



**Disparity in Judge Decisions in Resolving *Rad* Inheritance Disputes:
Case Study at the Sharia Court in Banda Aceh City**

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Abstrak

Two contrasting viewpoints emerge over the issue of *rad* inheritance, notably concerning the events at the Syar'iyah Court. One viewpoint granted Baitul Mal the remaining inheritance, while the other viewpoint maintained that the heirs were entitled to reclaim their remaining assets. This study aims to identify the key elements considered by the justices of the Aceh *Syar'iyah* Court and the Banda Aceh *Syar'iyah* Court while making their verdicts in this case, as well as how Islamic law assesses the resolution of inheritance disputes related to property rights. This study scrutinizes the empirical legal research methodologies employed by analyzing them from the perspective of Islamic legal theory. The data is collected by conducting interviews and accessing material in libraries. The findings indicate that the Banda Aceh *Sharia* Court's Panel of Judges awarded the remaining inheritance to Baitul Mal, in accordance with the book *Hasyiyah al-Bajuri*, Qanun Number 11 of 2002, and Article 11 paragraph (1), and Article 14 of Aceh Qanun Number 7 of 2004, which pertain to the implementation of Islamic *Sharia* in the fields of *Aqidah*, Worship, and Islamic *Sharia*, and *Zakat* Management, respectively. Per Article 193 KHI, the justices of the Aceh *Syar'iyah* Court hold a differing opinion regarding the distribution of any leftover inheritance to the heirs of the *zawil furudh*. According to Islamic family law, Zaid bin Thabit and a few *Malikiyah* and *Syafi'iyah* jurists endorse the choice of Baitul Mal to accept the remaining bequest. Furthermore, Uthman bin Affan's viewpoint about the application of *rad*, which includes marital relations, asserts that all *furudh* heirs possess the right to *rad*. This stance is also backed by the ruling of the Panel of Judges of the Aceh *Syar'iyah* Court.

Keywords: Disparity, judge's decision, radical inheritance, Islamic family law

Abstrak

Persoalan kewarisan rad yaitu yang terjadi pada Mahkamah Syar'iyah memunculkan dua pendapat ada yang memberikan sisa harta warisan tersebut kepada Baitul Mal, pendapat lain sisa harta tersebut dikembalikan kepada ahli waris. Penelitian ini bertujuan untuk mengetahui bagaimana dasar pertimbangan hakim Mahkamah Syar'iyah Banda Aceh dan Mahkamah Syar'iyah Aceh dalam memutuskan perkara tersebut, dan bagaimana tinjauan hukum Islam terhadap penyelesaian kewarisan rad tersebut. Kajian ini menggunakan metode penelitian hukum empiris dianalisis dengan teori hukum Islam, teknik pengumpulan data kepustakaan melalui wawancara dan dokumentasi. Hasil penelitian menunjukkan bahwa Majelis Hakim Mahkamah Syar'iyah Banda Aceh memutuskan untuk memberi sisa harta warisan kepada Baitul Mal berdasarkan kitab Hasyiyah al-Bajuri, Qanun Nomor 11 Tahun 2002 tentang Pelaksanaan Syari'at Islam bidang Aqidah, Ibadah, dan Syari'at Islam jo. Pasal 11 ayat (1) dan Pasal 14 Qanun Aceh Nomor 7 Tahun 2004 tentang Pengelolaan Zakat. Majelis Hakim Mahkamah Syari'yah Aceh tidak sependapat, menurut ketentuan Pasal 193 KHI, bahwa jika terdapat sisa bagian harta warisan maka sisa tesebut di-rad-kan kepada ahli waris zawil furudh. Di dalam hukum keluarga Islam putusan Majelis Hakim Mahkamah Syar'iyah Banda Aceh yang memberikan sisa harta warisan kepada Baitul Mal sesuai dengan pendapat Zaid bin Tsabit dan sebagian fuqaha Malikiyah dan Syafi'iyah, dan juga putusan Majelis Hakim Mahkamah Syar'iyah Aceh sejalan dengan pendapat Utsman bin Affan bahwa pengembalian yang bernama rad itu juga berlaku untuk hubungan perkawinan, sehingga semua ahli waris furudh mendapat hak atas rad.

