



Reformulation Of The Arrangement Of Dzawil Arham In The Compilation Of Islamic Law To Realize Legal Certainty Of Inheritance

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Info Articles	Abstract
Article History Received: 2025-05-12 Revised: 2025-05-22 Published: 2025-05-30-30 Keywords: <i>Inheritance, Dzawil Arham, Compilation Of Islamic Law</i>	This research examines the issue of inheritance law related to the status and position of dzawil arham when distributing inheritance in Indonesia. This research is presented in qualitative form. This research uses Islamic law (Islamic legal inheritance) as an analytical tool in analyzing research data. In the end, this research concludes that Decision Number: 014 / Pdt.P / 2014 / PA-LPK and Decision Number: 263 / Pdt.G / 2009 / PTA.Sby, become a legal fact that the judges of the Lubuk Pakam Religious Court and the Surabaya High Religious Court in the matter of dzawil arham determined the decision in accordance with the opinions of Ahmad bin Hambal, Imam Abu Hanifah, Ali bin Abi Thalib, Umar bin Khathab and Ibn Mas'ud. There is no explanation of the status, position and resolution of dzawil arham in full in normative jurisprudential law (Compilation of Islamic Law), so this provides an opportunity for differences of opinion and judges' decisions in the matter of dzawil arham, so it is important to provide an attachment as an additional explanation in the Compilation of Islamic Law to be a legal guideline in resolving issues concerning dzawil arham

I. INTRODUCTION

Inheritance law is one of the disciplines within Islamic family law, explaining the method for determining heirs and the proportion of each party in the distribution of inheritance. These inheritance methods are formulated in accordance with values derived from the Quran and Sunnah. Inheritance law can be found in various classical references by past scholars from various schools of Islamic jurisprudence. Their *ijtihad* and opinions on inheritance issues have now been published in various languages and translations, making it easier for people from various backgrounds to read and understand inheritance issues.

A common issue that arises in families after a family member dies is the inheritance. Who has the greater right and how much of the inheritance each relative (heir) should receive is often the issue that ends in disputes that cause rifts in family relationships between relatives (heirs). The vulnerability of inheritance issues to the integrity and harmony of a family makes it imperative to study inheritance law at an urgent level, with the aim of maintaining and preserving the integrity of family relationships within a

family.

Inheritance law in the general sense is a law that discusses the issue of transfer or assignment of assets left by the deceased (a person who has died) which concerns the determination of heirs from the closest relatives of the deceased and providing a portion of the deceased's inheritance with the amount of each portion that has been regulated in accordance with the provisions of Islamic law. Beni Ahmad, explains that the law of inheritance in Indonesia is understood as a way of resolving legal relations in society, which give rise to more or less difficulties as a result of a person's death (Beni, 2009). In simple terms, the law of inheritance is a legal product that explains the transfer of inherited assets from a deceased person to his relatives who have the status of heirs.

Disputes between family members arising from the division of the deceased's inheritance are caused by inheritance property distribution practices that do not comply with the inheritance provisions stipulated in Islamic law, so that these practices will give rise to inheritance disputes and disputes that will end up in the Religious Court (Wirdjono).

To avoid inheritance disputes within the family, everyone is required to know and understand the concept of Islamic inheritance, including the rights of the deceased to his inheritance and the obligations of the heirs to the deceased's inheritance, as well as the method of determining the status of the heirs and the amount of the portions that have been determined according to the status of the heirs, or everyone who does not understand inheritance law is required to submit to and obey the decision/results of the division that have been determined according to what has been regulated in Islamic law regulations contained in legislation.

