

POSTPONEMENT OF INHERITANCE DISTRIBUTION FROM AN ISLAMIC LEGAL PERSPECTIVE

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Abstract

*The context of this research is the prevalent practice of delaying the distribution of inheritance for an indefinite period in South Kalimantan Province. Consequently, the objective of this study is to examine this phenomenon from the perspective of Islamic law. This research is included in the type of qualitative normative research, starting from the legal behavior of the South Kalimantan Muslim community which is then studied within the scope of Islamic legal normativism. The data source used is secondary data, including primary legal materials and secondary legal materials. The data collection technique uses the documentation method. The analysis indicates that the postponement of inheritance distribution is not necessarily haram, as there is no specific substantiation in the Qur'an or hadith texts regarding the time limit for inheritance distribution. Additionally, there are numerous regulations that can validate the practice of delaying the distribution of inheritance, such as the principle of *لِلْوَسَائِلِ حُكْمُ الْمَقَاصِدِ*, which maintains that the law of the means of an action is equivalent to the law of the action. Therefore, the law of postponing the distribution of inheritance is relative and dependent upon the purpose or consequences of the delay.*

Keywords: Postponement of Inheritance, Islamic Law.

Abstrak

*Konteks penelitian ini adalah praktik penundaan pembagian warisan yang lazim terjadi di Provinsi Kalimantan Selatan. Oleh karena itu, tujuan penelitian ini adalah untuk mengkaji fenomena ini dari perspektif hukum Islam. Penelitian ini termasuk dalam jenis penelitian normatif kualitatif, dimulai dari perilaku hukum masyarakat Muslim Kalimantan Selatan yang kemudian dipelajari dalam lingkup normativisme hukum Islam. Sumber data yang digunakan adalah data sekunder, termasuk bahan hukum primer dan bahan hukum sekunder. Teknik pengumpulan data menggunakan metode dokumentasi. Analisis menunjukkan bahwa penundaan pembagian warisan tidak selalu haram, karena tidak ada dasar khusus dalam Al-Qur'an atau hadits mengenai batas waktu pembagian warisan. Selain itu, terdapat banyak peraturan yang dapat membenarkan praktik penundaan pembagian warisan, seperti prinsip *لِلْوَسَائِلِ حُكْمُ الْمَقَاصِدِ*, yang menyatakan bahwa hukum sarana suatu perbuatan sama dengan hukum perbuatan itu sendiri. Oleh karena itu, hukum penundaan pembagian warisan bersifat relatif dan bergantung pada tujuan atau akibat penundaan tersebut.*

Kata kunci: Penundaan Warisan, Hukum Islam.



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INTRODUCTION

Terminologically, Islamic inheritance law is the law that regulates how to transfer ownership rights to the assets of someone who dies (the heir), determining who has the right to be an heir and how much each heir will share.¹ Based on the Egyptian Darul Ifta' fatwa, delaying the distribution of one of the heirs without a syar'i excuse or without the relevant permission is haram. Based on the Prophet's hadith, scholars concur that the heirs inherit the deceased person's assets, as death terminates the heir's ownership.

عن أنس بن مالك - رضي الله عنه - أن النبي - صلى الله عليه وسلم - قال : يَتَّبِعُ الْمَيِّتَ ثَلَاثَةٌ : أَهْلُهُ وَمَالُهُ وَعَمَلُهُ، فَيَرْجِعُ اثْنَانِ وَيَبْقَى وَاحِدٌ: يَرْجِعُ أَهْلُهُ وَمَالُهُ، وَيَبْقَى عَمَلُهُ.

Meaning: "Three entities trail the corpse; two will reappear, while one will stay by his side." He will be followed by family, wealth, and charity. Then his family and property will return home, while charity will remain with him."²

The recommendation to expedite inheritance distribution aims to mitigate potential issues, such as unintentional or intentional consumption of property that is not legally theirs. In addition, it aims to prevent instances of al-munasakhat, or inheritance cases, where the distribution is intentionally delayed or postponed. This results in the heirs not having time to receive their share. The heirs then pass on their rights to subsequent generations. And so on until there are several problems (death events), which often leave problems in the operational technicalities of solving them because sometimes there are orphans who do not get their rights based on the transfer of their parents' inheritance rights.³

In reality, based on the author's observations, the practice of delaying inheritance distribution has become a common occurrence among the people of South Kalimantan. One of the factors that delay or deliberately postpone the distribution of inheritance is the survival of one of the parents, either the father or the mother. As a sign of respect for children as heirs, as well as love and care for their parents, no heirs want to immediately distribute the inheritance. Given the aforementioned issues, the author is keen to delve deeper into the distribution of inheritance delays through the lens of Islamic law.

¹ Mardani, *Hukum Kewarisan Islam Di Indonesia* (Jakarta: Rajawali Pers, 2015), 1–2.

² المماطلة في تسليم الإرث - الفتاوى - دار الإفتاء المصرية - دار الإفتاء المصرية، accessed March 20, 2023, <https://www.dar-alifta.org/>.

³ Wahidah and Fahmi Al Amruzi, "Fenomena Kewarisan pada Masyarakat Banjar Kalimantan Selatan," *Khazanah: Jurnal Studi Islam dan Humaniora* 20, no. 1 (July 29, 2022): 127, <https://doi.org/10.18592/khazanah.v20i1.6205>.

RESEARCH METHODS

This research is qualitative normative research.⁴ The research, departing from the phenomena in South Kalimantan society, explored evidence from both the Qur'an and hadith, as well as the rules of fiqh and the opinions of scholars. The search for evidence of sharia was carried out to find the law of the postponement of inheritance distribution from the perspective of Islamic law.

