

PERSECUTORY AND DEFAMATION AS BARRIERS TO INHERITANCE (Maqāṣid Syarī'ah Approach at KHI)

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Abstract

“Kompilasi Hukum Islam,” which was ratified through Presidential Instruction (or now decree) No. 1 of 1991, is a modern codification of Islamic individual and family law that becomes the standard of judges’ reference in resolving cases in religious courts. One of the important parts of KHI is inheritance, which is the main focus of this paper. The article on inheritance in KHI is interesting to be further reviewed because it has a different legal provision to fiqh or qanun. Through the study of libraries with a philosophical approach, this paper intends to analyze the provisions that become a barrier to inheritance from the perspective of Maqāṣid al-Sharia. The results of this study show that the obstacles to obtaining inheritance for reasons of persecution and slander, as mentioned in article 173 KHI, there are some barriers to one obtaining inheritance that are not discussed as a barrier to inheritance in the classic fiqh book of severe persecution and slander. Through literature research, it is understood that the decree of persecution and slander is a barrier to inheritance in line with the Maqāṣid al-Sharia, namely to protect the soul (hiḡ al-naḡsi), then guard the property (hiḡ al-māl) and further maintain self-respect (hiḡ al-’Ird) Thus. However, severe persecution and slander are not listed in classical Islamic jurisprudence as a barrier to inheritance. With the study of Maqāṣid al-Sharia, these two things are very appropriate to be applied in the rule of inheritance law, especially in Indonesia. This is because these two acts cause very much harm to the victim (beir).

Keywords: Inheritance law, Kompilasi Hukum Islam, Maqāṣid Syarī'ah

Abstrak

“Kompilasi Hukum Islam”, yang disahkan melalui Instruksi Presiden No. 1 Tahun 1991, merupakan kodifikasi modern hukum perorangan dan keluarga Islam yang menjadi standar rujukan para hakim dalam menyelesaikan perkara di pengadilan agama. Salah satu bagian penting KHI adalah kewarisan, yang menjadi fokus utama dalam tulisan ini. Pasal tentang waris dalam KHI menarik dikaji lebih lanjut karena memiliki ketentuan hukum yang berbeda dengan fiqh atau qanun. Melalui studi pustaka dengan pendekatan filosofis, tulisan ini bermaksud menganalisis ketentuan yang menjadi penghalang warisan dari perspektif Maqāṣid al-Syarī'ah. Hasil studi ini menunjukkan bahwa halangan mendapatkan warisan karena alasan penganiayaan dan defamasi, sebagaimana yang disebutkan dalam pasal 173 KHI terdapat beberapa penghalang seseorang mendapatkan hak waris yang tidak dibahas sebagai penghalang kewarisan dalam kitab fiqh klasik yaitu penganiayaan berat dan defamasi. Melalui penelitian kepustakaan,

dipahami bahwa ketetapan penganiayaan dan memdefamation sebagai penghalang kewarisan sejalan dengan Maqāṣid al-Syarī'ah yakni yakni untuk menjaga jiwa (biḥfẓ al-nafsi), kemudian menjaga harta (biḥfẓ al-māl) dan selanjutnya menjaga kehormatan diri (biḥfẓ al-ʿrd) Maka, sekalipun penganiayaan berat dan defamation tidak tercantum dalam fiqh klasik sebagai penghalang kewarisan, namun dengan kajian Maqāṣid Syarī'ah, kedua hal ini sangat pantas diterapkan dalam aturan hukum waris, khususnya di Indonesia. Hal ini disebabkan karena dua perbuatan ini menyebabkan sangat banyak mudarat kepada korban (pewaris).

Kata Kunci: Hukum Waris, Kompilasi Hukum Islam, Maqāṣid Syarī'ah.

