



## Implications of Postponing the Distribution of Inheritance from an Islamic Legal Perspective

Aminah Tanjung<sup>1\*</sup>, Mariadi<sup>2</sup>

<sup>1,2</sup> Institut Agama Islam Negeri Langsa, Indonesia

email: [aminah@iainlangsa.ac.id](mailto:aminah@iainlangsa.ac.id)

\* Corresponding Author

Submitted: Oct 26, 2023

Accepted: Dec 29, 2023

Published: Dec 31, 2023

How to Cite (Chicago): Tanjung, Aminah, and Mariadi Mariadi. 2023. "Implications of Postponing the Distribution of Inheritance from an Islamic Legal Perspective". *Al-Qadha : Jurnal Hukum Islam Dan Perundangan* 10 (2). <https://doi.org/10.32505/qadha.v10i2.7200>.

### Abstract

Conflicts between heirs and a reduction in the rights or shares that must be received as a result of some assets being controlled by one party generally result from delays in the community's inheritance distribution. To avoid this, it is crucial to comprehend and be aware of how inheritance is distributed in society from the standpoint of Islamic law. Qualitative research using a normative juridical perspective is the methodology employed. The distribution of inherited assets should not be delayed because the negative impact is greater than the positive impact felt by the community, so it is better for the community to immediately distribute the inherited assets after the heir dies and the costs of arranging the body, paying wills, and paying debts have been completed. The Compilation of Islamic Law (KHI) also specifies what needs to happen when heirs inherit money, as stated in Article 187, and what needs to happen when one family decides not to share the money, as stated in Article 188.

**Keywords:** Postponement, Division, Inheritance

### Abstrak

Konflik antar ahli waris dan berkurangnya hak atau bagian yang harus diterima akibat dikuasainya suatu harta benda oleh salah satu pihak, kondisi ini pada umumnya diakibatkan oleh tertundanya pembagian warisan. Untuk menghindari hal tersebut, penting untuk memahami dan menyadari bagaimana pembagian warisan dalam masyarakat dari sudut pandang hukum Islam dan Peraturan waris di Indonesia. Penelitian kualitatif dengan perspektif yuridis normatif merupakan metodologi yang digunakan. Pembagian harta warisan tidak boleh ditunda-tunda karena dampak negatifnya lebih besar dibandingkan dampak positif yang dirasakan masyarakat, sehingga sebaiknya masyarakat segera membagikan harta warisan tersebut setelah ahli waris meninggal dunia dan biaya pengurusan jenazah, pembayaran wasiat, dan pembayaran hutang telah selesai. Kompilasi Hukum Islam (KHI) juga mengatur apa yang perlu dilakukan ketika ahli waris mewarisi uang, sebagaimana tercantum dalam Pasal 187, dan apa yang perlu dilakukan ketika satu keluarga memutuskan untuk tidak membagi uang tersebut, sebagaimana tercantum dalam Pasal 188.

**Kata Kunci:** Penundaan, Pembagian, Warisan



Creative Commons Attribution-Noncommercial 4.0 International  
(CC BY-NC 4.0)

## **Introduction**

Many people do not immediately distribute the assets inherited from their heirs after they die. After the costs of arranging the body, they then paid off the debt left by the heir. Some people postpone the distribution of inheritance for years, and some heirs even die before the inheritance can be distributed. Then the son of the deceased heir submitted this case to the Sharia Court so that the distribution of the inheritance could be carried out fairly and correctly.<sup>1</sup> Rahadian Setiawan's work in his thesis explains that the procedure for distributing inheritance property in religious courts begins with a decision and determination of an issue that was previously considered based on the procedural law applicable in religious courts. Obstacles to the implementation of inheritance arise from not immediately implementing the judge's decision and obstacles in its implementation, as well as the type and nature of the object in dispute.<sup>2</sup> The problem with implementing Succession Law Number 7 of 1989 is that there are choices and disputes over property rights, which can give rise to adjudication disputes between courts.<sup>3</sup>

The similarity in this article is that the object of the inheritance distribution problem is the same, while the difference is that the thesis discusses the decision of the Religious Court, while this article discusses the postponement of inheritance distribution from an Islamic legal perspective. Endah Mayana's work in her thesis explains that the reason the heir holds inheritance rights is because the heir considers that the inheritance he left behind is the inheritance his father received since marrying his mother as the heir's second wife so that the heir feels more empowered and other relatives, the heir, want to take the inheritance. The heirs feel that they have made the greatest sacrifice to care for their parents so that they can enjoy large amounts of wealth.<sup>4</sup>

The analysis of the Supreme Court decision Number 2I34.K/PDT/1989 in resolving the case of dividing inheritance among one of the heirs is correct and fulfills the meaning of justice. The Supreme Court rejected Buyung Musjaya and his friends' cassation petition and upheld the decision of the Lubuk Pakam District Court, which required that the distribution be made first between H. Muhammad Djamil and Subangliah and then redistributed to the other heirs. Apart from that, it turns out there is no evidence of Subangliah's remains.

The similarity is that both are related to the distribution of inheritance, while the difference is that the thesis explores the decision, whereas this article is only normative about delaying the distribution of inheritance from the perspective of Islamic law. The writing analysis model used in this discussion is a qualitative research analysis model, namely, an approach that is not carried out using statistical formulas and symbols. In the settlement of inherited assets, there is a sequence of actions that must be followed in the distribution of inherited assets, namely:

*First*, even though the Koran does not explain at all about the costs of handling a corpse, the results of the ijithad from the Jumhur ulama determine that the costs of handling a corpse are the first action that must be taken.<sup>5</sup> The Zahiri group has a different view on this, arguing that debt payments should come before the agency's operational costs. Their reason

---

<sup>1</sup> Sayuti, Interview at the IAIN Langsa Legal Aid and Consultation Institute (LKBH), 2020.

