

# THE EXISTENCE OF ISLAMIC LAW COMPILATION ARTICLE 183 IN SOLVING INHERITANCE ISSUE OF MUSLIM COMMUNITIES IN MAKASSAR

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## **Abstrak**

*Al-Qur'an dan hadis Nabi saw merupakan sumber utama hukum Islam. Kedua sumber itu dapat dipahami dan diamalkan berdasarkan aspek tektualnya dan juga berdasarkan aspek kontekstualnya, serta dikembangkan secara terperinci oleh ulama mujtahid dengan memperhatikan ruang dan waktu serta situasi dan kondisi tempat mereka berijtihad sehingga melahirkan Kompilasi Hukum Islam. Salah satu bagian dari isi Kompilasi Hukum Islam adalah aturan tentang peralihan harta pewaris kepada ahli warisnya yang masih hidup. Dengan adanya aturan tersebut, maka praktik pembagian warisan pada masyarakat Muslim, khususnya di kota Makassar, sangat bervariasi. Ada dengan jalan hibah, perdamaian atau musyawarah, pendekatan hukum kewarisan Islam, dan juga melalui mediasi yang diprakarsai oleh pengadilan agama.*

*Hasil penelitian menunjukkan bahwa masyarakat Muslim Kota Makassar lebih cenderung menerapkan pasal 183 Kompilasi Hukum Islam, oleh karena pasal tersebut dikuatkan juga dengan QS Ali Imran/3: 159 dan QS al-Syura/42: 38 yang menekankan pentingnya musyawarah untuk mencapai kesepakatan. Kesepakatan tercapai dengan baik dan damai berdasarkan petunjuk pasal 183 Kompilasi Hukum Islam dengan jalan bermusyawarah dengan semua ahli waris, memaparkan semua harta warisan baik lokasi maupun luasnya, menjelaskan bagian masing-masing ahli waris berdasarkan aturan kewarisan, menyepakati metode pembagian yang digunakan, dan membuat dan menandatangani surat pernyataan kesepakatan dan dipersaksikan. Maka dengan demikian, terciptalah kerukunan, kedamaian dan kemaslahatan di kalangan keluarga pada khususnya dan di kalangan masyarakat pada umumnya.*

## **Kata Kunci:**

*Al-Qur'an, Hadis, Pasal 183, Hukum Islam*

## **Abstract:**

The Qur'an and hadith of the Prophet are the main sources of Islamic law. The two sources can be understood and practiced based on their

textual and contextual aspects, as well as being developed in detail by mujtahid scholars by paying attention to space and time with the situations and conditions in which they *ijtihad* resulting in the Compilation of Islamic Law. One of the contents of Islamic Law Compilation is the rule about the transfer of inheritance property to his surviving heirs. With the existence of these rules, the practice of distributing inheritance to Muslim communities, especially in the city of Makassar, varies greatly. There are by way of grants, deliberation, approaches to Islamic inheritance law, and also by mediation initiated by religious courts.

The finding shows that the Muslim community in Makassar City is more likely to apply Compilation of Islamic Law article 183 because the article is strengthened by QS Ali Imran/3: 159 and QS al-Shura/42: 38, which emphasize the importance of deliberation to reach agreement. The agreement was reached well and peacefully based on the instructions in article 183 Islamic Law Compilation by deliberating with all heirs, describing all inheritance properties both location and area, explaining the part of each heirs based on inheritance rules, agreeing on the distribution method used, and making and signing up a statement of agreement and witnessed. So thus, harmony, peace, and benefit can be created among families in particular and among the community in general.

**Keywords:**

Al-Qur'an, Hadith, Article 183, Islamic Law

## A. PREFACE

Property can trigger disputes and conflicts. In fact, not a few have led to the seizure of property which led to killings among human in general and among families in particular. That is because in humans, there is an instinct of love for property.<sup>1</sup> In line with the explanation of Allah Almighty in the Qur'an that human beings have instincts of love for women, children, and properties. Especially for property, the instinct of this love is sometimes motivates someone to justify any means to get it, including inheritance.

Therefore, the transfer of property from one person to another, especially inheritance for Muslims, must refer to the religious teachings outlined in the Qur'an and the Prophet's hadith, as applicable in other fields, such as prayer, fasting, etc. Rules regarding the distribution of inheritance are sub-systems of all Islamic law that regulate the transfer of property of a deceased person to his surviving heirs. The rule is very important because the issue of inheritance often creates disputes among families whose heirs have died. A person's compliance with inheritance rules is a

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<sup>1</sup> Allah's word in QS Ali Imran/3: 14. Ministry of Religion, Republic of Indonesia, *Al-Qur'an and Its Translation* (Jakarta: Tehazed, 2010), page 77.

measure of the level of faith and obedience to Allah Almighty. If someone completes his inheritance in accordance with what is taught by Islam, then he will get praise from Allah and receive a great reward. But on the contrary, if he disobeys from the decree of Allah, Allah will put him into the Fire to abide eternally therein (Surah al-Nisa '4: 13-14).

