

THE TIMING ANALYSIS OF INHERITANCE DISTRIBUTION IN THE COMPILATION OF ISLAMIC LAW

Azni*

Universitas Islam Negeri Sultan Syarif Kasim Riau
Jl. H. R. Soebrantas Km. 15 Pekanbaru, Riau 28293
*email: azni@uin-suska.ac.id

Muhammad Akhyar Rifqi

Universitas Islam Riau
Jl. Kaharuddin Nasution 113, Pekanbaru, Riau 28284

Saifunnajar

Sekolah Tinggi Agama Islam Negeri Bengkalis
Jl. Lembaga – Senggoro, Bengkalis, Riau 28714

Kholil Syu'aib

Universitas Islam Negeri Sulthan Thaha Saifuddin Jambi
Jl. Jambi-Muara Bulian KM. 16, Simp. Sei Duren, Jambi Luar Kota, Muaro Jambi, Jambi 36361

Najibah Bt Mohd. Zin

International Islamic University Malaysia
Jln Gombak, 53100 Kuala Lumpur, Selangor, Malaysia

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Abstract: This study discussed about the distribution time of inherited property after the death of a person that is not explained explicitly in Islamic family law in Indonesia particularly in the Compilation of Islamic Law. This study aimed to critically analyze the time of inheritance distribution in the Compilation of Islamic Law viewed from *maqasid sharia* perspective. The research employed qualitative research method, namely library legal research. The data collection technique was documentation, included the Compilation of Islamic Law, *fiqh* books, books of legislation in the field of Islamic law which were applicable in Indonesia. The data were analyzed by using content analysis method to find out the distribution time of inheritance in the compilation of Islamic Law based on *maqasid sharia* perspective. The result of this research showed that the Compilation of Islamic Law did not stipulate the time of inheritance distribution explicitly, and if the determination of the inheritance distribution time is in accordance with the provisions in the compilation of Islamic law for the kindness of the family and heirs, then the action is justified by sharia law because it is in line with *maqasid sharia*. However, if the division of inherited property is in accordance with the provisions of the Compilation of Islamic

Law with the purpose to delay the time of distribution which will result in a reduction in the value of the property, or the physical loss of the property, then it is included into the act of *zalim* and certainly contradicts the Islamic sharia itself. It must not be carried out.

Keywords: Inheritance Distribution, Compilation of Islamic law, *Maqashid Sharia*

Abstrak: Penelitian ini membahas mengenai waktu pembagian harta warisan setelah seseorang meninggal dunia yang tidak dijelaskan secara eksplisit dalam hukum keluarga Islam di Indonesia khususnya dalam Kompilasi Hukum Islam. Penelitian ini bertujuan untuk menganalisis secara kritis waktu pembagian warisan dalam Kompilasi Hukum Islam ditinjau dari perspektif *maqashid syariah*. Penelitian ini menggunakan metode penelitian kualitatif, yaitu penelitian hukum kepustakaan. Teknik pengumpulan data yang digunakan adalah dokumentasi, meliputi Kompilasi Hukum Islam, buku-buku fiqh, buku peraturan perundang-undangan di bidang hukum Islam yang berlaku di Indonesia. Data dianalisis dengan menggunakan metode analisis isi untuk mengetahui waktu pembagian warisan dalam kompilasi Hukum Islam berdasarkan perspektif *maqashid syariah*. Hasil penelitian menunjukkan bahwa Kompilasi Hukum Islam tidak mengatur secara tegas waktu pembagian warisan, dan jika penentuan waktu pembagian warisan sesuai dengan ketentuan dalam kompilasi hukum Islam demi kebaikan keluarga dan harta warisan. ahli waris, maka perbuatan tersebut dibenarkan menurut hukum syariah karena sejalan dengan *maqashid syariah*. Namun apabila pembagian harta warisan sesuai dengan ketentuan Kompilasi Hukum Islam dengan tujuan untuk menunda waktu pembagian yang mengakibatkan berkurangnya nilai harta, atau hilangnya fisik harta, maka hal tersebut termasuk ke dalam perbuatan zalim dan tentunya bertentangan dengan syariat Islam itu sendiri. Itu tidak boleh dilakukan.

Kata Kunci: Pembagian Warisan, Kompilasi Hukum Islam, *Maqashid Syariah*

Introduction

Islamic inheritance law is the norms or rules that regulate the issue of distributing property from a deceased person to a living person,¹ namely the heir, who is the generation that will continue the relay of ownership of the inheritance property.² Islamic inheritance law is an important expression of Islamic family

law. It is half of the knowledge that humans have.³

Studying and understanding Islamic inheritance law entails studying half of human knowledge. The law of inheritance has been and continues to live amid Muslim society in the future.⁴ Islamic inheritance law is a part of family law that must be learned for the distribution of inheritance to be carried out

¹ Inheritance or another name for *al-mirats*, and which has the name *al-furudh* is the science that discusses the distribution of inheritance, to whom the inheritance is given, and who does not get the inheritance. Information related to this science is explained by Allah in great detail and detail, so as not to confuse people who are burdened with the law in implementing these rules. See, 'Ali al-Sayis, *Tafsir Ayat al- Ahkam*, (Cairo: Dar al-Hadith, 2014), p. 127. 127.

² Ahmad Rafiq, *Hukum Islam di Indonesia*, (Jakarta: RajaGrafindo Persada, 2017), Cet. 7, p. 52.

³ Mahammad Ibrahim Al-Tuwaijuri, *Mukhtashar Fiqh Islami fi Zhilli Al-Qur'an wa Al-Sunnah*, (Mamlakah Al-'Arabiyah As-Su'diyah: Dar Al-Asdhaq Al-Mujtama', 2010) p. 250. 250.

⁴ Budi Hariyanto, "Tinjauan Yuridis Terhadap Pembagian Harta Waris Beda Agama Menurut Kitab Undang Undang Hukum Perdata (KUH Perdata) Dan Kompilasi Hukum Islam (KHI)," *IUS: Jurnal Ilmiah Fakultas Hukum* 8.2 (2020): 28-42. <https://doi.org/10.51747/ius.v8i2.688>

correctly and with justice.⁵ As a result of studying Islamic inheritance law, Muslims will be able to complete the distribution of inheritance in line with the stipulated provisions. The results of an in-depth study of inheritance result in the process of transferring property from the testator to the heirs can be done without having to be disputed.