The data generated is descriptive, taking the form of written words. As a result, the data sources used are secondary. In terms of legal research methodology, primary legal materials are texts of the Qur'an and hadith, while secondary legal materials are writings or opinions of scholars related to the research theme.⁵

The data collection technique was carried out through the documentation method. The author carried out data analysis by sorting books, writings, or references related to fiqh mawaris and Islamic law in general.

RESULTS AND DISCUSSION

The problem of postponing the distribution of inheritance basically arises because of customs or cultures that have become popular in the traditions of the Banjar people and also of Indonesian citizens in general. Nash from the Qur'an and hadith cannot be found that expressly prohibits the practice of postponing the distribution of inheritance, so that when postponing the distribution of inheritance, the feeling of guilt and sin is less felt. Therefore, we will always discuss and study the issue of delaying the distribution of inheritance. The author tries to compare the arguments regarding the law of postponing the distribution of inheritance in reviewing Islamic law and the benefits that can be applied in the hope of minimising problems that could arise as a result of this delay.

According to the KBBI, procrastination is a process, method, or act of delaying. Meanwhile, according to the KBBI, division is defined as the process, method, or act of dividing. Inheritance assets are assets left by someone who dies to their heirs. According to the Compilation of Islamic Law, Article 171 Letter E, inheritance assets are inherited assets that are added to the joint assets after they are used for the heir's needs during illness until death, funeral expenses (tajhiz), payment of debts, and gifts to relatives.

What is meant by postponing the distribution of inherited assets is postponing or ending the distribution of inherited assets over a period of time from the death of the testator until the distribution of the inheritance is carried out, or, in other words, when the heir dies, the inherited

⁴ Soerjono Soekanto, *Penelitian Hukum Normatif* (Jakarta: Rajawali Pers, 2015).

⁵ Bambang Songgono, *Metodologi Penelitian Hukum* (Jakarta: PT. Raja Grafindo Persada, 1998).

assets are not immediately distributed to the heirs but are postponed until a certain time limit, namely waiting for the heirs left behind to be adults, able to support themselves, and no longer depend on their parents' assets.⁶

In Islamic law, there is no text that expressly prohibits it, but this has resulted in the exclusion of a clear text from Islamic law, namely that in Islamic inheritance law, if death occurs, the assets left behind will automatically be transferred to the heirs. So, if there is a postponement, when viewed from the Islamic inheritance principle, namely the principle of *ijbari*, then this is not in line with what is desired, namely that the distribution of inherited assets must be carried out immediately after death.

Some of the negative impacts of postponing inheritance distribution are:

- a. The occurrence of various inheritance cases in the Religious Courts is due to the large number of inheritances being unclear, the loss of inheritance data causing the size and number of inheritances to not be recorded, and it is also unclear which assets are inherited by husband and wife, which are joint assets. In fact, the lack of clarity regarding inherited assets can provide opportunities for heirs who are weak in faith to manipulate data on inherited assets, and can also lead to prolonged disputes, causing the breakdown of friendly relations.
- b. It will make things difficult in the future, especially if the delay lasts for years, it is possible that some of the heirs will die. Or it will cause the value of the inherited assets to depreciate because they have not been divided for too long, making it increasingly difficult to calculate them correctly and accurately.

The arguments that recommend not delaying the distribution of inheritance are like the words of Allah in Surah an-Nisa verse 11, Allah says:

مِنْ بَعْدِ وَصِيَّةٍ يُوصِي بِهَا أَوْ دَيْنٍ

Translation: "*(The distributions mentioned above) after (fulfilling) the will he made or (and after paying) his debt.*"

After obligations towards the deceased have been fulfilled, such as the need for a funeral procession, paying off debts, and a will, it is required to hand over the remaining assets to the people who are entitled to those assets (heirs). Just as he is required to quickly fulfil the rights of the deceased, he is also required to hand over the inheritance to the heirs as quickly as possible. It is best to fulfil the distribution of inheritance as quickly as possible and not delay it, because the distribution of inheritance is part of carrying out Allah's command, as Allah says in Surah Al-Imran verse 133:

⁶ Dwi Putra Jaya, *Hukum Kewarisan Di Indonesia* (Bengkulu: Zara Abadi, 2020), 163.

وَسَارِعُوا إِلَىٰ مَغْفِرَةٍ مِّن رَّبِّكُمْ وَجَنَّةٍ عَرْضُهَا السَّمَاوَاتُ وَالْأَرْضُ أُعِدَّتْ لِلْمُتَّقِينَ

Translation: "And hasten to seek forgiveness from your Lord and obtain paradise as wide as the heavens and the earth prepared for the pious."

According to the verses concerning inheritance, each heir is entitled to inherit the assets left by their parents, their father or mother, or their ancestors, in accordance with the established qath'i. Subsequently, it is additionally reinforced by additional verses and hadith, which implicitly implore us to expedite the performance of charitable acts. As evidenced by the lives of Ahmad, Al-Nasa'i, and Al-Daruqutni, the implementation of Islamic inheritance law is a duty of Muslim society.

تَعَلَّمُوا الْعِلْمَ وَعَلِّمُوهُ النَّاسَ تَعَلَّمُوا الْفَرَائِضَ وَعَلِّمُوهُ النَّاسَ تَعَلَّمُوا الْقُرْآنَ وَعَلِّمُوهُ النَّاسَ فَإِنِّي أَمْرٌ مَّقْبُوضٌ وَالْعِلْمُ سَيُقْبَضُ وَتَظْهَرُ الْفِتْنُ حَتَّىٰ يَخْتَلِفَ اثْنَانِ فِي فَرِيضَةٍ لَا يَجِدَانِ أَحَدًا يَفْصِلُ بَيْنَهُمَا

Meaning: "You should study knowledge and teach it to people, study fara'idl knowledge and teach it to people, study the Qur'an and teach it to people, because I am a person who will be called (die), and knowledge will always decrease while chaos will arise until there are two people who will disagree about (whether or not) an obligation, and both of them will not find someone who can decide between them."