The attitude of Muslims towards the absoluteness of inheritance verses leads to pro-contra attitudes and opinions about the distribution of inheritance as mentioned in QS al-Nisa'/ 4: 11, 12 and 176. The first group believes that the verses of inheritance are qat'i verses, both wurud or dalalah. Therefore, what has been stipulated in the inheritance verses cannot be denied and rejected and no other understanding or change can be taken by adding or reducing them; The second group is not only fixated on the numbers set in the verses of the Qur'an, but this group also sees from the spirit of justice stored behind these numbers (textual) so that the numbers can be practiced contextually; The third group still believes in the rules or numbers listed in the verses of the Qur'an. They also realize how difficult it is if the numbers are applied in the context of Indonesian society with different traditions and habits with other Islamic communities, and they do not dare to do transformations like the second group. Finally, they took the mechanism of dividing their wealth to their children in the form of grants. There are also those who share their wealth with their children but the possession of the property will change after their parents die.

Although the inheritance material has been explained in detail in the Qur'an and the hadith of the Prophet, but in certain parts, there are also works of ijtihad which provide actual formulations, where legal products are applied in accordance with the circumstances in which the community located so that the law that applies to Indonesian society is not necessarily actual in other communities. This is because every change in time and place requires benefit in accordance with the conditions of the time. Thus, the application of a law in the community needs to be adapted to the situation and condition as well as the environment where the law is located.

Even though the Qur'an and the hadith of the Prophet mention the distribution of inheritance with numbers clearly and the Compilation of Islamic Law also regulates the distribution of inheritance, in other verses in QS Ali Imran/ 3: 159 and QS al-Shura/ 42: 38, as well as the Compilation of Islamic Law article 183 still give ways to the heirs to conduct deliberations and peace in the distribution of inheritance if each heir is aware of his share. Peace in the distribution of inheritance is called takharuj or tasaluh, which is a method of adjustment in the distribution of inheritance due to the agreement of two or more people to change the inheritance outside the provisions of syara'.<sup>2</sup> In this case, tasaluh can also be interpreted as an heir who agrees not to accept a part or to give part of the inheritance to another heir

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<sup>2</sup> Sudarsono, *Pokok-Pokok Hukum Islam* (Jakarta: Rineka Cipta, 1992), page 354.

or more.<sup>3</sup> The concept of peace as intended in the Compilation of Islamic Law article 183 above is used with the aim of obtaining mutual benefit.

By looking at the phenomena that exist in society, the fundamental question becoming problem in this research is how the basic concept and principle of Islamic inheritance are, how the attitude of the scholars is to the numbers set by Allah SWT, and how the implementation of Islamic Law Compilation articles 183 is among the Muslim community in Makassar City.

## B. DISCUSSION

### Basic Concept and Principle of Islamic Inheritance

#### *The Basic Concept of Islamic Inheritance*

The word "inheritance" can be understood from QS al-Nisa/ 4: 7 : مِمَّا تَرَكَ الْوَالِدَانِ : 7  
The word تَرَكَ is changed in *masdar* form to التركة which means leaving. The word التركة is then used as one of the names of three known names in the *fiqh al-mawaris*, namely *al-mawaris*, *al-fara'id* and *al-Tirkah*. The word can be found in several verses in the Qur'an which contain several meanings, including:

1. Leave, as found in Surah al-Baqarah/ 2: 180

Translation:

Prescribed for you when death approaches [any] one of you if he leaves wealth [is that he should make] a bequest for the parents and near relatives according to what is acceptable - a duty upon the righteous<sup>4</sup>

2. Inheritance, such as those contained in QS al-Nisa/ 4: 7

Translation:

For men is a share of what the parents and close relatives leave, and for woman is a share of what the parents and close relatives leave, be it little or much - an obligatory share.<sup>5</sup>

3. Abandoned, as found in QS al-Nahl/ 16: 61

Translation:

And if Allah were to impose blame on the people for their wrongdoing, He would not have left upon the earth any creature, but He defers them for a specified term. And when their term has come, they will not remain behind an hour, nor will they precede [it].<sup>6</sup>

From the several meanings mentioned above, it can be stated that *tirkah* is all the inheritance of the person who died before the financing was issued for the purpose of arranging the body, paying the debt, and carrying out the will. The rest of what was issued is then called inheritance.

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<sup>3</sup> Ali Darokah, "Reaktualisasi Mencari Kebenaran, Ikhtiar yang Wajar", in *Polemik Reaktualisasi Ajaran Islam* (Bandung: Mizan, 1998), page 84.