Human instincts tend to like the things they want,⁶ especially wealth which will trigger the emergence of various conflicts and disputes when not regulated by good rules.⁷ This is due to the greedy nature of humans, who are often carried away by mere pleasures. The initial review found that the conflicts and disputes that arose were caused by various factors, one of which is the problem of dividing inheritance. It was discovered that the family's integrity had been shattered as a result of the unwise division of inheritance and that the process of dividing the inheritance had taken much too long.⁸ Another problem is the determination of when the distribution of inheritance is carried out.

Although the explanation of the procedure for the distribution of inheritance has been explicitly mentioned, the provisions regarding the time of distribution of the property have not been regulated in detail in Islamic inheritance law,⁹ the Compilation of Islamic Law. This means that KHI only explains in outline related to the distribution of new inheritance can be implemented when the heir

dies and after paying off the rights relating to the property left by the corpse. These rights include the management of the testator's body, the repayment of the testator's obligation, and the repayment of the will. After these three conditions are met, the remaining assets are distributed to the heirs.

Analyzing the information mentioned above, that related to the certainty of the time of distribution of inheritance is not measured precisely in the Compilation of Islamic Law, for example after 10 days of the death, or after 20 days of the death of the owner of the property, meaning that Compilation of Islamic Law does not determine a concrete time limit for the practice of distributing inheritance. As a result, the heirs will delay or even refuse to distribute the inheritance.

Applying something in social life necessitates legal certainty that regulates and even requires understanding, not least the problem of inheritance. The researcher's hypothesis states that today Muslims are hesitant to practice inheritance distribution since no standard provision regarding the time of inheritance distribution.

Determining the time of distribution of inheritance is regarded as crucial, because if the time of distribution of inheritance is not determined, various kinds of problems would develop. For example, is the case of *munasakhat*¹⁰ that occurs when the new inheritance will is distributed over an inordinately lengthy period. As a consequence, the inheritance is ambiguous in terms of its existence and amount. Due to the difficulty in calculating and determining the quantity of the property, both the distribution of property

⁵ Ahmad Rafiq, *Hukum Islam...*, p. 374.

⁶ This is as mentioned by the Qur'an in surah Ali 'Imran verse 14 which means: "Make beautiful in the sight of man the love of what is desired, in the form of women, children, property piled up in the form of gold and silver, horses, cattle and fields. That is the pleasure of life in the world, and with Allah is a good return. See Ministry of Religious Affairs, Al-Qur'an Translation, Abdul Wahid Al-Faizin and Nashr Akba, *Tafsir Ekonomi Kontemporer*, (Jakarta: Gema Insani, 2018), p. 38.

⁷ Ibid, p. 356.

⁸ Budi Hariyanto, "Tinjauan Yuridis...", p. 23

⁹ Amir Syarifuddin, *Hukum Kewarisan Islam*, (Jakarta: Kencana, 2004), p. 102.

¹⁰ *Munasakhat* is placing the share of the heirs to the people who will inherit it because the first-generation heirs are already dead. The inheritance should be distributed to the first-generation heirs, then if the first-generation heirs have died, then the transfer is given to the second-generation heirs, and so on. See Imam Al-Ghazali, *Al-Wasith fi Al-Mazhab*, volume IV, (Dar As-Salam, Cairo), p. 389

to those who are not entitled and the distribution of inheritance becomes invalid.¹¹

Apart from the *munasakhat* problems mentioned above, several other problems will also arise if the time of distribution of inheritance is not determined with certainty, due to the growing assets, the accumulation of assets in the hands of one party, the loss of authentic deeds or proof of ownership of property, and several other problems.

The aforementioned issues are therefore thought to require a comprehensive study, given that disputes amongst coheirs will arise if the timing of inheritance distribution is not decided upon. There has been a long practice of distributing inheritance, and there are Muslims who are hesitant to share inheritance with their heirs since there is no time to divide it. This draws attention to the issue of the time of inheritance partition in light of the Compilation of Islamic Law. Determining the time to distribute inherited assets raises the likelihood of the above-mentioned disputes occurring within the family, which the heirs do not want.

The benefit to be achieved in Islamic inheritance law is an effort to prevent conflicts and disputes that can arise due to a sense of injustice felt by the heirs. However, if the right time for the distribution of inheritance is not determined, the heirs will fight over the inheritance unnaturally, and the benefit to be achieved in Islamic inheritance Law will not be achieved.¹² Therefore, this research aims to find out what is the urgency of determining the time of inheritance distribution according to the Compilation of Islamic Law and analyze it with the *maqashid sharia* perspective.

Method

This research is qualitative. Moleong defines qualitative research as research that produces analytical procedures by not using statistical analysis procedures or other quantifications, but using library research,¹³ whose object discovery is carried out by exploring library information.¹⁴

The data sources used in this study are classified into three parts. The primary data for this research is Book II of the Compilation of Islamic Law, which discusses inheritance issues. Secondary data in this study include books containing opinions on inheritance law that focus on the issue of the timing of dividing inheritance property as well as other books that are relevant to the issues discussed.

To analyze the data, especially the Compilation of Islamic Law and the legal results obtained, a qualitative content analysis technique is used.¹⁵ Furthermore, to conclude, then deductive,¹⁶ inductive¹⁷ and comparative¹⁸ methods are used with the *Maqashid al-Syar'iyah* approach.

¹¹ Indah Sari, "Pembagian Hak Waris Kepada Ahli Waris Ab Intestato dan Testamentair Menurut Hukum Perdata Barat (BW)," *Jurnal Ilmiah Hukum Dirgantara* 5.1 (2018): 6. <https://doi.org/10.35968/jh.v5i1.99>

¹² Lena Nova, "Hukum Waris Adat Di Minangkabau Ditinjau Dari Kompilasi Hukum Islam Dan Hukum Perdata," *AKADEMIK: Jurnal Mahasiswa Humanis* 1.1 (2021): 38. <https://ojs.pseb.or.id/index.php/jmh/article/view/109>

¹³ Lexy J. Moleong, *Metodologi Penelitian Kualitatif*, (Bandung: CV Rosdakarya, 2016), p. 6.

