, 2020): 39–58, https://jurnal.ucy.ac.id/index.php/agama_islam/article/view/340.

³Setiawan Santoso Muthmainnah, "Akibat Hukum Harta Bersama Perkawinan Dalam Pewarisan Di Indonesia Analisis Komperatif Hukum Islam Dan Hukum Adat," *Ulumuddin: Jurnal Ilmu-Ilmu Keislaman* Vol.9, no. 1 (June 1, 2019): 81–96, https://jurnal.ucy.ac.id/index.php/agama_islam/article/view/286.

Because every human mind has different standards in understanding what is good and what is bad, and what is fair and what is not.⁴

As for Islamic law, it is explained that its provisions cover all aspects of human life in the world, both realizing happiness in the world and the hereafter. On the issue of inherited property, Islamic law has been regulated in the law of inheritance. In Islamic law, this science is known as *faraid science*,⁵ or what is referred to as *fiqh mawarits*, or *Islamic inheritance law*.⁶

This is related to the relationship between fellow Muslims which is regulated in Islamic law. Although Indonesia is not a country based on Islamic law, the majority of Indonesia's population is Muslim, so that if there is a dispute in the interaction between Muslims, a separate court is provided to resolve the problem. This is determined based on the authority given or listed in Article 49 paragraph (1) of Law No. 3 of 2006 concerning religious courts that are authorized to examine, decide, and resolve marriages, wills, and inheritance.⁷

In Islam, if someone who has died and he has property left behind, then the law is obliged to be distributed to the family left behind or given to those who are entitled to receive the inheritance.⁸ Therefore, it is necessary to carry out a process of determining who is entitled to become heir, determining the share of each heir, and carrying out the distribution of the inheritance, as well as a court decision on a person's request regarding who is entitled to inheritance as well as determining each part of each heir.

⁴ Mush'ab, Bahrah, "Urgensi Ilmu Mawaris Dan Hukum Penerapannya Dalam Praktik Kewarisan Islam," *Ulumuddin: Jurnal Ilmu-Ilmu Keislaman* Vol.12, no. 1 (June 1, 2022): 80–81, https://jurnal.uci.ac.id/index.php/agama_islam/article/view/1060.

⁵ The term *faraid* refers to a specific portion that is distributed according to Islam to those entitled to receive it, while they are aware of the intricacies used by the scholars.

⁶ One definition of inheritance law is the laws governing the transfer of ownership rights over inherited property (*tirkah*) from the deceased, identifying the heirs eligible to receive the inheritance, and allocating the shares in getting the inheritance in accordance with Islamic law make up Islamic inheritance law.

⁷ Firdawaty Linda, "Analisis Terhadap UU NO 3 Tahun 2006 Dan UU NO 50 Tahun 2009 Tentang Kekuasaan Peradilan Agama," *Al-'adalah* x, no. 213–220 (2011): 1-12, <https://ejournal.radenintan.ac.id/index.php/adalah/article/download/262/572>.

⁸ Nur Moh Kasim, *Hukum Islam Dan Masalah Kontemporer* (Yogyakarta: Interpena, 2014): 64, <https://repository.ung.ac.id/riset/show/1/502/hukum-islam-dan-masalah-kontemporer.html>.

This also often happens in every dispute, while the settlement must be different, be it in Civil Inheritance Law, Islamic Inheritance Law or Customary Inheritance Law. So that the issue of inheritance in civil law cannot be resolved in accordance with the law of mawarits in Islam, as well as the issue of customary inheritance cannot be resolved in Islam.

In this study the author wants to analyze a case that occurred in the Palangka Raya religious court regarding an inheritance dispute that ignores or deliberately ignores the distribution of the inheritance, so that the inheritance is not divided in accordance with the applicable provisions.

Therefore, the author conducts this research with the aim of understanding and analyzing the distribution of inheritance that does not involve or deliberately eliminates some of the heirs to obtain their share, reviewed through fiqh mawarits, with the aim of knowing the form of distribution that is clear and fair, so that a mutual agreement is formed in the distribution of inheritance. Thus the author wants to conduct a research with the title **“Analysis of Fiqih Mawarits on Decision Number 449/Pdt.G/2021/PA Plk (Case Study of Inheritance Neglect in Some Heirs at the Palangkaraya Religious Court)”**

1.2 Problem Formulation

Based on the background of the problems described above, the problems formulated in this study include :

1. How is the form of inheritance distribution through religious court decision Number 449/Pdt.G/2021/PA.Plk in the Palangkaraya religious court?
2. How is the analysis of Fikih Mawarits on the distribution of inheritance through the Religious Court by ignoring some of the heirs?

1.3 Purposes of Objectives

Based on the problem formulation described above, there are several objectives that the authors want to achieve in this study, including :

1. Knowing the form of inheritance distribution through religious court decision Number 449/Pdt.G/2021/PA.Plk in the palangkaraya

religious court, so that it can be a role model for the surrounding community who experience similar cases.