Kata Kunci: *Disparitas, putusan hakim, kewarisan rad, hukum keluarga Islam*

Introduction

In Indonesia, inheritance problems hold substantial importance in both Islamic family law and Islamic law. The significance of inheritance is such that it is extensively addressed in all state legal rules and Islamic jurisprudence literature. Both the Islamic Law Compilation and the Marriage Law provide evidence of this. The legal regulations delineate the prerequisites and factors to be taken into account for judges serving in Indonesia's religious courts.¹

The evolving cultures and practices of Indonesian societies also influence historic artifacts. Therefore, it is apparent that culture and norms exert the most

¹ Euis Nurlaelawati, *Modernization, Tradition and Identity: The Kompilasi Hukum Islam and Legal Practice in The Indonesian Religious Courts*, Amsterdam University Press, 2010. Mursyid Djawas, et.al., "The Construction of Islamic Inheritance Law: A Comparative Study of The Islamic Jurisprudence and The Compilation of Islamic Law," *JURIS: Jurnal Ilmiah Syari'ah* 21, No. 2 (2022). Ismail Ismail, et.al., "The Contribution of 'Urf to the Reform of Islamic Inheritance Law in Indonesia," *Al-Risalah: Forum Kajian Hukum dan Sosial Kemasyarakatan* 22, No. 2 (2022), p. 165-178.

significant impact on the distribution of inheritance. This is observable in diverse cultural contexts such as Aceh, Minangkabau, Banjar, Javanese, Bugis, and Mandar. The division of inheritance, whether in the formal legal system or the customary system, nevertheless prioritizes Islamic legal rules.² *Rad* inheritance, also known as residual inheritance, is a method of distributing inherited assets when there is an insufficient number of heirs to split the original portion equally.

Disputes often arise on matters that are resolved by the Religious Courts. Concerning the matter of inheritance in Indonesia, Article 193 of the Compilation of Islamic Law provides a potential solution as a guiding principle: The inheritance is distributed in a proportional manner, based on the rights of each heir. If the distribution among the heirs of *Dzawil Furud* shows that the numerator is smaller than the denominator, and there are no heirs to the *ashabah*, the remaining portion is divided equally among them. As to the Guidelines for the Implementation of Duties and Administration of Religious Courts, the procedure for distributing remaining assets does not extend to individuals who have lost their spouse. Article 193 of the KHI includes the principle of equitable justice, which necessitates a fair distribution of rights and responsibilities, adjustments to the allocation of inherited assets, and the return of any surplus assets to the current heirs, proportionate to their respective shares.³

Article 193 of the KHI (Islamic Law Compilation) should be used as a primary legal source by judges in the *Syar'iyah* Court when making decisions related to the division of inheritance. Practically, there is a discrepancy between the decision made by a judge of the Banda Aceh *Syar'iyah* Court regarding the distribution of inheritance assets and the provisions stated in this article. This discrepancy is evident in decision Number 223/Pdt.G/2017/Ms.Bna, where the Panel of Judges responsible for handling cases of inheritance asset distribution acted contrary to the provisions. The ruling states that H bin MA, the spouse of the heir, was granted 25% of the property, while MJ bint H, the biological daughter of the deceased, was granted either 50% or 50% of the inheritance, leaving the remaining 25% to the testator. The heritage was bestowed upon the Baitul Mal Banda Aceh institution.⁴

Furthermore, discrepancies in the protocols for settling *rad* cases were identified in decision No.52/Pdt.G/2018/MS.Aceh, which is an appellate ruling based on decision No. 223/Pdt.G/2017/Ms.Bna. The appellate judges determined that the remaining 1/4 of the inheritance was divided among the present heirs, which includes the husband (widower). Widowers do not have the right to the

² Khairuddin Hasballah, et.al. "Patah Titi and Substitute Heirs: A Study of Legal Pluralism on the Inheritance System in Aceh Community," *Ahkam: Jurnal Ilmu Syariah* 21, No. 2 (2021), p. 229-324. Ulfiani Rahman, "Men and Women in The Distribution of Inheritance in Mandar, West Sulawesi, Indonesia," *Samarah: Jurnal Hukum Keluarga dan Hukum Islam* 6, No. 1 (2022).