INTRODUCTION

Inheritance law in Indonesia at the beginning of its history has not been in the form of statutory law as contained in the current Compilation of Islamic Law but still quotes from the book of Fiqh chapter Faraid. This means that the judge, in giving consideration when he wants to decide in court, refers to the book of fiqh faraid. Therefore, the developed fiqh is fiqh that varies according to the religion of the existing schools. In general, fiqh developed in Indonesia follows the Imam Shafi'i school without closing other schools of thought. However, if a court decision that refers to different fiqh results in a different determination in one inheritance case, it will only cause problems.¹

The Compilation of Islamic Law (KHI) is very considerate of benefit, especially regarding matters that fall into the category of ijtihadi. Based on a brief note, the Compilation of Islamic Law (it is hoped) can unite the insights of judges of religious courts in Indonesia in solving various problems posed to them. After a long process, KHI finally became legal through Presidential Instruction No. 1/1991 on the Copy of Islamic Law. Although its strength still needs to be reviewed, its presence is good news in the nationalization of Islamic law. However, whether the articles on inheritance in the KHI

are following Islamic Sharia (fiqh Marwaris) or not, of course, this requires further proof.²

Discussing the inheritance barrier in this KHI, first in Chapter I of the General Provisions of Article 171 sub-article "c," it is stated that:

"Heirs are people who at the time of death have blood relations or marital relations with their heirs, are Muslim and are not hindered by law from becoming heirs."

In other words, it can be concluded that as long as the heirs are related by blood or related by marriage and are Muslim, then there is no obstacle for them to receive an inheritance according to article 171 of the Compilation of Islamic Law.

Then in the next article regarding inheritance barriers, it can be seen in the comparison listed by Amir Syarifudin between Islamic inheritance law (faraid) and inheritance law in the Compilation of Islamic Law, namely Article 173, which talks about inheritance barriers whose format and substance are slightly different from fiqh. The formula is as follows:

"A person is prevented from becoming an heir if by a judge's decision that has permanent legal force, is punished because:

- 1) Accused of having killed or attempted to kill or severely abused the heirs;
- 2) Convicted of slanderously filing a complaint that the testator has committed a

¹ Amir Syarifuddin, *Hukum Kewarisan Islam* (Jakarta: Kencana, 2008), 53.

² Hasanudin and Hasanudin, "Transformasi Fiqh Mawaris Dalam Kompilasi Hukum Islam Di Indonesia" 22, no. 1 (2021): 43–62.

crime punishable by five years in prison or a heavier sentence.”³

The article, which states that the murderer is a barrier to inheritance in the child of Article 1), of course, is in line with fiqh. However, attempted murder, persecution, and slander as obstacles to receiving an inheritance seem to have quite a basic difference. The KHI only lists two points of inheritance barrier. From this, KHI is different from fiqh, while it is known that KHI refers to fiqh books.⁴ If the three categories of inheritance barriers are observed, it means that the testator has not died. While the nature of the transfer of property from the heir to the heirs is when the testator has died. From the point of view of humanity, acts of persecution and slander against heirs are inhumane acts and endanger a person's condition. Fiqh assumes that inheritance is a person's right that is stipulated in the Qur'an and cannot be revoked unless there is a strong argument such as the Hadith of the Prophet SAW. The revocation of a person's rights only because of attempted murder or persecution, let alone slander. However, this is a crime, cannot eliminate certain rights, especially if the testator before death has forgiven.⁵

Therefore, this study will focus on the arguments used in the formulation of Article 173 KHI, especially regarding severe persecution and slander as an inheritance barrier and its review in Maqāshid Syari'ah. This research is library research with an exploratory, descriptive technique, which will investigate and then describe an object of knowledge that is still lacking or has no study data on the object. With the hope that this

research will be useful as an example of legal *istinbāt* literature, especially in inheritance law in the Compilation of Islamic Law.