¹⁴ Mestika Zed, *Metodologi Penelitian Kepustakaan*, (Jakarta: Yayasan Obor Indonesia, 2018), p. 15

¹⁵ Content Analysis is an effort to analyze the issues of a text including classification efforts, determining a criterion, and making predictions about the content of a text. Noeng Muhajir, *Metodologi Penelitian*, (Yogyakarta: Rakeh Sarasih, 2017), pp. 68-69

¹⁶ Deductive is a way of thinking in which from a general statement a specific conclusion is drawn. See Jujun Suriasumantri, *Filsafat Ilmu*, (Jakarta: Pustaka Sinar Harapan, 2007), p. 48.

¹⁷ Inductive is a way of thinking in which a general conclusion is drawn from various individual cases. Ibid.

¹⁸ Comparative research is research intended to find out and or test differences in two or more groups. Comparative research is also research conducted to compare a variable (object of research), between different subjects or different times and find the cause-and-effect relationship. See Muhammad Nazir, *Metode Penelitian*, (Jakarta: Ghalia Indonesia, 1988), p. 68.

Result and Discussion

1. History of the Birth of the Compilation of Islamic Law

The establishment and preparation of the Compilation of Islamic Law (KHI) began in 1983, after the signing of the Joint Decree of the Chief Justice of the Supreme Court of the Republic of Indonesia and the Minister of Religious Affairs of the Republic of Indonesia, for uniformity and reference for judges in religious courts. The committee worked for approximately five years and in 1988 the KHI formulation was ready to be submitted to the government to process the legality of a statutory law. For more than three years in the waiting period waiting for a follow-up on the fate of the draft KHI rules, there has not been a bright spot. President Soeharto finally signed Presidential Instruction Number 1 of 1991 on June 10, 1991.¹⁹

In the preamble to the Presidential Instruction, several clauses of legal material were mentioned, among others, that the Indonesian scholars in a workshop held in Jakarta on February 2 to 5, 1988 had accepted three draft books of the Compilation of Islamic Law, namely Book I on Marriage Law, Book II on Inheritance Law, and Book III on *Perwakafan* Law. On that basis, the community responded to the KHI with joy and pride because it was the work of Islamic scholars in Indonesia.²⁰

After the Presidential Instruction was socialized to various provinces in Indonesia, especially among the *ulama*, religious leaders, and community leaders, there were objections

about various matters, for example, in the field of marriage law there were rules about the permissibility of marrying pregnant women, the field of inheritance law regarding substitute heirs, and adopted children who received mandatory wills.²¹ However, officials from the Supreme Court of the Republic of Indonesia who became resource persons explained these objections with the argument that although KHI is still weak and has many shortcomings, it should be accepted as it is, while walking it is attempted, and thought of improvement concepts for the future.²²

Furthermore, in terms of its history, KHI was formed beginning with a workshop in February 1988 and at the same time as socialization to gain broad support as an innovation in fiqh and Islamic law throughout Indonesia. In its 24th Congress in Yogyakarta, Muhammadiyah expected the government to immediately ratify Law No. 7 of 1989 on Religious Courts. A few days before President Soeharto performed the Hajj pilgrimage, on June 10, 1991, he signed Presidential Instruction No. 1 of 1991 concerning the Compilation of Islamic Law.²³

In the consideration of the Presidential Instruction, it was stated:

- a. That the scholars of Indonesia in a workshop held in Jakarta on February 2-5, 1988, had accepted the draft books of the Compilation of Islamic Law, namely Book I on Marriage Law, Book II on

¹⁹ Fajar Sugianto and Slamet Suhartono, "The Existence of President Instruction of The Republic of Indonesia Number 1 The Year 1991 on The Wide Spread of Compilation of Islamic Law in Indonesian Legal System," *AL-IHKAM: Jurnal Hukum & Pranata Sosial* 13.2 (2018): 291-309. <https://doi.org/10.19105/al-lhkam.v13i2.1727>

²⁰ Zainal Abidin Abubakar, *Kumpulan Peraturan Perundang-undangan dalam Lingkungan Peradilan Agama*, (Jakarta: Yayasan Al-Hikmah, 1993), p. 303.

²¹ Shofiatus Jannah and Dwi Hidayatul Firdaus, "The Concept of Iddah in the Compilation of Islamic Law in the View of Negotiative Hermeneutics," *De Jure: Jurnal Hukum dan Syar'iah* 15.2 (2023). <https://doi.org/10.18860/j-fsh.v15i2.21065>

²² Naskur Bilalu, et al. "Compilation of Islamic Law as Judge's Consideration at a Religious Court in North Sulawesi, Indonesia." *Samarah: Jurnal Hukum Keluarga Dan Hukum Islam* 6.2 (2022): 514-536. <http://dx.doi.org/10.22373/sjhk.v6i2.12441>

²³ Jan Michiel Otto, "Sharia and national law in Indonesia," *Sharia Incorporated* (2010): 459. <https://scholarlypublications.universiteitleiden.nl/access/item%3A2882769/view>

- Inheritance Law, and Book III on Perwakafan Law.
- b. That the Compilation of Islamic Law mentioned in point (a) can be used by government agencies and the people who need it as a guideline for solving problems in that field.
 - c. Therefore, the Compilation of Islamic Law mentioned in point (a) needs to be disseminated.²⁴

