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# Challenges and opportunities on Islamic inheritance distribution in Indonesia

**Dian Berkah, MHI<sup>1</sup>**

<sup>1</sup>Doctor Candidate of Islamic Economic Postgraduate School of Universitas Airlangga, Surabaya, Indonesia And lecturer of Muhammadiyah Univeristy of Surabaya,

[dian.berkah@unair.ac.id](mailto:dian.berkah@unair.ac.id)

**Tjiptohadi Sawarjuwono<sup>2</sup>**

<sup>2</sup>Lecturer of Economic faculty, Airlangga University

[tjiptohadi@unair.ac.id](mailto:tjiptohadi@unair.ac.id)

**Abd. Hadi, M.Ag<sup>3</sup>**

<sup>3</sup>Lecturer at Islamic State University Sunan Ampel, Surabaya,  
hadi@uinsby.ac.id

[dian.berkah-13@pasca.unair.ac.id](mailto:dian.berkah-13@pasca.unair.ac.id)

## Abstract

This paper seeks to identify the challenges and opportunities for inheritance distribution in Indonesia by using a library-based study method which is a kind of qualitative research approach. As a result, the potential funding sourced from the estate's people would be the greatest opportunity for Indonesia as an income of the people beside zakat funds and waqf. In conclusion, identification of the challenges and opportunities in inheritance distribution may benefit the religion court in completing inheritance distribution.

**Key Words:** Challenges, Opportunities, Islamic inheritance.

## Desafíos y oportunidades en la distribución de la herencia islámica en Indonesia

### Resumen

Este documento busca identificar los desafíos y las oportunidades para la distribución de la herencia en Indonesia mediante el uso de un método de estudio basado en bibliotecas, que es un tipo de enfoque de investigación cualitativa. Como resultado, el financiamiento potencial que se obtiene de la gente de la finca sería la mayor oportunidad para Indonesia como un ingreso de la gente al lado de los fondos zakat y waqf. En conclusión, la identificación

de los desafíos y oportunidades en la distribución de la herencia puede beneficiar al tribunal de la religión al completar la distribución de la herencia.

**Palabras clave:** Desafíos, Oportunidades, Herencia Islámica.

## 1. INTRODUCTION

In many Litteratur mentioned, distributions estate occupied an important role in achieving economic balance (Djamil, 2013). Called for the distribution of property inheritance is done after death. Death cannot be avoided but many people tend to ignore it and they leave the dispute for family members (Nasution et al., 2010). Therefore, inheritance distribution is known as the most important discipline in financial planning, in addition to other pillars, such as wealth protection (takaful), Wealth purification (zakat), and wealth accumulation. In Islam, inheritance is one of the concepts that regulate the distribution of wealth within the family. Particularly, the transfer of wealth occurs automatically without any request (the will) of the owner of the assets of the deceased and relatives but returned to the law of God in sura al-Nisa verse 7, 11, 12, and 176 (Syarifudin, 2012). Thus, inheritance distribution not only helps inheritance distribution in a fair and reduce inequalities in the distribution of wealth but also can motivate each individual more active before dying role seek sustenance and not leave the poor offspring, The concept does not only affect to the life of the world, but also in the hereafter.

In practicing, inheritance distribution is still a problem in Muslim majority country such as Indonesia. According to Afdol as a r that mostly Muslim prefers the General Court of the Religion court in resolving the matter of distribution inheritance (Afdol, 2010). Thus, the lack of public

awareness will be reflected in inheritance distribution in accordance with the Islamic concept of inheritance. Even based on the research report data Religion courts in Indonesia in 2007, inheritance distribution case is still the second matter after divorce cases meanwhile in Indonesia can be a potential inheritance fund people beside zakat and waqf, because the country has a Muslim majority population approximately 85% of the total population. The Government of Indonesia has given full authority to the religious court in resolving inheritance distribution. For example, Indonesia has rules namely law number 7 of 1989 and law number 3 of 2006 and law number 5 of 2009. Moreover, Indonesia has formal rules as a KHI. Therefore, this study aims to look at the practice of the most important pillars in financial planning (wealth distribution) to identify challenges and opportunities for inheritance distribution in Indonesia using a library-based study method, the which as a kind of qualitative research approach.