Several previous studies related to this discussion include the writings of Muḥammad Jufri, which discusses defamation as a barrier to heirs. He concluded that no priests of the four schools of thought included it as a barrier to heirs. He discussed that the legal basis used in determining it as one of the barriers to KHI's inheritance was the *qiyās* to murder contained in surah al-Baqarah verse 191. He took the opinion of Imam al-Syafi'i that all types of a murder could hinder inheritance. Furthermore, Riyan Ramdani, in his writings on severe persecution as a barrier to inheritance in Article 173 letter a of the KHI, concludes that the legal stipulation regarding inheritance barriers in the Compilation of Islamic Law uses three methods of *uṣūl fiqh*, namely, first, *maslahah mursalah*; second, *sad al-dzari'ah*; and third, *qiyās*. *Sad al-dzari'ah* is used in order to prevent before the murder of the heir. So anything that will approach the murder has been anticipated by including attempted murder and severe maltreatment as a barrier to inheritance. However, all of this discussion does not cover *Maqāshid al-Syari'ah*, which is the author's focus in this paper.

PERSECUTORY AS A BARRIER TO INHERITANCE

In terms of the *farāid* scholars, *Mawāni 'Al-irṣ*, persecutory or “defamation” is a condition or trait that causes the person to be unable to receive an inheritance even though there are sufficient conditions there is an inheritance relationship. At first, a person has the right to inherit, but it results in him not getting an inheritance.⁶

³ Tim Redaksi Nuansa Aulia, *Kompilasi Hukum Islam* (Bandung, 2008), 54.

⁴ Amru Syaputra Lubis, “Perbedaan Seseorang Yang Terhalang Mendapatkan Warisan Dalam Khi Dan Fiqh,” *Wahana Inovasi* 9, no. 2 (2020): 113.

⁵ Syarifuddin, *Hukum Kewarisan Islam*, 326.

⁶ Amin Husein Nasution, *Hukum Kewarisan* (Jakarta: Rajawali Pers, 2012), 78.

Some inheritance barriers are divided into two parts: the agreed-upon part and the disputed part. The first part (which is agreed upon) is of three kinds: different religions, slavery, and murder. Scholars have agreed upon these three types as barriers to inheritance, called *mawāni*'. While the second one, the disputed part, are; the uncertainty of the time of death and different countries.

Fiqh scholars have agreed that murder is one of the obstacles in inheritance law. Thus, an assassin cannot inherit the property of the person he killed.⁷ It is based on :

First, from the hadith of Ibn Abbas, which was issued by ad-Darimi in his Musnad :

عن ابن عباس قال : لا يرث القاتل من المقتول
شيئا (الدارمي)

Second, the hadith of Umar from al-Sha'bi as issued by add-Darimi is also in his Musnad ⁸ :

عن الشعبي قال : قال عمر : لا يرث قاتل خطأ و
عمدا (الدارمي)

Trial effort means an act that is part of a series of actions that, if not disturbed, will result in a greater crime being committed. The Indonesian Criminal Code (KUHP) Chapter IV article 53 explains separately about this probationary punishment, especially for children in article (1) and children in article (2), as follows :

- (1) Attempting to commit a crime is punished if the intention to do so has been proven from the beginning of the execution. The non-completion of the execution is not solely due to his own will.

- (2) In the case of probation, the maximum principal penalty for crimes can be reduced by one-third.⁹

Sayyid Sabiq in the book of Fiqh al-Sunnah provides a definition of *jinayat* :

“all actions forbidden by al-Shari’a are prevented from doing so because they involve religion, soul, reason, self-respect, or property. All these bad deeds (*jarimah*) are classified as *jarimah hudud* and *qisas*. *Jarimah hudud* includes all unlawful acts involving the soul or others such as injuring, cutting off a limb. Maintaining this benefit is a primary need (*ḍarūri*) that humans must maintain. It is also obligatory to maintain the community’s life.”¹⁰