<sup>4</sup> Ministry of Religion, Republic of Indonesia, *Al-Qur'an and Its Translation* (Jakarta: Tehazed, 2010), page 44.

<sup>5</sup> Ministry of Religion, Republic of Indonesia, *Al-Qur'an and Its Translation*, page 116.

<sup>6</sup> Ministry of Religion, Republic of Indonesia, *Al-Qur'an and Its Translation*, page 410-411.

### ***Principle of Islamic Inheritance***

The Qur'an and the hadith of the Prophet are the basic sources of Islamic inheritance law. These two sources are then developed in detail by mujtahid scholars (fikhi jurists) through the results of their ijihad in accordance with space and time and the situations and conditions in which they ijihad. The result of ijihad was outlined in the Compilation of Islamic Law which later obtains several principles<sup>7</sup> as follows:

1. **Bilateral/parental principle**  
Bilateral principle is principle that does not distinguish between men and women in terms of inheritance so they do not know the relatives of dzawil arham. This principle is based on article 174 of Islamic Law Compilation, article 185 Islamic Law Compilation, and Jurisprudence of the Supreme Court of the Republic of Indonesia.
2. **The principle of direct heirs and the principle of substitute heirs**
  - a. Direct heirs are heirs caused by blood relations or marital relations (Compilation of Islamic Law article 174 verse 1 letter a).
  - b. Substitute heirs are heirs regulated in the article 185 verse 1 of the Islamic Law Compilation, being substitute/descendants of the heirs mentioned in the Compilation of Islamic Law article 174 verse 1 letter a.
3. ***Ijbari* principle**  
The word *Ijbari* means compulsory. The *ijbari* element is seen when the assets of the heir are transferred to their heirs. There is no single power that can change the status of the rightful person or an heir who is obliged to accept inheritance to him in accordance with the amount set by Allah Almighty or in accordance with an agreement outside his own will.
4. ***Individual* principle**  
Individual principle is formed by itself in the principle of inheritance because every inheritance shared with each of the heirs is certainly owned individually.
5. **Balanced justice principle**  
This principle means that there must always be a balance between rights and obligations, between what someone has and the obligations that must be fulfilled.
6. **The principle of inheritance because of death**  
This principle gives a signal that a person's assets cannot be transferred to another person (family) by the name of inheritance, as long as the owner of the property is still alive.
7. **The principle of blood relations**

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<sup>7</sup> Supreme Court of the Republic of Indonesia., *Pedoman Teknis Administrasi dan Teknis Peradilan Agama Buku II*, Revised Edition 2009 (Direktorat Jenderal Badan Peradilan Agama, 2014), page 190-192.

The principle of blood relations is the relationship of blood due to legal marriage, subhat marriage, and the recognition of children (Islamic fiqh principle). With this principle, children born out of wedlock are accommodated.

8. Mandatory principle

Foster children and foster fathers can mutually carry out a will about their respective assets. If there is no will from the adopted child to the adoptive father or vice versa, then the adoptive father and/or adopted child can be given a mandatory will by the Ministry of Religion in ex officio as many as 1/3 part of the inheritance (Compilation of Islamic Law article 209).

9. Egalitarian principle

A person, who has a kinship due to blood relations but embracing a religion other than Islam, gets a mandatory will as much as 1/3 part, and may not exceed the equivalent portion of the heirs. (Jurisprudence)

10. Limited retroactive principle

Compilation of Islamic Law does not apply retroactively. If the inheritance has been divided in real terms before the Compilation of Islamic Law is enacted, then the family who is positioned as the successor heir cannot file a claim for inheritance. However, if the inheritance has not been shared in real terms and the heir dies before the Islamic Law Compilation is obtained, then the Compilation of Islamic Law naturally applies retroactively.

### **The Attitude of the Religious Leaders towards the Numbers Set by Allah SWT**

Allah SWT orders man to obey Him and obey the Messenger according to His words in QS al-Nisa'/ 4: 59 and the example of the system of implementing Islamic rules carried out by Muaz bin Jabal as illustrated in the hadith of Abu Daud. Those rules, in particular the rules of inheritance, are meant for Muslims to avoid the catastrophe resulting from dissatisfaction in the completion of inheritance. Thus, there is no other way except to adhere the source of Islamic teachings, namely the Qur'an, the hadith, and the law (ijtihad).

Obedience to Allah and His Messenger is a necessity for the believers. Therefore, some views of the leaders in addressing the numbers set by Allah SWT in the verses of inheritance will be stated.