Indonesia is chosen for several reasons. Firstly, Indonesia is the Largest Muslim population. With the total population of 240 million in the 85 percent of it is Muslim. Secondly, legislation published since 1989, Law of number 7 of 1989 in conjunction with Law No. 3 of 2006 in conjunction with Law No. 5 of 2009 which is an instrument of its jurisdiction to resolving the completion of the distribution of wealth Muslim inheritance (Komari, 2011). Thirdly, Indonesia has the biggest community organizations such as Muhammadiyah and Nahdhatul Ulama (NU) which aims to provide services to the public and preserve the value of religion and belief in God. Finally, Indonesia is a Muslim country as recognized has been active in developing Islamic economic as an inheritance distribution (Noor, 2013). As a result, identification of the

challenges and opportunities on the distribution of inheritance may benefit the institution of Islamic justice in settling the inheritance distribution and also Indonesian government sets policy for the success of inheritance distribution and gets potential of people beside the Zakat funds n waqf in Indonesia.

## **2. DISCUSSION**

### **2.1 Concept of inheritance Distribution in Indonesia**

As a Muslim majority country, Indonesia is unique because it not only has shaped the rules of law on inheritance distribution according to Islam, but also continue to recognize inheritance distribution according to customary law, which is enacted in accordance with the local custom, and the distribution of wealth inheritance based on the rules in the Civil Law Act (Saebani & Falah, 2011). Next will be described briefly the three concepts above inheritance distribution. First of all, the indigenous concept of inheritance distribution. This concept regulates the flow of the estate which cannot be separated from the form and nature of the family which he believes. In this case, large families receive a direct distribution of wealth based on collective rights on properties directly, so that the estate is not distributed to others. In the development taken place and there is a shift in the nature of the family. So, inheritance custom is divided into three distribution models. Inheritance distribution by the maternal line or known as matrilineal. In other words, inheritance distribution is only given to the women as the case in indigenous Minangkabau, West Sumatra. Inheritance distribution by the father or the line known as patrilineal. In

other words, inheritance distribution is only given to the men as the case in indigenous Batak, North Sumatra. Inheritance distribution by the mother and father in line that known as bilateral. In case, inheritance distribution was given to two lines namely men and women as happened in Java.

Secondly, inheritance distribution concept is based on the Civil Law Act. In this case, the transfer of wealth occurs when the existence of death (Article 830 Civil Code). According to Subekti emphasizes on inheritance distribution to family members whether legitimate or outside of marriage and the husband or wife who lived the longest. According to the study Perangin Article 832 of KUH Perdata is going without distinguishing between men and women, young and old, or inheritance distribution with the same parts as written in Article 852 paragraph 1 and paragraph 2 of KUH Perdata. Thirdly, the Islamic concept of inheritance distribution. Islam as a universal religion must not only regulate human relationships with God, but also regulate human relationships with each other. Fadl identified Islamic teachings that promote humanistic moral and ethical values. Inheritance distribution is one of the many Islamic teachings are included in Islamic family law. In the concept of Islamic law, inheritance distribution occurs by itself without a request initiated by (the will) of the owner of the assets but returned to the law of God in Surah al-Nisa verse 7, 11, 12, and 176 (Syarifudin, 2012). The point that made the difference with the other concept of Islamic inheritance distribution (Muhibbin & Wahid, 2012). The concept of distribution of the estate according to Islamic law has been enacted in the second book of Article 171 to 214 Compilation of Islamic Law (KHI) based on the Ministry of Religious Affairs of the Republic of Indonesia Number 154 of 1991 on the Implementation of Presidential Instruction (Afdol, 2010).