Furthermore, Malikiyah believes that murder that hinders inheritance is a murder that is cruel and intentionally carried out either directly or with a cause. Including those who are prevented from inheriting are people who are at fault for ordering to kill, people who carry out murders, people who make it easy to carry out murders, people who participate in the killing, people who put poison in food or drink, people who guard the location when the occurrence of a murder, a person who testifies falsely and his testimony has legal consequences. This person is forced to kill protected blood, a person who digs a well, puts a stone, or gangs up on someone so that the person dies. While the murder is guilty, it does not prevent inheriting the heirs' property. However, it prevents the inheritance of the diyat property (wealth derived from fines) owned by the heir.¹¹

From this opinion, it can be concluded that Malikiyah is more detailed in categorizing murder. It is not only the act of killing that

⁷ Komite Fakultas Syari’ah Universitas Al-Azhar Mesir, *Hukum Waris* (Jakarta: Senayan Abadi Publishing, 2004), 46.

⁸ Abu Muḥammad Abdillāh Ibn Abdirrahman Ibn Al-Fadl Ibn Bahram, *Musnad Darimi* (Riyadh, Arab Saudi, 2000), Darul Mughni, 1988.

⁹ Moeljatno, *Kitab Undang-Undang Hukum Pidana* (Jakarta: PT. Bumi Aksara, 2008), 24.

¹⁰ Sayyid Sabiq, *Fiqh Sunnah* (Kairo: Fath al-’ilam al-’arabi, n.d.), 323.

¹¹ Wahbah Al-Zuhaily, *Fiqh Al-Islam Wa Adillatubn* (Damaskus: Dar al-Fikr, 1986), 260-262.

becomes a barrier to inheritance, but also killing those who persecute, including those who order to kill, facilitate, etc. In the Religious Court itself, the perpetrator of a crime cannot be punished when he only intends, and there is no evidence of his crime, and therefore a form of support is needed.¹²

The regulation of severe persecution as a barrier to inheritance is a new thought in Islamic inheritance law. So that criminal acts that can be used as inheritance barriers are limited to murder but have developed towards actions that are feared to result in death, such as severe persecution, concerning the formulation of the child article (1) KHI Article 173 regarding persecution as an inheritance barrier, the author uses the *qiyās* method to find the source of the law. The child of Article (1) KHI Article 173 above states that a person is prevented from getting an inheritance by a judge's decision if he is blamed for killing or trying to kill or severely mistreating the heirs. Persecution is still in the same category as murder and attempted murder. So if you look at the sequence from the point of murder, attempted murder, to severe abuse, it appears that the essence of this article is focused on point one, namely the murder itself. Guilt for killing the heir has become the cause of obstructed inheritance for an heir. If it is formulated using the *qiyās* method, then the type of *qiyās* that can be used in the formulation of this article is *Qiyās al-Adnā*.

Qiyās al-Adnā is where the legal basis ('illat) contained in the branch (furu') is of lower weight than the divine provision (ashal).¹³ from that case, ashal is murder. It is furu' is abuse and it is illat is equally threatening to human life and safety. This kind of 'illat called

reasoning (istinbāt). One way to find 'illat in the form of reason, as explained by Busyro in his book *Philosophical Fundamentals of Islamic Law*, is *ilgā' al-fāriq*, eliminating the difference 'illat between origin and furu,' thus producing the same law. The application of *qiyās al-adnā* here, because persecuting is lighter than killing but equally threatening human life and safety. Therefore, the law of killing as a barrier to inheritance is also applied to persecution. So it can be concluded that severe abuse as a child in Article (1) KHI Article 173 can be categorized as an inheritance barrier with the *qiyās* argument.

In addition, Amir Syarifuddin explained that the cause of losing inheritance for the killer are:

- a) The murder broke the relationship (Silaturahmi) that once used to be. With the termination of the relationship, the musabab or law that stipulates inheritance rights is also cut off.
- b) Murdering someone who has been determined to receive an inheritance to speed up the process of enactment of that right. For prevention, scholars set a rule of fiqh.

من تعجل على شيء قبل اوانه عوقب مجرمانه

“Anyone who speeds things up prematurely is rewarded with nothing.”