According to Dr. (HC) AGH. M. Sanusi Baco, Lc,

There are verses that scholars may have different opinions and there are also verses that scholars should not have different opinions. Which include *qat}'i al-dilalah* are verses about inheritance 1/2, 2/3, 1/4, and so on. The scholars should not be different. Why? Because it means one, 1/2 *dee gaga ulama sedunia makkeda seddi setengah* (no scholar in the world says that one and a half), that is *qat}'i al-dilalah, de wedding itambai, deto nawedding ikurangi* (cannot be added and cannot be reduced). That is when the heirs want to bring it. But if the heirs have a deal,



it is allowed.<sup>8</sup>

AGH. M. Sanusi Baco views that the law or the verses of the inheritance is *qat'iy* so that the numbers cannot be changed again. There are no scholars who disagree about these numbers. Although the numbers are *qat'i*, but if the heirs want a division based on an agreement, the settlement in that way may be permitted by referring to QS Ali Imran/3: 159 and QS al-Syura/ 42: 38 that permit solving every affair by deliberation way.<sup>4</sup>

Dr. H. Hamzah Harun, Lc., M.A views that:

In terms of *dilalah*, our scholars are divided by 2 because the position of the verse is *khaboriyah*, not a command and not *isyai*. If it is *isyai*, then it is *qat'i al-dilalah*. But it is *khaboriyah*. He only mentioned that it supposed to be 2:1 if there is no agreement. It does not mean that there is a *lizzakari mislu hazzil unsayain* that deny the agreement because the verse of the Qur'an seems to inform that for those of you who do not agree, then you go back to the 2:1 rule, but if the agreement is found, it is okay because the Qur'an does not say that divide it based on it, but it only says that the comparison between men and women is 2:1.<sup>9</sup>

The verses of the inheritance are the laws that contain news and do not contain the orders so that those who do not agree, then they should go back to the rules as Allah preached that male and female part is 2:1. As long as there is a completion point achieved by the heirs before seeing the *nas}*, it is no problem because *nas}* is essentially revealed by Allah SWT to create and achieve the benefits of humanity. So the purpose and substance of a *nas}* is for the benefit.

Dr. H. Ruslan, MA views that:

The verses about that inheritance is *qat'i al-dilalah*, meaning that we have to give heritage property. We are obliged to give heritage property to the heirs. But such application is legal attitude. The law of the heirs is obligatory. Related to how we address the inheritance, it depends on which legal attitude we want to take. The implementation of inheritance distribution is what must be and that is an attitude. The numbers are the standard. When there is a problem, then it supposed to go back to the rule.

About *ijbari* principle in inheritance, what it is forced is transferring the ownership of the owner to his heirs. If no one wants to get along with them, then *ijbari* applies with those rules. As long as you still want to get along, then *ijbari* is not necessary. But if you want to fight, *ijbari* applies with numbers. If so, the judge has the right to determine the *ijbari*.<sup>10</sup>

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<sup>8</sup> H. M. Sanusi Baco (80 years old), Chairman of MUI Sulawesi Selatan and Chairman of Syuriah NU Sulawesi Selatan, *Interview*, Makassar, March 5<sup>th</sup> 2019.

<sup>9</sup> H. Hamzah Harun (54 years old), Head of Tanfiziyah NU Sulawesi Selatan, *Interview*, Makassar, March 4<sup>th</sup> 2019.

<sup>10</sup> H. M. Ruslan (58 years old), Figure of NU, *Interview*, Makassar, February 25<sup>th</sup> 2019.

The meaning of *qat'i al-dilalah* in the verses of the inheritance is the obligation of performing the inheritance by giving inheritance to the rightful heirs. The numbers in the verses are standard in case of a case so that the heirs may complete the distribution of their legacy by agreeing to compromise.

The figures differ from the point of view of the inheritance verses which status is *qat'i*. AGH. M. Sanusi Baco looks at the verses of inheritance, beside it contains the material value ie numbers, it also has spiritual value that is the sense of justice. So that, the verses can be understood and practiced contextually if agreed by all heirs.

H. Hamzah Harun views the verses of heritage in terms of content that contains news, which becomes a solution that can be taken in the event of a deadlock in completing inheritance. While Dr. H. Ruslan perceives that the inheritance verses are the verses containing the command to execute the inheritance division to the beneficiaries who are entitled to receive by the rules set by Allah SWT or settled on the basis of the deliberation result and agreement of the heirs.

### **Implementation of Islamic Law Compilation Article 183 in Completing Inheritance**

As the previous description is that although the material of the inheritance is largely formulated in a manner of *qat'i* in the Qur'an and described in the hadith, but in some parts there is also a work of *ijtihad* or reason which provides the actual formulation, in which the product of laws imposed in accordance with the circumstances where the community resides. That is because every change of time and place requires the benefit of the time. As the *fiqhiyyah* rules apply:

فِي تَغْيِيرِ الْفَتَاوَى وَ إِخْتِلَافِهَا بِحَسَبِ تَغْيِيرِ الْأَزْمَنِ وَالْأَمْكَنَةِ وَالْأَحْوَالِ وَالنِّيَّاتِ وَالْعَوَاقِدِ<sup>11</sup>

Meaning:

A law may change due to changing situation of the day, place situation, circumstances, cause of intentions, and customary traditions.