³ Muhammad Daud Ali, *Hukum Islam dan Peradilan Agama (Kumpulan Tulisan)*, (Jakarta: Raja Grafindo Persada, 2002), p. 129.

⁴ The decision of the Syari'yah Court of Banda Aceh No.223/Pdt.G/ 2017/MS.Bna.

remaining assets as per the stipulations outlined in the Guidelines for the Implementation of Duties and Administration of Religious Courts.

The consequences of these two choices will undoubtedly provoke a discussion, as the assets that were supposed to be given to the rightful heirs, specifically the daughters as stated in Article 193 KHI, will instead be allocated to the Baitul Mal institution in the initial decision and to the husband (widower) in the subsequent decision. In this scenario, the appeal pertains to a party who is not the rightful successor. The provisions stipulate that the judge can only transfer control of the inherited assets to Baitul Mal if there is no rightful party entitled to the assets, as stated in Article 191 KHI. This article specifies that if the heir has no heirs or if the heirs do not exist, control of the assets is transferred to Baitul Mal for religious purposes and general welfare.

In order to ensure legal certainty regarding the allocation of remuneration, it is imperative to conduct further research on the subject, taking into account the provisions of Article 193 KHI and the Guidebook for the Implementation of Duties and Administration of Religious Courts. These regulations govern the technical division of inheritance assets classified as rad cases and address the potential for disputes to arise between the parties.

This paper will provide research findings on the Disparity of Judges' Decisions in Rad Dispute Resolution that occurred in the Banda Aceh Court and Aceh Province. This study uses empirical legal research methods analyzed with Islamic legal theory,⁵ literature data collection techniques through interviews and documentation.

Rad Concept in the Islamic Law

Linguistically, *ar-radd* indicates to turn aside or backward. The phrase describes it as a decrease in the problem's original source and a rise in the number of *ashabul furudh* portions. Stated differently, *rad* arises when the number of heirs from the problem's origin is insufficient, or when the number of heirs' shares is less than the problem's origin. *Rad* happens when the following three conditions are met:⁶

- a. There is *ashabul furudh*
- b. There is excess inheritance after being distributed to each *ashabul furudh*
- c. There are no heirs to the *ashabah*

Rad will not occur unless these three pillars are met. For example, if the heirs are all *ashabah* or numerous *ashabul furudh* and one *ashabah*, the inheritance will be lost or reduced. Similarly, if the number of shares (shares) of the successors is the same as the initial number of problems, with no excess, there will be no *rad* problems.⁷

⁵ Salim HS and Erlies Septiana Nurbani, *Penerapan Teori Hukum pada Disertasi dan Tesis*, Buku II, Jakarta: RajaGrafindo Presana, 2018.

⁶Khairuddin, *Fikih Faraidh: Teknik Penyelesaian Kasus Waris*, (Aceh Besar: Sahifah, 2020), p. 51.

⁷Amal Hayati, *Hukum waris*, (Medan: Manhaji, 2015), p. 63.

Except for husband and wife, Rad can arise and involve any ashabul furudh. There are just eight ashabul furudh who can receive rad. These are:⁸

- a. Girl (daughter)
- b. A granddaughter descended from a son
- c. Biological sister
- d. Father's half-sister
- e. Biological mother
- f. Sahih grandmother (father's mother)
- g. Mother's sister
- h. Mother's brother

Even if both fathers and grandfathers are ashabul furudh under some circumstances, they cannot acquire rad. In any case, if one of them is included in the allocation of inheritance rights, there cannot be rad because both will get inheritance as ashabah.⁹

The Judge's Basic Considerations in the *Rad* Inheritance (a Case at the Banda Aceh City Syar'iyah Court)

In decision no. 223/Pdt.G/2017/MS.Bna, dated September 11, 2017, the plaintiff, who is the husband of the deceased heir, initiated a legal action at the Banda Aceh Syari'yah Court. The purpose of the lawsuit is to divide the inheritance assets that were left behind by the deceased heir (his wife), which have been unilaterally controlled by the defendant (his biological daughter). Consequently, the plaintiff requested the distribution of the inherited assets (*faraid*) to the rightful heirs, including both the plaintiff and the defendant, in accordance with the current laws.