<sup>2</sup> Rahadian Setiawan, "Pelaksanaan Pembagian Warisan Menurut Hukum Islam (Studi Pada Pengadilan Agama Sleman)" ( Bandung, Program Pascasarjana Universitas Diponegoro, 2003).

<sup>3</sup> Zainal Arifin Haji Munir, "Analysis of Patterns for Inheritance Dispute Settlement in the Tradition of Sasak Community in Lombok," *Mazahib* 20, no. 2 (January 12, 2022): 225-50, <https://doi.org/10.21093/mj.v20i2.3774>.

<sup>4</sup> Endah Mayana, "Analisis Yuridis terhadap Pelaksanaan Pembagian Harta Warisan yang Dikuasai oleh Salah satu Ahli Waris (Studi Kasus Putusan Mahkamah Agung No. 2134/k/PDT/1989)" (Thesis, Medan, Universitas Sumatera Utara, 2013).

<sup>5</sup> Ibnu Abidin, *Hasyiyatu Radd Al-Mukhtar* (Egypt: Mustafa al-Baby al-Halaby, 1996).780

is that the Zahir verse of the Koran requires debts to be paid off first. Based on this advice, they are of the opinion that if the debt can offset the inheritance, then the costs of arranging the body will be borne by the mourners present, including the person who owes it.<sup>6</sup>

*Second*, regarding the amount of funeral management costs that should be charged to the estate, there is no specific indication in the Qur'an or in the Hadith of the Prophet SAW. However, the principle of living a simple life and not wasting money in Islam can be used as a basis for funeral funding. The funeral expenses deducted from the inheritance are for the funeral expenses of the deceased. This opinion prevails among the majority of scholars.<sup>7</sup> The thinking that determines the payment of funeral expenses by a person who is under the heir's responsibility is based on the consideration that while the person is still alive, he is his dependent, as well as his responsibility after his death. Payment of Heir's Debt

*Third*, the debt of a deceased person does not become a burden for the heirs because, according to the Islamic view, the debt is not inherited. The debt remains the responsibility of the deceased and is deducted from the inheritance. The obligation of the heir or the person who is still alive is only to contribute to the repayment of the debt with his inheritance.

*Fourth*, submitting a will, If after disbursing the funeral expenses and paying the debt, the inheritance is still there, then the next action is to pay or hand over the will made by the heir to the rightful party. There is a provision about the will found in the Qur'an, chapter al-Baqarah, verse 180.

Qualitative research using a normative juridical<sup>8</sup> perspective is the methodology employed.<sup>9</sup> The data source was obtained from the results of a study of religious court decisions in Langsa City. In addition, this study also uses Islamic legal theory in analyzing religious court decisions. To strengthen the analysis, this research explores several empirical studies on cases of inheritance distribution.

## **Practices for Accelerating Inheritance Distribution**

### *Distribution of Inheritance in a Family Way*

Many people choose to share their inheritance according to family principles. Sharing an inheritance in this way is usually a simpler and quicker process. There are those who continue to divide their respective rights according to their portion of Islamic heritage, there are also those who divide them evenly based on mutual agreement. The Langsa City ulama who were interviewed said that in their village, the distribution of inheritance is more familial. However, there are also people who involve village officials. If the distribution of inherited assets involves the participation of village officials, then the distribution of inherited assets is carried out in accordance with Islamic law. If the distribution of inherited assets is only related to the family or is of a familial nature, then there is no need to measure the land and calculate the inherited assets. For example, if an heir leaves 3 children and inherits assets in the form of land located in 3 places, then no measurements are needed. Each person inherited a plot of land. However, if the division of inheritance involves the village government, action must be taken first. Until now, the division of inheritance in his village has not yet reached the Sharia Court. The distribution of inheritance is completed in the Village only.<sup>10</sup>

---

<sup>6</sup> Ibn Hazm, *Al-Muhalla* (Egypt: Matba'ah al-Jumhuriyah al-Arabiyah, 1970). 254

<sup>7</sup> Khatib Syarbaini, *Mughnil Al-Muhtaj*, vol. 3 (Mecca: Dar al-Katib al-Arabi, n.d.).3

<sup>8</sup> Muhazir Muhazir, "Status Hukum Pernikahan Muslim Pasca Perpindahan Keyakinan Perspektif Hukum Keluarga Islam Di Indonesia," *TAQNIN: Jurnal Syariah Dan Hukum* 3, no. 1 (2021): 8.

<sup>9</sup> Zuchri Abdussamad, *Metode Penelitian Kualitatif* (Makassar: CV. Syakir Media Press, 2021). 23

<sup>10</sup> Ridwan, Ulama Kota Langsa, May 1, 2020.

### Distribution of Inheritance through the Sharia Court

According to one employee at the Langsa Syar'iyah Court who was interviewed, he said that many inheritance cases were registered at the Langsa Syar'iyah Court. These cases involve determining heirs, joint assets or inheritance problems such as inherited assets, controlled by one party. Furthermore, it is recommended to look directly at the decisions regarding the inheritance case on the Syar'iyah Court website.