Inheritance law classifies relatives into 3 (three) groups, namely dzawil furudh (Dzawil, 2012), ashabah and dzawil arham (Dzawil, 2012). Of the three groups, only two groups have the right to the deceased's inheritance, namely the dzawil furudh and ashabah groups, according to the majority of Islamic jurisprudence scholars. Meanwhile, for one group, namely dzawil arham, Islamic jurisprudence scholars have *ikhtilaf* (differences) in understanding the texts contained in the Qur'an and hadith regarding their legal status, whether they have the right as heirs and receive a portion of the deceased's inheritance. Among Islamic jurisprudence scholars, there is *ijtihad* which considers that grandchildren with dzawil arham status receive a portion of the inheritance and on the other hand, there are also Islamic jurisprudence scholars with *ijtihad* that grandchildren with dzawil arham status do not have the right to a portion of the deceased's inheritance.

Ikhtilaf/ differences of opinion or *ijtihad* regarding the legal status of dzawil arham, whether the heirs are entitled to receive a portion of the deceased's inheritance among Islamic jurists certainly stem from differences in perspective and understanding of the texts concerning the issue of dzawil arham. These differences of opinion among Islamic jurists certainly have logical legal arguments that serve as a solid and strong foundation in creating and establishing a law in their respective *ijtihad*.

Differences among Islamic jurists regarding the position of dzawil arham in Islamic inheritance law and the lack of explanation of dzawil arham in laws and regulations (Law No. 1 of 1974 and the Compilation of Islamic Law) are driven by the differences in customs and culture between Indonesians and Arabs in family

relationships, which can lead to different resolutions regarding inheritance with the opinions of the majority of scholars. This is what makes the researcher interested in discussing this research.

This research focuses on the study with the object of research on the status and position of dzawil arham, this research aims to find the right legal formula in resolving the issue of inheritance distribution to relatives who have dzawil arham status, especially to the problem when the deceased leaves an inheritance and the relatives left behind have dzawil arham status. Thus, it is necessary to seek further explanations regarding the arguments that are considered appropriate related to the concept of dzawil arham according to the opinions and or views of the scholars and then adjusted to government regulations in Indonesia considering that so far the issue of dzawil arham in the Religious Court is still diverse.

II. RESEARCH METHODE

This study employed normative legal research, which focuses on examining legal norms, principles, doctrines, and legal concepts derived from statutory regulations, judicial decisions, and legal literature. The normative approach was chosen because the research primarily analyzes the legal position of dzawil arham in Islamic inheritance law and its application within the Indonesian legal system. The study is descriptive-analytical in nature, aiming to provide a systematic description and critical analysis of the legal status of dzawil arham based on Islamic jurisprudence, judicial practices, and relevant legal provisions.

To achieve the objectives of the research, several approaches were utilized. First, the statute approach was employed to examine legal provisions related to inheritance law, particularly those contained in the Compilation of Islamic Law (*Kompilasi Hukum Islam*) and other relevant regulations governing inheritance matters in Indonesia. Second, the conceptual approach was applied to analyze legal doctrines and theories developed by Islamic jurists concerning the inheritance rights of dzawil arham. This approach enabled the researcher to explore the differing opinions among classical

and contemporary scholars regarding the legal status of dzawil arham. Third, the case approach was used to examine judicial decisions relevant to the research topic, particularly Religious Court Decision Number 014/Pdt.P/2014/PA-LPK and High Religious Court Decision Number 263/Pdt.G/2009/PTA.Sby, which addressed the inheritance rights of dzawil arham.

III. DISCUSSION

A. The opinion of fiqh scholars regarding the position of dzawil arham in inheritance

There are differences of opinion among Islamic jurisprudence scholars regarding the status and position of dzawil arham. These differences among Islamic jurisprudence scholars also occurred among the companions of the Prophet Muhammad (peace be upon him). These scholars and companions developed two opinions (Dian, 2006):

