

SHIFTING THE ROLE OF MEDIATION IN ISLAMIC INHERITANCE DISPUTES: AN OVERVIEW OF ISLAMIC LEGAL PHILOSOPHY

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Abstract

This article aims to see the other side of mediation as an alternative settlement of inheritance disputes. The general view of the community is that mediation is carried out after the occurrence of a dispute as a form of dispute resolution between the disputing parties. However, the perspective of Islamic legal philosophy sees the other side of the role of mediation in dealing with disputes, including inheritance disputes. The writing of this paper is done in an analytical descriptive manner that combines a normative juridical approach with a philosophical approach. The study results show that the settlement of inheritance disputes can be done in two ways; litigation and non-litigation. As one of the non-litigation channels and acting as a dispute resolution institution, mediation also prevents disputes. Mediation is positioned to avoid disputes arising at the philosophical level in inheritance cases. This argument can be seen from the statements in the Qur'an and hadith regarding inheritance law which indicate that the existence of inheritance law is intended as an effort to prevent disputes.

Keywords: *Mediation; Dispute; Inheritance; Islamic Philosophy*

1. Introduction

Inheritance matters are closely related to family life, so inheritance law is inevitably related. Inheritance law is a sub-section of family law¹ that holistically regulates family life, from minor things to the most complex problems related to property. This family law will appear after another legal event, namely marriage. The legal marriage bond will have an extensive impact on family life, including inheritance.²

Inheritance law in Indonesia is divided into three legal systems that apply positively in Indonesia: customary law, Islamic law, and western law.³ These three legal systems become legal models used in the community regarding the distribution of inheritance depending on the legal system applied in each region. In addition, the kinship system in Indonesia, which is very varied, also colors the variety of inheritance in Indonesia.⁴ This condition makes inheritance problems in

¹ Oemarsalim, *Dasar-Dasar Hukum Waris Di Indonesia* (Jakarta: Rineka Cipta, 1991), 19.

² Susanne Dahlgren and Et.al, *Family Law in Islam: Divorce, Marriage and Women in the Muslim World*, ed. Maaïke Voorhoeve (New York: I.B. Tauris, 2011), 10.

³ Hilman Hadikusuma, *Hukum Perkawinan Di Indonesia* (Bandung: Mandar Maju, 2007), 33.

⁴ Abu Rokhmad, "Paradigma Hukum Islam Dalam Penyelesaian Sengketa," *International Journal Ihya' 'Ulum al-Din* 18, no. 1 (2017): 49.

Indonesia very complex, starting from determining who an heir is, how much each heir receives, which assets can be divided as an inheritance, and other property problems are.

Inheritance is a method taken by the community regarding legal relationships that arise from a person's death.⁵ This legal relationship concerns particular objects in the form of property that must be divided among the heirs left behind where the distribution of these assets tends to cause legal problems due to the dissatisfaction of particular parties or because of their ignorance of the inheritance law itself or even because of the selfish and greedy nature that exists in oneself. Those parties.⁶ This kind of condition ultimately creates friction, resulting in the disruption of order in the community or family, referred to as a dispute in legal terminology.

Disputes are a form of disharmony and disputes caused by conflicts and incompatibility between individuals and groups. Apart from the various factors behind the emergence of the dispute, the dispute should be adequately resolved, prioritizing the benefit aspect to bring back peace and harmony between individuals and groups in conflict. Indonesian society as a civilized nation certainly has excellent ways and traditions to perpetuate relations between individuals and groups through the dispute resolution process.

The settlement of disputes in the community can be broadly divided into two, namely through the court (litigation) and the out-of-court route (non-litigation).⁷ Of the two dispute resolution processes, dispute resolution out of court (non-litigation) is the best alternative media for both parties. Because in the process, this alternative path can help the parties to understand each other the conditions and situations faced by each party.⁸ Thus, it can be said that the direction towards peace in dispute resolution is prioritized considering that it is better able to bring benefits to both parties (win-win solution) without being harmed.