**Table 1.** Number of Inheritance Cases at the Langsa Syar'iyah Court<sup>11</sup>

No.	Number of Cases	Year	Case
1	33	2019	Inheritance
2	34	2020	Heritage
3	63	2021	Heritage
4	57	2022	Heritage

In Islam, there are four justifications for inheritance, among other things: *First*, valid marriage. Marriage is a legally binding contract between husband and wife. Because of the contract, the husband inherits the wife's property, and the wife inherits the husband's property, even though they have never had sexual intercourse.<sup>12</sup> The words of Allah SWT in Surat An-Nisā verse 12:

وَلَكُمْ نِصْفٌ مَا تَرَكَ أَزْوَاجُكُمْ إِن لَمْ يَكُن لَهُنَّ وَلَدٌ فَإِن كَانَ لَهُنَّ وَلَدٌ فَلَكُمُ الْرُّبُعُ مِمَّا تَرَكُنَّ مِنْ بَعْدِ وَصِيَّةٍ يُوصِينَ بِهَا أَوْ دَيْنٍ وَلَهُنَّ الْرُّبُعُ مِمَّا تَرَكُنَّ إِن لَمْ يَكُن لَكُمْ وَلَدٌ فَإِن كَانَ لَكُمْ وَلَدٌ فَلَهُنَّ الشُّتُّمُ مِمَّا تَرَكُنَّ مِنْ بَعْدِ وَصِيَّةٍ تُوْصُونَ بِهَا أَوْ دَيْنٍ

Meaning: " And for you (husbands), half of the wealth left by your wives, if they have no children, if your wives have children, then you get a quarter of the property they left behind after fulfilling the will they made or (and) after paying the debt. The wife gets a quarter of the property you leave if you have no children. If you have children, then the wives get one-eighth of the property you leave behind after the will you make is fulfilled or (and) after your debts are paid". (QS An-Nisā : 12).

*Second*, Lineage or kinship. Lineage or kin relationships consist of *ashabul furud*,<sup>13</sup> '*asabah*,<sup>14</sup> and *zawil arham*.<sup>15</sup> Lineage or kin here is every relationship resulting from birth, which includes the origin of the person who died, his descendants, as well as his siblings (biological, father, mother). Allah SWT says:

لِلرِّجَالِ نَصِيبٌ مِمَّا تَرَكَ الْوَالِدَانِ وَالْأَقْرَبُونَ وَلِلنِّسَاءِ نَصِيبٌ مِمَّا تَرَكَ الْوَالِدَانِ وَالْأَقْرَبُونَ مِمَّا قَلَ مِنْهُ  
أَوْ كَثُرَ نَصِيبًا مَفْرُوضًا

<sup>11</sup> "Mahkamah Syar'iyah Langsa," *Mahkamah Syar'iyah Langsa* (blog), accessed January 17, 2024, <https://ms-langsa.go.id/wp/>.

<sup>12</sup> Muhammad Muhyidin Abdul Hamid, *Panduan Waris Empat Madzhab* (Jakarta: Pustaka Al-Kautsar, 2009).

<sup>13</sup> *Ashabul Furud*: is an heir who has a certain share in the inheritance, namely 1/2, 1/3, 1/4, 1/6, 1/8 or 2/3.

<sup>14</sup> '*Ashabah* : is an heir who does not have a certain share in the inheritance, he takes the remaining property after the *ashabul furud* takes their share.

<sup>15</sup> *Zawil arham* : is a relative other than *ashabul furud* and '*ashabah*.

It means: "For men, there is a right to a share of the inheritance of their parents and relatives, and for women, there is a right to a share of the inheritance of their parents and relatives, either a little or a lot, according to the share that has been set". (QS An-Nisā : 7)

*Third, independence Relations ( al - wala' ).* In the language of *al-wala'* is *al-nushrah*, defense, help. In terms it is: a binding relationship between one person and another that makes it seem as if they are siblings.<sup>16</sup> In general, this *wala'* is a legal relationship (*qarabah hukmiah*) between a person who frees a slave and the slave he frees. This emancipation makes the emancipator and his companions able to inherit the property of the slave he freed, but this slave is not entitled to inherit from his master even if he does not have an heir.

*Fourth, Jihatul Islam (Islamic relationship).* If a Muslim dies and leaves no heirs at all, his inheritance will be handed over to Baitul Mal, and will further be used for the benefit of the Muslims.<sup>17</sup>

### ***Māni' (Barrier) to Inheritance***

Linguistically, *māni'* means what prevents you from obtaining something. Meanwhile, in terms of shari'a, *māni'* is a nature that is *zahir* and certain,<sup>18</sup> where generally, with its existence, there are no laws or invalidating causes. So, if there are any of the following things then the heirs who are related by marriage or kinship (relatives) to the person who died will lose their right to inherit inheritance. *Māni'* in inheritance is:<sup>19</sup>

1. Slave; A slave did not inherit property from his deceased family until he was free. From Ibn Umar ra, that the Prophet SAW said:

مَنْ بَاعَ نَخْلًا بَعْدَ أَنْ يُؤْتَرْ فَنَمْرُثُهَا لِلَّذِي بَاعَهَا ، إِلَّا أَنْ يَشْرَطَ الْمُبْتَاعُ . وَمَنْ بَاعَ عَبْدًا فَمَالِهُ لِلَّذِي بَاعَهُ إِلَّا أَنْ يَشْرَطَ الْمُبْتَاعُ

It means:

"Whoever sells a date palm tree after it has been pollinated, the fruit goes to the seller, unless there are conditions from the buyer. And whoever sells a slave, the slave's property becomes the property of the seller, unless there are conditions from the buyer . (HR Ibn Majah).

2. There are Different religions between heirs and *muwaris* (heirs). If someone dies and the heirs have a different religion, then the heirs have no right to the inheritance of their deceased family. Likewise, on the contrary, Muslims have no right to inherit property from their infidel families. In a *hadi* s narrated by Usamah bin Zaid bin Haris ah Rasulullah SAW said:

<sup>16</sup> Muhammad Suhaili Sufyan, *Fiqh Mawaris Praktis: Perbandingan Empat Mazhab Dan Kompilasi Hukum Islam Indonesia* (Citapustaka Media Perintis, 2012).

<sup>17</sup> Suhrawardi K. Lubis and Komis Simanjuntak, *Hukum Waris Islam* (Jakarta: Sinar Grafika, 2013).