The meaning of the verses about inheritance is very clear and detailed. Allah explains in these verses about people who inherit property in certain parts. Likewise, regarding when someone gets their share or someone who does not receive inheritance at all because it is obstructed and whose share of inheritance is reduced for certain reasons.

Then these provisions are confirmed by the word of Allah in Surah An-Nisa verses 13–14, which read:

تِلْكَ حُدُودُ اللَّهِ وَمَنْ يُطِيعِ اللَّهَ وَرَسُولَهُ ۖ يُدْخِلْهُ جَنَّاتٍ بِجَرِيٍّ مِنْ تَحْتِهَا الْأَنْهَارُ خَالِدِينَ فِيهَا ۚ وَذَلِكَ الْفَوْزُ الْعَظِيمُ. وَمَنْ يَعْصِ اللَّهَ وَرَسُولَهُ وَيَتَعَدَّ حُدُودَهُ ۖ يُدْخِلْهُ نَارًا خَالِدًا فِيهَا فِيهَا عَذَابٌ مُّهِينٌ

Translation: "Those are the limits (laws) of Allah. Whoever obeys Allah and His Messenger, He will put them in gardens beneath which rivers flow; they will remain eternal therein. And that is the great victory. And whoever disobeys Allah and His Messenger and violates the limits of His law, Allah will surely put him in hellfire; he will remain there forever, and he will suffer a humiliating punishment."

The verse above confirms that someone who carries out everything that is ordered by Allah and the Messenger of Allah will receive a reward in the afterlife in the form of eternal luck, which will be placed in the most beautiful place. Meanwhile, those who do not carry out the commands of Allah and the Messenger of Allah will receive very humiliating rewards in the afterlife.

In this case, the science of inheritance is a science that must be studied and implemented by Muslims. Carrying out the Islamic order to distribute inheritance is one of the orders that Muslims must carry out. Its relation to the timing of the distribution of inheritance is one of the orders contained in inheritance science.

Inherited property is property that was initially valid and legal for a Muslim to own, but then he died. Then, because the owner died, it became ownerless. In Islamic law, it is not permissible for unowned property to be owned without an owner, and action must be taken to ensure that the owner of the property is clear.

Therefore, every Muslim is required to hasten the distribution of inheritance. This demand exists because this problem is also related to other things, for example, the obligation to fulfil a trust, the obligation to immediately fulfil other people's rights, it is haram to eat the property of an orphan, it is haram to deprive other people of their rights, and the potential for confusion and problems to arise.

In the context of the Islamic religion, expediting the distribution of inheritance is a very important demand. This haste is emphasised because it is related to a number of important aspects of the life of a Muslim. One of them is the obligation to fulfil a mandate, which refers to the obligation to fulfil the trust or responsibility given to someone. In terms of inheritance distribution, this mandate refers to the obligation to immediately distribute inherited assets in accordance with Islamic provisions.

Apart from that, the demand to speed up the distribution of inheritance is also linked to the obligation to immediately fulfil other people's rights. In Islam, the rights of heirs are recognised and taken very seriously, and delaying the distribution of inheritance can be considered as delaying the fulfilment of other people's rights. The Islamic religion forbids consuming the property of orphans and depriving others of their rights; therefore, it is important to maintain the integrity of inherited property and ensure that distribution is carried out as soon as possible to prevent this legal and ethical violation.

Not only that, but delays in inheritance distribution also have the potential to cause confusion and problems among heirs. Delays in distribution can create uncertainty and conflict within the family or among heirs. Therefore, expediting the distribution of inheritance is an important demand to maintain peace and harmony among heirs and to ensure that all rights and obligations in accordance with Islamic law can be fulfilled properly.

By complying with demands to speed up the distribution of inheritance, a Muslim can better carry out his religious obligations, maintain integrity and ethics in financial matters, and ensure fairness in the distribution of inheritance. This is in line with the teachings of the Islamic religion,

which emphasise the importance of maintaining rights and obligations as well as supporting and helping fellow Muslims in family life.

The property of a deceased person is like someone's scattered property; there must be an owner. So it is the obligation of the person who finds the scattered property to return it to its owner, because that is part of the trust that must be fulfilled. Allah says in Surah An-Nisa verse 58:

إِنَّ اللَّهَ يَأْمُرُكُمْ أَنْ تُؤَدُّوا الْأَمَانَاتِ إِلَىٰ أَهْلِهَا وَإِذَا حَكَمْتُمْ بَيْنَ النَّاسِ أَنْ تَحْكُمُوا بِالْعَدْلِ
إِنَّ اللَّهَ نِعِمَّا يَعِظُكُمْ بِهِ ۗ إِنَّ اللَّهَ كَانَ سَمِيعًا بَصِيرًا

Translation: "Indeed, Allah commands you to convey a message to those who are entitled to receive it, and when you determine a law between people, you must determine it fairly. Indeed, Allah is the Best of those who teach you. Indeed, Allah is All-Hearing, All-Seeing."

The Prophet also said:⁷

أَدِّ الْأَمَانَةَ إِلَىٰ مَنْ ائْتَمَنَكَ، وَلَا تَخُنْ مَنْ خَانَكَ

Meaning: "Fulfil the trust of those who entrust you, and do not betray those who betray you." (HR. Ahmad)

When the scattered assets belonging to another person are left behind and not returned, it is a wrong act and part of betrayal. Allah says in surah Al-Anfal verse 27:

يَا أَيُّهَا الَّذِينَ آمَنُوا لَا تَخُونُوا اللَّهَ وَالرَّسُولَ وَتَخُونُوا أَمْنَتِكُمْ وَأَنْتُمْ تَعْلَمُونَ

Translation: "O you who believe! Do not betray Allah and the Messenger, and (also) do not betray the trust entrusted to you while you are aware."