Inheritance matters in Islamic legal discourse are cases that are explained clearly because there are verses in the Qur'an that mention in detail the distribution of inheritance.⁹ This stipulation indeed aims to ensure legal certainty for humans who will carry out the process in terms of the

⁵ Oemarsalim, *Dasar-Dasar Hukum Waris Di Indonesia*.

⁶ Amir Syarifuddin, *Hukum Kewarisan Islam*, 4th ed. (Jakarta: Kencana, 2004), 123.

⁷ Nugraha Pranadita, "Perubahan Fungsi Mediasi Dalam Praktek Di Pengadilan Negeri Dan Pengadilan Agama Kaitannya Dengan Peraturan Mahkamah Agung Republik Indonesia Nomor 1 Tahun 2016 Tentang Prosedur Mediasi Di Pengadilan," *Res Nullius* 2 1, no. 2 (2019): 98–104.

⁸ Kubasek and Silverman considered that the out-of-court dispute resolution provides an opportunity for the parties to understand each other and understand each other's situation so that this method is considered more appropriate than the court route (litigation). Look at Nancy K. Kubasek and Gary S. Silverman, *Environmental Law* (New Jersey: Prentice Hall Upper Saddle River, 2014), 17.

⁹ Muhammad Amin Suma, "Menakar Keadilan Hukum Waris Islam Melalui Pendekatan Teks Dan Konteks Al-Nushûsh," *AHKAM : Jurnal Ilmu Syariah* 12, no. 2 (2012): 47–58.

distribution of inheritance. However, although inheritance matters have been explained in detail in the Qur'an, the phenomena that occur in society seem to speak differently. Disputes between families and heirs often arise when the testator dies. This phenomenon is, of course, apart from the provisions of Islamic inheritance law, which have been stipulated in detail. This is where mediation as an alternative dispute resolution route plays a vital role in seeking settlement of inheritance disputes before entering the court (litigation).

Several studies related to the settlement of inheritance disputes can be found in several studies, such as the authority of religious courts in resolving inheritance disputes¹⁰ mediation instrumentation in inheritance cases as an alternative offer in dispute resolution.¹¹ On a philosophical level, Amin Summa highlights the value of justice in the Islamic inheritance system.¹² While in the formal juridical scope, Islamic inheritance is also studied by elevating the Compilation of Islamic Law (KHI) as one of the sources of material law on Islamic inheritance in Indonesia.¹³ From the research, the author tries to enter into a sub-section of Islamic inheritance dispute settlement by focusing on mediation institutions from the philosophical side of Islamic law.

The philosophical study of Islamic law as an approach to Islamic studies seems to provide new color for mediation as an alternative dispute resolution. As a holistic set of legal norms, Islamic Shari'a places the other side of mediation, which for many people believes is only believed to be a model of dispute resolution. From this, it can be seen that the analytical study of mediation, when viewed from the philosophical aspect of Islamic law, becomes significant to find the other side of the role and function of mediation in the settlement of inheritance disputes.

Based on the description of the background above, the author focuses the purpose of writing this article on the position of mediation in the settlement of inheritance disputes in terms of Islamic law. In addition, the role and function of mediation in the settlement of Islamic inheritance disputes will also be reviewed from the philosophy of Islamic law

¹⁰ Rini Fahriyani Ilham and Ermi Suhasti, "Mediasi Dalam Penyelesaian Sengketa Waris: Studi Putusan No. 181/Pdt. G/2013/PA .YK," *Al-Ahwal: Jurnal Hukum Keluarga Islam* 9, no. 181 (2016): 67–86.

¹¹ Rahmatullah, "Kewenangan Pengadilan Agama Dalam Menyelesaikan Sengketa Perkara Waris," *Jurnal Ilmiah Abdil Ilmu* 4, no. 1 (2011): 126–133.

¹² Suma, "Menakar Keadilan Hukum Waris Islam Melalui Pendekatan Teks Dan Konteks Al-Nushûsh."