- a. The first opinion is that relatives who have the status and position of dzawil arham do not have rights over the deceased's inheritance, whether or not there are ashhabul furudh or ashabah. The first opinion holds that even if there are no ashhabul furudh or ashabah, the deceased's inheritance is handed over to the Baitul Mal, which will then distribute the deceased's inheritance to the needs of the Muslim community in general. This means that the Baitul Mal views the Baitul Mal as having more rights than the dzawil arham over the deceased's inheritance. Among the fiqh scholars and companions who hold the same opinion are Imam Shafi'i, Imam Malik, Ibn Abbas, and Zaid bin Thabit.
- b. The second opinion is that relatives who have the status and position of dzawil arham have the right to inherit the deceased's inheritance. The right of inheritance to dzawil arham is conditional on the absence of ashhabul furudh, and/or ashabah. If the deceased leaves behind an inheritance and leaves behind relatives who only have the status of dzawil arham, then in this case the relatives who have the status and position of

dzawil arham have more rights than the baitul mal in obtaining the deceased's inheritance. Because in any case, it cannot be denied even though they do not have a close relationship as ashhabul furud and ashabah. Relatives who have the status and position of dzawil arham also have a family relationship with the deceased, so giving to them is more important than the baitul mal. Among the fiqh scholars and companions who hold the same opinion as this second opinion are Ahmad bin Hanbal, Imam Abu Hanifah, Ali bin Abi Talib, Umar bin Khattab and Ibn Mas'ud.

As explained above in the second opinion, the dzawil arham has the right to a portion of the deceased's inheritance by determining 2 (two) conditions: (Fachtur, 1971)

- a. The absence of ashhabul-furudh or ashabah.

All Islamic jurists agree (jumhur) that as long as there is a relative who holds the position or status of ashhabul-furudh or ashabah, then those relatives with the status of dzawil arham do not have the right to a share in the deceased's inheritance. Even if there is a remainder after the deceased's inheritance has been divided among the fardh ashhabul-furudh and after receiving their share according to the provisions, then the solution in this matter is through radd, so that the remaining inheritance can be divided completely without leaving any remainder. Prioritizing the radd method in distributing inheritance to ashhabul-furudh should be prioritized over giving a share of the deceased's inheritance to dzawil-arham. In this case, there is no difference of opinion among the companions and Islamic jurists on this matter. The same thing also applies to dzawil-arham when they are dealing with ashabah. Therefore, relatives with the status of dzawil-arham do not have the right to a share in the deceased's inheritance. Because the deceased's inheritance will be divided up and received by the heirs, whose role is to dispose of the remaining inheritance. If both the heirs and the heirs are jointly or individually, then the relative with the status of dzawil-arham does not

have the right to receive any portion of the deceased's inheritance (Fachtur, 1971)..

b. Dzawil-arhamtogether with one of the husband and wife.

In addition to the absence of the ashhabul furud and ashabah, dzawil-arham has the opportunity to receive a share of the deceased's inheritance in the second situation, namely if the ashhabul-furudh consists of only one husband or wife together with dzawil-arham in the heirs. In this condition, the deceased's inheritance is divided by the husband or wife taking their fardh first, then the remainder of the deceased's inheritance after the husband or wife has paid the fardh is divided among dzawil-arham. Giving a share to dzawil-arham and from the remaining assets takes precedence over giving it to one of the husband or wife (Fachtur, 1971)..

Based on the explanation above, the researcher is of the opinion that dzawil-arham has a kinship relationship with the deceased, this kinship relationship cannot be denied so that if a relative has the status and position of dzawil arham, then there are 2 (two) main factors that underlie his dzawil arham, namely: nasab relationship (family relationship) and secondly the absence of dzawil furudh and ashabah heirs. These two factors are the basis that a relative of the deceased can be said to be dzawil arham, if they have a nasab relationship, it is a relationship that can be based on the existence of a blood relationship between a person and the deceased. As long as a person has a blood relationship or kinship without anyone covering him (without anyone else who is closer to the deceased) (Fachtur, 1971). then the person has more rights to the deceased's inheritance than others. This opinion is based on the legal argument contained in the Qur'an 8:75: "those who have kinship are partly more entitled to each other (than those who are not relatives) in the book of Allah". The eighth verse in the Al-Anfal letter explains that someone as an heir due to blood ties and kinship relations has a higher position regarding the deceased's inheritance compared to people who are not from the deceased's family (rachmadi, 2009).