According to the hadith, the Prophet Muhammad also stated that betrayal is a characteristic of a hypocrite.⁸

آيَةُ الْمُنَافِقِ ثَلَاثٌ إِذَا حَدَّثَ كَذَبَ وَإِذَا وَعَدَ أَخْلَفَ وَإِذَا أُؤْتِمِنَ خَانَ

Meaning: "The Messenger of Allah said: The signs of a hypocrite are three; when he says he lies, when he promises he breaks it, and when he is trusted he betrays." (HR. Bukhari)

Apart from fulfilling the trust, the deceased person's assets must be given to the heirs, because this is part of hastening to fulfil other people's rights. On the other hand, any attempt to delay, even when there is the ability to carry it out, constitutes an act of injustice. The Prophet Muhammad said:

⁷ al-Imam Ahmad bin Hanbal, *Musnad Al-Imam Ahmad Bin Hanbal* (Beirut: Muassasah ar-Risalah, n.d.).

⁸ Imam Muhammad bin Ismail al-Bukhari, *Shahih Bukhari*, vol. 01, 03 vols. (Jerma: Thesaurus Islamicus Foundation, 2001).

مَطْلُ الْغَنِيِّ ظُلْمٌ

"Delaying other people's rights when they can afford it is a form of injustice." (HR. Bukhari)⁹

According to the Maliki school of thought, a person who deliberately delays, despite having the ability to fulfill others' rights, is considered a wicked person and commits a significant sin, even if they do so only once. The Shafi'i school of thought, on the other hand, identifies repeated haram acts as wickedness. Imam An-Nawawi's fatwa explains this.¹⁰

In another hadith, the Prophet Muhammad praised people who immediately fulfilled other people's rights.

إِنَّ خَيْرَ النَّاسِ أَحْسَنُهُمْ قَضَاءً

Meaning: "In fact, the best person is the one who is best at fulfilling other people's rights." (HR. Muslim)¹¹

Delays in inheritance distribution greatly increase the potential for appropriation of orphans' assets, particularly when there are underage children among the heirs. Allah's words in Surah An-Nisa verses 2 and 10 underscore the seriousness of the threat; it is a grave sin that could result in eternal punishment.

وَأْتُوا الْيَتَامَىٰ أَمْوَالَهُمْ وَلَا تَتَبَدَّلُوا الْخَيْرَ بِأَلْطِيفٍ وَلَا تَأْكُلُوا أَمْوَالَهُمْ إِلَىٰ أَمْوَالِكُمْ ۚ إِنَّهُ كَانَ حُوبًا كَبِيرًا

Translation: "And give their wealth to the orphans (who are adults); do not exchange the good for the bad; and do not eat their wealth along with yours." Indeed, the act of exchanging and eating is a great sin."

إِنَّ الَّذِينَ يَأْكُلُونَ أَمْوَالَ الْيَتَامَىٰ ظُلْمًا إِنَّمَا يَأْكُلُونَ فِي بُطُونِهِمْ نَارًا ۖ وَسَيَصْلَوْنَ سَعِيرًا

Translation: "Truly, those who consume the wealth of orphans unjustly swallow fire in their bellies, and they will enter the burning fire (hell)."

According to Tafsir al-Misbah, those who eat, use, or exploit the property of orphans and other weak people in a pious manner -that is, not in the right place and not in accordance with religious instructions- are or will swallow fire in their bellies, that is, their entire stomachs, and they will one day enter the burning fire of hell.

⁹ bin Ismail al-Bukhari.

¹⁰ Imam Nawawi, *Al-Minhaj Syarah Shahih Muslim Bin al-Hajjaj*, vol. 10 (Mesir: Muassasah Qurtubah, 1994).

¹¹ Muslim bin al-Hajjaj an-Naisabury, *Shahih Muslim*, vol. 02, 02 vols. (Jerman: Thesaurus Islamicus Foundation, 2001).

In Tafsir al-Misbah, it is stated that in fact, people who eat, that is, use or utilise the property of orphans and other weak people in a pious manner, that is, not in the right place and not in accordance with religious instructions, are or will swallow fire in their bellies, that is, their whole stomachs, and they will one day enter the burning fire of hell.¹²

Furthermore, delaying inheritance distribution has the potential to deprive other people of their rights. This occurs when an individual utilizes inherited assets without the heirs' consent. Allah says in Surah An-Nisa verse 29:

يَا أَيُّهَا الَّذِينَ آمَنُوا لَا تَأْكُلُوا أَمْوَالَكُمْ بَيْنَكُمْ بِالْباطِلِ إِلَّا أَنْ تَكُونَ تِجَارَةً عَنْ تَرَاضٍ مِنْكُمْ وَلَا تَقْتُلُوا أَنْفُسَكُمْ إِنَّ اللَّهَ كَانَ بِكُمْ رَحِيمًا

Translation: "O you who believe! Do not consume each other's wealth in a false way, except in trade that takes place on the basis of mutual consent between you. And do not kill yourselves. Indeed, Allah is most merciful to you."