¹³ Anang Setio Budi et al., "The Existence of Islamic Legal Compilation in Islamic Inheritance Law Context As Material Law on Religious Courts," *International Journal of Education and Research* 1, no. 12 (2013): 1–10.

2. Method

This research is classified into normative legal research (doctrinal research). In practice, this research combines a philosophical approach and a conceptual approach. This study uses secondary data, namely research data generated from library research consisting of primary legal materials, secondary legal materials, and tertiary legal materials. The method used in tracing legal materials in this research is library research through documentary studies of related legal materials. The legal materials that have been obtained are then analyzed descriptively analytically. Processing is carried out deductively, starting from assumptions and general legal phenomena and concluding on the studied problem. The results of the processing will be presented descriptively, which is systematic and logical

3. Results and Discussion

Inheritance law (*mawarits* or *faraidh*) is always related to the issue of property whose management and transfer have been legally regulated in the customary law system, Islamic law and Western law. Such provisions in Indonesian society, especially Muslim ones, have positively influenced the values of religious orders, prohibitions, and Islamic jurisprudence.¹⁴ Islamic inheritance law for some Indonesian people is a necessity whose implementation must refer to the provisions of Islamic law. Terminologically, inheritance law rules regulate property transfer after a person's death to his closest family. In contrast, the property left behind is called inheritance.¹⁵ Meanwhile, inheritance law in Islam is defined as legal regulations regarding determining heirs who are entitled to receive the inheritance, determining their position in the heirs and the share obtained reasonably and ideally.¹⁶

Verses about inheritance can undoubtedly be found in several suras in the Qur'an. Of the many verses that are often conveyed, the main verse that explains the importance of maintaining good relations and friendship between families in surah an-Nisa verse 1 is as follows: "And fear Allah who by (using) His name you ask one another for one another. each other, and (maintain) friendly relations." Furthermore, the provisions of *mawarits* are explained again in verse 7 of surah an-Nisa 'as follows:

¹⁴ Juhaja S. Praja and Et.al, *Hukum Isslam Di Indonesia Dalam Pemikiran Dan Praktik* (Bandung: Remaja Rosda karya, 1991), 15.

¹⁵ Hilman Hadikusuma, *Hukum Waris Indonesia* (Bandung: PT. Citra Aditya Bakti, 1991), 3.

¹⁶ M. Idris Ramulyo, *Perbandingan Hukum Kewarisan Islam Dengan Kewarisan Kitab Undang-Undang Hukum Perdata*, Cet. I. (Jakarta: Sinar Grafika, 2004), 84.

"For a man, there is a share of the inheritance of his parents and relatives, and for a woman, there is a share (also) of the inheritance of her parents and relatives, either a little or a lot according to the share that has been determined."

In the verse above, the word '*arham*' means blood relations or kinship, the leading cause of inheritance relationships. The recommendation to maintain a friendship is to build good relations between families.¹⁷ So the verse above is said to be the primary basis for the provisions of Islamic inheritance law, which is intended to create good relations in the family. From this verse, other inheritance verses are referred to which determine the assigned parts (*furudh muqaddara*) for heirs, such as surah an-Nisa verses 11, 12, 32, 176 and other verses that talk about the formulation of inheritance distribution.

Inheritance is assets left by the testator whose ownership is full/absolute for the heir after purification of the other rights of the property to be passed on to the rightful heirs. Purification of inheritance is carried out so that the inheritance is genuinely a legal property before being distributed to the heirs. The cleansing includes fulfilling the debts of the heirs, wills, *zakat* and other material obligations that have not been fulfilled.¹⁸ After all these things are issued, the property becomes valid to be passed on to the heirs still living.

