

## RINGKASAN

**HARTA WARISAN UNTUK AHLI WARIS LAKI-LAKI  
DAN PEREMPUAN MENURUT HUKUM ISLAM  
H. MOCH. NANANG SYAIFUDDIN, R.SH.**

Hukum Waris Islam disebut dengan istilah Ilmu Faraid, yaitu ilmu yang menerangkan cara pembagian harta waris kepada para ahli waris menurut ketentuan Allah S.W.T yang terdapat di dalam Al-Quran dan Hadis Rasulullah S.A.W. Ilmu Faraid menjelaskan bahwa Harta Warisan ialah peninggalan seseorang yang telah meninggal dunia, baik berupa uang, harta benda atau hak-hak atau apapun aset yang mempunyai nilai kebendaan, yang dibenarkan syariat untuk diwariskan kepada ahli waris.

Penelitian ini merupakan penelitian Hukum Islam terhadap konsistensi pembagian harta warisan dan pelaksanaannya di lapangan. Tujuan utama penelitian ini adalah menganalisis pembagian waris berdasarkan hukum waris Islam untuk ahli waris laki-laki dan perempuan. Bahan hukum dalam penelitian ini terdiri dari dua yaitu bahan hukum primer dan bahan hukum sekunder. Penelitian hukum normatif ini dilakukan secara sistematis dimana setelah bahan hukum sekunder terkumpul, kemudian diinventarisasi dan diklasifikasi sesuai dengan masalah dan bidang Hukum Waris Islam. Analisis bahan hukum dilakukan dengan metode deduktif, yang diawali dengan penyajian teori, dikomparasikan dengan bahan hukum pembagian harta warisan kemudian dilakukan penarikan kesimpulan sesuai dengan rumusan masalah, serta memberikan saran-saran yang dipandang relevan sesuai dengan tujuan penelitian.

Ketentuan waris mengenai ahli waris dan hak mereka menurut Hukum Waris Islam telah dijabarkan secara jelas yang didasarkan pada Al-Qur'an dan Hadis Rasulullah S.A.W. Hukum Waris Islam yang dikenal dengan Ilmu Faraid berlandaskan kepada Firman Allah SWT dan Hadist Nabi Muhammad Saw, yang berhak mewarisi harta warisan berdasarkan hubungan kekeluargaan (nasab) dan perkawinan, dengan demikian setiap ahli waris akan memperoleh bagian sesuai dengan derajat masing-masing ahli waris baik ahli waris laki-laki maupun ahli waris perempuan. Menurut Hukum Waris Islam adanya ahli waris dikarenakan terjadinya kematian atau meninggal dunia. Dalam Hukum Waris Islam ahli waris laki-laki digolongkan kedalam 14 (empat belas) golongan, sedangkan golongan ahli waris perempuan didalam Hukum Waris Islam digolongkan menjadi 9 (sembilan) golongan.

Pembagian Harta Warisan yang telah ditetapkan didalam Al-Qur'an memberikan dimensi keadilan yang jelas, walaupun telah ditentukan besarnya jumlah bagian dari ahli waris laki-laki dan perempuan. Namun Al-Qur'an sebagai sumber Hukum Waris Islam juga memberikan kebebasan yang didasarkan kepada Syariah kepada Umat Islam didalam pembagian warisan,

kebebasan tersebut adalah menyangkut adanya musyawarah mufakat didalam pembagian harta warisan. Sehingga dalam pembagian harta waris tidak mutlak laki-laki mendapat dua bagian atau 2:1, apabila ahli waris telah mencapai mufakat ahli waris perempuan dapat memperoleh bagian lebih besar dengan perbandingan 1:2 atau 1:1, hal ini didalam Hukum Waris Islam dikenal dengan istilah "at-takharuj min at-tarikah" ialah pengunduran diri seorang ahli waris dari hak yang dimilikinya untuk mendapatkan bagian (secara syar'i). Hal ini dalam syariat Islam dibenarkan dan diperbolehkan. Syariat Islam juga memperbolehkan apabila salah seorang ahli waris menyatakan diri tidak akan mengambil hak warisnya, dan bagian itu diberikan kepada ahli waris yang lain, atau siapa saja yang ditunjuknya.