<sup>18</sup> Indah Sari, "Pembagian Hak Waris Kepada Ahli Waris AB Intestato dan Testamentair Menurut Hukum Perdata Barat (BW)," *JURNAL ILMIAH HUKUM DIRGANTARA* 5, no. 1 (May 21, 2018): 1-20, <https://doi.org/10.35968/jh.v5i1.99>.

<sup>19</sup> Agus Wantaka, Abdul Rosyid, and Eka Sakti Habibullah, "Pembagian Warisan Dalam Perspektif Hukum Islam Dan Hukum Adat Jawa (Studi Komparasi)," *Prosa AS : Prosiding Al Hidayah Ahwal Asy-Syakhshiyah* 1, no. 1 (December 22, 2018): 13-33.

لَا يَرثُ الْمُسْلِمُ الْكَافِرُ وَلَا الْكَافِرُ الْمُسْلِمُ<sup>20</sup>.

It means:

"Muslims do not inherit unbelievers, and non-believers do not inherit Muslims ."

3. Apostate; People who leave Islam do not have the right to inherit property from their families who remain Muslim. Likewise, if he dies of apostasy, his family will not inherit the property he left behind.
4. Murder; the person who killed his family is prevented from getting the inheritance of the person he killed. In a hadith from 'Amru bin Syu'aib from his father, from his grandfather, from Rasulullah SAW:

لَا يَرثُ الْمُقَاتَلُ شَيْئًا

It means:

"The person who kills inherits nothing from the person he killed."

5. The time of death between the two is unknown. If two or more people who have a lineage (family) relationship or marriage die in an accident or disaster and so on, then they do not inherit from each other, because it is not known who died first, so it is considered that they died at the same time.<sup>21</sup>

A condition is something whose absence requires the absence of law. To obtain inheritance rights, there are three conditions that must be met; first the death of the heir, second the life of the heir, and third there is no obstacle to get the inheritance.<sup>22</sup>

1. Death of Heir. The death of the heir is the main requirement in discussing the science of inheritance, because with the death of the heir, ownership of the assets has been transferred to the heirs.<sup>23</sup> The death of *the muwaris* (heir) absolutely must be fulfilled. A person is called *muwaris* if he has died. That means that, if a person gives property to his heirs while he is still alive, it is not an inheritance.<sup>24</sup>
2. The life of the heir. The heir is still alive when *the muwaris dies* even if only for a moment, whether the heir's life is a real life or is considered to be alive like a fetus in its mother's womb.
3. There is no *mā ni'* (barrier to obtaining an inheritance) or any known relationship with the heir, whether by lineage (relatives), marriage, or both,<sup>25</sup> or by freeing slaves.<sup>26</sup>

<sup>20</sup> Al-Bukhari, *Sahih...*, jilid IV, hadis no 6383, 2484; Muslim, *Sahih...*, jilid III, hadis no 1614, 1233; Abu Daud, *Sunan...*, jilid III, hadis no 2909, 125.

<sup>21</sup> Maryati Bachtiar, "Hukum Waris Islam Dipandang Dari Perspektif Hukum Berkeadilan Gender," *Jurnal Ilmu Hukum* 3, no. 1 (March 8, 2013): 1–45, <https://doi.org/10.30652/jih.v3i01.1026>.

<sup>22</sup> Habib Ismail and Agus Hermanto, "Analisis Hak Waris Istri Akibat Murtad Perspektif Hukum Waris Islam Dan Gender," *At-Tahdzib: Jurnal Studi Islam Dan Muamalah* 8, no. 1 (October 3, 2020): 121–43.

<sup>23</sup> Rahmat Haniru, "Hukum Waris Di Indonesia Perspektif Hukum Islam Dan Hukum Adat," *AL-HUKAMA: The Indonesian Journal of Islamic Family Law* 4, no. 2 (2014): 456–74, <https://doi.org/10.15642/al-hukama.2014.4.2.456-474>.

<sup>24</sup> Elviana Sagala, "Hak Mewaris Menurut Ketentuan Hukum Waris Perdata," *JURNAL ILMIAH ADVOKASI* 6, no. 2 (September 15, 2018): 116–24, <https://doi.org/10.36987/jiad.v6i2.254>.

<sup>25</sup> For example, a woman marries her father's nephew (uncle), then the man is connected to the wife with two relationships; as her husband and as her uncle's son.

<sup>26</sup> Sufyan, *Fiqh Mawaris Praktis: Perbandingan Empat Mazhab Dan Kompilasi Hukum Islam Indonesia*.

## Implementation of Inheritance Distribution

After the obligations regarding the assets left behind have been carried out as explained previously and it turns out that there are still assets remaining, the remaining assets become the full rights of the heirs. Before directly distributing inherited assets to heirs, there is still a voluntary action on the part of the party who owns the assets in full, namely making modest donations to parties who have no right to the assets by inheritance.<sup>27</sup>

After facing a pile of assets that will be distributed to the heirs, both physically and calculatedly, the next steps are as follows:<sup>28</sup> *First*, Detailing valuable assets and calculating them in the form of numbers that can be divided. The whole is estimated in the form of money and figures, both movable and immovable, whether the assets are large or small; *Second*, Exactly trace the people who are related and married to the testator, whether present or not, and examine the following matters: a. Ensure his relationship with the heir by using all possible means. Like whether he was born to that mother or not; b. Certainty of the conditions determined are: whether at the time of the testator's death he was alive or not; c. Ensure that there are no obstacles such as the same religion between the heir and heirs; and that his death was not caused by the heir; d. The distance between her kinship and the heir to find out whether she is veiled in a *hirman hijab* by the heir who is with her; e. Sorting out the members of the people who are definitely entitled to receive the inheritance of the specified share or *zauk furud* or heirs whose share is still open, aka *aşabah* or simply *zaul arham*.