The implementation of inheritance law can practically be done with the provisions that have been prescribed in the Qur'an and hadith. Still, there is also a model for the distribution of inheritance carried out in various ways outside the shari'a provisions, including *takharruj*, namely the exit of someone or more from a group of heirs. With other compensation in exchange for his right to inheritance. Or another model is called *tasaluh*, namely the distribution of inheritance by way of an agreement between heirs and carried out by getting out of the provisions of the shari'a with an understanding that rewards will be given to heirs who relinquish their rights to a specific part.¹⁹ Apart from the model of inheritance distribution, it seems that the provisions of inheritance law often do not run smoothly as the ideals of inheritance law, where inheritance provisions aim to create harmony and order in society regarding the transfer of inheritance. This condition, of course, can be caused by various factors, including the interests of individual heirs, which in turn triggers family conflicts when the inheritance is distributed.²⁰

¹⁷ Rahmawaty Anita, "Harmoni Dalam Keluarga Perempuan Karir : Upaya Mewujudkan Kesetaraan Dan Keadilan Gender Dalam Keluarga," *Palastren* 8, no. 1 (2015): 1–34.

¹⁸ Syarifuddin, *Hukum Kewarisan Islam*.

¹⁹ Ibid.

²⁰ Ilham and Suhasti, "Mediasi Dalam Penyelesaian Sengketa Waris: Studi Putusan No. 181/Pdt. G/2013/PA .YK."

Islamic inheritance law in Indonesia has experienced a reasonably dynamic development. The positivity of Islamic inheritance law marks this development into the Compilation of Islamic Law through Presidential Instruction No. 1 of 1991 concerning the dissemination of Islamic Law's Compilation. Long before the Compilation of Islamic Law (KHI) was disseminated, there were various customary inheritance laws in the archipelago which were influenced by the principles of kinship and lineage from both father and mother lines, namely: (1) patrilineal, (2) matrilineal, (3) bilineal, and (4) bilaterally.²¹

The formulation of Islamic inheritance law in the form of a positive direction in the form of the Compilation of Islamic Law is used as a reference for judges in the Religious Courts in handling inheritance cases for Muslims. Islamic inheritance law in the Compilation of Islamic Law (KHI) is contained in book II from article 171 to article 193. However, the inheritance law provisions are insufficient to reduce internal and external conflicts in Indonesian Muslim society. The number of inheritance disputes that enter the Religious Courts is evidence that there is still a need for institutions capable of resolving these disputes both inside and outside the court.

Disputes that arise in the community reflect order disturbances, injustice and disruption of public order.²² This reality can occur in various aspects identified with conflicts and disputes between two or more parties. Although all components of society want life to run in harmony, it seems that the emergence of conflicts is inevitable as long as there are dynamic relationships between individuals.

The problem that often arises related to inheritance is the neglect of certain heirs' rights to feel aggrieved. In addition, other issues also trigger inheritance disputes, including control of the inheritance, the amount of inheritance received disputes over inheritance ownership, and embezzlement of inheritance to the comparison of the share of each heir, which is deemed not to fulfil the element of justice.²³ These problems always accompany the distribution of inheritance in the community, and not a few have ended up in court.

Considering the complexity of inheritance issues, Islamic inheritance rules, as mentioned in the verses of the Qur'an above, have been so clearly explained in the Qur'an and hadith. Specifically for the Indonesian Muslim community, it is further strengthened by the inheritance provisions in the Compilation of Islamic Law (KHI). Some people are still trying to see the

²¹ Kuntjaraningkrat, *Beberapa Pokok Antropologi* (Jakarta: Dian Rakyat, 1992), 135.

²² Roger Bowles and Nuno Garoupa, "Household Dissolution, Child Care and Divorce Law," *International Review of Law and Economics* 22, no. 4 (2002): 495–510.