In this decision the Panel of Judges determined the share of each heir as follows:¹⁰

1. H bin MA (husband/plaintiff) received 1/4 (a quarter) share
2. MJ bint H (daughter/defendant) gets 1/2 (half) share or is the origin of problem four so she gets 2/4
3. The remaining 1/4 (quarter) part is the right of Baitul Mal, due to the absence of *ashabah* either by lineage or freeing/freeing slaves (*wala'*)

This decision is based on several factors, including the fact that the heir's remaining assets are not completely distributed to the *zawil furudh* and there are no *ashabah*, or because *wala'* is based on the *syara'* argument as stated in the book of *Hasyiyah al-Bajuri*, juz II, page 75, which states:

فإن لم يوجد للميت عصبه بالنسب و لا عصبه بالولاء فماله لبيت المال

⁸Gamal Achyar, *Nilai Adil Dalam Pembagian Warisan Menurut Hukum Islam*, (Banda Aceh: Awsat, 2018), p. 123.

⁹Gamal Achyar, *Nilai Adil Dalam Pembagian Warisan*, p. 123.

¹⁰ The decision of the Syari'yah court of Banda Aceh No.223/Pdt.G/ 2017/MS.Bna.

It means: *If the heir lacks a 'ashabah (who can dispose of all assets), either due to family connections or because of wala' (freeing slaves), his possessions are given to Baitul Mal.*

The transfer of the remaining assets to *Baitul Mal* is in accordance with *Qanun* Number 11 of 2002, which pertains to the implementation of Islamic *Shari'ah* in the areas of *Aqidah*, Worship, and Islamic *Sharia*. This transfer is also aligned with Article 11, paragraph (1), and Article 14 of Aceh *Qanun* Number 7 of 2004, which specifically addresses the management of zakat. According to these regulations, the *Baitul Mal* Agency is a regional institution with the authority to manage *zakat*, *infaq*, and other religious assets in the Province of Nanggroe Aceh Darussalam. Considering that this aligns with the requirements and implementation of the Islamic *Shari'ah* in Aceh, which has been progressing smoothly, the transfer of the remaining assets to *Baitul Mal* is also approved. The *Baitul Mal* Agency is tasked with the development of *mustahiq* and *muzakki*, the management of zakat, and the empowerment of religious assets in accordance with Islamic law.

From the judge's views, it may be inferred that it is possible to allocate the remaining bequest to *Baitul Mal*, as long as the management of religious assets in *Baitul Mal* is efficiently structured, methodical, and supervised by a reliable and impartial *amil*. If these criteria are not fulfilled, the remaining assets are distributed to the rightful heirs, excluding the husband and wife, who have no direct relation to the person who made the will.¹¹

Nevertheless, in the appeal case number 52/Pdt.G/2018/Ms. Aceh, the Aceh *Syari'yah* Court Panel of Judges expressed disagreement with the legal rationale of the Banda Aceh *Syari'yah* Court Panel of Judges, who awarded the surplus portion of the inheritance to *Baitul Mal*. According to Article 193, the Compilation of Islamic Law, any remaining inheritance is distributed among the *zawil furudh* heirs, which in this case are the husband (plaintiff/appellee) and the daughter (defendant/appellant). Their portions are distributed based on their shares, resulting in the reduction from eight to six. Therefore, the husband receives a 33.3% share (2/6) and the daughter receives a 66.7% share (4/6) of the inheritance.¹²

The two rulings differ in their approach to dividing the residual inheritance due to variances in the underlying legal factors considered. The panel of judges at the Aceh *Syari'yah* Court relied on Article 193, the Compilation of Islamic Law to make legal decisions about the distribution of the remaining inheritance. Meanwhile, the panel of judges at the Banda Aceh *Syari'yah* Court resorted to the book *Hasyiyah al-Bajuri*. Both opinions carry equal legal weight due to the fact that a religious court judge is not only bound by the rules of the Compilation of Islamic Law when rendering decisions in inheritance issues. Compilation of Islamic Law, or the *Kitab al-Hujjah al-Islamiyyah*, is merely one of the foundational principles of

¹¹ Syekh Ibrahim al-Bajuri, *Hasyiyah al-Bajuri*, juz II, (Surabaya: Maktabah Imaratullah, n.d.), p. 75.