## **2.2 Challenges on Islamic Inheritance Distribution in Indonesia**

In Indonesia, the practice of inheritance distribution has been a concern of government since 1990. Especially the issuance of Law No. 7 of 1989 which gives its jurisdiction in resolving inheritance disputes. In 1989 the government also has invited the concept of inheritance distribution written in the Compilation of Islamic Law by Presidential Instruction Number 1 in 1991. Nevertheless, inheritance distribution has not been a concern for the government and the public as well as stakeholders associated with the distribution of wealth inheritance. In this section, the paper Attempts to present the challenges in inheritance distribution in Indonesia. The challenges can be categorized into Regulation, Public awareness of Inheritance distribution, Human resources.

### *2.2.1 Regulation*

Since the 90 century, Indonesia has set up the equipment in the success of inheritance distribution to the Muslims by giving the authority the religious courts to handle disputes inheritance distribution even kept constantly reinforced by the implementation in three times. Starting in 1989, in 2006, and the last in 2009. It should be a strength for the government to finish inheritance distribution for its citizens in accordance with Islamic law. Moreover, the government has published presidential instruction on a compilation of Islamic law which arranges inheritance distribution according to Islamic law. In practice, the issue of inheritance distribution is still relatively high in the Indonesian case. Based on the record of the Supreme Court in civil religious books, in the year 2007 to

2011, inheritance distribution is still occupying the second highest matter after divorce in Indonesia. Moreover, based on legal records online ([www.hukumonline.com](http://www.hukumonline.com), accessed on 1 July 2013) by observing the Jurisprudence of the Supreme Court Yearbook part of civil religion, almost every edition since 1997 until 2011 always quote the court judgment of inheritance. So, the case of the inheritance distribution is still in the second rank for the case of marriage.

Therefore, it becomes an important opportunity for the religious court such as a tool to implement the Islamic inheritance system in completing inheritance distribution. So, it realizes the economic balance in society. However, in the existing regulations religion, courts are passive, waiting for inheritance distribution dispute the proposed community. For example, Article 188 KHI mentions the heirs either jointly or individual may submit a request to the beneficiary to perform the division of inheritance. If any of the heirs who do not approve the request, then the question can be filed through the religion court for inheritance distribution. In practice, most of Muslims to the dispute to take the case to a religious court based on Adol's research. For example, there are numbers fantastic in East Java from 1990 to 1995 most of the Muslim community prefers the General Court of the religious courts in resolving cases of property distribution beneficiary. More details can be seen in the table below).

Table 2.2.1: Data Muslim groups claim the inheritance case Source: Afdol, 2010

Years	Inheritance Matter	Inheritance Matter
	District Court	District Court
1990	105	9

1991	114	18
1992	111	22
1993	108	24
1994	137	9
1995	134	13
	709	95
Percentage	88.18 %	11.82 %

It should not happen in Indonesia because the government has given full authority to the religious court in resolving inheritance disputes for Muslims based on final legislation in 2009 as a law number 5 of 2009. In here the government should conduct an evaluation in providing an additional role to the religious court to be directly involved in helping to resolve inheritance distribution in the community. Moreover, it often occurs when there is a dispute inheritance distribution, most of Muslims do not leave it to the religious court but they are distributed by the agreement itself without reference to the concept of inheritance distribution based on Islamic law that is intended for Muslims as summarized in KHI. However, this is the challenge inheritance distribution in Indonesia that the government is more active in disseminating act distribution know about inheritance as well as how the community should file a dispute inheritance distribution and how the religion court plays an active role in assisting the communities to resolve inheritance distribution in accordance with Islamic law.