²³ Ilham and Suhasti, "Mediasi Dalam Penyelesaian Sengketa Waris: Studi Putusan No. 181/Pdt. G/2013/PA .YK."

elasticity and dynamics of Islamic inheritance law, which sometimes confuses and is called legal uncertainty for some legal experts. They consider that Islamic law only regulates the share of heirs that fall into category one (children, husband/wife/ and father/mother) with additional further heirs such as brothers, nephews, uncles/aunts, grandparents, etc. Of course, with much stricter requirements than the heirs of category one earlier. For the rest, there is room for legal experts to explore the law (*istinbath al-hukm*) through the *ijtihad* process. This process is carried out by referring to the interpretation of verses related to inheritance, and not even a few have reinterpreted the understanding of authoritative Islamic scholars.²⁴

3.1. Mediation in Resolving Islamic Inheritance Disputes

Mediation is one way of resolving disputes perceived by the majority of the community as being carried out outside the court (non-litigation). Mediation is a dispute resolution process carried out by conflicting parties to find an agreement with the assistance of a mediator as a third party. The disputing parties can determine alternative dispute resolution methods to realize peace. Following the provisions of Law no. 30 of 1999 concerning Arbitration and Alternative Dispute Resolution article 1 paragraph (10) which states that "Alternative Dispute Resolution is an institution for resolving disputes or differences of opinion through procedures agreed upon by the parties, namely outside the court utilizing consultation, mediation, conciliation, or assessment. expert." In addition, several views state alternative dispute resolution models, including consultation, negotiation, mediation, conciliation, arbitration, good offices, mini-trial, summary jury trial, rent a judge, and mediation.²⁵ Some groups also mention various alternative dispute resolution routes that can be taken by the community, namely facilitation, negotiation, adjudication, reconciliation, arbitration, mediation and formal dispute resolution (courts).²⁶ Of these several ways, mediation is an alternative dispute resolution commonly known among the public, so dispute resolution efforts through mediation are often a popular alternative in resolving disputes, especially those related to inheritance.²⁷

²⁴ Komari, "Dinamisasi Dan Elastisitas Hukum Kewarisan Islam," *Jurnal Hukum dan Peradilan* 1, no. 3 (2012): 463–486.

²⁵ Ros Angesti Anas Kapindha, Salvatia Dwi M, and Winda Rizky Febrina, "Efektivitas Dan Efisiensi Alternative Dispute Resolution (ADR) Sebagai Salah Satu Penyelesaian Sengketa Bisnis Di Indonesia," *Privat Law* 12, no. 4 (2014): 1–14.

²⁶ Svahrizal Abbas, *Mediasi Dalam Perspektif Hukum Svariah, Hukum Adat Dan Hukum Nasional* (Jakarta: Fajar Interpratyama Offset, 2009), h. 120-122.

²⁷ Adi Nur Rohman and Sugeng, "Probabilitas Mekanisme Small Claim Court Dalam Penyelesaian Sengketa Waris Di Pengadilan Agama," *Jurnal Hukum dan Pembangunan* 7, no. 3 (2018): 1–18.

In line with this, Islam also regulates the polarization of dispute resolution to benefit the disputing parties. Islam recommends that dispute resolution prioritizes aspects of peace rather than disputes. In the Qur'an surah as-Shura verse 38, Allah SWT says: "*And (for) those who accept (obey) the call of their Lord and establish prayer, while their affairs are (decided) by deliberation between them; and they spend part of the sustenance We have given them.*"

The above verse instructs humans to consult in all their affairs, both public and private. This is because deliberation is carried out without haste in deciding a case and can provide a better solution by prioritizing peace for all parties.

Other legal experts refer to mediation as a negotiation process in finding a solution with a neutral third party that is impartial to one of the parties to reach a mutually satisfactory agreement.²⁸ According to Supreme Court Regulation (PERMA) No. 1 of 2016, mediation is a method of resolving disputes through a negotiation process to obtain an agreement between the parties with the assistance of a mediator. From these definitions, it can be concluded that mediation is a joint effort of the disputing parties to negotiate jointly with the aid of a mediator who bridges the two parties for one goal, namely peace.