The above rule can be understood that a law existing in the past is based on the benefits of the time. But now, where the benefits change, then the law must follow, likewise for the future. Thus, legal changes can be made if the law is deemed ineligible to accommodate the interests and benefits of the people as a consequence of the inaction of law with the condition of society.<sup>12</sup> So accommodating the agreement in completing the inheritance division is based on the word of Allah in QS Ali Imran/3: 159 and QS al-Shura / 42: 38. These two verses are become bases by the scholars in producing the results of *ijtihad*, which are included in article 183 of the Compilation of Islamic Law:

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<sup>11</sup> Ibn Qayyum al-Jauzi, *I'lamu al-Muwaqqi'in 'an Rabbi al-'Alamin*, Juz III (al-Qahirah: Dar al-Hadis, 1997), page 14.

<sup>12</sup> Ilyas Supena and M. Fauzi, *Dekonstruksi dan Rekonstruksi Hukum Islam* (Yogyakarta: Gema Media, 2002), page 226.



Heirs can agree on peace in the division of inheritance after each is aware of his or her part.<sup>13</sup>

That is why Prof. Dr. Hj. Andi Rasdiyanah states that:

There is no sin and it is not infringement if the property is divided based on the result of agreement because it is also the result of scholars' *ijtihad*.<sup>14</sup>

The result of scholars' *ijtihad* in the Islamic Law Compilation article 183 provides an opportunity for heirs to complete the division of heritage by agreeing to make peace. This formulation is an alternative to the application of existing rules in QS al-Nisa/4: 11, 12, 176, the hadith of the Prophet, and the Compilation of Islamic Law article 176 to 182.

The statement of Prof. Dr. Hj. Andi Rasdiyanah is in line with statement from Dr. (HC) AGH. M. Sanusi Baco, Lc.

No innocence if he leads to an agreement, then the rule 2:1. But if he sees her sister and her family are mediocre, then they agree to share flat, that is no problem because *syari'at* by language is water but by term it is law. *Syari'at* in the sense of water is needed by physical life. *Syari'at* in the sense of law is needed by spiritual life. That means people will be calm if the law is implemented, that is why it is called *baladan amina*. Is there really no thief in this country? The answer is there, but the legal sanctions are implemented. So is the water, it becomes fresh if we drink. The verses of the Qur'an contain values both material and spiritual value. So the Islamic law is independent of 2 values, namely material value and spiritual value.<sup>15</sup>

The statement of AGH. M. Sanusi Baco is that Islamic law besides having material value also has spiritual value. If it is related to a matter of inheritance, then the value of the material is the amount of property that becomes part of the heirs as already specified in QS aa-Nisa/4: 11, 12, 176, and the hadith of the Prophet (peace be upon him), as well as the Compilations of Islamic Law article 176 to 182, while the spiritual value is the sense of justice or satisfaction of the heirs. If the heir completes his or her inheritance by applying article 183 of the Islamic Law Compilation that is agreed to make peace with the consideration of giving the sense of justice or inner satisfaction of the heirs, then this sense of justice implies the benefit of the harmony and integrity of the family. This is the spiritual value of Islamic law of inheritance.

What Prof. Dr. Hj. Andi Rasdiyanah and AGH. M. Sanusi Baco said is in line with H. Hamzah Harun's opinion stating that:

As long as there is a completion point that can be reached by the heirs before returning to see the *nas*, that is no problem. Then the *nas* in its essence is derived by Allah SWT to create and achieve human benefit. When the benefits

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<sup>13</sup> Supreme Court of the Republic of Indonesia., *Kompilasi Hukum Islam*, page 52.

<sup>14</sup> Hj. Andi Rasdiyanah, Tokoh Muhammadiyah, *Interview*, Makassar, February 27<sup>th</sup> 2019.

<sup>15</sup> H. M. Sanusi Baco (80 years old), Chairman of MUI Sulawesi Selatan and Chairman of Syuriah NU Sulawesi Selatan, *Interview*, Makassar, March 5<sup>th</sup> 2019.

are there, then there is the substance of *nas}*. It must not be like for example men - women should be 2:1. It does not have to be that if the man says no. We are all the children, I have a job, my sister does not have or she has a bigger responsibility. It is okay if my part is equal to her. It is not even a violation of the *nas}*. When men say please to give it to my sister because she has nothing, I am worthy of having a better life without depending on the division, this is not contrary to the *nas}* because *nas}* is revealed to all, where a man saw his sister more important so giving all the wealth to his sister was nothing. It is in principle that where there is a *tasyawwur* or deliberation among the family and we find the agreement with what is desired, then it does not have to be based on the *nas}*, unless there is an agreement then *nas}* should be applied as a way out of the dispute.<sup>16</sup>

From the statement presented by Dr. H. Hamzah Harun, the syari'ah of Islam is intended to realize the benefits of humanity. If in the completion of the inheritance division, the heirs choose to agree to make peace in order to keep the welfare of the family, so that is the substance of *nas}*.