As it is seen in the draft of Presidential Instruction No. 1 of 1991 concerning KHI, it is stated that the legal basis of the Presidential Instruction is Article 4 paragraph (1) of the 1945 Constitution, namely the power of the President to hold the power of the State government, whether it is called a Presidential Decree (Keppres) or Presidential Instruction (Inpres), the legal position is the same. In other words, Presidential Instruction No. 1 of 1991 concerning KHI is legally enacted by the president and has strong and binding legal force. Then, on July 22nd, 1991, the Minister of Religious Affairs of the Republic of Indonesia issued Minister of Religious Affairs Decree No. 254/1991 on the Implementation of Presidential Instruction No. 1 of 1991 dated June 10, 1991. In the preamble, considering that KMA No. 254/1991 mentions the legal basis of Article 4 paragraph (1) and Article 17 of the 1945 Constitution, its first dictum stipulates all agencies of the Ministry of Religious Affairs and other related Government Agencies to disseminate the Compilation of Islamic Law in the fields of marriage law, inheritance, and perwakafan as referred to in the first dictum of Presidential Instruction of the Republic of Indonesia No. 1/1991 dated June 10, 1991, to be used by

government agencies and the public who need it in problems in these fields.²⁵

In its development, to avoid legal uncertainty, in March 1985 President Soeharto took the initiative with the issuance of a joint decree (SKB) of the Chief Justice of the Supreme Court and the Minister of Religious Affairs. The SKB established the Compilation of Islamic Law project to draft three books of law, one each on Marriage Law (Book I), Inheritance Law (Book II), and Perwakafan Law (Book III).

On that basis, the provisions for resolving legal issues of marriage, inheritance, and trusts for Muslims refer to the KHI, which has been established through a *taqnin* process in the form of an Inpres and applies positively to Muslims. Therefore, KHI, which contains acceptable material law and has been stipulated by Presidential Decree/Presidential Instruction Number 1 of 1991, can be seen as written law. In fact, some academics and Islamic thinkers refer to Presidential Instruction No. 1 of 1991 on KHI as "*qanun*" which was formed and induced from the Indonesian version of national fiqh.

Thus, the position of KHI until now remains a result of a seminar or workshop of scholars and experts in Islamic law on the work of a team formed by the Supreme Court and the Ministry of Religious Affairs of the Republic of Indonesia. In short, the author argues that KHI is simply like *qanun* because it has been compiled using *ijma'* among scholars and jurists, and has received legitimacy from the government as outlined in the form of Presidential Instruction Number 1 of 1991. In substance, the Presidential Instruction mandates the Department of Religious Affairs (now the Ministry of Religious Affairs) to disseminate the contents of the KHI material and also its application in the Religious Courts.

²⁴ Amiroedin Syarif, "Peraturan Perundang-undangan: Dasar, Jenis, dan Teknik Pembuatannya," in Weldo Parinussa, Merry Tjoanda, and Barzah Latupono, "Pembagian Harta Waris Kepada Ahli Waris Dari Perkawinan Pertama Dan Kedua Ditinjau Dari Kitab Undang-Undang Hukum Perdata," *TATOHI: Jurnal Ilmu Hukum* 1.4 (2021): 356-363. <https://doi.org/10.47268/tatohi.v1i4.612>.

²⁵ Ismail Suny, "Kompilasi Hukum Islam Ditinjau Dari Sudut Pertumbuhan Teori Hukum Di Indonesia," *Mimbar Hukum* 4 (1991).

2. General Review of Inheritance in Islamic Law

Islamic inheritance law regulates the transfer of property from someone who has died to the living. The rules regarding the transfer of this property are called by various names. In Islamic legal literature, several terms are found to name the law of inheritance such as *Faraid*, *Fiqh Mawaris*, and *hukm al-Waris*.²⁶ This difference in naming occurs due to differences in the direction that is used as the main point in the discussion. However, the commonly used word is *faraid* as used by an-Nawawi in the book *Mihaj al-Thalibin*. Inheritance in Islam is an inseparable thing, therefore, to actualize it in Islam, its existence must be described in factual form. In this case, the implementation of inheritance law must be seen in the family system that prevails in society. 3 Of all the laws that apply in society, it is the law of marriage and inheritance that determines and reflects the family system which is also part of one of the civil laws.²⁷

The inheritance law is also called the *Faraidh*. The definition of *faraidh* cannot be separated from inheritance (matters relating to inheritance or inheritance).²⁸ This word is the

jama' of *faridhah* which is interpreted by faraidh scholars as *mafrudhah*, namely the parts that have been determined by the levels (shares). *Faraidh* is the name for a share that is determined by *shara'* law for the heir. The jurists of *fiqh* define *faraidh* as the science of *fiqh* relating to the division of inheritance, the knowledge of how to calculate the amount of inheritance. The knowledge of *faraidh* is the knowledge of inheritance and the proper portion of the estate for each of those who have rights. In another interpretation, the science of faraidh is also the science of inheritance and the science of *hisab* (calculation) which leads to an understanding that specifies each who has the right to his right from the inheritance.²⁹

3. Rights Related to Inheritance Property

Apart from leaving heirs, sometimes someone has obligations towards other people that have not been resolved until that person dies, in the form of unpaid debts or perhaps a will regarding their inheritance.³⁰ Therefore, the heirs must first settle the testator's affairs with others before the inheritance is divided among the heirs. There may be many parties who are entitled to the testator's inheritance, but the testator's inheritance is not sufficient to fulfill all of them. To avoid deviations in its implementation, such as giving precedence to the party that should be at the end, the Islamic

²⁶ Amir Syarifuddin, *Hukum...*, p. 25; Miftahul Huda, Niswatul Hidayati, and Khairil Umami. "Fiqh And Custom Negotiation In Inheritance Dispute Tradition At Mataraman Society, East Java," *AL-IHKAM: Jurnal Hukum & Pranata Sosial* 15.2 (2020): 224-250. <https://doi.org/10.19105/al-lhkam.v15i2.3787>

²⁷ Fidah Wahyuni, "Sistem Waris Dalam Perspektif Islam Dan Peraturan Perundang-Undangan Di Indonesia," *SALAM: Jurnal Sosial Dan Budaya Syar'i* 5.2 (2018): 148. <https://doi.org/10.15408/sjsbs.v5i2.9412>; Ilyas, et al., "The Accommodation of Customary Law to Islamic Law: Distribution of Inheritance in Aceh from a Pluralism Perspectives," *Samarah: Jurnal Hukum Keluarga dan Hukum Islam* 7.2 (2023): 897-919. <http://dx.doi.org/10.22373/sjhk.v7i2.15650>