¹² Decision of the *Syari'yah* Court of Aceh No. 52/Pdt.G/2018/Ms.Aceh.

Islamic jurisprudence. It is important to note that there exist additional authoritative texts on Islamic legal rulings, known as *fiqh*.¹³

However, some courts argue that individuals other than the husband and wife, known as *zawil furudh* heirs, should be entitled to receive the remaining inherited assets. This means that the allocation of these assets varies not only for Baitul Mal or *zawil furudh* heirs, including spouses. This perspective aligns with the Guidelines for the Execution of Duties and Management of Religious Courts, which explicitly state "*rad*." The concept of *Rad* does not pertain to widows and widowers when the heirs are limited to *zawil furudh* and the number of shares inherited is less than 1 (one)."¹⁴

The Panel of Judges, being independent and impervious to external influence, possess the exclusive authority to apply fundamental legal principles in a case. This encompasses the utilization of the Compilation of Islamic Law, the Guidelines for the Implementation of Duties and Administration of Religious Courts, or other books related to Islamic jurisprudence (*fiqh*). The concept of a judge's freedom is based on Article 24, paragraph (1) of the 1945 Constitution, which states that "judicial power is an independent power responsible for administering justice and upholding the law and justice."

Independent judicial power, also referred to as judge independence, denotes the capacity of judicial institutions to render impartial and unbiased rulings. A judge must exhibit impartiality and refrain from favoring any party involved in a litigation or disagreement when issuing a ruling. An impartial ruling is characterized by the judge's lack of bias towards any party involved and the absence of any perception of unfairness among the parties. To render an objective decision, the judge must take an honest position and rely on widely accepted objective measures or criteria (conditions/circumstances in society).¹⁵

The author's analysis indicates that the lack of a binding rule pertaining to radical inheritance—such as Law Number 1 of 1974 concerning marriage, which serves as a guide for judges in religious courts when resolving marriage-related cases—is what leads to differences in legal considerations when deciding this case. One of the regulations controlling *rad* is the Compilation of Islamic Law; according to Article 7 paragraph (1) of Law Number 12 of 2011 concerning Formation of Legislative Regulations, the Compilation of Islamic Law's authority is restricted to Presidential Instructions (Presidential Instructions) and is not included in Indonesia's hierarchy of laws and regulations.

The Republic of Indonesia's 1945 Constitution, the People's Consultative Assembly Decree (TAP MPR), Laws and Government Regulations in Lieu of Law, the Government Regulations, Presidential Regulations, Provincial Regional

¹³ Interview with Yusri, the judge at the Syari'yah Court of Banda Aceh, November 13, 2020.

¹⁴ Interview with Abu Bakar Ubit, Judge of the Syari'yah Court Banda Aceh, 13 November 2020.

¹⁵ Firman Floranta Adonara, "Prinsip Kebebasan Hakim dalam Memutus Perkara Sebagai Amanat Konstitusi," *Jurnal Konstitusi* 12, No.2, (2015), p. 230-231.

Regulations, and Regency/City Regional Regulations make up the types and hierarchy of Legislative Regulations. Because Presidential Instructions are not included in Article 7 Paragraph (1) of Law Number 12 of 2011 about the Formation of Legislative Regulations, it is evident from the aforementioned article that the Compilation of Islamic Law is not included in the legal hierarchy or order of laws and regulations in Indonesia. Thus, the Compilation of Islamic Law is merely a proposal from the Minister of Religion, who executes the President's orders to be applied in all Indonesian Religious Courts, rather than a legally binding norm.

