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Justice of the Heritage 2:1 Distribution in Article 176 of Islamic Law Compilation Perspective in Aristotle's Distributive Justice Theory

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ABSTRACT

This paper explores the justice of inheritance distribution as outlined in Article 176 of the Compilation of Islamic Law, specifically focusing on the 2:1 distribution ratio. The study addresses the perception of inequality that arises from this distribution, which some individuals view as unjust. To evaluate the fairness of this inheritance model, the research employs Aristotle's Theory of Distributive Justice as a theoretical framework. The methodology utilized is normative legal research, incorporating both statutory and conceptual approaches to analyze the relevant regulations and principles surrounding the 2:1 inheritance distribution. The findings indicate that the 2:1 distribution in Article 176 maintains a value of justice, as the rights allocated to male and female heirs are proportionate to their respective obligations. This conclusion challenges the notion that the distribution is inherently unjust, suggesting instead that it reflects a balanced approach to inheritance that aligns with the principles of justice articulated by Aristotle. The research ultimately contributes to the discourse on Islamic inheritance law by reaffirming the legitimacy of the 2:1 distribution ratio within the context of distributive justice.

Keywords: Aristotle's Distributive Justice, Inheritance Distribution, Islamic Inheritance

INTRODUCTION

Death will definitely happen in a human's life. When human dies, they will not take his wealth with him to the grave, if they have property during their death. Therefore, the problem arises as to who is most entitled to own the property of the deceased person. To solve this problem, there is an inheritance law that will distribute these assets to the people who are most entitled to receive these assets.

In Islamic inheritance constitution, especially those that use the Compilation of Islamic Law as its material law, there are six principles that apply to it. The six principles are the principle of bilateral, the principle of *ijbari*, the principle of individual, the principle of inheritance due to death, and the principle of balanced justice. The principle of *ijbari* has the meaning that inheritance is carried out by force since the heir dies, although without the will of the heir the execution of the inheritance is still done including the transfer of inheritance, the determination of each heir who has rights, and the determination of the portion of each heir. According to the Qur'an and Hadith, this principle aims to ensure that justice, certainty, and usefulness in Islamic inheritance law can be realized.¹

However, Islamic inheritance law in its journey to date has often caused debate among academics, namely the fairness of the portion of the inheritance regulated in Article 176 of the Compilation of Islamic Law with the rule "the share of inheritance for sons is twice that of daughters". or commonly known as a 2:1 portion. The reason for the debate over the issue of justice is the perception of some people who judge that the share of boys is more than girls which, when viewed mathematically, does not have balance or justice.

Based on the problems above, the authors are interested in studying the justice of inheritance 2:1 distribution in Article 176 inside the Compilation of Islamic Law using Aristotle's Distributive Justice Theory. This article aims to assess the fairness of the 2:1 distribution of inheritance in Article 176 of the Compilation of Islamic Law according to Aristotle's Theory of Distributive Justice.

RESEARCH METHODOLOGY

This research is included in the category of normative legal research using statutory approach and conceptual approach. statutory approach was carried out to find out all the regulations related to the 2:1 inheritance distribution in Article 176 of Islamic Law Compilation. While the approach is taken in order find out the concept behind the distribution of inheritance 2:1 in Article 176 of the Compilation of Islamic Law and analyze it with the concept of distributive justice of Aristotle.

¹ Yudian Wahyudi and Suwardi, "Dinamika Hukum Waris Di Indonesia," *Majalah Peradilan Agama* (Jakarta Pusat, 2016).