B. Religious Court Decision Against Dzawil Arham

a. Decision Number: 014/Pdt.P/2014/PA-LPK

In the Lubuk Pakam Religious Court Decision Number: 014/Pdt.P/2014/PA-LPK, it was determined that the deceased's biological nephew received the inheritance from the deceased's estate in full. With the judge's consideration that the deceased's biological nephew in the decision Number: 014/Pdt.P/2014/PA-LPK was the only heir of the deceased without any heirs occupying the position of ashhabul furudh or ashabah, and the biological nephew had a kinship relationship with the deceased who was more important to receive the inheritance compared to other people.

Decision Number: 014/Pdt.P/2014/PA-LPK is a legal fact for researchers that the judge of the Lubuk Pakan Religious Court in the matter of dzawil arham in Islamic inheritance law made a decision in accordance with the opinion Ahmad bin Hanbal, Imam Abu Hanifah, Ali bin Abi Thalib, Umar bin Khathab and Ibn Mas'ud.

b. Decision Number: 263/Pdt.G/2009/PTA.Sby

The same thing also happened at the Surabaya High Religious Court. In Decision Number: 263/Pdt.G/2009/PTA.Sby, it was determined that dzawil arham received a portion of the deceased's inheritance. With the judge's consideration that there were no other relatives of the deceased who occupied the position of ashhabul furudh and ashabah, relatives with the status of dzawil arham were given a 2/30 portion. Apart from them, the deceased only left 2 (two) adopted children and they were given a 5/30 portion. The existence of adopted children cannot be an obstacle for dzawil arham in receiving a portion of the deceased's inheritance and giving all the inheritance to adopted children is no more important than giving a portion of the assets to dzawil arham.

Decision Number: 263/Pdt.G/2009/PTA.Sby, also it is a legal fact for researchers that the judge of the Surabaya High Religious Court in the matter of dzawil arham in Islamic inheritance law made a decision in accordance with the

opinion Ahmad bin Hanbal, Imam Abu Hanifah, Ali bin Abi Thalib, Umar bin Khathab and Ibn Mas'ud.

C. Settlement of Inheritance Regarding Dzawil Arham in Indonesia

In 1946, Egyptian legislation introduced the concept of a mandatory will for the first time. The mandatory will in Egypt was created to resolve a legal dispute arising from differing opinions among legal experts regarding the status of grandchildren, who are considered to be sons (Fahmi, 2014). The obligatory will in Egypt is only given to the deceased's grandchildren whose parents (grandchildren) died earlier than the deceased (grandfather) who, in the opinion of the majority of jurisprudence scholars, grandchildren have the status of dzawil arham and according to the provisions of Islamic jurisprudence, jumhur will be veiled by the father's brother, which means that the grandchildren do not have the right to a share of the deceased's (grandfather's) inheritance. The concept of mandatory wills in Indonesia is regulated in the Compilation of Islamic Law, in Article 209: paragraph 1) The inheritance of an adopted child is divided based on Article 176 to Article 193 above, while adoptive parents who do not receive a will are given a mandatory will of up to 1/3 of the inheritance of their adopted child. 2) Adopted children who do not receive a will are given a mandatory will of up to 1/3 of the inheritance of their adoptive parents.

Through the laws in Egypt and the Compilation of Islamic Law, it can be understood that the concept of a mandatory will is an effort to provide the deceased's inheritance to someone who is basically not entitled to the inheritance because there are other heirs who are preventing the inheritance from being given. With this condition, the concept of a mandatory will emerged as a solution in providing a portion of the deceased's inheritance to those who are prevented, such as the heirs of dzawil arham or people who do not have a lineage relationship, such as adopted children.