**Heirs Who Have the Right to Receive Inherited Assets.** There are twenty-five (25) people entitled to inherit, fifteen (15) from the male side, and ten (10) from the female side. The male heirs are:

- a. Son
- b. Male grandson/descendant of a male child and directly down as long as the relationship is still male
- c. Father
- d. Paternal grandfather and upwards
- e. Biological brother
- f. Half brother
- g. Half brother
- h. The son of a biological brother
- i. The son of a half-brother
- j. Father's brother (uncle) who is the same mother as the father
- k. Father's brother (uncle) who is the same father
- l. The son of the father's brother (uncle) who is the same mother as the father
- m. The son of the father's brother (uncle) who is the same as the father
- n. Husband, and
- o. *Mu'tiq* (the man who set him free).<sup>29</sup>

The heirs from the female side are:

- a. Daughter
- b. Daughters of sons (grandsons) and further down as long as their relationship with the deceased is still male
- c. Mother

<sup>27</sup> Cindy Aoslavia, "Perbandingan Hukum Waris Adat Minangkabau Sumatera Barat Dan Hukum Perdata Barat," *Mizan: Jurnal Ilmu Hukum* 10, no. 1 (June 3, 2021): 54–63, <https://doi.org/10.32503/mizan.v10i1.1545>.

<sup>28</sup> Adelina Nasution, "Pluralisme Hukum Waris Di Indonesia," *Al-Qadha : Jurnal Hukum Islam Dan Perundang-Undangan* 5, no. 1 (2018): 20–30, <https://doi.org/10.32505/qadha.v5i1.957>.

<sup>29</sup> T. Mahmud Ahmad, *Ilmu Praktis Faraidh*, (Banda Aceh: Pena Foundation, 2012), 4.

- d. Paternal grandmother
- e. Grandmother from the mother's side and directly above the mother's side before the male interludes
- f. Full sister
- g. Half sister
- h. Mother's sister
- i. Wife; and
- j. *Mu'tiqah* (the woman who set him free).<sup>30</sup>

If all the male heirs are collected, then only the son, father, and husband are entitled to the inheritance. If there are all female heirs, then only daughters, granddaughters of sons, mothers, wives, and biological sisters are entitled to inheritance. If there are all male and female heirs entitled to inheritance only sons, daughters, mothers, fathers, and husbands or wives.

#### 1. Provisions of the Heirs' Section

There are six stipulations for the share of heirs in the Qur'an, namely: 1/2, 1/3, 1/4, 1/6, 1/8, and 2/3.<sup>31</sup>

##### a. The heirs who get 1/2 share are:

- 1) Husband, when there are no children to inherit. This means when there are no sons, daughters, sons of sons, daughters of sons;
- 2) A biological daughter, if she is alone, is not with an heir who is equal to her, and has no ashabah like a son;
- 3) A granddaughter from a son, if the deceased does not leave behind a biological daughter, or a grandson from a son of the same rank;
- 4) A biological sister, if there is no biological brother, biological daughter, or biological granddaughter of a son;
- 5) A father's sister, if there are no biological sisters, or father's brothers, or daughters, or granddaughters of sons.<sup>32</sup>

##### b. The heirs entitled to 2/3 of the property are:

- 1) Two or more biological daughters, and no biological sons;
- 2) Two or more biological granddaughters, if there are no biological brothers, or daughters, or granddaughters of sons;
- 3) Two or more biological sisters, if there are no biological brothers, daughters, or granddaughters of sons;
- 4) Two or more half-sisters, if there are no half-brothers, biological sisters, daughters, or granddaughters of sons.<sup>33</sup>

##### c. The heirs entitled to 1/4 of the inheritance are:

- 1) Husband, with the existence of a descendant who inherits;
- 2) One or more wives, without heirs.<sup>34</sup>

##### d. The heirs who get 1/8 of the inheritance are: Wife, if the husband leaves a child or children from sons, both male and female.<sup>35</sup>

##### e. The heirs who get 1/3 of the estate are:

- 1) Mother, when there is no child heir and a number of brothers;

---

<sup>30</sup> Syarbaini, *Mughnil Al-Muhtaj*.

<sup>31</sup> Abidin, *Hasyiyatu Radd Al-Mukhtar*.

<sup>32</sup> Syarbaini, *Mughnil Al-Muhtaj*.

<sup>33</sup> Sufyan, *Fiqh Mawaris Praktis: Perbandingan Empat Mazhab Dan Kompilasi Hukum Islam Indonesia*.

<sup>34</sup> Sufyan.

<sup>35</sup> Sufyan.

2) There are a number of brothers and a number of sisters on the mother's side when there is no male heir or father.<sup>36</sup>

f. The heirs who get 1/6 of the inheritance are:

- 1) Father, if the deceased had children, or children from sons;
- 2) Grandfather on the father's side, if there is no father, and the deceased has children, or children from sons;
- 3) Mother, if the deceased had a child, or a child from a son, or two or more brothers or sisters, either biological, half-brother, or half-mother;
- 4) The daughter of a son (grandson), either one or more, if the deceased had a daughter, and there are no sons of the son (grandson) who are of the same level with him;
- 5) Father's sister, one or more, when there is one biological sister, and no father's brother's sister, or son's daughter (grandchild);
- 6) One brother or sister who is the same mother only;
- 7) Grandmothers, both maternal and paternal, one or more, when the mother is not present.<sup>37</sup>

### **'Aşabah and its Levels**

Linguistically, 'aşabah comes from the word 'aşaba-ya'subu-ta'sieban, the plural is aşabāt, meaning male descendants and relatives from his father's line.<sup>38</sup> 'Aşabah are the heirs who do not have a specific share in the inheritance. They take all the property if there is no a şhabul furud, if there is ashabul furud they take the remainder after the aşhabul furud take their share, and if aşhabul furud spends all the property then aşabah does not get anything. 'Aşabah consists of three types:

First, 'Aşabah bin nafsi ; namely, male relatives whose lineages are directly connected to the heir (without intermediaries) such as sons and fathers, or whose lineages are connected to the heirs through men and women, such as biological brothers, or only through men, such as grandsons. -son's son, father's grandfather, father's brother, and so on. The levels of 'aşabah bin nafsi are:

- 1) Sons and their male descendants;
- 2) Father; namely the biological father of the deceased person;
- 3) Paternal grandfather and siblings or father's relatives;
- 4) The son of a biological brother or the son of a father's brother all the way down;
- 5) Uncle; namely the father's brother (uncle) who is the same mother as the father (biological), the father's brother (uncle) who is only the same father, the son of the father's brother who is the same mother as the father (biological uncle's son), namely the son of the father's brother (uncle's son) who is only the same father.<sup>39</sup>

If there are several 'aşabah bin nafsi from different sides , then the side of albunuwwah is preferred over the side of al ubuwwah , and so on. If there are several 'a ş abah bin nafsi from the same jihah , then the one who is closer in degree to the person who died comes first. If there are several 'a ş abah bin nafsi from the same jihah and closeness of the same degree, then the one with the strongest kinship is given priority.

Second, 'aşabah bil ghair , that is, every female heir who has a certain share in the inheritance is shared even by the male heir of ashabah bin nafsi who is equal to her. They

<sup>36</sup> Sufyan.

<sup>37</sup> Sufyan.

<sup>38</sup> Sufyan.

<sup>39</sup> Sufyan.

together become '*asabah*' , the man's share is twice the woman's share. '*asabah bil ghair*' is limited only to:<sup>40</sup>

- 1) Biological daughter, if there is a biological son;
- 2) Daughter of a son (grandchild), if there is a grandson of a son, so on down;
- 3) Biological sisters, if there are biological brothers;
- 4) Father's sister, if there is a father's brother.

Third, '*asabah ma'al ghair*' , namely women who have a certain share in the inheritance, but because there is *ṣahibatul far d* others cause them to become 'ashabah that they do not participate in the association in the part of '*ashabah*' . '*Asabah ma'al ghair*' is limited only to biological sisters and father's sisters . They become '*asabah ma'al ghair*' if the deceased had a daughter, or a granddaughter from a son.<sup>41</sup>

### Hijab in Inheritance Law

Etymologically, *hijab* means to prohibit entry or prevent it from becoming inherited property; *hijab* means to prevent; and *hajaba ash syai-a* means to cover. Meanwhile, *hijab* in Sharia terminology means holding someone back from inheriting because there are other heirs who are more entitled than them, either in whole or in part.<sup>42</sup>

*Hijab* is different from *mani'*. *Mani'* is the obstruction of a person from obtaining inheritance due to a *mawani'* (barrier to obtaining inheritance) such as committing the crime of murder, different religions between the heir and *the muwaris* , and so on. So if a child has a different religion from his father then the child has no right to the inheritance left by his father. And the child cannot wear the *hijab* on other people, but their existence is considered non-existent. If a person dies with heirs consisting of his wife, sons of different religions, and biological brothers. In this case, sons are not entitled to inheritance because of a *mani'* , namely a different religion, the wife gets 1/4 of the inheritance because her husband who died is considered childless, and biological brothers get the rest. wife's share as '*asabah*'.

Meanwhile, *hijab* means preventing someone from obtaining inheritance, but not because of the existence of a *mani'* from them, but because there are other heirs who are closer in lineage or have a stronger kinship with the person who died. A person who wears a *hijab* can also *hijab* other people, their existence is still taken into account even though they do not receive a share of the inheritance. If someone dies with heirs consisting of mother, father and two biological brothers, then the mother gets 1/6 of the inheritance because of the presence of two siblings even though the two siblings do not get a share because they are *hijab hirman* by father.

*Hijab* is divided into two categories: *hijab nuqshan* and *hijab hirman*: First, *hijab nuqṣan* is the reduction of the heir's *far d* from a large part to a smaller part due to the presence of other heirs, such as a husband whose rights are reduced from 1/2 to 1/4 due to the presence of children. *Hijab nuqṣan* occurs in five *ashabul furuḍ*, which get two parts for each; both those of a higher degree, and those of a lower degree. They are is husband, wife, mother, son's granddaughter, father's sister;<sup>43</sup> Second, *hijab hirman* is the obstruction of an heir from obtaining absolute inheritance. There are two groups of heirs in *the hirman hijab* . First, heirs who have never been hindered by *the hirman hijab*. There are 6 heirs, namely; father, mother, husband, boy, girl, wife.<sup>44</sup>

<sup>40</sup> Sufyan.

<sup>41</sup> Wahbah Az- Zuhaili, *Fiqh Al-Islami Wa Adillatuhu* (Beirut: Dar al-fikr, 1989).420

<sup>42</sup> Zuhaili.420

<sup>43</sup> Zuhaili.

<sup>44</sup> Sofyan Mei Utama, "Kedudukan Ahli Waris Pengganti dan Prinsip Keadilan Dalam Hukum Waris Islam," *Jurnal Wawasan Yuridika* 34, no. 1 (December 15, 2016): 68-86, <https://doi.org/10.25072/jwy.v34i1.109>.

## Reasons for Postponing the Distribution of Inheritance

Reasons for Postponing the Distribution of Inheritance, namely because there is an agreement between the heirs, one of the heirs is still small or has not yet received the time to receive the inheritance, because some parties are greedy for the inheritance, so the distribution of the inheritance is postponed, there are also most people who consider discussing inheritance issues. after the heir dies is taboo .

