Inheritance Practice of Community Society in Bantan District Bengkalis Regency Based on Islamic Law

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Abstract: This article analyzes the practice of inheritance carried out by the community in Bantan District of Bengkalis Regency Based on Islamic Law. The practice is based on their understanding of the very limited law of inheritance of Islam, resulting in misunderstandings that result in errors in inheritance practices. The approach and method is the sociological law study that collects the data by interviewing the responden. Data were analyzed by qualitative and inductive method. The results of the analysis in this article show that 1) people in Kecamatan Bantan was wrong in understanding the principle of balanced justice which is considered to be contrary to the sense of justice for the heirs. They understand the principle of balanced justice should be in the same sense. Yet the meaning of the principle is that each heir of both men and women have equal rights in the acquisition of inheritance rights. Men get more rights not mean unfair, but in Islamic law determines that men are responsible for family burden. 2) Communities in Bantan District in understanding radd in Islamic law do not fully refer to Islamic Law Compilation (KHI) which become the reference in the determination of law. They divide radd only on the basis of customs that can be distributed to desirous heirs or mosques. 3) Communities in Bantan District consider that the heirs who died prior to the heirs can not be replaced by the heirs' children. Whereas based on Article 185 paragraph (1) KHI the heir position can be replaced by the offspring both men and women.

Keywords: Inheritance Practice, Society, and Islamic Law

1. Introduction

The law of inheritance aims to give the transfer of property from heir to heir to be orderly. However, in reality in the field there is a misunderstanding of the principles of inheritance law with the legalization of the three legal systems of inheritance prevailing in the Indonesian legal system that affects the feeling of community justice. Survey of problems faced by communities in some villages in Bantan sub-district, Bengkalis, land conflicts often occur from inheritance. Such confusion of understanding can lead to conflict of inheritance distribution in Bantan District. Conflicts can involve a family or some families who feel an unjust distribution between siblings and each of the camps feels entitled to fight for the wrongful rights of inheritance. In some villages, land has become a valuable asset in business and finance. Mastery of assets in the form of land in one family among the heirs can lead to prolonged conflict and bring resentment within the community because each one forms an heir of winning heirs and a losing heir. The study wanted to analyze the inheritance practiced by the community in Bantan District of Bengkalis Regency.

2. Method

The type of research is a sociological legal research that discusses the enactment of positive law about the practice of community inheritance in Bantan District Bengkalis District. Research subjects are District Government Bantan Bengkalis District, Chairman of Majelis Ulama Indonesia (MUI) Bantan District, Head of Malay Customary Institution (LAM) Bantan Subdistrict, and Community Leader in District Bantan. In the determination of the sample on the subject of the study...
used purposive and snowball methods. The data source consists of Primary Data, Secondary Data, and Tertiary Data. Data Collection Technique using Observation, that is observation to practice of inheritance of society of Bantan District, Nonstructural Interview, that is interview which is addressed to research subject, and literature review. In drawing conclusions, the inductive method is used, i.e. drawing the conclusions of a special statement into a general statement. Several studies have been done related to inheritance in Islamic law, the author traced a number of research results in various scientific journals. Lia Murlisa's research on radd mentions that no nass directly explains radd, causing strife among scholars. The results showed that the scholars who rejected radd used the argument of al-Nisa 'verse (13-14). The scholars who receive radd use the argument of al-Anfal verse (75). As for the settlement of radd according to the jumhur 'ulama' submitted to all dhawil furud except husband and wife, while KHI give the rest of the treasures to all heirs without exception. The radd concept that should be applied in Indonesia is to consider the kinship system in a family, because it contains the transition of responsibility that must be carried after the heirs died, without overriding the opinion of the clergy in decision making.