2. Knowing the analysis of Mawarits Jurisprudence on the distribution of inheritance through the Religious Court by ignoring some of the heirs.

1.4 Benefits of Research

The results of this study are expected to contribute both theoretically and practically:

1. Theoretical Benefits

The results of this study are expected to add knowledge that can be useful for the development of Islamic law in fields related to muamalah and roseits law as well as a reference for similar research in the future and can be further developed according to the times.

2. Practical Benefits

To be taken into consideration for the heirs in taking a stand in the distribution of inheritance fairly and equitably.

1.5 Previous of Research

The purpose of previous research is to ensure the quality and authenticity of the research. Researchers will describe previous research writings with similar research themes studied by the current author, with the aim of knowing the similarities and differences and research focus of each research that has been done before and can provide an overview of the gaps or things that occur between previous research and current research. Therefore, the researcher lists several previous studies as follows :

The first research was written by Faiz Febrinasyah in 2023 with the title “Review of Islamic Inheritance Law in the Distribution of Heirs to Non-Muslim Heirs in the Yogyakarta Religious Court”. This research discusses the transfer of rights and obligations for inheritance assets where some of the heirs have different

religions. Reviewed using Islamic inheritance law and determined in the Yogyakarta Religious Court.⁹

The second research was written by Gaga Hotma Parulian Siregar and Widhi Handoko in 2022 with the title “Case Study Review of Inheritance Law of Supreme Court Decision Number 784 K/Pdt/2014 Against the provisions of Western Inheritance Law”. This research states that the decision is not based on the Civil Code, so that in this study it states that the division of inheritance in this case is not based or not in accordance with the provisions of the Civil Code because it bases its decision on the applicable Marriage Law.¹⁰

The third research was written by Anshari Ayyub in 2019 with the title “Neglect of the Inheritance Rights of Fathers and Mothers in the Implementation of the Distribution of Inheritance in Kota Besi District, Kotawaringn Timur Regency.” This study discusses the case of neglect of the inheritance rights of fathers and mothers, which shows that in the distribution of inheritance property there is a misunderstanding in understanding hijab / mahjub so that the father's heirs are blocked by the existence of a husband or wife and the descendants of the deceased so that the father and mother are not included in the list of recipients of inheritance.¹¹

The fourth research was written by Babet Edi Kuswoyo, Agustinus Samosir, and Ahmad Fuadi in 2023 with the title “Analysis of the Settlement of the Heir Case Decision no.02/Pdt.P/2017/PA.LLG at the Lubuklingga Religious Court.” This study discusses the basis for the consideration of the panel of judges in deciding that the basis for the consideration of the panel of judges regarding the determination of heirs is in accordance with the Compilation of Islamic Law so that legal certainty and justice values are in accordance with existing provisions and based on applicable aspects of justice.¹²

⁹ Faiz Febriansyah, “*Kajian Hukum Waris Islam Dalam Pembagian Harta Waris Terhadap Ahli Waris Non Muslim Di Pengadilan Agama Yogyakarta*” (2023): 1-106, <https://repository.unissula.ac.id/29903/>.

¹⁰ Widhi Handoko, Gaga Hotama Parulian Siregar, “Kajian Studi Kasus Hukum Waris Putusan Mahkamah Agung Nomor 784 K/Pdt/2014 Terhadap Ketentuan Hukum Waris Barat,” *Notarius* E-ISSN:268,no.ISSN:2086-1702(2022):1, <https://ejournal.undip.ac.id/index.php/notarius/article/view/36976>.

¹¹ Ayyub Anshari, “*Pengabaian Hak Waris Ayah Dan Ibu Pada Pelaksanaan Pembagian Warisan Di Kota Besi Kabupaten Kotawaringin Timur*” Tesis IAIN Palangka Raya, (2019): 1-175, <http://digilib.iain-palangkaraya.ac.id/2243/>.

¹² Ahamad Fuadi, Babet Edi Kuswoyo, Agustinus Samosir, “Analisis Penyelesaian Perkara Ahli Waris Putusan No.02/Pdt.P/2017/PA. LLG Di Pengadilan Agama Lubuklinggau,”

The fifth research was written by Apriadi, Misra Netti, and Muhammad Kamalin in 2023 with the title “Comparative Study of Article 173 of the Compilation of Islamic Law on slander as a barrier to inheritance.” This research discusses behavior that can cancel or become an obstacle in obtaining inheritance rights in accordance with what is regulated in the Compilation of Islamic Law.¹³

From some of the literature reviews above, we can clearly see the differences in each discussion carried out by the author. So that it can be seen clearly the focal point that wants to be researched on each existing problem. Therefore, my research will refer more to court decisions regarding the determination of some heirs who are not included in the distribution of inheritance as well as conflict resolution mechanisms that occur from parties who are not included in the distribution of inheritance.