The goal of the Compilation of Islamic Law is actually quite beneficial; it is to create unified standards for judges of Religious Courts and to make it a law that all Muslims in Indonesia must abide by. As a result, decisions made by Religious Courts will no longer be unclear. This goal, however, cannot be achieved in practice because the Compilation of Islamic Law is merely a recommendation that need not be followed. Instead, judges at Religious Courts base their decisions not only on the Compilation of Islamic Law but also on references to previous jurists' fiqh books, which they consult depending on the circumstances of each case. As a result, judges often reach different conclusions while trying to resolve the same cases.

Islamic Law Review of *Rad* Inheritance Settlement in the Judge's Decision at the Banda Aceh City Sharia Court

In decision no. 223/Pdt.G/2017/MS.Bna, the judge ruled that the daughter of the heir would get 50% of the estate, the heir's spouse would acquire 25% of the estate, and Baitul Mal Banda Aceh City would inherit the remaining 25%. This decision aligns with the perspectives of Zaid bin Thabit and specific scholars from the Syafi'iyah and Malikiyah schools, who argue that Baitul Mal should receive the entire inheritance rather than people receiving a predetermined share.

Zaid bin Thabit's reasons for rejecting *rad* were:¹⁶

1. It is unnecessary to modify the obligatory share of the inheritors of *Zawil Furudh Qath'y* since Allah SWT has already established it. Adding *fardh* for the heirs of *zawil furudh* refers to making provisions that go beyond the limits set by *Shari'ah* law.. This is an evil deed, according to Allah SWT:

Meaning: *And Allah will undoubtedly cast whoever disobeys Him and His Messenger and disobeys His commands into the flames of hell, where he will spend eternity in agonizing agony.*

2. After concluding the revelation of the inheritance verse, Rasulullah SAW strengthened the word of Allah regarding the *fardh-fardh* of heirs,

¹⁶ Khairuddin and Zakiul Fuadi, *Belajar Praktis Fikih Mawaris* (Banda Aceh; UIN Ar-Raniry, 2014), p. 41-42

ان الله قد أعطي حق حقه (رواه الترمذي)

3. meaning that verily Allah has provided rights to the right holders (HR. Turmuzi).¹⁷

According to the Hadith of Rasulullah SAW.

...انا وارث من لا وارث له (رواه ابو داود)

I am the successor of those who have no other heirs. (Mr. Abu Daud)¹⁸

4. They are regarded as heirs of the *ashabah* if the remaining assets are given back to them and are not regarded as further *furudh*; generally speaking, they are female heirs who have received specific *furudh*.¹⁹

In order to ensure that all *furudh* heirs have the right to *rad*, the Panel of Judges at the Aceh Sharia Court upholds Uthman bin Affan's assertion that the return known as *rad* also applies to marital ties. They contend that the limitations are not well-founded. When lowering *aul*, they (the husband and wife) receive the same responsibilities. Naturally, there's no need to distinguish when obtaining more rights. In accordance with Uthman's *ijtihad*, the heirs who received the *rad* were:²⁰

- a. Husband and wife
- b. Father
- c. Grandpa, go upstairs
- d. Mother
- e. Grandma
- f. Girl
- g. Boy's granddaughter
- h. Siblings
- i. Father's sister
- j. Mother and sister
- k. Siblings.

According to the Guidelines for the Implementation of Duties and Administration of Religious Courts, widows and widowers are not required to go through the residual asset distribution process in *rad* situations. This perspective aligns with that of certain associates, such as Ali bin Abi Talib, who asserts that all beneficiaries of *Zawil Furudh*, excluding spouses, are entitled to receive *rad*. The denial of inheritance rights to a husband and wife is based on the principle that

¹⁷Ibnu Hajar al-Asqalani, *Bulughul Maram dan Dalil-Dalil Hukum*, terj. Khalifaturrahman, (Jakarta: Gema Insani, 2013), p.417.

¹⁸ Sayid Muhammad bin Ismail al-Kahlani Al-San'ani, *Subul al-Salam*, Juz III, (Kairo: Dar Ikhya' al-Turas al-Islami, 1960), p. 100.

¹⁹ Amir Syarifuddin, *Hukum Kewarisan Islam*, (Jakarta: Prenada Media, 2004), p. 106.