²⁸ H. A. Kadir, *Memahami Ilmu Faraidh: Tanya Jawab Hukum Waris Islam*, (Jakarta: AMZAH, 2016), p. 9; Abdul Mutakabbir, Hastuti, & Mikdar Rusdi, "The system of inheritance distribution in South Sulawesi," *Ijtihad: Jurnal Wacana Hukum Islam dan Kemanusiaan*, 23.1 (2023): 57-76. <https://doi.org/10.18326/ijtihad.v23i1.57-76>

²⁹ Fidah Wahyuni, "Sistem Waris...", 153; Fahmi Fatwa Rosyadi Satria Hamdani, et al., "Traditional Law vs. Islamic Law: An Analysis of Muslim Community Awareness in Inheritance Issues," *Al-Ahkam* 32.1 (2022): 109-130. <https://doi.org/10.21580/ahkam.2022.32.1.11000>

³⁰ Elfia, "Kewarisan Beda Agama Di Nagari Persiapan Bancak Kariang Kecamatan Kinali Kabupaten Pasaman Barat," *Al-Istinbath: Jurnal Hukum Islam* 6.2 (2021), <http://dx.doi.org/10.29240/jhi.v6i2.3479>; Elfia, Surwati, and Bakhtiar, "The Struggle of Custom and Sharia: Classic Dilemma of Inheritance Settlement in Javanese and Minangkabau Ethnic Communities in Indonesia," *Al-Istinbath: Jurnal Hukum Islam* 8.1 May (2023): 75-94. <http://dx.doi.org/10.29240/jhi.v8i1.5480>

inheritance law regulates the order of the parties who have the right to the inheritance of the testator.³¹ Among them are as follows:

1. The rights that concern the interests of the deceased himself, for the cost of managing the body.
2. Rights that concern the interests of creditors or to pay the debts of the testator.
3. Rights that concern the interests of the person receiving the will or to fulfill the testator's will.
4. The rights of the heirs.³²

The following are several descriptions of the aforementioned points: *First*, the cost of taking care of the corpse is the right of the heir who must first be fulfilled by using the heir's property. Covering the needs of bathing the corpse, purchasing shrouds, and burial costs, are called *tahjiz*. The use of *tahjiz* costs is adjusted to the provisions of *shara'*, not too much and not too little. Traditional demands such as supplying the needs of *tahlil*, welcoming guests, and others are not deducted from the inheritance in order not to decrease or even eliminate the rights of other parties, including creditors and heirs themselves. This inheritance also applies to the *tahjiz* costs of people who were dependent on the testator during his lifetime, such as children or wives who also died before the inheritance was divided. *Second*, if the person who died still has debts, then first must pay off his debts. This means that all of the testator's inheritance is not allowed to be distributed to his heirs before his debts are

settled first. This is based on the hadith of the Prophet Muhammad (peace be upon him) which means: "*The soul of a believer depends on his debts until they are paid.*" (H.R. Ahmad)

4. Inheritance Requirements

Furthermore, as Mardani said in his book Islamic Inheritance Law, the requirements for inheritance in addition to having a kinship relationship, marriage relationship, and religious relationship, other special conditions must be met to be entitled to inheritance by law, including:

- a. The person who bequeaths is dead. The scholars distinguish death into three kinds of provisions, including :
 - 1) The *haqiqy* death is an actual death. In this case, humans are considered dead when they breathe their last breath, fulfill the provisions for the dead in Islam, and are then buried.
 - 2) *Hukmy* death, which is the missing person who by the court is considered dead, and;
 - 3) *Taqdiry* death (death according to conjecture), is a death that is not *haqiqi* or *hukmy*, but solely based on strong conjecture. Such as the death of a newborn baby due to a hard impact on the mother's stomach.
- b. People who receive inheritance (heirs) are still alive at the time of the death of the testator.
 - 1) There is no barrier to getting an inheritance.
 - 2) Not fully veiled or obstructed by closer heirs.³³

5. Distribution of Inheritance

Based on our obligations as Muslims who must obey and submit to Allah for all His

³¹ Indah Sari, "Pembagian Hak Waris...", p. 13; Hasbuddin Khalid and Rizki Ramadani, "Compulsory Testament: Efforts to Protect and Fulfil the Welfare Rights of Adopted Children in Indonesia's Islamic Inheritance System," *Manchester Journal of Transnational Islamic Law & Practice* 19.2 (2023): 162-175. https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4521123

³² Ali Akbar, "Konsep kepemilikan dalam Islam," *Jurnal Ushuluddin* 18.2 (2012): 131. <http://dx.doi.org/10.24014/jush.v18i2.704>

³³ Agustina Suryaningtyas, "Pelaksanaan Pembagian Warisan Berdasarkan KUHPerdara Berkenaan Dengan Adanya Testamen," *Jurnal Daulat Hukum* 1.1 (2018): 267. <http://dx.doi.org/10.30659/jdh.v1i1.2645>

laws,³⁴ both commands and prohibitions, the main reference is the Al-Qur'an and As-Sunnah, as well as other sources of law that do not conflict with Islamic law. To explain the timing of the division of inheritance in the Compilation of Islamic Law, using a theoretical framework: *First*, the theory of creed and the theory of God's sovereignty is used as a grand theory to explain Muslims' compliance with Islamic law; *second*, the theory of legal change and constitutional theory are used as a middle theory to explain the dynamics of Islamic inheritance law and its transformation into the Indonesian legal system; and *third*, the theory of mashlahah and maqashid ash-shari'ah are used to analyze the implementation of Islamic inheritance law in Compilation of Islamic Law in Indonesia which is reduced to *qath'iyy ad-dilalah* (Al-Qur'an and As-Sunnah) and *zhanny ad-dilalah* (ijtihad).³⁵

6. Maqashid Sharia in Inheritance Division

Maqashid sharia says that Allah SWT revealed the sharia (rule of law) none other than to take benefit and avoid harm (*jalbul mashalih wa dar'u al-mafasid*), the rules of law that Allah determines are only for the benefit of human beings.³⁶ Thus, *maqashid sharia* is the

application of what is contained and the purpose of sharia in formulating Islamic laws. This goal is obvious and comprehensible in the Qur'an and Hadith, which are focused on the good of people in both the hereafter and the hereafter.³⁷