The group of people who are entitled to receive a mandatory will are walidain or aqrabin

who do not receive or receive an inheritance. The criteria for walidain or aqrabin who are entitled to receive a mandatory will is if the walidain is classified as dzawil arham then he is entitled to be given a mandatory will. This happens in Egypt, while in Indonesia it is given through the concept of a substitute heir or aqrabin whose status is dzawil arham is more important than baitul mal. The opinion that says that dzawil arham has the right to receive an inheritance is Ali, Ibn Sirrin, Syuraih Al-Qadhi, Ibn Mas'ud, Atha, Imam Abu Hanifah and Imam Ahmad bin Hambal. This opinion is based on the text of the Qur'an, which in this case is explained by Fatcturrahman; The sentence "ba'dhum biba'dhin fi kitabillah.", has the meaning "ba'dahum aula bimiratsi ba'dhin fima kataballahu wahakam bihi.", namely some other relatives according to the rules and regulations of Allah (Suparman, 2002). This explanation does not mean that some relatives are more important than others, with the legal consequence of setting aside relatives who have the status and position of dzawil arham from the general understanding of relatives.

In general, scholars interpreting verse 75 of Surah Al-Anfal argue that the verse is a complement to other verses in the Qur'an that discuss heirlooms based on the promise of loyalty in verse 33 of Surah An-Nisa. With this interpretation, researchers argue that the inheritance rights of the relatives of the deceased are absolute and general, not only limited to the heirs of the ashhabul furudh and ashabah. But also to the dzawil arham. Therefore, a person/relative who has to determine the status of his heirs should refer to and be based on a general provision, namely the sentence al-arham. Thus, the dzawil arham portion of the inheritance should be given in accordance with the provisions regulated by the Qur'an, and not provide a new legal solution by establishing a law that is not found in the Qur'an.

The majority of Islamic scholars are of the opinion that the dzawil arham has the right to inherit the deceased's property as explained previously, namely by setting two conditions:

1) There are no ashhabul furudh and ashabah at all

2) If you are only with your husband or wife.

If dzawil arham experiences the first condition, then dzawil arham receive all the inheritance of the deceased, in this case giving part of the inheritance to the deceased more important than giving it to Baitul Mal.

And if the dzawil-arham meets the second condition, then in this condition, the deceased's inheritance is divided by the husband or wife taking their fardh first, then the remainder of the deceased's inheritance after the husband or wife has paid the fardh is divided among the dzawil-arham. Giving a share to the dzawil-arham and from the remaining assets takes precedence over giving it to one of the husband or wife.

Furthermore, if in practice it is found that more than one relative has the status of dzawil-arham, then there are 3 (three) principles which are the basis for its division: (Suparman, 2002)

First, the principle of al-qarabah, this principle is based on the closest nasab relationship between the dzawil-arham and the deceased. Among the relatives with dzawil-arham status, those with the closest lineage to the deceased are those whose position is given priority in receiving a share of the inheritance.

Second, the principle of tanzil, this principle is based on the placement of the deceased's relatives to the status of heirs, which is due to the existence of a lineage relationship with the deceased relative and replaces his share, if the relative is still alive. If the degree of dzawil arham has a long relationship distance, it should shift step by step until it reaches the position of mudla bihi heirs whose position will be occupied. Relatives with the status of dzawil-arham, and in relation to their position, whether they are entitled or not to receive a share of the deceased's estate, the amount of the share of the estate they will receive depends on the position of mudla bihi they occupy.

Third, the principle of mercy This principle is based on the concept of rahim (compassion). The principle of rahmi emphasizes that each relative left behind by the deceased is not justified in

differentiating their position and the size of their share. Because in terms of kinship, the deceased may be closer to the first dzawil arham, but emotionally in their daily life while still alive they were closer and more connected to the second dzawil arham. Therefore, based on the principle of rahmi, dzawil arham are entitled to receive the same share.