3. Result and Discussion

Darussamin research on integration of Malay customary inheritance with Islam. The results suggest that integration of local tradition inheritance with Islamic heritage has a diverse pattern in accordance with the shared kinship system. In the Malay-Riau region, the integration of both legal systems occurs through a very long process rather than without conflict even though the intensity of the clashes is softer than in other areas, such as Minangkabau. The reason is because of the tribal system in Minangkabau which resulted in the birth of tradition institutions which are relatively difficult to adapt to Islamic heritage. Generally, Social conditions in the Malay-Riau region are more favorable so that the conflict of indigenous heritage with Islamic heritage does not give rise to open conflict. Shintiya Dwi Puspita and Fabian Fadhly analyze the portie legitieme setting. The result of their analysis states that the right of the heirs cannot be reduced by the testator. The research shows that Islamic legal inheritance system recognizes the legal heir’s rights arrangement that cannot be ruled out by the heir, but still guarantees the right of the wives as heirs. Islamic inheritance law in Indonesia is based on the principle of justice and balanced and contained in it ijbari (imperative), bilateral, 'ubudiyah, death and kinship principles. Inheritance distribution cannot be separated from that aspect. The wife and / or husband and the parents of the testator cannot be denied their rights unless justified by Syara '. The western heirs justify the abolition of the third right based on the legitieme portie rules that are bound to be legitimate or competent to obtain their share.

Kamarudin's research analyzes the variety of legal norms applied in inheritance. The results of his research mentioned that the right of the heir to be fulfilled to all the prescribed heirs, including the child who is still in the womb shall be taken into account his right. All of them have a part in accordance with the conditions outlined by the Qur'an and Hadith. The law of inheritance of Islam is more inclined to divide the estate to as many equal heirs as possible, by specifying certain parts to some heirs. If the heir consists of a father, mother, husband (widower) or wife (widow) and children, they are all entitled to inheritance. Balanced Equity Principles Based on Islamic Law of Inheritance in the Understanding of the Community in Bantan District of Bengkalis Regency. The problems faced by the community in Bantan District are related to the principle of balanced equity in the distribution of inheritance. They argue that this principle can be interpreted as the division of inheritance must be equally between men and women. Even in relation to this principle, they relate to the pattern of distribution of indigenous inheritance, especially the customary inheritance of Minangkabau, which prefers more distribution to women.

Many commonly called word in the Qur'an whose position is very important in the Islamic legal system, including the law of inheritance. In the system of Islamic inheritance, the treasures received by the heirs of the inheritors are essentially the continuation of the heirs' responsibilities to their families. In addition, the Qur'an letter al-Baqarah verse (233) and al-Tahrir verse (7) explains
that a man be in charge of family life to meet the needs of the child and his wife according to his ability. That responsibility is a religious duty that must be done, regardless of whether the wife is capable or not, the child needs help or not. This principle shows an essential justice in Islamic law, equal justice rather than equitable justice.

The event of death which carries the legal consequences of the inheritance of inheritance / inheritance law is an inevitable event. The rules of dividing inheritance among the heirs are manifestations of the recognition of individual property rights to movable property, as well as immovable property and a manifestation also that one’s possessions and must be equitably shared between his heirs after fulfilling certain conditions.

Associated with the assumption of people in Bantan District that the law of inheritance of Islam and customary law of inheritance is contradictory, in fact the two laws are not contradictory. The results of research by Ratno Lukito mention that both customary law and Islamic law cannot be separated from one another, because sessahal Tradition in Islam is one of the system not two opposite systems. Snouck Hurgronje has failed to recognize the fact that the two legal systems in indigenous life are inseparable. Dutch politics separating dispute settlement is the authority of the Religious Courts when it comes to family law of Islam, provided that the dispute does not concern the law of ownership because it is the domain of customary law contrary to the facts. The facts show that for indigenous people (Islamic community) Islamic law becomes part of customary law.

Position of Substitute Heirs in Islamic Law on the Understanding of the Community in District Bantan Bengkalis District. For the people in Bantan Sub-district, the position of the surrogate heir (mawali) is considered not entitled to the distribution of inheritance. Generally, people do not put this mawali into inheritance distribution. A public figure declares that the heirs who have deceased heirs are usually transferred to the siblings of the testator. The transition made the inherent right of mawali to be closed.

This understanding occurs because people in Bantan District consider that mawali is not part of the heirs. Whereas the position of the mawali is regulated by Article 185 Paragraph (1) The heirs who have died earlier than the heirs, the positions may be replaced by their children, except those mentioned in Article 173. (2) The surrogate heirs shall not exceed the equivalent heirs with the replaced.