According to Al-Syatibi, all laws that have been created by Allah SWT contain three benefits, namely, *dharuriyat* (primary) needs, *hajiyat* (secondary) needs, and *tahsiniyat* needs.³⁸ Al-Syatibi defines that *maqashid sharia* is a benefit that comes from Allah SWT a benefit that comes from Allah SWT which if the benefit is not achieved then it cannot be categorized as a benefit. If the benefit is not achieved, it cannot be categorized as *maqashid sharia*.³⁹ Because every law created by Allah SWT must contain the value of usefulness and the value of benefit for all mankind. As a result, researchers found that a settlement of equal division of inheritance using *tashaluh* will be able to fulfill the objectives of *maqashid sharia* in Islamic inheritance as follows: (1) Preserving religion (*hifzh al-din*). Islam has ordered all Muslims to learn the provisions of Islamic inheritance. The religion of Islam itself can be preserved because Islamic inheritance is half of human concerns, and humans will eventually die at that point as well. Maintaining one's religious beliefs is also

³⁴ Husam Hamidah, *Fi Rihabil Islam*, (Cairo: Daar At-Tauzy' wa An-Nasyr Al-Islamy, 2014), volume 12, p. 241; Ali Muhtarom and Yuli Sutoto Nugroho, "Grants as a Model of Inheritance Prospective Distribution in the Coastal Santri Community," *Al-Ahkam* 32.2 (2022): 169-188. <http://doi.org/10.21580/ahkam.2022.32.2.12557>

³⁵ Habiburrahman, *Rekonstruksi Hukum Waris Islam di Indonesia*, Jakarta: Kencana Prenada Media Group, 2011), p. 20; Syaikh, "The dispute settlements of inheritance in Palangka Raya: a legal anthropology approach," *Mazahib: Jurnal Pemikiran Hukum Islam* 18.1 (2019): 117-141. <https://doi.org/10.21093/mj.v18i1.1441>

³⁶ Yusuf Al-Qardhawi, *Pedoman Negara dalam Perspektif Islam*, (Jakarta: Al-Kautsar Library, 2016), p. 113; Mohammad Hipni, "The Study of Maqashidi Sharia Toward Maduresse Traditional Inheritance by Using System Approach," *AL-IHKAM: Jurnal Hukum & Pranata Sosial* 14.1 (2019): 50-71. <https://doi.org/10.19105/al-lhkam.v14i1.2159>

³⁷ Felicitas Opwis, "New trends in Islamic legal theory: maqāsid al-sharī'a as a new source of law?," *Die Welt des Islams* 57.1 (2017): 7-32, <https://doi.org/10.1163/15700607-00571p03>; Felicitas Opwis, "Maqāsid al-Sharī'a and Contemporary Reformist Muslim Thought: An Examination, edited by Adis Duderija, 2014," *Islamic Law and Society* 23.1-2 (2016): 141-146, <https://doi.org/10.1163/15685195-02312p06>

³⁸ Mawardi Djalaluddin, "Pemikiran Abu Ishaq Al-Syatibi Dalam Kitab Al-Muwafaqat," *Al Daulah: Jurnal Hukum Pidana dan Ketatanegaraan* 4.2 (2015): pp. 289-300. <https://doi.org/10.24252/ad.v4i2.1483>

³⁹ Yunice Karina Tumewang, Herlina Rahmawati Dewi, and Hanudin Amin. "Over a decade of maqashid sharia studies: a bibliometric analysis and direction for future research." *Journal of Islamic Accounting and Business Research* (2023). <https://doi.org/10.1108/JIABR-08-2022-0207>

realized in carrying out all of the rules outlined in Islamic inheritance law, which serves as evidence of one's adherence to Islamic law.⁴⁰ Thus, the purpose of Islamic law is to uphold truth and justice, return rights to their owners and achieve truth and justice, and then maintain friendship or affectionate relationships between heirs. (2) Preserve the soul (*hifzh al-nafs*). Preserving the soul in Islamic inheritance is also realized from the existence of the provision that murder prevents a person from getting an inheritance. This provision shows the existence of a relationship among heirs in terms of protecting themselves against property guarding himself against property. It is hoped that the implementation of the inheritance property distribution that God has predetermined will result in each heir's share and no disturbed souls, particularly in the case of one heir's psychological distress brought on by disappointment with the unfairness of the inheritance division as the result of the distribution of inheritance which is considered unfair to the heirs. Family relationships between heirs can remain intact and there are no disputes between heirs because the practice of dividing inheritance is carried out subjectively based on *al-shulh* (peace), sincerity, and full awareness based on a sense of kinship and brotherhood. (3) Maintaining descent (*hifzh al-nasl*). Islam places a high value on family preservation and nurturing to achieve tranquillity in guarantee a harmonious family life by praising the nasab heritage. The Sharia objective of the maintenance of offspring is fulfilled by maintaining the integrity and harmony between family members. This is achieved by the Islamic law of inheritance in which heirs receive according

to their respective shares so that there is no division in the family. (4) Guarding the intellect (*hifzh al-'aql*). Intellect is the source of intelligence (knowledge), the emanation of guidance, and the medium of human happiness. Because of their reason, humans can understand the commands given by Allah SWT through the al-Qur'an, have the right to choose who leads the world, and are perfect and distinct from other creatures.⁴¹ (5). Maintaining treasure (*hifzh al-mal*). Humans are expected to utilize property by striving for it in a straight path following the Sharia. This requires that there be no conflict or disagreement between fellow humans. The aim of sharia in preserving assets is that inheritance is distributed fairly to the heirs who are entitled to receive it and prevents someone from eating or taking other people's goods (property) in a way that is haram according to Islamic inheritance. In this way, all heirs receive an inheritance according to their portion, there is no hoarding of assets on one person alone.⁴²

7. Inheritance in the Compilation of Islamic Law

The Compilation of Islamic Law is one of the legal bases for judges in the Religious Courts in deciding cases. One of the parts regulated in the Compilation of Islamic Law is about inheritance law.⁴³ Particularly concerning