The Prophet Muhammad also emphasised that it is haram to take away other people's rights, as in the hadith:

إِنَّ دِمَاءَكُمْ، وَأَمْوَالَكُمْ وَأَعْرَاضَكُمْ حَرَامٌ عَلَيْكُمْ كَحُرْمَةِ يَوْمِكُمْ هَذَا، فِي شَهْرِكُمْ هَذَا، فِي بَلَدِكُمْ هَذَا

"Indeed, your blood, your wealth, and your honor are as noble to you as this day, this month, and this country are." (HR. Bukhari and Muslims)¹³

لَا يَأْخُذَنَّ أَحَدُكُمْ مَتَاعَ أَخِيهِ جَادًّا وَلَا لَاعِبًا وَإِذَا أَخَذَ أَحَدُكُمْ عَصَا أَخِيهِ فَلْيُرُدِّهَا عَلَيْهِ

Meaning: "Let no one of you take his brother's property, either seriously or in jest. If one of you takes his brother's stick, let him return it to him." (HR. Ahmad, Abu Dawud, Tirmidhi)

لَا يَحِلُّ مَالُ امْرِئٍ مُسْلِمٍ إِلَّا بِطَيْبِ نَفْسٍ مِنْهُ

Meaning: Sharing a Muslim's property with another Muslim is not halal unless the other Muslim gives his consent. (HR. Ahmad)¹⁴

Delaying the distribution of inheritance can lead to a range of social issues, including the reduction of heirs' rights from their rightful share. Acceptance of the inheritance can lead to future enmity and hatred among the heirs, ultimately resulting in the severing of friendships.¹⁵

¹² M. Quraish Shihab, *Tafsir Al-Mishbah*, vol. 02, 15 vols. (Tangerang: Lentera Hati, 2002).

¹³ Imam Muhammad bin Ismail al-Bukhari, *Shahih Bukhari*, vol. 03, 03 vols. (Jerma: Thesaurus Islamicus Foundation, 2001).

¹⁴ bin Hanbal, *Musnad Al-Imam Ahmad Bin Hanbal*.

¹⁵ Lia Dahliani, Faisar Ananda, and Ansari Yamamah, "Penundaan Pembagian Warisan pada Masyarakat Muslim di Kota Langsa," *Tahkim* 14, no. 1 (November 18, 2018), <https://doi.org/10.33477/thk.v14i1.573>.

After explaining the arguments regarding the recommendation to hasten inheritance distribution, the author concludes that there is no text from the Koran and hadith that expressly prohibits delaying inheritance, making this delay part of the rules:

الأَصْلُ فِي الْأَشْيَاءِ الْإِبَاحَةُ مَا لَمْ يَرِدِ الدَّلِيلُ عَلَى تَحْرِيمِهِ

It means: "As long as something is permissible, as long as there is no argument that forbids it."¹⁶

The muamalah section also encompasses the inheritance problem, allowing for the application of this rule. According to this rule, postponing the distribution of the original inheritance is permissible as long as there are no arguments that forbid it. The heirs' pleasure and agreement caused the delay, so postponing inheritance distribution is allowed. God's instruction in Surah An-Nisa verse 29 is applicable.

يَا أَيُّهَا الَّذِينَ آمَنُوا لَا تَأْكُلُوا أَمْوَالَكُمْ بَيْنَكُمْ بِالْبَاطِلِ إِلَّا أَنْ تَكُونَ تِجَارَةً عَنْ تَرَاضٍ مِّنكُمْ

Translation: "O you who believe! Do not consume each other's wealth in a false manner, except in trade that is based on mutual consent between you."

Scholars have different views regarding the form of consent in this verse. The Shaf'iyyah say that the muamalah contract must be stated in the form of shighah (consent and qabul), which is said in clear or figurative sentences, considering that like and like are abstract. Meanwhile, Hanafiyah circles say that the form of shighah (consent and qabul) is not limited to speech; it can take the form of writing or deeds. It is crucial to effectively and clearly communicate the goals and objectives.

Whether you agree with it or not, Allah explains it in the Qur'an; however, it solely focuses on the realm of muamalah, while the ulama merely explain the operational concept. Therefore, disagreements persist in this issue, as the sentiment, whether favorable or unfavorable, resides in the heart (amran khafiyān wa dhamiran qalbiyan) and is only discernible through genuine proof from the individual in question. For example, sellers prefer to sell their goods, whereas buyers prefer to buy them.

Based on this verse, 'an tarâdhin is a principle that exists in the buying and selling process. This is because human interaction in carrying out various transactions, including buying and selling, must be based on the principles that apply to mu'amalat, such as mutual interests through the exchange of benefits (tabaddulul manfa'at), on the basis of mutual acceptance ('an taradhin), mutual

¹⁶ Abdullah al-Lahji, *Idhah Al-Qawa'id al-Fiqhiyyah* (Kuwait: Daar ad-Dhiya, 2017).

benefit (*murabahah*), mutual trust (*amanah*), and cooperation (*musyarakah*), so as to prevent trade that is mutually deceptive, usury, and *maisir*.

There are property rights in Islam, and it recognizes them as individual ownership rights; therefore, it protects them. It is possible to transfer an object that holds the ownership rights of another individual. Several systems exist for transferring ownership rights, some of which stem from inheritance or wills. Basically, the transfer of property rights is based on the principle of mutual consent because this method will produce good impacts, such as peace of mind, for both parties.

The Compilation of Islamic Law (KHI) does explain the existence of a system for peaceful distribution of inheritance. However, the distribution of inherited assets in 'an taradhin is distinct from the peaceful distribution of inheritance. The distribution of inheritance involves voluntary peace efforts aimed at peacefully resolving disputes among heirs through agreements between the parties.¹⁷

In his commentary, Ibn Kathir explains that Allah forbids carrying out commercial transactions that could result in haram (forbidden) acts, but orders commercial transactions according to Islamic law, namely with a mutual agreement between the seller and the buyer. Furthermore, Ibnu Katsir clarified that when trading goods with low value, it is necessary to demonstrate mutual willingness through appropriate actions or customs. Conversely, when the commodity holds significant value, the *ijab* and *qobul* (contract) demonstrate mutual willingness.¹⁸

This text outlines the views contained in Ibn Kathir's interpretation of trade practices in Islam. Overall, this perspective mirrors the principles of justice and the provisions of Islamic law that dictate the conduct of commercial transactions. First, Ibn Kathir emphasised that Allah prohibits commercial practices that can result in haram, or forbidden acts. This reflects the moral values in Islam, which view the importance of avoiding transactions that violate religious principles.