In the picture above shows that the grandson as the surrogate heir (mawali) actually replaces the position of his parents who have died before the heir. Based on Article 185 paragraph (1) KHI the position of the grandchild has the right to obtain the inheritance from the testator. Substituted heirs may be one or more men and women who replace their parent's standing as heirs, their heirs determined in the line of the law of al-Qur'an letter al-Nisa 'verse (33). The replacement part of the heirs shall not exceed the number of replaced heirs. Each sub-heir's part refers to the provisions of al-Nisa 'verses (11), (12), and (176).
4. Conclusions

Based on the analysis in the above discussion, this article may give the following conclusions:

1) The people in Bantan Sub-district are wrong to understand the principle of balanced justice that is considered to be contrary to the sense of justice for the heirs. They understand the principle of balanced justice should be in the same sense. Yet the meaning of the principle is that each heir of both men and women have equal rights in the acquisition of inheritance rights. Men get more rights not mean unfair, but in Islamic law determines that men are responsible for family burden.

2) The community in Bantan District considers that the heirs who died prior to the heirs cannot be replaced by the heirs' children. Whereas based on Article 185 paragraph (1) KHI the heir position can be replaced by the offspring both men and women.

5. References

[1] Abdul Ghofur Anshori. 2002. Hukum Kewarisan Islam di Indonesia. Jakarta: Pustaka.
[2] Agus Sudaryanto. 2010. Aspek Ontologi Pembagian Waris Dalam Hukum Islam Dan Hukum Adat Jawa. Jurnal Mimbar Hukum. Vol. 22, No. 3, Oktober.
[3] Al-Yasa’ Abubakar. 2012. Rekonstruksi Fikih Kewarisan: Reposisi Hak Kewarisan. Banda Aceh: LKAS.
[4] Amir Syarifuddin. 1984. Pelaksanaan Hukum Kewarisan Islam dalam Lingkungan Adat Minangkabau. Jakarta: Gunung Agung.
[5] Anik Tri Haryani dan Tiara Oliviarizky Toersina. 2013. Hak Mewaris Anak Luar Kawin Menurut Hukum Waris BW (Burgerlijk Wetboek) Pasca Putusan Mahkamah Konstitusi Nomor 46/PUU-VIII/2010. Jurnal Sosial. Vol. 14, No. 1, Maret.
[6] Kamaruddin. 2013. Beragam Norma Hukum Dalam Penerapan Waris. Jurnal Al-Risalah. Vol. 13, No. 1, Mei.
[7] Lia Murlisa. 2015. Ahli Waris Penerima Radd Menurut Kompilasi Hukum Islam dan Relevansinya Dengan Sosial Kemasyarakatan. Jurnal Ilmiah Islam Futura. Vol. 14. No. 2, Februari.
[8] Mohammad Daud Ali. 2003. Hukum Islam: Pengantar Ilmu Hukum dan Tata Hukum Islam di Indonesia. Jakarta: RajaGrafindo Persada.
[9] Rahmat Haniru. 2013. Hukum Islam Yang Hilup Dalam Tradisi (Waris). Jurnal Al-Hukama’. Vol. 3, No. 2, Desember.
[10] Ratno Lukito. 1997. Islamic Law And Adat Encounter The Experience Of Indonesia. Montreal: Master of Arts in Islamic Studies Institute of Islamic Studies McGill University.
[11] Shintiya Dwi Puspita Dan Fabian Fadhly. 2012. Legitieme Portie Dalam Hukum Waris Islam Di Indonesia. Jurnal Ilmiah Hukum. Vo. 2, No. 1.
[12] Zainuddin Ali. 2008. Pelaksanaan Hukum Waris di Indonesia. Jakarta: Sinar Grafika.
[13] Zasri M Ali. 2011. Sistem Kewarisan Adat Melayu Rokan Hulu (Analisis Sosiologis dan Hukum Islam). Jurnal Khutubkhanah. Vol. 14. No. 2.
[14] Zikri Darussamin. 2014. Integrasi Kewarisan Adat Melayu-Riau Dengan Islam, Sosial Budaya: Media Komunikasi Ilmu-Ilmu Sosial dan Budaya. Vol. 11, No. 2, Juli-Desember.