Dr. H. Ruslan perceives that the verses of inheritance contain commands for immediate fulfillment by the rules set by Allah SWT or the result of agreement from the heirs. This may be in line with what the judges practiced, as elucidated by Muh. Arief Musi:

The verse describing the division of 2:1 is a law of the inheritance, which according to the scholar, it is *qat'i*, but when there is a question of inheritance inherited in the court, it may be that the *qat'i* has changed to not *qat'I* as an example of a case that I have previously disclosed.

Such a case may have occurred because the function of *nas}* both in the Qur'an and hadith of the Prophet relating to his or her inherits is only a law, while the completeness of the inheritance is claimed is a verdict fair.<sup>17</sup>

The verses of the inheritance are *Qat'iy*, and there is a spirit of justice. Therefore, if there is a case of inheritance inherited in the Ministry of Religion, then the judge is required to work as far as possible to resolve the case by fulfilling the sense of justice to the heirs. The settlement of legacies should pay attention to the basis of the law of inheritance itself, which is the principle of equitable justice. This foundation is in the Compilation of Islamic Law, especially in article 176 and article 180. It is also developed in the adjustment of acquisitions made at the time of completion of inheritance distribution among them by *takaruj* or *tasaluh*, based on mutual agreement as in article 183.

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<sup>16</sup> H. Hamzah Harun (54 years old), Head of Tanfiziyah NU Sulawesi Selatan, *Interview*, Makassar, March 4th 2019.

<sup>17</sup> Drs. Muh. Arief Musi, S.H, Judge of Religious Court of Makassar, *Interview*, Makassar, August 31<sup>th</sup> 2018.

If so, the judges are required to see and consider who among the beneficiaries are more beneficial to the heirs during his life to be one of the bases in the verdict. In addition, Muh. Arief Musi explains that:

The religious courtesy principle is that *ijtihad* of *ra'yu*. It means that the way in performing and obtaining the basis of the verdict on a matter has been exemplified by Muaz bin Jabal when he was commissioned by the Prophet in Yemen.<sup>18</sup>

Islam really respects the result of *ijtihad* or reason. It is a constructive thought. It is not surprising that the Supreme Court ruled that the only one daughter is given all the rest of heritage, while the rules in the Qur'an and the Compilation of Islamic Law in article 176 are given a half of the inheritance.

Furthermore, H. Baharuddin said that there is also a community habit applied without being preceded by an agreement, but not in question. He gave an example:

I see in the community that girls usually get home, as well as gold and jewelry. This is applied without any objection because it has become a habit in the community. So in my opinion, if that is already an agreement, there is no violation.<sup>19</sup>

What Dr. H. Baharuddin said above is a culture that exists in Bugis Makassar society and practices without being questioned by the heirs. This can be categorized as *urf* based on the rule of *al-a datu muhakkamat* (customary custom in consideration of law), as long as it does not conflict with the Islamic *Syari'ah*.

Although all figures state that there is no violation or sin against the rule of Allah if the inheritance is settled by means of consensus, but according to Prof. Dr. H. Arifuddin Ahmad, M.Ag., there is still a gap of infringement or sin, as he states:

There is always a chance for a violation or sin. For example, *limaki masselesureng* (We are five siblings). I am considered as a figure. I can dictate the four brothers. It is deliberation but because I have the authority, I can dictate, even it should not be like that. So deliberation is to be shared in deliberation but there is always a gap that the violation still exists. But of course, if the deliberation is put forward, the violation will be less. It is because all should be humble then deliberation could be achieved. But in general, the basis of doing that is because based on Islam, that principle of deliberation must be put forward and it is part of local wisdom that also grows and is very much in line with Islamic law.<sup>20</sup>

Although there are gaps in deliberation, but Prof. Arifuddin still puts forward the principle of deliberation. To avoid the occurrence of irregularities in the designation of heirs by deliberation, then they must first know their rights in accordance with the rules of Islamic inheritance, as stated by AG. Drs. H. Jalaluddin Sanusi:

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<sup>18</sup> Drs. Muh. Arief Musi, S.H, Judge of Religious Court of Makassar, *Interview*, Makassar, August 31<sup>th</sup> 2018.

<sup>19</sup> H. Baharuddin HS (63 years old), Head of Tanfiziyah NU Makassar, *Interview*, Makassar, February 28<sup>th</sup> 2019.

<sup>20</sup> Arifuddin Ahmad (50 years old) Administrator of Muhammadiyah Sulawesi Selatan, *Interview*, Makassar, March 3<sup>th</sup> 2019.