Mengingat Hukum Waris Islam didasarkan pada Al-Qur'an dan Hadis Rasulullah S.A.W. maka ketentuan waris mengenai ahli waris dan hak mereka menurut Hukum Waris Islam tidak perlu diragukan. Oleh karena itu warga Negara Republik Indonesia khususnya Umat Islam dalam Pembagian waris harus berdasarkan Hukum Waris Islam hal tersebut dikarenakan pembagian waris tersebut didasarkan pada Firman Allah SWT dan Hadist Nabi Muhammad Saw. Pembagian waris yang didasarkan pada Hukum Waris Islam akan memberikan keadilan kepada ahli waris dengan tidak mengurangi bagian-bagian yang diterima oleh setiap ahli waris baik laki-laki maupun perempuan. Oleh karena itu Untuk menegakkan Hukum Waris Islam maka Kedayagunaan Pengadilan Agama (Islam) bagi umat Islam di Indonesia perlu ditingkatkan dengan lebih efektif. Adalah sangat keliru jika umat Islam di Indonesia menyelesaikan sengketa pembagian waris dilakukan dengan jalan ke Pengadilan Negeri hal ini dikarenakan dalam Pengadilan Negeri akan dipengaruhi oleh ketentuan-ketentuan politik hukum, peraturan hukum yang dibuat oleh manusia dan segala sesuatu yang dibuat oleh manusia itu sifatnya tidak kekal, tidak abadi dan masih jauh dari adil.

Karena Hukum Waris Islam yang disarkan pada Firman Allah SWT dan Hadist Nabi Muhammad Saw, yang bersifat terbuka serta memandang mufakat, maka dalam pembagian harta warisan dikalangan Umat Islam jika ahli waris telah memperoleh kesepakatan dalam musyawarat bahwa ahli waris perempuan mendapatkan lebih besar misal 1:1 atau 1:2 maka hal tersebut dapat diterima karena dalam Hukum Waris Islam dikenal "at-takharuj min at-tarikah" ialah pengunduran diri seorang ahli waris dari hak yang dimilikinya, dengan demikian maka akan mematahkan bahwa bagian laki-laki adalah dua bagian perempuan, dan kejadian seperti ini tidak mengurangi dimensi keadilan didalam pembagian harta warisan. Kiranya hal tersebut merupakan suatu wacana yang patut disadari untuk membuka pikiran bahwa Hukum Waris Islam dalam pembagian harta warisan bagi ahli waris laki-laki dan perempuan menurut Hukum Waris Islam memberikan dimensi keadilan secara syar'i.

**SUMMARY**  
**INHERITANCE SHARES ACCORDING TO MOESLEM LAWS**  
**FOR MALE AND FEMALE HEIRS**  
**II. MOCH. NANANG SYAIFUDDIN R. S.H.**

In Moeslem Inheritance Law called by the science of Faraid, which is a study explains about the rules of inheritance treasure to the heirs in accordance with the Laws of Allah S.W.T. existed on Al-Qur'an and Hadits of Prophet Rasulullah S.A.W. Faraid explains that inheritance is the property inherited from someone who has passed away, in the form of money, property or rights or even other valuable properties, confirmed by Syariat to be inherited to the heirs.

This research is a one concern about an investigation upon the consistency of inheritance share and its implementation at every day life. The main purpose of this research is to analyze in normative way the inheritance shares based on Moeslem Inheritance Law for male and female heirs. Law materials contains on this research consist of two materials, which are: primer and secunder law materials. This normative law research is conducted systematically were after all secunder law materials have been collected they were categorized and clarified according to this problem and Moeslem Inheritance Law. The analyzes on the law materials are conducted with deductive methode, which were begin with general theory explanation, then it were being compared to practical law materials received from the implementation of inheritance shares, then made a conclusion according to the problems and also gave suggestion relevant to the research purpose.

The rules of inheritance concern about heirs and their right in accordance with Moeslem Inheritance Law has been explained in details based on Al-Qur'an and Hadits of the Prophet Rasulullah S.A.W. Moeslem Inheritance Law known as the Faraid is founded based on the Saying of allah S.W.T. and Hadits of the Prophet Muhammad SAW, those who have the right upon the inheritance based on family relationship (nasab) each part according to their degree each as male and female heirs. According to Moeslem Inheritance Law the existence of heirs is caused by the death or pass away. On the Moeslem Inheritance law male heirs are categorized in 14 (fourteen) category, son, husband, grandson from the son, father, grand father on father's root, relatives, relatives by nature on father, relatives in one mother, son of nature relatives, son from one father's relatives, father's relatives with nature relation to the father of the pass away person, father's relatives who have the same father to that of pass away person, son of father's relatives in nature, and son of father's relatives. While the female heirs in Moeslem Inheritance Law is categorized in 9 (nine) category that is : daughter, wife, grand daughter from the son, mother, grandmother of the father and above, grandmother from mother's roots and above, female relatives by nature, female relatives in one father, female relatives in one mother. Moeslem inheritance law confirmed the shares accepted by the heirs have been stated by Al-Qur'an consists of six kinds, amount of shares consists of half share divide in five which are one from male heirs and the other four female are the husband, daughter, grand

daughter from the son, female relatives by nature, female relatives in one father. A quarter ( $1/4$ ) is shared to husband and wife. One to eight shares, is given to wife, one or more shall get one to eight share from the inheritance of her husband. Two of three shares ( $2/3$ ) is shared to four persons and all of them are female. One of three shares, that is mother and the two relatives (both male and female) in one mother.