- c) Murder is a crime or immorality, while inheritance is a favor. Disobedience should not be used to get pleasure.¹⁴

From the reasons above, it can be understood that there are things that the determination of murder wants to prevent from becoming an inheritance barrier. Therefore, it is very necessary to close the road so that the above causes do not materialize. Wahbah al-Zuhaili stated that

¹² Ramdani And Karim, “Penganiayaan Berat Sebagai Alasan Penghalang Mewarisi Dalam Kompilasi Hukum Islam Pasal 173 Huruf A.”: 102.

¹³ Satria Effendi, *Uṣūl Fiqh* (Jakarta: Kencana, 2012), 140.

¹⁴ Syarifuddin, *Hukum Kewarisan Islam*, 196.

everything that mediates to something that is haram, then the law is haram, and what is obligatory. Because when God gives a command, then everything that mediates on command is also required. Moreover, if Allah has forbidden something, then the intermediary for realizing the unlawful act is also unlawful.

From the analysis above, in addition to the qiyās argument, sadd al-dzarī'ah, as a step to close everything that conveys something prohibited that contains damage and harm, can also be applied to this discussion. Killing is haram because it means A godly act of removing someone from existence about inheritance is to speed up the transfer of inheritance, so efforts that lead to murder, such as severe persecution, are also forbidden. Then by qiyās, severe persecution is associated with killing because it is 'illat is equally threatening to human life and safety, even though the weight of crime is lighter.

DEFAMATION (DEFAMATION) AS BARRIER TO INHERITANCE IN KHI

Inheritance is a person's right that is stipulated in the Qur'an and cannot be revoked unless there is a strong argument, such as the Hadith of the Prophet SAW. There is not a single argument or opinion of madhab scholars stating that defamation can be a reason to prevent a person from obtaining inheritance. As stated in the Compilation of Islamic Law Article 173 letter b, as follows: "To be blamed for defamation has filed a complaint that the heir has committed a crime which is punishable by five years in prison or more. Therefore, the author intends to look for the suitability of the formulation of the arguments for determining defamation as a barrier to inheritance with the concept of Maqāṣid Syar'ah.

Abdullah Sya'ban, in his book of Fiqh al-Fitan fi auī al-Sunnah, explains that

defamation (defamation) linguistically means destroyed or melted, just as gold and silver are melting with fire to sort out good and bad gold. Defamation is also defined as trials, destruction, disbelief, differences of opinion, mistreatment, misguidance, and sin. People who do it are people who have strayed from the right path. While the meaning of defamation that is more often used is a test that worsens the situation or a situation that moves a person to another situation that is worse for him. Defamation is a big threat in religion for a believer, for it can bring the worst result; neglect. Neglecting is the greatest and cruelest sin in the sight of Allah than any kind of murder. Because a believer is a person who says, acts, and believes in the right (Haq). Muḥammad Abu Zahrah added that fighting true belief is worse than killing someone.¹⁵

There are several verses of the Qur'an that mention Defamation, including :

1) QS. Al-Buruj (85): 10.

Ibnu Kaṣīr dIn his commentary, Tafsir al-Qurān al-'Azīm, explains that the meaning of term *fatanū* has meaning *aḥraqū* (annihilate).¹⁶In line with that, Ibn Mas'ūd al-Bagawīy in his commentary also explains that the meaning of term *fatanū* is to punish and annihilate. The object here is the Muslims.

2) QS. al-Hadid (57): 14.

Ibnu Mas'ūd al-Bagawīy explains the meaning of term *fatantum* is defamation in the form of self-harm by being hypocritical, disbelieving in Allah, committing immorality and following lust.¹⁷

3) QS. al-Nisa (4) : 101.

Term *yaftinakum* has the meaning of an act that transgresses and tries to fight. Both

¹⁵ Muḥammad Abu Zahrah, *Al-Jarimah Wa Al-Uqubah Fi Fiqh Islam* (Kairo: Dar al-Fikr al-'Arabiy, 1998), 29.