⁴⁰ Ahmad Al-Mursi Husain Jauhar, *Maqashid Sharia*, transl. Khimawati, (Jakarta: AMZAH, 2015), p. 96; Darlin Rizki, Frina Oktalita, Ali Sodikin, "Maqasid Sharia Perspective in Changes the Marriage Age Limits for Women According to Law Number 16 of 2019," *Al-Istinbath: Jurnal Hukum Islam* 7.2 (2022): 487-508. <http://dx.doi.org/10.29240/jhi.v7i2.4016>

⁴¹ "And indeed We have honored the children of Adam, We carried them on land and sea, We gave them sustenance from the good and We favored them with perfect them with a perfect advantage over most creatures We have created." Look at The Al-Quran S. Al-Isra': 70

⁴² Lilis, "Tradisi-Tradisi Dalam Pembagian Harta Warisan Di Masyarakat Minangkabau," *Siwayang Journal: Publikasi Ilmiah Bidang Pariwisata, Kebudayaan, dan Antropologi* 2.1 (2023): 7-14. <https://doi.org/10.54443/siwayang.v2i1.453>

⁴³ Mursyid Djawas, et al. "The Construction of Islamic Inheritance Law: A Comparative Study of the Islamic Jurisprudence and the Compilation of Islamic Law." *JURIS (Jurnal Ilmiah Syariah)* 21.2 (2022): 207-219. <http://dx.doi.org/10.31958/juris.v21i2.7495>

inheritance in the Presidential Instruction, Book II of the three books—Book I on Marriage and Book III on Waqf—contains The Compilation of Islamic Law.⁴⁴ In general, the Islamic Inheritance Law contained in Book II and the Compilation of Islamic Law already covers aspects of the discussion of inheritance law, for example, heirs, inheritance property, and so on. These provisions are contained in Articles 171 through 193, as well as Article 209 on mandatory wills.⁴⁵

Inheritance law is the law that regulates the transfer of ownership of the heir's estate, determining who is entitled to become heir and how much each share is. The heir is a person who at the time of death or declared dead based on a Court decision is Muslim, leaving heirs and property. An heir is a person who at the time of death has a blood relationship or marital relationship with the testator, is Muslim, and is not prevented by law from becoming an heir. The inheritance is the property left by the heir either in the form of property that belongs to him or his rights.⁴⁶ The inherited property is the inherited property plus part of the joint property after being used for the needs of the testator during the illness until his death, the cost of managing the body (*tajhiz*), payment of debts, and gifts to relatives.⁴⁷

⁴⁴ Ilyas, Faisal A. Rani, Syamsul Bahri, Sufyan, "The Accommodation of Customary Law to Islamic Law: Distribution of Inheritance in Aceh from a Pluralism Perspectives," *Samarah: Jurnal Hukum Keluarga dan Hukum Islam* 7.2 (2023): 897-919. <http://dx.doi.org/10.22373/sjhk.v7i2.15650>

⁴⁵ Presidential Instruction No. 1 of 1991 concerning the Compilation of Islamic Law; Diana Zuhroh, "Criticizing the Compilation of Islamic Law (KHI) to Resolve the Case of Grandchildren's Inheritance Right in Religious Courts," *1st International Seminar on Sharia, Law and Muslim Society (ISSLAMs 2022)*. Atlantis Press, 2022. https://doi.org/10.2991/978-2-494069-81-7_4

⁴⁶ Compilation of Islamic Law, chapter 1, article 171, letter d

⁴⁷ Ministry of Religious Affairs, *Compilation of Islamic Law* (Jakarta, 2016), Ed. 3, p. 167.

8. *Maqashid Sharia Analysis of the Timing of Inheritance Division in the Compilation of Islamic Law*

Taking into account several articles in the Compilation of Islamic Law relating to inheritance law, that:⁴⁸

- a. In general, the inheritance or inheritance referred to by the Compilation of Islamic Law is similar to the *faraidh* contained in the book or reference *turats* or classical books.⁴⁹
- b. In general, it can be said that the provisions regarding the law of inheritance regulated in the Compilation of Islamic Law are guided by the lines of Islamic inheritance law. The use of the *qath'i* principle dominates the formulation and the whole is almost based on the line of formulation of the *nash* contained in the Qur'an.
- c. Compilation of Islamic Law does not adopt the provisions of customary law which equate the rights and position of adopted children with the status of biological children. This can be seen in the provisions of Article 171 letter h.
- d. The share of boys and girls does not undergo reactualization. This certainly is based on the Qur'anic text of Surah An-Nisa verse 11.⁵⁰

⁴⁸ M. Yahya Harahap, *Informasi Materil Kompilasi Hukum Islam: Mempositifkan Abstraksi Hukum Islam, dalam Berbagai Pandangan Terhadap Kompilasi Hukum Islam* (Jakarta: Elsas, 2011), p. 66

⁴⁹ Agustina Suryaningtyas, "Pelaksanaan...", p. 270.

⁴⁹ Husam Hamidah, *Fi Rihabil Islam...*, p. 241.

⁵⁰ "Allah has prescribed for you (the division of inheritance for) your children. Namely: The share of a son is equal to the share of two daughters; and if the children are more than two daughters, then for them two-thirds of the property is left behind; if the daughter is alone, then she gets half the property. and for two mothers-fathers, for each of them, a sixth of the property is left behind if the deceased has children; if the deceased has no children and he is inherited by his mother (only), then his mother gets a third; if the deceased has several brothers, then his mother gets a sixth. (The aforementioned divisions) after the fulfillment of the will he made or (and) after paying his debts. (As for) your parents and your children, you do not know which of them is more likely to benefit you. Verily, Allah is All-knowing and All-wise."

e. Ordering inheritance for immature children. Before the Compilation of Islamic Law, there was no regulation among the Muslim community on the acquisition of inheritance property received by immature children. The management and maintenance were left based on trust in one of the relatives without supervision and accountability. Finally, when the heir is an adult, the inheritance that should have been given to him has disappeared, spent by the caretaker.