Then, Ibnu Katsir explained that legal commercial transactions in Islam must involve mutual agreement between the seller and the buyer. This underscores the significance of reaching a consensus during transactions and the necessity of conducting them with honesty and adhering to Islamic law. However, Ibnu Katsir also acknowledged that in some situations, especially if the goods being traded do not have a high value, agreements can be realised through existing actions or customs. This demonstrates adaptability in transactions, taking into account the context and value of the goods involved.

¹⁷ Siah Khosyi'ah, "Perdamaian dalam Menyelesaikan Kewarisan," *ADLIYA: Jurnal Hukum dan Kemanusiaan* 10, no. 1 (2016): 1–18, <https://doi.org/10.15575/adliya.v10i1.5143>.

¹⁸ Hafidz Ibnu Katsir, *Tafsir Al-Qur'an al-Azhim*, vol. 02, 08 vols. (Mesir: asy-Sya'bu, n.d.).

Finally, Ibnu Katsir explained that if the goods being traded are very valuable, the agreement must be realised through an agreement and qobul (contract). This implies that commercial transactions involving valuables necessitate adherence to official procedures. Overall, Ibn Kathir's views on commercial transactions in Islam emphasise the importance of integrity, fairness, and compliance with Islamic law in business while recognising the diverse contexts that can influence transaction procedures.

According to Quraish Shihab in *Tafsir al-Misbah*, the meaning of 'an-taradhin minkum is a form of agreement between both parties as a harmonious reciprocal relationship, binding regulations and laws, and awaiting sanctions. This harmonious reciprocal relationship shows agreement from both parties. Even though consent is an invisible thing, the signs and indicators are visible.¹⁹

This text details the concept of 'an-taradhin minkum as explained by Quraish Shihab in *Tafsir al-Misbah*. According to Quraish Shihab, 'an-taradhin minkum is a form of agreement between two parties who establish a harmonious reciprocal relationship. This illustrates that in social interactions, binding rules and laws are the basis of these relationships, and sanctions exist to maintain these rules.

Furthermore, Quraish Shihab emphasised that harmonious reciprocal relations in 'an-taradhin minkum reflect an agreement from both parties. Although consent itself is not always physically visible, there are signs and indicators that indicate the existence of this consent. This underscores the importance of cooperation, respect, and shared understanding in social relationships, especially in the context of the rules and laws that govern human interactions.

By combining aspects of harmony, regulations, laws, and sanctions, Quraish Shihab illustrates that 'an-taradhin minkum is an important basis for understanding social relations and social contracts in society. This concept encourages people to maintain agreements and rules that regulate their interactions, emphasizing the importance of agreements as the basis for healthy and fair social cooperation. This concept promotes moral and ethical principles in human relations, which include important aspects such as justice and togetherness in building a well-functioning society in the context of Islamic teachings.

Besides that, the modern scholar Al-Zuhaily talks about three signs of 'an-taradhin minkum in his book of tafsir called *Al-Tafsir al-Munir fi Al-'Aqidah wa Al-Syari'ah wa Al-Manhaj*. These are the presence of words of consent qobul (contract), the right to choose, and behaviour or actions that show mutual willingness.²⁰

¹⁹ Shihab, *Tafsir Al-Mishbah*.

²⁰ Wahbah Zuhaily, *Al-Tafsir Al-Munir Fi Al-'Aqidah Wa Al-Syari'ah Wa Al-Manhaj*, vol. 03, 17 vols. (Damaskus: Daar el-Fikr, 2003).

This text presents the perspectives of the modern scholar Al-Zuhaily, as presented in his Tafsir book, regarding the three indicators of 'an-taradhin minkum.' He stated that the first indicator is the existence of the words of consent (qobul) in the context of a harmonious reciprocal relationship. This underscores the importance of clear communication in forming agreements. Ijab qobul is a concrete step that shows agreement between the parties involved.

Next, the second indicator is the right to vote. In 'an-taradhin minkum, each party must have the right to choose or give consent, according to Al-Zuhaily. This shows that consent should not be coercive and should be based on the individual's freedom to give permission or refuse it.

Al-Zuhaily identifies behaviour or actions that demonstrate mutual willingness as the third indicator. This underscores the importance of concrete actions that demonstrate the agreement and satisfaction of all parties involved.

As a result, the principles of 'an-taradhin minkum and agreements in various contexts, including commercial transactions or social relations, must follow the applicable principles of Islamic law and meet the standards of clear agreement, right to choose, and mutual consent.

In a broader context, Al-Zuhaily's views and the principles of 'an-taradhin minkum underline the importance of ethics and moral principles in various aspects of social life, including commercial transactions and human relations. They emphasise the principles of justice, voluntary agreement, and mutual consent as the basis for maintaining healthy and just reciprocal relationships in society.

Scholars who recommend not delaying the distribution of inheritance typically base their opinion on the words of the Prophet Muhammad SAW.

أَحِقُّوا الْفَرَائِضَ بِأَهْلِهَا، فَمَا بَقِيَ فَهُوَ لِأَوْلَى رَجُلٍ ذَكَرٍ

"Give the inheritance portion to the heir; the rest belongs to the nearest male." (H.R. Bukhari, Muslim)

In the hadith above, the word أَحِقُّوا has a form of amr (command), which means give or share. Amr is derived linguistically from the Arabic الأَمْر, namely orders, commands, and actions. Meanwhile, there are legal rules known as istinbat that govern the demands made by superiors to subordinates. word used by people in a higher position to demand that people in a lower position do something.

Amr, according to Abu Zahrah, is an order from a higher-level party to a lower-level party. In Arabic, the form amr uses shigat if'al افعال (which means do it) and litaf'al (which means let you do it). According to the original, shigat *amr* is used to indicate an order. Conversely, if one uses the form of shigat *amr* for purposes other than commands, such as guiding (irsyad), intimidating (tahdid), praying, or insulting, it becomes figurative. Khudari Biek characterizes amr as a specific

form, known as *shighat*, that signifies and intends to carry out a specific action, accompanied by power.