### 2.2.2 *Awareness of Islamic Inheritance distribution*

As mention earlier, the majority of the Muslim community would prefer the concept of inheritance distribution more favorable herself and choose the General Court of the religious courts in resolving cases of

property distribution beneficiary. Based on the above data, it is a very visible lack of public awareness in inheritance distribution according to Islamic inheritance system. Even based on the research report data Religion courts in Indonesia in 2007, the estate distribution case is still second only to divorce cases. More details can be seen in the table below about the case that goes on religion courts,

Table 2.2.2: Judicial matters in religion court Source: Report on the PA in Indonesia

Type op Matter	Religion court	Percentage	Religion court II	Percentage
Divorce	178.913	98.8	1.288	84.69
Inheritaance	1.311	0.72	195	12.82
Probat	22	0.01	4	0.26
Grant	58	0.003	16	1.05
Waqaf	21	0.01	4	0.26
Shadaqah	2	0.01	0	0
P3HP	318	0.18	0	0
Islamic Economic	0	0	0	0
Others case	432	0.24	14	0.92

Directly, inheritance distribution is not fair and equal, does not show the economic problems in society, considering this is the case in a small scope, which is the family. But indirectly, inheritance distribution that is not fair and equitable will cause conflict between rich and poor, until the occurrence of a bloody revolution (Chaudhary, 2012; Almasi & Khorasgani, 2018). For example, a case of murder in a society that is motivated by motives estate. For instance, as happened in Surabaya in May of 2013, a mutilated child birth mother who is motivated by the motif distribution of inheritance (Java Post, issue 15, May 2013, 25). At the same time, in 2014 the murder occurred in Mokokerto in March 2014

against the backdrop of the estate motifs (Java Post, March 24, 2014 edition). In addition, the existence of a new phenomenon in modern times are characterized by the development of technology, have led to completely different people's behavior, giving rise to a shift in the original family relationships and close tightly (family thigh) tended to become loose (loose family). The above changes should also be a concern, given the existence of a state cannot be separated from the people who are covered in the small unit called the family (Salman, 2005). So, in the view of Shaltut likens the family as a brick in the building of a nation, when the family was solidly sturdy also building the nation. In other words, the family occupies an important position in a country, let alone a family (household) serves as one of the economic actors. Moreover, to corporate and government (Wibowo, 2013).

### 2.2.3 *Human resources*

One of the most important factors in inheritance distribution is human resource. The individual expected a figure of individuals who were born in the family as a strong generation (Surah al-Nisa verse 9). In understanding the concept of inheritance distribution according to Islamic law, authoritative and become role models in the family. In addition, as a group, there is a group of people who are expected affiliation society organizations (CBOs) religious directly involved in assisting in inheritance distribution directly. Indonesia has community organizations such as Muhammadiyah and Nahdlatul Ulama which aims to provide services to the public and preserve the value of religion and belief in God Almighty (Article 5 point's b, c in Law number17 in 2013). Both organizations are religious organizations that have a base to the village level and spread

throughout Indonesia. Moreover, the organization has a specialized agency in the field of propaganda that is directly in contact with the public as an object to provide guidance on preaching in religious affairs.

However, there are still no programs and specialized agencies of both organizations in helping the community in the completion of inheritance distribution in accordance the Islamic law. Therefore, this is the challenge for individuals and groups of people (organizations) to be involved in assisting with as following steps; Firstly, draw up a strategic program to increase public understanding of the importance of inheritance distribution according to with Islamic law. Secondly, establish special institutions such as inheritance distribution consultancy that aims to help directly inheritance distribution, before going to the religious courts. Thus, inheritance distribution can be run in the community by mentoring peers and can run fairly and equitably in accordance with the concept of inheritance distribution in Islam

### **2.3 Opportunities on Islamic Inheritance distribution in Indonesia**

Based on some existing literature, can be found some of the opportunities in the success of inheritance distribution can be run accordance Islamic law in Indonesia, including Number of Muslims in Indonesia; Islamic Justice Institution in Indonesia; Social Fund (inheritance *kalalah*).