In general, people believe that if a problem or dispute cannot be resolved through deliberation, the last resort is to take it to court. If so, one party wants to achieve 'victory' over one party. Whereas before arriving at the court, there is a choice of alternative dispute resolution institutions, which is regulated in the Arbitration and Alternative Dispute Resolution Law article 1 paragraph (10), which states that,

"Alternative Dispute Resolution is an institution for resolving disputes or differences of opinion through a procedure agreed upon by the parties, namely outside the court employing consultation, mediation, conciliation, or expert judgment."

In addition, there are expert views who also mention several alternative dispute resolution models, namely consultation, negotiation, mediation, conciliation, arbitration, good offices, mini-trial, summary jury trial, rent a judge and med-arb.²⁹ All of these are ways that the community can take when they experience a deadlock in resolving a dispute before it ends up in court.

²⁸ Abbas, *Mediasi Dalam Perspektif Hukum Svariah, Hukum Adat Dan Hukum Nasional*.

²⁹ Kapindha, M, and Febrina, "Efektivitas Dan Efisiensi Alternative Dispute Resolution (ADR) Sebagai Salah Satu Penyelesaian Sengketa Bisnis Di Indonesia."

Mediation was initially a way for the disputing parties to resolve disputes and was carried out outside the court institution.³⁰ However, the development of the proceedings in court has made mediation an inseparable part of the dispute resolution process within the court institution.³¹ This mediation process is a must that court judges must carry out before continuing the proceedings to the next stage.

The regulation on mediation departs from article 154 RBg, article 130 HIR, and article 31 Rv, which regulates the existence of a peace institution (*dading*). Furthermore, this peace process is embodied and institutionalized in a mediation institution through PERMA No. 2 of 2003 concerning Mediation Procedures in Courts and amended by PERMA No. 1 of 2008.³² Given that this PERMA is considered not yet capable of optimizing the role of mediation in court, the Supreme Court again issued PERMA No. 1 of 2016 concerning Mediation Procedures in Courts to revitalize the part of mediation in court proceedings.

Among the reasons for the issuance of regulations on mediation as stated in PERMA No. 1 of 2016 among others that (1) mediation is carried out to minimize the accumulation of cases in court, (2) mediation is a dispute resolution process with a faster and cheaper process, (3) mediation presents the common goals and desires of the parties, namely peace and justice for all parties, and (4) maximize the role and function of the judiciary in the dispute resolution process in addition to the adjudicative settlement process.

For the settlement of cases in the Religious Courts, mediation efforts are a must taken by judges in resolving issues either at the beginning or in the middle of the case examination process. Law Number 7 of 1989 concerning Religious Courts requires judges to reconcile the two parties. Therefore, judicial institutions, both the District Court and the Religious Courts, have prepared mediators to assist in the mediation process. Two types of mediators will carry out mediation duties and functions in court; (1) judge mediators and (2) non-judge mediators who have certificates as mediators and have been assigned by the local Chief Justice.³³ Later, the parties can agree to

³⁰ Robert E. Emery, *Renegotiating Family Relationships: Divorce, Child Custody and Mediation* (New York: The Guilford Press, 2012), 79.

³¹ Pranadita, "Perubahan Fungsi Mediasi Dalam Praktek Di Pengadilan Negeri Dan Pengadilan Agama Kaitannya Dengan Peraturan Mahkamah Agung Republik Indonesia Nomor 1 Tahun 2016 Tentang Prosedur Mediasi Di Pengadilan."

³² Rachmadi Usman, *Mediasi Di Pengadilan Dalam Teori Dan Praktik* (Jakarta: Sinar Grafika, 2012), 6.

³³ Pranadita, "Perubahan Fungsi Mediasi Dalam Praktek Di Pengadilan Negeri Dan Pengadilan Agama Kaitannya Dengan Peraturan Mahkamah Agung Republik Indonesia Nomor 1 Tahun 2016 Tentang Prosedur Mediasi Di Pengadilan."

choose whether to appoint a judge mediator or a non-judge mediator who will assist in mediation efforts in the court.