From this, we can understand that a superior can order or request his subordinates to perform a task, regardless of whether it is immediate or not. According to the Hanafiyah and Syafi'iyah scholars, using the rules of *ushul*:

الأصل في الأمر لا يقتضي الفور

The meaning: "Originally the order does not require immediacy."

The reason is that *shighat amr* is only to demand that it be done, not immediately or with delay, unless there is a *qarinah* (instruction) accompanying it. Meanwhile, Malikiyah, Hanbaliyah and some Hanafiyah Ulama use the following rules:

الأصل في الأمر يقتضي الفور

The meaning is: "The order's basis requires immediacy."

They reasoned that if Allah did not want immediacy, then there would be no reproach or expulsion of Satan, who did not want to immediately bow down to Prophet Adam. Furthermore, they draw an analogy between *amr* and *nahi*, highlighting the pressing need to relinquish the demands of prohibition.

By closely examining this argument, it becomes clear that the issue of immediacy or delay in carrying out *amr* lies in the existence or absence of a relationship between demands and time, as orders are sometimes associated with time and sometimes they are not. The meaning of *amr* in this hadith does not indicate time demands in dividing inheritance, so following the opinion of Hanafiyah and Shafi'iyah scholars, it is obligatory to distribute inheritance to his heirs without time limits or demands. Another rule also says:

لِلْوَسَائِلِ حُكْمُ الْمَقَاصِدِ

Meaning: "The law of an act is the law of its means."²¹

This demonstrates that in Islam, the law that applies to an act will be similar to the law that applies to the means or method of carrying it out. Because the purposes of postponing the distribution of inheritance are different, we cannot judge with certainty that postponing the distribution of inheritance is wrong and sinful. If the postponement of inheritance distribution serves an evil purpose, harms other parties, and causes harm, it becomes haram. However, if the postponement serves a good purpose, does not harm others, and brings benefits, it becomes permissible.

²¹ Abd Salam Asy-Syuwai'ar, *Syarah Manzumah Al-Qawa'id al-Fiqhiyyah* (Saudi: Alshuwayer, n.d.).

In accordance with this principle, the Majelis Permusyawaratan Ulama (MPU) Aceh issued a draft fatwa on the postponement of inheritance distribution from the perspective of Islamic law, positive law, and Aceh customs in Plenary Session III of 2023 at the Tgk H Abdullah Ujong Rimba Building, MPU Aceh, on Wednesday, May 24, 2023. The draft fatwa prohibits delaying inheritance distribution in a way that oppresses the heirs, causes damage, or lowers the property's value. However, if it obtains the approval of all heirs who are entitled, are consistent in granting permission, and are managed according to sharia law, then the postponement of the distribution of inheritance is permitted.

This draft fatwa describes the legal approach to the postponement of inheritance distribution in the context of Islam, positive law, and Acehese customs towards the postponement of the distribution of inheritance. The fatwa emphasizes that the postponement of inheritance distribution that results in injustice to the heirs or substantially harms them is considered forbidden behavior. In other words, an Islamic legal perspective forbids this delay if it causes harm to the heirs or damages their property.

However, the draft fatwa also provides an exception that delaying the distribution of inheritance can be justified if all legitimate and mu'tabar (reliable) heirs give their consent and the delay is carried out in accordance with the principles of sharia law. By allowing families to negotiate and reach a fair agreement on inheritance management, this approach reflects a more flexible approach to inheritance delaying. This is a positive step in resolving inheritance distribution conflicts and upholding the values of justice and fairness in Islamic law.

The draft fatwa also reflects the efforts of religious institutions in Aceh, which are trying to understand and address legal issues relevant to the local community. Initiatives like these are critical for gaining a deeper understanding of Islamic law and the principles of justice in the context of local positive and customary law. Overall, the draft fatwa illustrates a balanced approach between Islamic legal principles, social realities, and the local context in an effort to achieve a just and legally sound solution.

Despite the existence of various Islamic jurisprudential rules that circumvent the law of delaying inheritance distribution, the author advocates for the immediate distribution of inheritance to the entitled parties, following the payment of expenses for the deceased's debts and wills. Even if there are no problems and it is a mutual agreement to delay the distribution of inheritance, the perpetrator is still confronted with the makruh of delaying a law. Within the Islamic context, makruh denotes actions that, while not explicitly forbidden, are advisable to avoid. Essentially, even if the action isn't explicitly forbidden, it won't yield significant benefits. Another rule says:

دَرْءُ الْمَفَاسِدِ مُقَدَّمٌ عَلَى الْجُلْبِ الْمَصَالِحِ

The meaning is: "Preventing mafsadah is more prioritized than getting mafsadah."

According to ar-Razi in his book al-Maushul, ulama proposes two definitions for understanding the meaning of *maslahah*. According to one opinion, *maslahah* is something that creates or enacts laws that are suitable for humans. The purpose of creating is to bring benefits, while the purpose of establishing is to prevent loss (*madharat*). The second opinion asserts that *maslahah* aligns with the actions of individuals who possess the intelligence of the heart (*al-uqala*), based on habitual behavior. This means that if we propose this to people with sound judgment, they will accept and agree. According to 'Izz ad Din ibn 'Abd as-Salam, *maslahah* is pleasure and happiness, and all paths lead to that pleasure and happiness. On the other hand, *mafsadah* is a type of work that, if performed, will result in negative labeling, insults, and threats of hell.