The Langsa City Ulema Consultative Council, who was interviewed, explained that postponing the distribution of inheritance is a sin because, according to Islam, after a family member dies, the inheritance must be distributed immediately. Ridwan said that in his village, the distribution of inheritance is more of a family nature. However, there are also people who ask for help from village officials. If the distribution of inherited assets involves the participation of village officials, then the distribution of inherited assets is carried out in accordance with Islamic law. In the event that the distribution of inherited assets is only related to the family or is essentially a family principle, there is no need to measure and calculate the inherited assets.

Murdani said that, for those who postpone inheritance distribution, there are two aspects that need special attention, namely positive and negative. The positive side of this delay is that if the distribution of inheritance is carried out quickly, it will give the impression that death is worth waiting for, because it has become a habit in society not to rush in the distribution of inheritance. In religion, it is recommended to do something that does not cause *suuddhan* for other Muslims, there is no obligation to hasten the distribution of inheritance, because it is not part of the *tajhiz mayyit*, whether it is divided or not, the inheritance is indeed the joint property (*syirkah syuyu'*) of all the heirs. . Due to the nature of *syirkah*, one of the heirs who wants to take advantage of the *warasah* (inherited property) needs to determine their respective rights in accordance with religious guidance. This determination (division/ *taqsim* ) is needed if the heirs really want to make use of it, such as for selling, renting, etc. -Otherwise, as long as the heirs do not want to use it, there is no urgent reason to rush it.<sup>45</sup>

Bustami then said that the essence of inheritance should not be postponed. He said that delaying the distribution of inheritance was a mistake. So, when the heir dies, the assets must be immediately distributed according to their respective rights. If the inheritance is not immediately divided, other consequences will arise in the future, for example, if the heir dies and leaves behind children. The heirs leave a business that has been managed together and has not been divided. In the end, problems will arise, such as the death of one of the heirs. So, in his opinion, the inheritance must be distributed immediately, because if it is not resolved, then the inheritance will be mixed up. So there are many reasons why the distribution of inheritance is postponed, it's not just the community that's at fault, but also the lack of supportive education.<sup>46</sup>

Journal This Also find verses Which explain about provisions Which must done If death happens death give treasure inheritance to expert inheritance. Which right after implementation will expert inheritance and payment paid off debts expert inheritance. Allah SWT has mentioned this action in Surah An-Nisa'ayat 11 and 12. In these two verses, Allah states that the inheritance, according to its parts will be settled after completing the will and after the heir's debts have been paid. This provision is mentioned once in paragraph 11 and three times in paragraph 12.

---

<sup>45</sup> Murdani, Leader of Dayah Futuhul Mu'arif Al Aziziyyah Langsa City, April 21, 2020.

<sup>46</sup> Bustami A Latief, Chairman of the Langsa City Muhammadiyah Regional Leadership, April 21, 2020.

Based on this provision, it can be said that it is better not to postpone the distribution of inheritance assets because the negative impact is greater than the positive impact felt by the community, so it is better for the community to immediately proceed with the distribution of assets. It is better for the community to immediately distribute inheritance assets when the heir has died and the costs of handling the body have been completed. settlement of wills and settlement of debts. The Compilation of Islamic Law (KHI) also regulates things that must be done with the heir's inheritance as written in articles 187 and article 188

The things listed in the Compilation of Islamic Law (WHI) should be better understood by the public so that they are more aware of the distribution of inheritance and its implementation after the death of the heir, so as not to cause negative impacts. However, if seen from the benefit perspective, postponing the distribution of inheritance can apply to several certain cases that occur in society, for example delays in the distribution of inheritance to orphans who are underage and children who are still in the womb. Regarding inheritance to orphans, as stated in Surah An-Nis ā verse 2, if the heirs are orphans who are not yet old enough, then the inheritance distribution can be postponed until the orphans are adults and can manage their own inheritance. However, if the other heirs still want to distribute the inheritance, to avoid disputes, the distribution of the inheritance can be carried out, and a portion of the inheritance of immature orphans can be looked after by their guardians.

The second case is inheritance for the baby in the womb. The distribution of inheritance to a baby in the mother's womb whose gender is not yet known leads, this article to conclude that the child in the womb is the heir, and the way to distribute inheritance is by postponing the distribution of inheritance until the child is born. However, if there is a dispute and other heirs want to immediately distribute the inheritance, then the inheritance can be distributed to other heirs by assuming the largest possible amount received by the child in the womb.

## **Conclusion**

Reasons for Postponing the Distribution of Inheritance, namely because there is an agreement between the heirs, one of the heirs is still small or has not yet received the time to receive the inheritance, because some parties are greedy for the inheritance, so the distribution of the inheritance is postponed, and there are also most people who consider discussing inheritance issues. After the heir dies, it is taboo. The essence of inheritance should not be postponed; delaying the distribution of inheritance is a mistake. So, when the heir dies, the assets must be immediately distributed according to their respective rights. Regarding inheritance to orphans, as stated in Surah An-Nis, verse 2, if the heirs are orphans who are not yet old enough, then the inheritance distribution can be postponed until the orphans are adults and can manage their own inheritance. The distribution of inheritance to a baby in the mother's womb whose gender is not yet known leads this article to conclude that the child in the womb is the heir, and the way to distribute inheritance is by postponing the distribution of inheritance until the child is born. However, if there is a dispute and other heirs want to immediately distribute the inheritance, then the inheritance can be distributed to other heirs by assuming the largest possible amount received by the child in the womb. The author's advice to families as heirs to inherited assets is to carry out the distribution of inherited assets and not postpone the distribution unless there are benefits that the author stated above. Because the implementation is legally obligatory based on the principle of inheritance, namely ijbar, it is feared that we will consume other people's property or abuse it, which will cause problems in the future.