²⁰ Fatchur Rahman, *Ilmu Waris*, (Bandung: Al- Ma'arif, 1975), p. 431.

inheritance is solely reserved for the biological offspring of blood relatives. This is based on the statement made by Allah in Surah al-Anfal, verse 75, to be precise:

وَالَّذِينَ ءَامَنُوا مِنۢ بَعْدِ وَهَاجَرُوا وَجَاهَدُوا مَعَكُمْ فَأُولَٰئِكَ مِنكُمْ وَأُولُوا الْأَرْحَامِ بَعْضُهُمْ أَوْلَىٰ بِبَعْضٍ فِي كِتَابِ اللَّهِ إِنَّ اللَّهَ بِكُلِّ شَيْءٍ عَلِيمٌ

And those who believed after [the initial emigration] and emigrated and fought with you - they are of you. But those of [blood] relationship are more entitled [to inheritance] in the decree of Allāh. Indeed, Allāh is Knowing of all things

This paragraph emphasizes the significance of uterine connections in comparison to other interactions. Therefore, individuals who are biologically related through blood relations (uterus) rather than through marriage ties (consanguinity or *sababiyah*) are the rightful heirs who have the entitlement to receive *rad*. The husband and wife are not entitled to inherit because death will terminate their familial relationship. This is additionally reinforced by the divine utterance of Allah SWT in *surah* al-Ahzab verse 6.

التَّيِّبُ أَوْلَىٰ بِالْمُؤْمِنِينَ مِنْ أَنفُسِهِمْ وَأَزْوَاجُهُ أُمَّهَاتُهُمْ وَأُولُوا الْأَرْحَامِ بَعْضُهُمْ أَوْلَىٰ بِبَعْضٍ فِي كِتَابِ اللَّهِ مِنَ الْمُؤْمِنِينَ وَالْمُهَاجِرِينَ إِلَّا أَن تَفْعَلُوا إِلَىٰ أَوْلِيَآئِكُمْ مَّعْرُوفًا كَانَ ذَٰلِكَ فِي الْكِتَابِ مَسْطُورًا

The Prophet has a stronger affinity to the believers than they do themselves. And his wives are their mothers. As ordained by Allah, blood relatives are more entitled 'to inheritance' than 'other' believers and immigrants, unless you 'want to' show kindness to your 'close' associates 'through bequest'. This is decreed in the Record

The term *wajhu al-istidlal* affirms that Allah has determined that individuals who have a familial bond possess a stronger entitlement to inheritance compared to those who do not. This verse possesses a general quality, rendering it incapable of being tailored to any other subject matter. The assets that are left after the *ashabul furudh* receive their portions must be returned to those who have priority, namely the priority side of inheritance. Due to the continued existence of familial ties, their inheritance rights remain contingent upon this connection.²¹

This group makes assumptions not only from the verse's suggestions but also from a passage in the *muttafaq 'alaih* hadith that says:

²¹ Muhammad Muhyiddin Abdul Hamidi, *Panduan Waris Empat Mazhab*, (Jakarta; Al-Kautsar, 2009), p. 246

قال: أنا أولى بالمؤمنين من أنفسهم, فمن توفي من المؤمنين, فترك ديناً, فعلي قضاؤه, ومن ترك مالا, فلورثته (متفق عليه)

Meaning: "I have more rights towards the believers than themselves," declared the Messenger of Allah. That being said, I will settle any debt left by a believer who passes away. And property left by a deceased person belongs to his heirs".²²

The initial faction that donates the remaining inheritance to Baitul Mal holds the belief that Muslims in general, as well as other relatives, should be prioritized over members of their kinship (via *rad*). However, it is important to consider that the relatives of the blood relationship have already been granted their rights as *zawil furudh*, and donating to Baitul Mal does not diminish the inheritance of the *zawil furudh* heirs.²³

The hadith of Rasulullah, however, contradicts the first group's opinion that there is no such thing as *Rad*:

عن سعد بن ابى وقاص قال : قلت يا رسول الله اني قد بلغ بي من الوجع و انا ذو مال ولا يرثني الا ابنة لى واحدة افاتصدق بثلثي مالى؟ قال: لا . قلت: افاتصدق بشطره؟ قال: لا . قلت: افاتصدق بثلثه؟ قل: الثلث والثلث كثير, انك ان تذر ورثتك اغنياء خير من ان تذر عائلة يتكفون الناس. (متفق عليه)