The shares of inheritance law stated on Al-Qur'an provides a firm justice dimension, even though it has been stated about the amount of the shares form male and female heirs, yet Al-Qur'an as the source of Moeslem Inheritance Law also provides freedom based on the syariah to the Moeslem people in the case of Inheritance shares, that freedom mentioned also about the discussion upon the inheritance shares. So that in this shares it is not absolutely that male always get two shares or 2:1, if the heirs have confirmed that the female heirs shall get bigger portion with comparison 1:2 of 1:1, this is what so called with "at-takharuj min at-tarikh" on Inheritance Law, which is the resignation of a heirs from his right to shares (in syar'i) it is allowable according to Moeslem syariat. Moeslem syariat also allows a heir to state himself not to take his inheritance, and those shares shall be given to other heirs, or other appointed persons.

Considering Moeslem Inheritance Law is based on AL-Qur'an and Hadits of Rasulullah S.A.W. then the inheritance rules about the heirs and their right according to Moeslem Inheritance Law is in-doubtful. Therefore Indonesian citizen especially those of Meoslem on the shares of inheritance based on Moeslem Inheritance Law is caused by those shares has based on the saying of Allah S.W.T. and Hadits of Prophet Muhammad S.A.W. Inheritance shares based on Moeslem Inheritance Law shall provide justice to the heirs by not reducing the accepted shares by each male or female heirs. Therefore to strengthened the Moeslem Inheritance Law the Moeslem court usage for all Moeslem in Indonesia needs to be improved effectively. It is a mistake that Moeslem in Indonesia settle the dispute upon inheritance by State Court since it will be infected by Law Political Provision, The regulation made by human and all made by human in immortal, far from what so called justice.

Because the Moeslem Inheritance Law is based on the Saying of Allah S.W.T. and Hadits of Prophet Muhammad S.A.W. with an open nature and considering peacefully discussion, then the inheritance shares in Moeslem community if the heir has been given according to the discussion of all hairs, female heirs shall get bigger portion, such as 1:1 or 1:2 then those consideration are accepted as in Moeslem Inheritance Law exist the what so called "at-takharuj min at-tarikh", that is a resignation of a heir from his right, that it is canceling the male shares nad make two portion shares for female, and this condition shall not rduce justice dimension on the inheritance shares. It is a study worth to be learned to open our mind that Moeslem Inheritance Law on its inheritance shares to female and male heirs according to Moeslem Inheritance Law has given justice dimension in Syar'i way.

**ABSTRACT**  
**INHERITANCE SHARES ACCORDING TO MOESLEM LAWS**  
**FOR MALE AND FEMALE HEIRS**  
**H. MOCIL. NANANG SYAIFUDDIN R, S.JI.**

Moeslem Inheritance Law is called by Faraid's Science, that is a study explains about the way to share the inheritance to all heirs following the rule of Allah S.W.T. in the Al-Qur'an and Hadits of Rasulullah S.A.W. On the Faraid's Inheritance is the property left by somebody who has passed away, in the form of money, properties, of other valuable properties, informed by syariat to be inherited to the heirs.

This research is a one concern about an investigation upon the consistency of inheritance share, the main purpose of this research is to analyze in normative ways the shares based on Moeslem inheritance law for male and female. Law materials on this research in contained in two materials which are : primer law materials and secunder law materials and analyzes of law materials conductor in deductive methode.

The shares of inheritance stated on Al-Qur'an gives a clear justice dimension, even though it has been stated the amount of the shares both for male and female heirs, yet Al-Qur'an as the Law source, also gives freedom to the discussion of shares as the Saying of Allah S.W.T. on the Asy-Syuura, verse 38, so the inheritance shares are not absolutely to be given to male in two portion or 2:1 all the heirs have come to and agreement.

Due to the Moeslem Inheritance Law based on the Saying of Allah S.W.T. and Hadits of Prophet Muhammad S.A.W. which has an open nature and considers an open discussion, then on the shares of inheritance, if the male heir agrees then the female heirs shall get 1:1 or 1:2 considering the Moeslem Inheritance Law based on Al-Qur'an and hadits Rasulullah S.A.W. then the rules about the heirs and their rights according to Moeslem Inheritance Law is indoubtful. In Moeslem Inheritance Law it is known as "at-takharuj min at-tarikh" which is the resignation of a heir from his belonging right.

Thus this study shall be another consideration for us to realize and to open our mind that Moeslem Inheritance Law on the shares for their male and female heirs according to the Moeslem Inheritance Law has given a justice dimension in Syar'i way.

**Keyword : Inheritance, Moeslem Law**  
**Male and female**