## References

Abdussamad, Zuchri. *Metode Penelitian Kualitatif*. Makassar: CV. Syakir Media Press, 2021.

Abidin, Ibnu. *Hasyiyatu Radd Al-Mukhtar*. Egypt: Mustafa al-Baby al-Halaby, 1996.

Aoslavia, Cindy. "Perbandingan Hukum Waris Adat Minangkabau Sumatera Barat Dan Hukum Perdata Barat." *Mizan: Jurnal Ilmu Hukum* 10, no. 1 (June 3, 2021): 54–63. <https://doi.org/10.32503/mizan.v10i1.1545>.

Bachtiar, Maryati. "Hukum Waris Islam Dipandang Dari Perspektif Hukum Berkeadilan Gender." *Jurnal Ilmu Hukum* 3, no. 1 (March 8, 2013): 1–45. <https://doi.org/10.30652/jih.v3i01.1026>.

Bustami A Latief. Chairman of the Langsa City Muhammadiyah Regional Leadership, April 21, 2020.

Haji Munir, Zainal Arifin. "Analysis of Patterns for Inheritance Dispute Settlement in the Tradition of Sasak Community in Lombok." *Mazahib* 20, no. 2 (January 12, 2022): 225–50. <https://doi.org/10.21093/mj.v20i2.3774>.

Hamid; Muhammad Muhyidin Abdul. *Panduan Waris Empat Madzhab*. Jakarta: Pustaka Al-Kautsar, 2009.

Haniru, Rahmat. "Hukum Waris Di Indonesia Perspektif Hukum Islam Dan Hukum Adat." *AL-HUKAMA: The Indonesian Journal of Islamic Family Law* 4, no. 2 (2014): 456–74. <https://doi.org/10.15642/al-hukama.2014.4.2.456-474>.

Hazm, Ibn. *Al-Muhalla*. Egypt: Matba'ah al-Jumhuriyah al-Arabiyyah, 1970.

Ismail, Habib, and Agus Hermanto. "Analisis Hak Waris Istri Akibat Murtad Perspektif Hukum Waris Islam Dan Gender." *At-Tahdzib: Jurnal Studi Islam Dan Muamalah* 8, no. 1 (October 3, 2020): 121–43.

K. Lubis, Suhrawardi, and Komis Simanjuntak. *Hukum Waris Islam*. Jakarta: Sinar Grafika, 2013.

Mahkamah Syar'iyah Langsa. "Mahkamah Syar'iyah Langsa." Accessed January 17, 2024. <https://ms-langsa.go.id/wp/>.

Mayana, Endah. "Analisis Yuridis terhadap Pelaksanaan Pembagian Harta Warisan yang Dikuasai oleh Salah satu Ahli Waris (Studi Kasus Putusan Mahkamah Agung No. 2134/k/PDT/1989)." Thesis, Universitas Sumatera Utara, 2013.

Muhazir, Muhazir. "Status Hukum Pernikahan Muslim Pasca Perpindahan Keyakinan Perspektif Hukum Keluarga Islam Di Indonesia." *TAQNIN: Jurnal Syariah Dan Hukum* 3, no. 1 (2021): 8.

Murdani. Leader of Dayah Futuhul Mu'arif Al Aziziyah Langsa City, April 21, 2020.

Nasution, Adelina. "Pluralisme Hukum Waris Di Indonesia." *Al-Qadha : Jurnal Hukum Islam Dan Perundang-Undangan* 5, no. 1 (2018): 20–30. <https://doi.org/10.32505/qadha.v5i1.957>.

Ridwan. Ulama Kota Langsa, May 1, 2020.

Sagala, Elviana. "Hak Mewaris Menurut Ketentuan Hukum Waris Perdata." *JURNAL ILMIAH ADVOKASI* 6, no. 2 (September 15, 2018): 116–24. <https://doi.org/10.36987/jiad.v6i2.254>.

Sari, Indah. "Pembagian Hak Waris Kepada Ahli Waris AB Intestato dan Testamentair Menurut Hukum Perdata Barat (BW)." *JURNAL ILMIAH HUKUM DIRGANTARA* 5, no. 1 (May 21, 2018): 1–20. <https://doi.org/10.35968/jh.v5i1.99>.

Sayuti. Interview at the IAIN Langsa Legal Aid and Consultation Institute (LKBH), 2020.

Setiawan, Rahadian. "Pelaksanaan Pembagian Warisan Menurut Hukum Islam (Studi Pada Pengadilan Agama Sleman)." Masters, Program Pascasarjana Universitas Diponegoro, 2003. <http://eprints.undip.ac.id/10751/>.

Sufyan, Muhammad Suhaili. *Fiqh Mawaris Praktis: Perbandingan Empat Mazhab Dan Kompilasi Hukum Islam Indonesia*. Citapustaka Media Perintis, 2012.

Syarbaini, Khatib. *Mughnil Al-Muhtaj*. Vol. 3. Mecca: Dar al-Katib al-Arabiyy, n.d.

Utama, Sofyan Mei. "Kedudukan Ahli Waris Pengganti dan Prinsip Keadilan Dalam Hukum Waris Islam." *Jurnal Wawasan Yuridika* 34, no. 1 (December 15, 2016): 68-86. <https://doi.org/10.25072/jwy.v34i1.109>.

Wantaka, Agus, Abdul Rosyid, and Eka Sakti Habibullah. "Pembagian Warisan Dalam Perspektif Hukum Islam Dan Hukum Adat Jawa (Studi Komparasi)." *Prosa AS : Prosiding Al Hidayah Ahwal Asy-Syakhshiyah* 1, no. 1 (December 22, 2018): 13-33.

Zuhaili, Wahbah Az-. *Fiqh Al-Islami Wa Adillatuhu*. Beirut: Dar al-fikr, 1989.