#### *2.3.1 Number of Muslims in Indonesia*

Based on the record of the CIA World Fact book in 2013, Indonesia was the country fourth ranks after China, India, the United States with 4 percent of the world population, or about 251, 150, 124 peoples. Moreover, Indonesia has a Muslim population of 85 percent of the population of Indonesia has a Muslim population or range 213, 477, 605 inhabitants. Most of the population spread across the island of Java such as East Java, West Java, Central Java, and Jogjakarta with a population of over 100 million people.

### *2.3.2 Religion courts*

Since 1989, Indonesia has issued Law number 7 of 1989 which is an instrument of its jurisdiction to hear the case inheritance distribution for the Muslim. According to Matrais these rules will greatly assist in the resolution of inheritance distribution with the realization of unification of law in the religion courts (Matrais, 2008). Then this will be the first opportunity for religion courts to settle inheritance distribution in accordance with Islamic law in society. Moreover, the Government continues to give independence to the religious court to issue regulations as reinforcement religion court in resolving inheritance distribution in the Muslim-majority country, by issuing Law number 03 of 2006 and Law number 7 of 1989 on the authority of Religion court. This would be a second opportunity for religion courts to help resolve inheritance distribution in accordance with the Islamic law. Finally, in 2009 the government re-issued new regulation to give authority for the religion court in resolving inheritance disputes Muslims by issuing Law number 5 of 2009.

### 2.3.3 *Social Fund*

In addition to inheritance distribution should the estate to the heirs that leave her, the estate can be distributed to the state or bait al Mal if not found else who is become his heir. This can be done because the concept of inheritance can be one means the transfer of ownership of property or assets of an individual to others (Djuwaini, 2008). Thus, the estate can be a potential race in addition to zakat funds and endowments, as an heir-as property owners who left no heirs, it is called kalalah state (no heirs). Social funds can be given to the bait al-mal that fund manager or country people Yusanto & Yunus (2011) or the estate may be given to the treasurer of state in Islamic countries. Moreover, according to nasution that inheritance including the obligatory charity as an instrument of income distribution among a Muslim based obligations with other Muslim (Nasution et al., 2010).

In Indonesia the issue of funding comes from the people of the estate has been set in the rules and regulations such as KHI. In Article 191 states that if the testator left no heirs at all, or there are no known heirs or not, then the asset over religion court decision handed command of the Bait al-Mal in the interests of Islam and the general welfare (Article 191 KHI). Even clarified in another article it is the temple of Al Mal Treasure Hall Religious (chapter 171 KHI). Therefore, the potential funding sourced from the estate's people would be the greatest opportunity for Indonesia as an income of the people beside zakat funds and waqf. Especially Indonesia has a Muslim majority population of around 85 percent. This is a very fantastic number if it is realized in practice in Indonesia

### **3. CONCLUSION**

As a Muslim majority country, Indonesia has been paid attention to the community by publishing in the form of laws and regulations to manage inheritance distribution in according with Islamic law and give full authority to the religion court to assist in the completion of it. However, the implementation is far from complete, because Islamic societies prefer to resolve disputes General Court inheritance distribution even these issues (inheritance) was entered in the second after a divorce based on the record of the Supreme Court in the field of civil religion. These issues are identified challenges in the implementation of inheritance distribution Indonesia such as regulations are not yet actively encourages religion court, lack of public awareness in inheritance distribution and the lack of human resources to provide assistance actively involved in inheritance distribution. However, it is identified many opportunities in inheritance distribution in Indonesia, including; Firstly, the number of Muslims in Indonesia are very large about 85 percent will be the biggest opportunity in Indonesia creation of economic equilibrium through inheritance distribution; Secondly, the competent religion court in resolving inheritance distribution in dispute, so inheritance distribution will be monitored in according with the Islamic law; Finally, the funds of people came from inheritance estate will be likely a huge potential in Indonesia beside zakat and waqf funds which will be given to bait al-Mal for Muslims and the general welfare under section 191 KHI.

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