RESULT AND DISCUSSION

Aristotle's Theory of Distributive Justice

This theory of justice was initiated by Aristotle, a student of the Greek philosopher Plato. This theory was put forward by Aristotle in his book entitled *Nicomachea Ethics* which fully discusses justice based on Aristotle's general philosophy and is called the core of his legal philosophy, this is because the law can only be applied in the realm of justice.² Besides, according to Gustav Radbruch that the purpose of the law is to enforce three things, namely: justice, certainty, and expediency. Besides, according to Gustav Radbruch the purpose of law is to enforce three things, namely: justice, certainty, and expediency. Besides, according to Gustav Radbruch the purpose of law is to enforce three things, such as: justice, certainty, and benefit.³

Apart from this book, there is also a political book written by Aristotle which states that the formation of laws and regulations in a certain territory must be based on a sense of justice, namely a sense of what is good and something that is appropriate for people who socialize with each other in a group.⁴ However, taste is a very abstract thing and is closely related to something subjective, therefore there is an adage *iustitia est constans et perpetua voluntas ius suum cuique tribuere*, which means that the portion of rights possessed by every human being is not always the same. Thus, it can be understood that justice is not seen as leveling, because leveling will lead to injustice.⁵ This is based on the contradiction in the comparison between the parts will be the same between the people. If the person is not the same, then the fair distribution is not the same, according to Aristotle, this is a source of quarrels and recriminations if the same is given an unequal share, or the unequal is given an unequal share. In the end, the quarrel can be ended with the principles put forward by Aristotle, namely; "To each person based on his share."⁶

Aristotle argues that justice is assumed to be equality, meaning that justice is not generalization, but equality. More than that, justice consists of two models that he formulated, namely distributive justice and commutative justice, in the sense that distributive justice in terms of proportional equality and commutative justice in terms of numerical equality. Proportional equality gives birth to the principle of

² Bernard L. Tanya, *Teori Hukum : Strategi Tertib Manusia Lintas Ruang Dan Generasi*, 5th ed. (Yogyakarta: Genta Publishing, 2019).

³ Bernard Arief Sidharta, *Meuwissen Tentang Pengembangan Hukum, Ilmu Hukum, Teori Hukum, Dan Filsafat Hukum*, ed. Aep Gunarsa, 4th ed. (Bandung: Refika Aditama, 2013).

⁴ Bernard L. Tanya, *Teori Hukum : Strategi Tertib Manusia Lintas Ruang Dan Generasi*.

⁵ Jimly Asshiddiqie, *Pengantar Ilmu Hukum Tata Negara*, 11th ed. (Jakarta: Rajawali Pers, 2019).

⁶ M Khusnun Nia'am and Puput Dwi Lestari, "Konsep Moderasi Islam Dan Etika Keutamaan Aristoteles," *Academic Journal of Islamic Principles and Philosophy* 1, no. 2 (October 2020): 175–94, <https://doi.org/10.22515/ajipp.v1i2.2714>.

giving everyone rights with a portion of their property, while numerical equality gives birth to the principle that all people are equal before the law.⁷

Beside the equality-based justice model mentioned above, Aristotle also suggests other forms of justice to support the above-mentioned justice model, namely distributive justice and corrective justice. Distributive justice is the same as justice on the principle of proportional equality above, namely how the state or community group distributes justice to people according to their position. While corrective justice is a form of justice that has the aim of correcting wrong assumptions, in principle, corrective justice does not distinguish between people's positions or positions to obtain treatment in the eyes of the law, therefore corrective justice can be described as a manifestation of the fulfillment of human rights.⁸

Furthermore, Aristotle argues about the ideal state of law, by the state power based on fair thinking and the good or bad of the legal system in the country is determined by the morality of the people, and not humans who determine it. Therefore, people can have a fair attitude and can seep into the life of the nation and state, humans must be educated and expected to be good citizens and have appropriate behavior. Thoughts about the rule of law began to develop when there was a conflict of ratios about which is more acceptable between a life that is governed by humans or a good legal system that regulates that life. Aristotle's view shows that the rule of law is a sign of a good state or nation and not as a mere need that is not feasible.

If a mistake is made or the agreement is violated, it is corrective justice that is in charge of providing appropriate compensation for the party who feels aggrieved, and appropriate and appropriate punishment should be given to the perpetrator. This theory is implemented so that humans can determine how to do something that is good, something that is right, and something that is right. That is a way that uses ratios or pure logic so as to produce certainty about what should be judged wrong and what should be judged right. This happens because according to Aristotle that the goal of humans as rational moral persons is happiness (eudaimonia). So that the law is expected to guide humans in choosing the right decision.⁹

Furthermore, according to Sudikno Mertokusumo, Aristotle's justice is divided into two types, namely *Justitia Distributiva* (Verdelende, Begevende, or Distributive Justice) and *Justitia Commutativa* (Vergedende, ruilgerechtigheid, or Remedial Justice) with the following explanation.¹⁰

⁷ Zaeni Asyhadie and Arief Rahman, *Pengantar Ilmu Hukum*, 2nd ed. (Depok: Rajawali Pers, 2019).