1.6 Research Methods

The research method or scientific method is a way or technique to obtain information and data sources that will be used in research. This information or data can be in various forms, so this method can facilitate the compilation of knowledge. This research method refers to normative research, usually this method is used in the legal field. While research techniques are techniques for implementing research methods. Research methods usually refer to forms of research. The steps in this research method are as follows:

1.6.1 Type of Research

The type of research in this study is descriptive analysis, this research is qualitative in nature whose data is obtained from a significant decision data described from trusted sources and also data obtained from the object of research so that it is also called a reflexive and open approach, where the way data is collected is followed by the development of theoretical concepts and literature reviews that take place in

Hutanasyah: Jurnal Hukum Tata Negara (Siyasah Syar'iyah) Vol.1, no. 1 (2023): 1–30, <https://jurnal.staibslg.ac.id/index.php/hutanasyah/article/view/531>.

¹³Muhammad Kamalin Apriadi, Misra Netri, “Studi Komperative Pasal 173 Kompilasi Hukum Islam (KHI) Dan Konsep Hukum Islam Tentang Fitnah Sebagai Penghalang Waris,” *Jurnal Ilmu Ilmu Al Quran* Vol.4, no. No.2 (2023): 1–10, <https://jogoroto.org/index.php/hq/article/view/239>.

a continuous cyclical process¹⁴, which will be combined with the literature research method (*library research*).¹⁵ The data obtained by the author includes primary data obtained directly from sources at the research location obtained from the results of data obtained by researchers with related agencies. Then described and adjusted to the opinions of several madzhab scholars, as well as several articles that resemble. While secondary data is obtained from literature such as books, books and other literature related to inheritance, secondary data is used to complement primary data which aims to support the results of this study.

1.6.2 Source of research data

The data collected is primary data and secondary data, consisting of :

a) Primary Data

Primary data is data obtained directly from the research subject by using the data of the Religious Court decision¹⁶, so that primary data is obtained from researcher observations with related agencies online and offline, which are combined with several sources from primary books which include; thurats book on inheritance, Fiqh Mawarist, Al-Qur'an and Hadith, and so on.

b) Secondary Data

Secondary data is data collected by researchers as support from the first source. It can also be said that the data is arranged in the form of journals or articles about inheritance¹⁷, so that the data that will be obtained by the author from the website of the relevant institution refers to related data sources and research with primary legal materials because it explains what will be obtained in order to assist in analyzing and understanding primary legal materials consisting of:

¹⁴ Y. Denzin N & Lincoln, *Hanbook of Qualitative Research* (Yogyakarta: Pustaka Pelajar, 2009): 23.

¹⁵ library studies include general processes such as systematic identifying theories, library discovery, and document analysis that contain information related to research topics, Lihat Muhammad Nazir, *Metode Penelitian* (Jakarta: Ghalia Indonesia, 2003): 27., Library Method (*Library Research*) it is a series of activities related to the library data collection method. Lihat Mahmud, *Metode Penelitian Pendidikan* (Bandung: Pustaka Setia, 2011): 31.

¹⁶ Primary data is data obtained directly from the subject of the research using measurement tools or direct data retrieval tools to subjections as the source of the information sought.

¹⁷ Nana Saodih Sukmadinata, *Metode Penelitian Pendidikan* (Bandung: Remaja Rosadakarya, 2008): 60.

- a. Islamic Inheritance Law in Indonesia.
- b. Opinions of experts related to inheritance disputes and settlement of inheritance disputes.
- c. Legal journals related to inheritance disputes.

1.6.3 Data collection techniques

The data obtained by the author will be collected using documentation techniques, namely techniques for collecting various data sources including; books, related articles, journals and so on.¹⁸ Then the second step taken by the researcher is to describe a series of activities carried out by the researcher to understand more about what will be researched, this is obtained through the results of data obtained from related institutions or experts who understand this problem. Furthermore, the material that has researches have obtained will be processed or analyzed to obtain a conclusion that is compiled in the form of a research report.¹⁹

1.6.4 Data analysis technique

This qualitative research uses inductive data analysis techniques, which are based on specific facts, the data analysis process begins with reviewing the data that has been obtained through documentation techniques. In general, the data analysis method includes reduction, data description and conclusions.²⁰ Then the approach used is a qualitative approach, which is research aimed at describing and analyzing phenomena, and events with analysis based on Fiqih mawarits in Islam. Some descriptions are used to find principles and explanations that lead to conclusions.²¹

¹⁸ Arikunto, *Prosedur Penelitian Suatu Pendekatan Praktik*, (Jakarta: PT.Rineka, 2006) : 135.

¹⁹Meistika, *Metode Penelitian Kepustakaan*, (Jakarta : Yayasan Obor Indonesia) Tahun 2006 : 3.

²⁰ Sandu Siyoto, *Dasar Metodhologi Penelitian* (Yogyakarta: Literasi Media Publishing, 2015): 124.

²¹Nana Saodah Sukmadinata, *Metode Penelitian Pendidikan* (Bandung: Remaja Rosadakarya, 2008): 1-56.