The Compilation of Islamic Law does not determine specifically (after 10, 20, or 60 days) the timing of the distribution of inheritance when a male or female person dies. Nevertheless, in the Compilation of Islamic Law, there is an explicit indication of an explanation of the time of distribution of inherited property. It can be found in article 171 concerning general provisions at point (e) with the following information: "The inheritance is inherited property plus part of the joint property after being used for the needs of the testator during their illness until death, the cost of managing the body, payment of debts and gifts to relatives. Through the article previously mentioned, it can be understood that the Compilation of Islamic Law provides information related to the timing of the distribution of inheritance, namely after the implementation of the settlement of rights related to the inheritance such as organizing the corpse, paying debts, and wills."⁵¹

The same information as the problem mentioned can also be understood in the next explanation put forward by the Compilation of Islamic Law in Article 175 point (1), the obligations of the heirs to the testator are:

a. Take care and complete until the funeral of the corpse is completed.

b. Pay off the testator's debts and collect receivables in addition to treating and caring for both debts.
c. Completing the testator's will.
d. Dividing the inheritance among the entitled heirs.⁵²

The information above can convey the author to the conclusion that there is an obligation stipulated by the Compilation of Islamic Law to divide the inherited property, this is as contained in point (d) in article 175, and in article 171 (c) that the obligation to divide the inherited property that has been mentioned. Naturally, it cannot be arranged until the time to separate it is precisely measured. Therefore, the Compilation of Islamic Law establishes stages to carry out the process of dividing the inheritance. This stage is ultimately considered as the time to divide the inheritance. Although the time mentioned has not been able to give a definite number, such as 10 days after death or more, the author understands that the Compilation of Islamic Law wants it to be as soon as possible to carry out the process of dividing the inheritance.

Determining the timing of the division of inheritance is considered important. The provisions of Islamic inheritance recommend that the division of inheritance must be carried out immediately for it is feared that there will be various internal conflicts in the family or inherited property whose value or amount will not be the same if it is not hastened. Furthermore, inheritance is usually not only in the form of money, but there can be land, buildings, or goods that have value. Thus, Islamic inheritance law views that the transfer of property is solely due to death. In other words, a person's property does not transfer (by inheritance) if he is still alive. This is in line with the explanation in the Compilation of Islamic Law in article 171 a) The law of inheritance is the law that regulates the transfer of ownership of the heir's estate, determining who is entitled to become heir

⁵¹ Ministry of Religious Affairs, *Compilation...*, p.168.

⁵² Ibid, p. 169

and how much each share is; b) The heir is a person who at the time of death or who is declared dead based on a court decision is Muslim, leaving heirs and property."⁵³ According to the provisions in the Compilation of Islamic Law, the Presidential Instruction No. 1 of 1991, the law of inheritance in Islam occurs when the heir, the person who is declared dead and has an inheritance to be given to the heirs who have the right to become heirs to the parts that have been determined.

Analyzing related to the certainty of the time of distribution of inherited property is not measured with certainty in the Compilation of Islamic Law, for example, 10 days, or after 20 days of the death of the owner of the property, meaning that KHI does not determine a concrete time limit on the practice of distributing inherited property. This considerably increases the chances of the heirs delaying or even refusing to distribute the inheritance.

According to *maqashid sharia*, it leads to revealed sharia (rule of law) is none other than to take benefit and avoid harm (*jalb al-mashalih wa dar' al-mafasid*) where the rules of law that Allah determines are only for the benefit of human beings.⁵⁴ Therefore, if the determination of the time of inheritance distribution is made in accordance with the provisions in the compilation of Islamic law for the benefit of the family and heirs, then the action is justified by sharia law because it is following *maqashid sharia*. This is in accordance with the time of inheritance contribution to the compilation of Islamic law. However, if the division of inherited property in accordance with the provisions of the Compilation of Islamic Law is to delay the time of distribution which will result in a reduction in the value of the property or the physical loss of the property, then it is

included in the act of *zhalim* and certainly contradicts the Islamic sharia itself. If one party feels disgruntled and refuses to share the legacy, it is permissible to divide the inheritance gained, and the delay in inheritance division can be canceled.

The attitude of willingness is the most important factor to consider before the distribution of inheritance is made, and all heirs must know the number of shares that would be obtained. Thus, the timing of inheritance distribution must not violate or conflict with the objectives of Sharia'. The timing of inheritance distribution should be in accordance with the benefits of the *maqashid sharia*, included in *hifzh al-din*, *hifzh al-nafs*, *hifzh al-nasl*, and *hifzh al-mal*. All of them are not up to the level of dharmas to the level of *dharuriyyat*, but at the level of *hajiyyat*, although not to the point of being in danger. The law is flexible, follows the circumstances, and adjusts the traditions in the society of the estate by considering the conditions, the role of the heirs, the share of the property inheritance, and the willingness of each heir before the time of inheritance distribution in the community is set.

Conclusion

The following are some conclusions that can be made from this research based on the discussion of the earlier chapters about the conducted research:

1. The Compilation of Islamic Law does not stipulate the time of distribution of inherited property in days but only provides information regarding the time of distribution of inherited property, which is conducted after the implementation of the settlement of rights related to the inherited property, such as organizing the corpse, paying debts, and wills.
2. In accordance with the time of inheritance contribution in the Compilation of Islamic Law, if the determination of the time of

⁵³ *Compilation of Islamic Law*, article 171 (a) and (b).

⁵⁴ Yusuf Qardawi, *Pedoman Negara dalam Perspektif Islam*, (Jakarta: Al-Kautsar Library, 2016), p. 113

distribution of inheritance following the provisions in the compilation of Islamic law is for the good of the family and heirs, then the action is justified by sharia law since it is in accordance with *maqashid sharia*. However, if the division of inherited property in accordance with the provisions of the Compilation of Islamic Law is to delay the time of distribution which will result in a reduction in the value of the property or the physical loss of the property, then this is considered *zholim* and certainly contradicts the Islamic sharia itself. If there is one party who feels aggrieved and unwilling to share the inheritance, then it is allowed to divide the inheritance obtained, then the delay of division of inheritance can be canceled.

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