⁸ Richard Kraut, "Aristotle's Ethics," in *Stanford Encyclopedia of Philosophy*, ed. Edward Zalta et al. (Stanford: Stanford University Press, 2018).

⁹ Johnny Ibrahim, *Teori & Metodologi Penelitian Hukum Normatif* (Malang: Bayumedia Publishing, 2013).

¹⁰ Fajlurrahman Jurdi, *Hukum Tata Negara Indonesia* (Jakarta: Prenada Media Group, 2019).

Distributive justice, namely justice that distributes property or other rights to each community. Aristotle views distributive justice as equality between something someone gets and something he should get. Distributive justice has a focus on the distribution of property, prices, and goods of equal value in society. Regardless of mathematical calculations, it becomes clear that what Aristotle meant was the distribution of property and wealth on the basis of values prevailing in social groups. This distributional justice may be a distribution that has a proposition in accordance with the value of goodness, namely the value of goodness in community groups.¹¹

Commutative/corrective justice, is a justice that aims to correct an incident which does not have a sense of justice. It means that the gift from one person to another is in balance with what is given and what he receives. The view of commutative justice is justice that does not distinguish a person's position or position in getting the same legal treatment.¹²

The Rights and Obligations of Men and Women in Household

1. The Meaning of Rights and Obligations

Rights are something that correlates with obligations. A person will not have the obligation or obligation to do something without the power to perform the obligation or obligation. This obligation requires a person to have the power to do everything necessary to carry out the obligation. Thus, no one is required to do something that is impossible to do.¹³

The explanation above is in line with the opinion of Ibn Nujaym which states that "right" is the "ability" or "capacity" possessed by a person or group. Therefore, the person or group becomes the subject of a right. Contrary to this, Ebrahim Moosa reviews rights as something related to objects or "materials", so that one's rights are more emphasized on one's ownership of materials.¹⁴ The power divided into two types, such as:

a. Physical Power or Strength

Physical power is the physical power needed to achieve a goal. Physical power here does not only include the meaning of the human body, but also tools in the form of objects or non-objects that we can use or command as we wish.

b. Moral Power or Rights

Moral power is the opposite of physical power, namely by stimulating or influencing the will of others through their

¹¹ Kraut, "Aristotle's Ethics."

¹² Kraut.

¹³ Agustinus W. Dewantara, *Filsafat Moral Pergumulan Etis Keseharian Hidup Manusia* (Surabaya: Kanisius, 2019).

¹⁴ Mujaid Kumkelo, Anas Kholish, and Fiqh Vredian, *Fiqh Ham : Ortodoksi Dan Liberalisme Hak Asasi Manusia Dalam Islam* (Malang: Setara Press, 2015).

intellect. Like a person who shows others that he claims something as his own and other people should morally respect that person's property.

Rights require everyone to respect those rights. Because all imperatives come from law, all rights exist because of the enforcement of the law. Therefore, in various literatures it is stated that law is the same as right, because all rights originate from law, then rights are by nature or according to their nature in accordance with the law that gives rights.¹⁵

Rights are limited by obligations. A person may exercise his rights to the extent that one's obligation to the rights of others overrides that person's rights. Because restrictions are a characteristic of rights, the most rational is for a person's right to stop if it harms the rights of others. Therefore, it can be obtained the meaning of obligation is a moral obligation to do or not do something.¹⁶

Similar as rights, every obligation begins from law, because all obligations are moral imperatives and all moral imperatives arise from law. Then the obligations are divided into two, such as:

a. Affirmative obligation

Affirmative obligations are obligations that are not carried out continuously, this is related to the scope or exclusion of a law.¹⁷

b. Negative Obligation

Negative obligation is an obligation that comes from the law that orders a person continuously and is never excluded by law.