Various opinions and principles regarding the resolution of dzawil arham have been put forward, researchers agree with the concept and ideas offered by Prof. TM Hasby Ash-Shiddieqy, as an effort to resolve when walidain occupies the position of dzawil arham in several ways, namely: (Suparman, 2002)

- 1) By determining the share of each heir, including the recipient of the legacy of the will, the position of their parents who have died is replaced according to the level of the recipient.
- 2) By determining the amount of the obligatory portion of the will recipient with the amount of the portion that should be received by the parents, a maximum of 1/3 or a third of the tirkah if the receipt exceeds the maximum limit.
- 3) Giving excess inheritance after the obligatory portion of the will recipient is taken to the heirs according to their respective portions.
- 4) Relatives who hold the position of dzawil arham are given priority in granting rights to inheritance or inheritance over the baitul mal. Thus, the status of dzawil arham can be taken into account and their position is guaranteed when the inheritance is divided. Providing dzawil arham from the deceased's inheritance (inheritance) with certain conditions and prioritizing it over the baitul mal, is a legal ijthad that is more appropriate to the Indonesian context and besides that, there is no explanation about the status, position and resolution of dzawil arham in its normative jurisprudential law, namely the Compilation of Islamic Law.

IV. CONCLUSION AND SUGGESTIONS

A. Conclusion

There are two opinions among Islamic jurists regarding the status and position of dzawil arham: The first opinion, that relatives who have the status and position of dzawil arham do not have rights over the deceased's inheritance, whether due to the presence of ashhabul furudh or ashabah or not. Among the Islamic jurists and companions who hold the same opinion as the first opinion, these are Imam Syafi'i, Imam Malik, Ibn Abbas and Zaid bin Thabit. The second opinion, dzawil arham have rights over the deceased's inheritance. The right of inheritance to dzawil arham is on the condition that there are no ashhabul furudh, and or ashabah. so giving to them is more important than giving to the baitul mal. Among the Islamic jurists and companions who hold the same opinion as the second opinion are Ahmad bin Hanbal, Imam Abu Hanifah, Ali bin Abi Thalib, Umar bin Khattab and Ibn Mas'ud.

Decision Number: 014/Pdt.P/2014/PA-LPK and Decision Number: 263/Pdt.G/2009/PTA.Sby, It is a legal fact that the judges of the Lubuk Pakam Religious Court and the Surabaya High Religious Court in the matter of Islamic inheritance law regarding dzawil arham made a decision in accordance with the opinions of Ahmad bin Hambal, Imam Abu Hanifah, Ali bin Abi Thalib, Umar bin Khathab and Ibn Mas'ud.

Noan explanation of the status, position and resolution of dzawil arham is found in its normative jurisprudential law, namely the Compilation of Islamic Law, so that this provides an opportunity for differences of opinion and judges' decisions in the matter of dzawil arham, so it is important to provide an attachment as an additional explanation in the Compilation of Islamic Law to serve as a legal guideline in resolving issues concerning dzawil arham.

B. Suggestions

- 1) To academics in the field of Islamic law to continue to pay attention to inheritance issues, especially those related to differences of opinion among Islamic jurists regarding inheritance law and especially those related to the differences in cultural conditions that occur in Indonesia and the Middle East, so that they can apply laws that are more appropriate to the Indonesian context while still referring to the opinions of previous Islamic scholars.
- 2) In making a decision, judges at Religious Courts must refer to the Compilation of Islamic Law as the main reference, and carry out ijtihad in matters that have not been clearly regulated in statutory regulations by taking into account the more relevant Indonesian context.
- 3) The government is urged to continue to provide space and support for academics to conduct research through various research assistance programs and to open the door to research results from academics by using them as sources when studying legal issues in this country and when producing legal products to suit customary and cultural conditions and keep pace with current developments.

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