Judges of the Religious Courts, like general courts, in their mediation efforts, are guided by PERMA regarding mediation to provide legal certainty and order in the civil dispute settlement process so that peace can be realized between the two disputing parties.³⁴ From this, it can be seen that mediation is directed to produce a decision that wins both parties without any party being harmed (win-win solution). By referring to the provisions of articles, 7 to 20 of the PERMA, mediation efforts are carried out in two stages, namely pre-mediation and mediation. The mediator carries out Premediation by contacting the parties, providing initial mediation information, coordinating with the parties, discussing the objectives and determining a time and place that offers a sense of security.³⁵ After the premediation stage is passed, then the next step is to enter the mediation stage by going through several processes, such as preliminary remarks from the mediator, explanations from both parties, identification of both problems, negotiation, offering options, finding understanding and formulating an agreement and closing with the closing of the mediation process by the mediator.³⁶

The mediation process that has been carried out is then implemented with the commitment of both parties to carry out the results of the agreement that has been reached. The mediation process, as stipulated in PERMA article 13 paragraph (4), is carried out within 40 (forty) working days from the appointment of a mediator who will handle the case and can be extended for 14 (fourteen) days based on the agreement of the parties. The understanding and commitment of the parties to make peace are 'forced' the parties to implement it. If not, then the court can take coercive measures if there are parties who do not want to carry out the results of the mediation agreement.

3.2. Mediation and Inheritance Disputes: A Philosophical Review of Islamic Law

In the Islamic legal tradition, dispute resolution prioritizes aspects of peace (*islah*) rather than if it has to be resolved in court.³⁷ Peace is very different from the judicial process because peace through mediation prioritizes the parties' benefits (win-win solution) rather than the judicial route that determines the parties' win and lose (win-lose key).³⁸ This condition will be very

³⁴ Abbas, *Mediasi Dalam Perspektif Hukum Svariah, Hukum Adat Dan Hukum Nasional*.

³⁵ Ibid.

³⁶ Ibid.

³⁷ Rokhmad, "Paradigma Hukum Islam Dalam Penyelesaian Sengketa."

³⁸ Adi Nur Rohman, "The Existence of Maslahah Mursalah As the Basis of Islamic Law Development in Indonesia," *KRTHA BHAYANGKARA* 13, no. 2 (2019): 251–260.

different from the impact that arises afterwards. Dispute resolution through mediation can preserve harmony between the parties without feeling wronged, unlike the judiciary. However, it is seen as a 'last resort', but not a few have resulted in a 'heated up' relationship due to the defeat received by one of the parties.

An overview of the verses of *mawarits* in surah an-Nisa mentioned above shows that indeed Allah wants peace. This can be seen still in the same sura, namely an-Nisa 'verse 35, which reads: "And if you fear that there will be a dispute between the two, then send a hakam from a male family and a hakam from a female family. If the two judges intend to make improvements, Allah will surely give *taufiq* to the husband and wife."

This verse explains the basic concept of mediation, which describes resolving cases with the help of a third party, which in Islamic legal terminology is called a *hakam*. A *hakam* in the paragraph above is positioned as a third party or mediator, or mediator in resolving conflicts between disputing parties. *Hakam*, in the conception of the content of the verse, is a peacemaker for a husband and wife in the event of conflict and dispute between the two.³⁹ Although this conception is mentioned in marital disputes, it is also relevant to other family issues. That way, the concept of *hakam* underlies the Supreme Court's spirit, which makes mediation the first step in the dispute resolution process in court.

Inheritance in Islam is one of the most complicated matters described in the Qur'an.⁴⁰ There are many verses of the Qur'an and the Prophet's hadith that explain the provisions of inheritance, ranging from the appointment of people who are entitled to receive the inheritance, the amount of property that must be distributed to each heir, even to which parties are prevented from receiving the inheritance due to the existence of a third party closer to the heir.