2. Rights and Obligations of Men and Women in the Household According to Legislation

The rights and obligations of men and women in terms of the household are not mentioned in detail in the legislation. However, these rights and obligations can be found in the following legal regulations:

- a. Article 33 of Marriage Law which stated that the husband is obliged to protect his wife and provide all the necessities of household life according to his ability and the wife is obliged to manage household affairs as well as possible.
- b. Article 80 (4) and Article 83 of Islamic Law Compilation based on his income, husband need to provide:
 - 1) livelihood and residence for the wife;
 - 2) household expenses, treatment costs and medical expenses for wife and children;
 - 3) educational costs for children.

¹⁵ Dewantara, *Filsafat Moral Pergumulan Etis Keseharian Hidup Manusia*.

¹⁶ Dewantara.

¹⁷ Dewantara.

- 4) The main obligation for a wife is to be devoted physically and mentally to her husband in what is allowed by Islamic law.
- 5) The wife organizes and manages daily household needs as well as possible.

Beside the written legal regulations, the rights and obligations of men and women are also found in the Quran and Hadith with the following description:

- a. The needs of a woman's life must be met by her father, brothers, children, and men whose relatives are able to provide for her, as mentioned in the hadith number 1218 narrated by Imam Muslim.
- b. Men are required to provide for their families and relatives, while women are not required to provide for anyone, as mentioned in the QS. Al Baqarah verse 233.
- c. The needs of education, treatment of children and wives are borne by the husband (male) as mentioned in the hadith number 5364 narrated by Imam Bukhari.¹⁸

Division of Inheritance 2:1 Article 176 of Islamic Law Compilation

Article 176 of the Compilation of Islamic Law regulates the amount of inheritance for girls. As for the amount of the inheritance share that is often considered unfair, it is the ratio of the share of a daughter's share if she has a biological brother (a son), then she gets an inheritance share with a portion of half of the portion like the inheritance of her biological brother (a son-man). Therefore, the principle underlying article 176 of the KHI is needed so that it can have the value of justice in the eyes of the community, namely the principle of balanced justice.

Based on the author's search, the principle of balanced justice has two meanings in the context of Division of Inheritance 2: 1 In Article 176 of the Compilation of Islamic Law. The first meaning, the heir of the deceased child (heir) must get the heir even if he is a boy or a girl. The principle contained in this division of inheritance of course removes the customary inheritance law which adheres to the patrilineal system which only gives inheritance property to boys only, while daughters do not get inherited property. In addition, this principle also removes the customary inheritance law that adheres to the matrilineal system that only gives inheritance to daughters only.¹⁹

While the second meaning, the principle of balanced justice means that the amount of the inheritance received by sons and daughters is determined in a

¹⁸ Al Robin, "Problematika Hukum Pembagian Waris 2:1 Dalam Pendekatan Teori Qath'i Zhanni," *SANGAJI: Jurnal Pemikiran Syariah Dan Hukum* 2, no. 1 (August 2019): 108–33, <https://doi.org/10.52266/sangaji.v2i1.265>.

¹⁹ Sigit Supto Nugroho, *Hukum Waris Adat Di Indonesia* (Solo: Pustaka Iltizam, 2016).

balanced manner. The meaning of balanced here is the balance of the inheritance obtained between boys and girls in terms of the responsibilities or obligations they carry.²⁰ In Islamic inheritance law, basically the transfer of property left by the heir is a continuation of the responsibility borne by the heir in supporting his family.

Distributive Justice in the Context of Division of Inheritance 2:1 in Article 176 of the Compilation of Islamic Law

Aristotle's distributive justice is based on the equalization of distribution which creates opportunities for injustice, from this equalization it creates a conflict if the same person is given an unequal share and an unequal person is given an unequal share. From this conflict, Aristotle raises a principle that underlies distributive justice, namely: "to each according to his share."