Knowing their rights then making the deal does not deviate because it is for giving up the right. Do not know their rights then agree to deviate, meaning leaving religion. Allowing the right means not deviating, even giving up all the rights is no problem. Sometimes, there are people who have lived well, their brothers have not, and they do not need it. It is legal, but there must be printed-evidence because it may be concerned later when the children objected because they did not know and there was no evidence, then he will sue and demand again. So that is the need to have printed evidence and two witnesses, even if the notary must have a witness<sup>21</sup>

AGH. Jalaluddin Sanusi emphasized the norm stability in QS. al-Nisa': 11, 12, 176, as well as the hadith and Compilation of Islamic Law article from 176 to 182. The article 183 of Islamic Law Compilation opens the possibility as an alternative through a peace path to an agreement. What is stated in article 183 of Islamic Law Compilation signals that before making peace in the division of inheritance, each individual must know his part according to Islamic rule of law so that no regrets will arise in the future because of his ignorance. That is why the underprivileged heirs must be accompanied by his or her other guardian or family, as regulated in article 184 of the Islamic Law Compilation. Determining and exposing the parts of the heirs is a necessity for the heirs to understand and realize their part and then to make peace in agreement as the formulation of article 183. It should be emphasized that after a conclusion, there must printed-evidence signed by all heirs and confirmed by witnesses as a stakeholder and proof of agreement.

There are several community leaders who have applied article 183 of Islamic Law Compilation within the scope of their families, among others is Prof. Dr. Hj. Andi Rasdiyanah. After her husband Drs. H. Amir Said passed away, she has shared her wealth as a whole to her children based on consensus among her children, as it is said:

This is the implementation if I keep implementing that rule (meaning Islamic heritages), but there is an agreement among my children. There are boys and girls. Sons are given according to their rights and daughters are also granted according to their rights, but not exactly. For example this house, is not it big? And I have 5 houses, divided them according to what they asked for. Someone wants this and someone wants that. This is the biggest, its place in a wide place. This is for the man with the household. So it is 2:1 but it does not have to be exactly weighed so, but that is 2:1. So each child gets one unit of house but the biggest house is for a boy. Settlement is based on agreement but still applies the law according to the Qur'an and hadith.<sup>22</sup>

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<sup>21</sup> H. Jalaluddin Sanusi (62 years old) Figure of Muhammadiyah, *Interview*, Makassar, March 4<sup>th</sup> 2019.

<sup>22</sup> Hj. Andi Rasdiyanah, Figure of Muhammadiyah, *Interview*, Makassar, February 27<sup>th</sup> 2019.

So what Prof. Andi Rasdiyanah did performs three rules simultaneously. They are: first, she divided it using rule 2:1 though not exactly the same. Boys get bigger home than their sisters and plus those households; secondly, the division of the house is performed on the choice of each child and they agree to it; and thirdly, the division of the house enters the grant category, since one of their parents is still alive.

The division of property practiced by Prof. Dr. Hj. Andi Rasdiyanah is also practiced by AGH. Muhammad Ahmad, as he says:

If I myself, before I die one day, I have given what I have to my children when their mother died. Since there are seven children, there is a little bit of jewelry and there are some plots of land. I gathered all the children and I told them that these are the bracelet, pendant, ring, and necklace of your mother's. Now we weigh according to what it should be. I say it because you are six women and one man. As far as I know, as a husband, the division should be divided into two first, partly for your mom and part for me, then the part for your mom I still get 1/4 and 3/4 that is what you share with 2:1 division, two parts for men and one part for women, it should be like that. But I say to them that above everything is an agreement. *Wa amruhum syura bainahum*. So now, like this, I am not going to divide like that. Please share this treasure, I want to take the ring one, the others please share them. Do we have to balance according to the inheritance, or according to your agreement? The kids say, yes, it is by an agreement. This is for older sister and this for younger siblings, this is for the man. Finally, it was finished with a deal only. Regarding land and house, my home is in Makassar, there is one in Selayar, there are some lands and some of my children had built home there. The outline is I have one land here, in Bontokapetta (700 m<sup>2</sup>), just divided it into two. Behind the campus, it is also divided into two. The two are here (the house occupied). There is my land in Sungguminasa, already been built a house by my fifth child (Ria). The sixth child was a man. His part is a house in Selayar, and the seventh is here where I live. As a note, we cannot sell this house but I live here till I die and we gather here all the time. So there is no calculation which is expensive and which is cheap, the most important is the deal. If I die, InshaAllah, there will be no problem. So above everything, it is a deal and they have felt fair.<sup>23</sup>

AGH. Muhammad Ahmad as a respected parent of his children and as a cleric who has kept in touch with the community a lot will certainly try to make the family atmosphere in a peaceful environment, especially after his death. Therefore, after the death of his wife, he immediately completed the division of his property by means of deliberation. It began by showing his entire wife's jewelry to his children and also describing the rules of inheritance in Islam and all the right rules according to him,

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<sup>23</sup> H. Muhammad Ahmad, Figure of Muhammadiyah, *Interview*, Makassar, March 2<sup>nd</sup> 2019.

and the best is the deal. Because his children chose settlement by way of agreement, he also no longer applied the inheritance rules which certainly began with the sharing of common property. Accordingly, all assets owned by AGH. Muhammad Ahmad was all divided up by a deal, except for a car he now uses for his daily activities and according to him, if his children were to die after him, the car would be given to his current wife.