Meaning: Said bin Abi Waqas stated, "My illness is getting worse, O Messenger of Allah, while I have wealth, I have no heirs except a daughter. Can I give away two thirds of my wealth?" "No" was the Prophet's response. What about half, I asked? The Prophet said: "no." I said, "How about a third?" One third, the Prophet retorted; that is a lot. It is preferable to leave your heirs wealthy rather than impoverished, forcing them to rely on others for support. (HR. Muttafaq alaih).²⁴

According to this *hadith*, Sa'id bin Abi Waqas had a daughter who was his successor. He intended to leave half or two thirds of his property to his daughter, even though the daughter's share was only half of what the Qur'an designated as *ashabul furudh*. However, the Messenger of Allah only verified that he would leave one third. All of the remaining fortune is transferred to the girls by the religious teaching not to leave successors in impoverished circumstances.²⁵

²²Muhammad Fu'ad Abdul Baqi, *Kumpulan Hadist Bukhari Muslim, Translation*, (Solo: Insan Kamil, 2010), p. 421.

²³ Amir Syarifuddin, *Hukum Kewarisan Islam...*, p. 110.

²⁴ Ibnu Rusyd, *Bidayatul Mujtahid*, Translation, (Jakarta; Pustaka Azzam, 2007), p. 669-670.

²⁵ Amien Husein Nasution, *Hukum Kewarisan: Suatu Analisis Komperatif Pemikiran Mujtahid Dan Kompilasi Hukum Islam*, (Jakarta: Raja Grafindo Persada, 2014), p. 161.

Conclusion

Rad inheritance is a strategy for distributing inherited property in cases where there is either an insufficient amount of inheritance available from the original source, or when there are fewer heirs than the original source of the inheritance. Disputes often arise in Religious Courts regarding settlements. An example of this is decision No. 223/Pdt.G/ 2017/MS.Bna, in which the judges of the Banda Aceh *Sharia* Court awarded Baitul Mal the remaining inheritance (*rad*) based on legal reasoning derived from the book *Hasyiyah al-Bajuri*, Qanun Number 11 of 2002 regarding the Implementation of Islamic *Sharia* in the areas of *Aqidah*, Worship, and Islamic *Sharia*; Article 11 paragraph (1) and Article 14 Aceh Qanun Number 7 of 2004 regarding Zakat Management. The Aceh *Syari'iyah* Court's Panel of Judges has expressed their disagreement with the provisions outlined in Article 193 KHI. These provisions dictate that any remaining inheritance should be allocated to the heirs of the *zawil furudh*, namely the husband (plaintiff/appellee) and the daughter (defendant/appellant). This disagreement was stated in decision no. 52/Pdt.G/2018/MS.Aceh, which is an appeal of decision no. 223/Pdt.G/2017/MS.Bna. Zaid bin Thabit and scholars from the *Malikiyah* and *Syafi'iyah* schools of thought, in accordance with Islamic law, endorse decision no. 223/Pdt.G/2017/MS.Bna. This judgment distributes the remaining inheritance to Baitul Mal. These academics argue that if the inheritance is still in Baitul Mal, it should be inherited by the institution itself rather than being distributed among individuals who receive a specific share. Meanwhile, the judges panel finding at Aceh *Syar'iyah* Court No. 52/Pdt.G/2018/MS.ACEH aligns with Utsman bin Affan's perspective, which states that marital relations are encompassed by the concept of *rad*, referring to the return of property, and so all *furudh* heirs have the right to *rad*. They argue that the constraints lack a solid basis. When reducing the workload, both the husband and wife are assigned equal tasks. There is no necessity to differentiate while acquiring more privileges.

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Interviews

- Interview with Yusri, the judge at the Syari'yah Court of Banda Aceh, November 13, 2020.
- Interviewed with Abu Bakar Ubit, Judge of the Syari'yah Court Banda Aceh, November 13, 2020.