Aristotle's concept of "to each according to his share" is the distribution or distribution of rights according to the obligations performed by a person.²¹ Therefore, it looks like the distribution must be proportional according to what someone has done. The proportional principle is ideal and at the same time not easy to apply, to apply it, there are many conditions that must be met, including the obligations or efforts that have been contributed must be measurable.²²

In implementing the proportional principle of distributive justice which was initiated by Aristotle on the 2:1 division of inheritance, Article 176 of Islamic Law Compilation, according to the author, must refer to the principle behind the 2:1 division of inheritance, namely the principle of balanced justice. When viewed from the understanding of the principle of balanced justice which gives a share of inheritance on the basis of differences in the obligations carried out between men and women in household matters, then the principle of balanced justice is very similar to the principles of Aristotle's distributive justice theory, namely "to each according to his share".²³ Thus, between Aristotle's theory of distributive justice and the principle of balanced justice, they have the same goal or principle, namely the proportional distribution or distribution of material.

While the conditions for the application of Aristotle's distributive justice theory are the conditions that must be met so that the proportional principle in this theory can be enforced. As described above, this proportional principle is ideal for

²⁰ Maimun Nawawi, *Pengantar Hukum Kewarisan Islam*, ed. Ulfatun Hasanah (Surabaya: Pustaka Radja, 2016).

²¹ Zakki Adlhiyati and Achmad, "Melacak Keadilan Dalam Regulasi Poligami: Kajian Filsafat Keadilan Aristoteles, Thomas Aquinas, Dan John Rawls," *Undang: Jurnal Hukum* 2, no. 2 (2019): 409–31, <https://doi.org/10.22437/ujh.2.2.409-431>.

²² Tri Wulida Afrianty and Silvia Putriwahyuni, "Analisis Keadilan Prosedural Dalam Penilaian Kinerja: Perspektif Social Exchange Theory," *E-Jurnal Ekonomi Dan Bisnis Universitas Udayana*, March 2020, 227, <https://doi.org/10.24843/EEB.2020.v09.i03.p01>.

²³ R. Fawzi et al., "Analysis of the Compilation of Islamic Law (KHI Article 181): An Islamic Law Perspective," in *Islam, Media and Education in the Digital Era* (London: Routledge, 2022), 403–7, <https://doi.org/10.1201/9781003219149-59>.

determining justice, but the application of this principle is difficult, because several conditions are needed to enforce this principle.

In the context of the 2:1 division of inheritance in Article 176 of the Compilation of Islamic Law, according to the author, the central issue that is a requirement in fulfilling the proportional principle is the obligation carried out by each heir, while the basis for the distribution of inheritance is 2:1 in Article 176 of the Compilation of Laws. Islam is the principle of balanced justice. Thus, the greater the obligations carried out by the heirs; the more portions of the inheritance obtained by the heirs.

If it observed from the components of the obligations inside the legislation, the obligations between men and women can be distinguished as follows:

1. Men have an obligation to provide for their wives, children, sisters, close relatives who cannot afford it. Whereas a man is only entitled to his wife's devotion or obedience.
2. Women have an obligation to serve their husbands or parents if they are not married and provide for children if the husband is unable to provide for them. Meanwhile, women have the right to support their parents, brothers and relatives if they are not married, while husbands have the right to support those who are married.

Then the rights and obligations above when analyzed using Aristotle's distributive justice theory which has a proportional principle, then men should have more rights than women, because the components of men's obligations are more numerous and these obligations have implications for material expenditures or higher living expenses. more than women's obligations which are less than men. Thus, the 2:1 division of inheritance in Article 176 of the Compilation of Islamic Law can be judged to be fair according to Aristotle's distributive justice theory and is still relevant to be used today.

CONCLUSION

The justice contained in the distribution of inheritance with the formula 2:1 in Article 176 of the Compilation of Islamic Law is supported by the principle of balanced justice. Meanwhile, the principle of balanced justice means that the share of inheritance for male heirs is twice that of female heirs. These differences are based on differences in the obligations carried out between men and women. The concept of division, when viewed from Aristotle's theory of distributive justice, still has the value of justice, because the concept of division has fulfilled the proportional principle, namely the proportion of rights obtained between boys and girls is directly proportional to the obligations implemented.

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