Prof. Andi Rasdiyanah and AGH. Muhammad Ahmad practiced the division of property in accordance with Compilation of Islamic Law article 183 concurring to make peace, and article 211 which is by means of a grant to deliver the part which should be accepted as a surviving spouse to his children. The same thing was done by AGH. Jalaluddin Sanusi that applied article 183 of Islamic Law Compilation in the environment of his brothers, when his father died, based on his confession as follows:

I have done it when I was in the village. It is hard for us to share that because of the coconut gardens. At that time, there were some places so I made the decree that this is according to our religion, the verse is like this. Then we listed the property and its location. Next, I explained that the rule is like this, male 2 and female 1 (2:1). I mentioned the places, and how about if this is like this, you are here, you are there, how? I am willing to agree. Finally, including mother because the mother was still alive at that time and entitled to also have the right of the husband then we made a consensus. Then, the case was brought to the village chief, Religious Affairs Office. Due to its location in two villages, the two village chiefs signed the deal.<sup>24</sup>

What it is practiced by the three figures above shows that the settlement of inheritance legacy will be well done if the inheritance property before being shared with the heirs is shown in advance of the type of property, location, and width transparently. Then their respective sections are explained according to the rules of Islamic heritage. Then their method of settlement is offered to them, whether resolved by religious rules or by agreement.

The above description suggests that religious leaders, law practitioners, and societies are more concerned with the completion of an inheritance legacy based on consensus arrangements. Thus, existing inheritance rules need additional provisions, specifically regulating the mechanisms of inheritance sharing by means of deliberation. The rules are necessary to prevent deliberate decisions because of the significant influence of a person involved in decision making.

The mechanisms of inheritance sharing by the deliberations offered are as follows:

1. Determination of the rightful heirs based on rules

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<sup>24</sup> H. Jalaluddin Sanusi (62 years old) Figure of Muhammadiyah, *Interview*, Makassar, March 4<sup>th</sup> 2019.



2. Inventory the heir treasurer and present it to the heirs
3. Determine the part of each heirs according to the Qur'an, the hadith, and Islamic Law Compilation
4. Complete the portion of each heirs according to the calculation method in Islamic law and the result is passed on to all heirs
5. Offer to the beneficiary whether the property will be divided by revenue calculated or "deviated" from it by agreeing to obtain peace
6. Offer to the beneficiary the mechanism of the inheritance solution that will be used
7. The result of the agreement is signed by heirs, witnesses, and the government.

Point 1 above is abandoned by the community, especially the father and mother of the heirs. The father and mother of the heirs are not included in the heirs because there is a wife or husband and children of the heirs. In fact, QS Nisa' verse 11 and the Compilation of Islamic Law article 174 verse 1.a clearly states that father and mother are as heirs based on blood relation, even on Compilation of Islamic Law article 174 verse 2 is more asserted that even if all heirs are there, then who are entitled to inheritance only: children, fathers, mothers, widows and widowers.

The highest value in the completion of a heritage case is the creation of a heritage concert with a deliberate discussion, compromise, peace and harmony among the heirs. The resulting agreement is in the approval letter containing statement of agreement signed by all heirs and witnesses. This is a solution through non litigation.

### C. CONCLUSION

Based on the research findings that the writer has done, it can be concluded as follows:

1. The law of Islamic heritage is the result of the formula derived from the Qur'an, the hadith of the Prophet saw, and from the ijthihad of scholars with regard to and adjust the situation, condition, space, and time.
2. The characters do not argue the position of the verses of the inheritance as *qat'i* verse so that the numbers cannot be changed. But their understanding and practice of verses are varied. Some understand and practice contextually; some have positioned these verses as *khabariyah* verses (information) that the division should be based on the numbers in the verse if there is no agreement; some also understand and practice the verse as an obligation to distribute inheritance property to any beneficiary either based on the numbers or through the results of deliberation among the heirs.
3. By observing the views of the figures on the verses of inheritance and the guidance and messages from QS Ali Imran/3: 159 and QS al-Shura/42: 38 and article 183 of the Islamic Law Compilation, this gives the opportunity to complete inheritance with consultation. Thus, the Muslim community, especially

the Muslim community of Makassar City, is more likely to complete their legacies by way of deliberation to preserve the peace, harmony, and the integrity of their families.

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