Amin Summa categorizes the verses of the *mawarits* into three categories, namely the main verse, the supporting verse and the verses related to the Mawaris. The main verse referred to includes Q.S. An-Nisa' verse 7, 11, 12 and 176 generally explains the share of each, which is the right of each heir, the determination of who is entitled to become the heir and the time of distribution of the inheritance. The next category of supporting verses is Q.S. An-Nisa 'verse 22-24 strengthens the position of the main verses so that the meaning and delivery of information are more precise and can be conveyed. In addition, these supporting verses also contain profound wisdom and philosophical substances beyond the ability of human reason, such as verse 9 of Surah

³⁹ Tihami and Sohari Sahrani, *Fikih Munakahat: Kajian Fikih Nikah Lengkap* (Jakarta: Rajawali Pers, 2009), 185.

⁴⁰ Sajuti Talib, "Hubungan Turunnya Ayat-Ayat Kewarisan Dalam Al-Qur'an," *Jurnal Hukum dan Pembangunan* (n.d.).

an-Nisa, which gives an obligation to parents not to let their children and all their offspring in a weak condition. Both in faith and materially. Therefore, the philosophical values in verse align with a 2:1 division between male and female heirs. The category of related verses concerns all verses relating to family, property, etc.⁴¹

If you look at the history of pre-Islamic inheritance, the implementation of the traditional inheritance of *jahiliyyah* is very contrary to the principle of justice. In principle, the inheritance of *jahiliyyah* customs mentions three factors that cause mutually inherited relationships: hereditary relationships, adopted children (*at-tabanni*), and agreements or oaths of allegiance. In addition, some rules of *jahiliyyah* normal family relations are discriminatory and unjust to their descendants and supposed heirs. That's why with the arrival of Islam, the inheritance system was then revised by prioritizing the principle of justice so that no party was wronged.

The wisdom of the *mawarits* verses above, when associated with mediation efforts in resolving inheritance disputes, looks very relevant to one another. The idea of hakam in household disputes and the conception of mediation in the dispute resolution process align with the wisdom behind these *mawarits* verses. The coherence contained in the concept of hakam in the Qur'an and mediation in PERMA shows one similarity in preventing disputes. The idea of prevention in conducting mediation efforts related to the settlement of inheritance disputes should be an essential element in this mechanism. Thus, what provisions of the Shari'a that avoid conflicts can be realized in the form of mediation efforts, especially in inheritance cases?

Another point that is no less important is that mediation is one way of resolving disputes in line with the *islah* principle. The dispute resolution process prioritizes the peace aspect between the disputing parties. The provisions of Islamic inheritance law, which are more rigid than other legal provisions, prove that the legalization of inheritance law is a form of prevention before disputes arise in inheritance matters. Take, for example, the surah. an-Nisa 'verse 11, which determines the amount of the share of boys and girls and specifically mentions the percentage of each heir with the parts that have been measured (*furudh muqaddarah*). The *mawarits* verse provisions indicate a wise decision from Allah SWT by determining the share of each heir according to a predetermined level.

The concept of peace (*islah*), which is the main goal in dispute resolution, makes mediation directed to resolve disputes and prevent disputes. The inheritance provisions that Allah SWT has

⁴¹ Suma, "Menakar Keadilan Hukum Waris Islam Melalui Pendekatan Teks Dan Konteks Al-Nushûsh."

outlined in the Qur'an are the philosophical keys behind the existence of legal products that prioritize aspects of peace before a dispute occurs.

4. Conclusion

In the case of Islamic inheritance, mediation and acting as a dispute resolution institution should also function as an effort to prevent disputes from occurring. Mediation is positioned to avoid disputes arising at the philosophical level in inheritance cases. This can be seen from the arguments from the Qur'an and hadith that talk about inheritance law in detail so that it can be interpreted that the existence of inheritance law is intended as an effort to prevent disputes in the future.

As the highest judicial institution, the Supreme Court should always encourage judges to mediate before proceeding to the following judicial process. The spirit to prevent disputes must always be put forward to provide the best solution for the disputing parties.

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