

DOKTRIN GHARAWAIN DALAM PEMBAGIAN HARTA WARIS

NUGRAHANI , SIWI

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ISLAMIC INHERITANCE LAWS

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A B S T R A C T

Religious Judicature Laws is born from democratic political configuration and responsive legal character. The non-Moslems, by their current authority , bind themselves to the syariah (Islamic laws) basic agreement, including also its religious court competency. Principles of Islamic inheritance laws are : ijbari (compulsory), bilateral, individual, fair justice, and death consequence. The classical fiqh text is inadequate enough to overcome Moslems" issues. It is required the fiqh based on the current real facts in Indonesia. Islamic inheritance laws have been re-actualized in their early establishment through several emerging actual issues and different solution. The consistently application of these syariah bond principles is aimed to achieve the Maqasid asy Syariah or Syari"at purposes. The syariah purposes are to establish human being"s maslahat (welfare), and to maintain against chaos, damage, and crime. Umar bin Khathab"s ijtiha d has other principles namely the Al Istishlah or the Al Maslahat al-Mursalah and the Al Istihsan. Therefore, Khalifah Umar bin Khattab"s point of view among other is the maslahat mursalah, including in Gharawain case of Welfare, namely in the case of encouraging that Islamic laws are dynamic in characters since their early establishment, and of considering welfare as two integral parts. The Gharawain occurs due to the unfairness considered based on the issues from the point of view at that time.

Keywords : Gharawain, Islamic Inheritance Laws