This rule applies to all problems in which there is a mixture of *mashlahah* and *mafsadah* elements. So when *mashlahah* and *mafsadah* come together, the priority is to reject *mafsadah*. The Prophet Muhammad, wielding legal authority (*shari'*), prioritized the prohibitions (*manhiyyat*) over the commands (*ma'murat*). Because in *manhiyyat* there are elements that can damage and eliminate the wisdom of the prohibition itself, this is not the case in *ma'murat*. From this, we can conclude that preventing things that are prohibited and dangerous is more important than trying to achieve goodness by following religious commands, but on the other hand, we are allowing damage to occur. This is in accordance with the hadith narrated by al-Nasa'i and Ibn Majah:

إِذَا أَمَرْتُكُمْ بِأَمْرٍ فَأَتُوا مِنْهُ مَا اسْتَطَعْتُمْ ، وَإِذَا نَهَيْتُكُمْ عَنْ شَيْءٍ فَاجْتَنِبُوهُ

Meaning: "If I give a command to all of you, follow it as closely as possible." And if I forbid you something, then avoid it."

In this instance, Islamic law emphasizes the importance of delaying inheritance distribution. Despite the existence of certain rules in the law of postponing inheritance distribution to overcome this situation, the author still advocates for the distribution of inheritance to the entitled parties as soon as possible, following the payment of expenses for the deceased's needs, including debts and wills. There are several wisdoms and objectives for accelerating the distribution of inheritance in Islam:

- a. We have arranged the inheritance distribution to align with social justice and each heir's duties, which are based on four bases (rules): love, marriage, mutual assistance, and affection. This inheritance distribution evenly distributes the property among the entire family (relatives), fostering a strong society.
- b. Encouraging someone to work harder and do their utmost to accumulate wealth throughout their life without tiring, as the pleasure and enjoyment of wealth extends beyond their own lifetime. But it will also be inherited by those they love the most. Thus, it is the responsibility of society to actively construct and flourish this world.

- c. With the implementation of the faraidh rule, Islam has elevated the status of women who were previously considered objects or goods of inheritance.
- d. There are many other lessons that can be learned, and it is not difficult for someone to understand that every law established by Allah SWT has certain wisdoms and clear benefits, namely for the benefit of humans themselves if they obey it.

The distribution of inheritance in Islam seems to follow a similar pattern, where all heirs, regardless of gender or strength, receive a portion. However, those with greater duties and responsibilities also receive a larger inheritance, as it aligns with their responsibilities. So it is clear that in Islam, inheritance is divided according to deep and high wisdom, sane reason, and noble character. The wisdom of inheritance lies in its ability to strengthen family relationships and foster natural feelings.

In principle, inheritance is very useful for humans. Ignoring the division of inheritance can harm heirs by allowing other heirs to misuse or use the property for their own benefit, destroying its condition. This will, of course, have an impact on the emergence of disputes between fellow heirs and, even (it is not impossible), the occurrence of rifts between family members.

According to the rules of ushul fiqh *al-dhararu yuzal*, Islamic law mandates the avoidance and elimination of harm, particularly when it involves the rights of others. Delays or neglects in inheritance distribution can lead to negative consequences, necessitating the immediate division of the inheritance to prevent future unintended outcomes. If the heirs have not divided the inheritance, it remains jointly owned.

Among the benefits of expediting the inheritance settlement are:

- a. Avoid conflicts and disagreements among family members.
- b. Avoid consuming illegal assets. The assets remain jointly owned due to the delay in distribution.
- c. To ensure a case of *munasakhah* is avoided. In the sense that the heirs in one inheritance structure will be able to directly receive and enjoy what is their right or proportion (when the heir dies) without having to be inherited from generation to generation. In practice, the settlement could potentially lead to issues such as consuming assets that are not legally theirs.

The author emphasizes that regardless of the circumstances or reasons underlying the delay in the distribution of inheritance, it is important to understand that religious law encourages the implementation of a fair distribution of inheritance in accordance with Islamic principles. The author underscores the importance of fulfilling obligations promptly to uphold justice and instill the essence of religion. Given the close relationship between this obligation and Islamic moral principles, the author suggests carrying out the distribution of inheritance as soon as possible after

fulfilling various responsibilities related to the needs of the deceased, debts, and the testator's testament.

This discussion conveys the importance of maintaining a balance between material interests and religious principles in the context of inheritance distribution. While some situations may justify or explain the delay in inheritance distribution, the focus remains on its prompt implementation and adherence to religious provisions. This reflects attention to moral and ethical values in Islam, as well as an effort to ensure that the inheritance distribution process runs smoothly, fairly, and harmoniously among the heirs involved.

Preserving property is one of the goals of the concept of *maslahah*, which upholds the goals of *maqashid asy-syari'ah*. The scholars of ushul fiqh agree that the ranking of *maslahah* must be sequential, with *dhoruriyat* occupying the first level, *hajiyyat* occupying the second level (which cannot occupy the first level), and *tahsiniyat* occupying the third level (which cannot occupy the second level, let alone the first level). The intention is to uphold the objectives of sharia, which do not overlap, to preserve reason, the soul, religion, descendants, and property for the benefit of human life in the world and the hereafter.²²

CONCLUSION

There is no clear evidence from the text of the Qur'an or hadith regarding the time limit for inheritance distribution, so we cannot immediately rule it as haram. This makes the postponement of the distribution of inheritance fall under the principle of ushul, which means "the original law of a matter is permissible, as long as there is no evidence that forbids it." In addition to the reason for delaying the distribution of inheritance when all heirs agree or consent, the evidence from QS an-Nisa verse 29 also supports delaying the distribution of inheritance. Furthermore, the principle of *لِلْوَسَائِلِ حُكْمُ الْمَقَاصِدِ*, which states that the law of the means of an act is the same as the law of its action, can justify the practice of postponing the distribution of inheritance. Thus, the law of postponing the distribution of inheritance is relative, depending on the purpose or effect of the postponement.

²² Wahbah Zuhaily, *Nadhoriyat Al-Dhoruroh al-Syari'ah* (Beirut: Darul Fikri al-Muasir, 1997).

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