¹⁶ Abu Muḥammad Husain Ibnu Mas'ūd Al-Baghawiy, *Tafsir Al-Baghawiy: Ma'alimu at-Tanzil* (Beirut: Dar Ibnu 'Azzam, 2002), 1398.

¹⁷ Al-Baghawiy, 1278.

of these actions are clearly in the form of disturbing the Muslims.

4) QS. al-Zariyat (51) : 14.

Term *yufitanun* and *fitnatakum* means torment and destruction, like the melting of gold by fire. As stated by al-Bagawi who agrees with Ibn Kathir in his commentary.¹⁸

From the several verses above, it can be seen that the meaning of defamation is not only attached to lying or untruthful words that are spread to discredit people (such as tarnishing one's good name, harming people's honor), but also meaning disturbance, torture, or actions that lead to destroying something.

Then there is a verse in the Qur'an that is interesting to discuss concerning the title of this article as follows:

(1) QS. al-Baqarah (2): 191.

(2) QS. al-Baqarah (2): 217.

The author tries to analyze these two verses based on the explanations of Ibn Katr and al-Bagawī in their second commentary to find whether there is a connection between the term "Defamation is crueller than murder."

Textually, it appears that in slander there is a heavier position than murder in these two verses. Scholars have agreed upon the killings as a barrier to inheritance. So if you look at the text of the verse, if defamation is crueller than murder, of course, it is clear that defamation is also a barrier to inheritance. Even its position is lighter than murder as a barrier to inheritance.

As explained by Abdullah Sha'ban in his book *Fiqh al-Fitan fi daii al-Sunnah*, Defamation is the cause of disease growing in one's heart. Defamation is divided into two; the first is the Defamation of the *Shabawāt*, which grows from corrupted intentions and goals. Moreover, the second, the Defamation of *Shubbāt*, which grows from the knowledge

and beliefs that are misguided.¹⁹ In the two verses above, it is said that "Defamation is greater (sin) than murder." However, what is meant here is not Defamation, which is in the form of lust to make someone worse in many people's eyes, but what is meant here is Defamation of doubt that comes from a false belief. This is what is meant by the two verses above, Defamation means *syirik* to Allah or turning away from the true path of Allah.²⁰ The connection between defamation (*syirik*) is greater (sins) than murder.

When Muslims were fighting the Quraysh in the Grand Mosque, In the beginning, Allah forbade fighting the polytheists in the Grand Mosque. However, if they threatened that a believer would become *syirik* and turn away from Allah's religion, Allah ordered them to fight even in the Grand Mosque. Because the sin of *syirik* of Allah is greater than the sin of killing them. The goal is that there is no more *syirik* (defamation) against Allah. So, it can be concluded that the two verses regarding defamation are greater (sins) than this murder, not meaning defamation as lying or without truth that is spread to vilify people (such as tarnishing one's good name, harming people's honor), but relates to *syirik* to people. Doing things to Allah is a greater sin than killing.

Furthermore, what is the position of slander as a barrier to inheritance? Defamation is not included in the causes of inheritance barriers. However, of course, the classification of defamation as an inheritance barrier in KHI has reasons.²¹

Defamation, what is meant here, is false or untruthful words spread to vilify people

¹⁹ Sya'ban, *Fiqh Al-Fitan Fi Daii Al-Sunnah*, 125.

²⁰ Abu Fida Ismail Kasir, *Tafsir Al-Qur'an Al-'Azim* (Beirut: Dar Ibnu 'Azzam, 2000), 248.

²¹ Jurfi, "Defamation Sebagai Penghalang Ahli Waris (Studi Komparatif Pasal 173 Kompilasi Hukum Islam Dan Hukum Islam)."

¹⁸ Al-Baghawiy, 331.

(such as tarnishing one's good name, harming people's honor). Defamation or Defamation is explained in the Indonesian's Criminal Code (KHUP) Article 310 regarding it as an act that attacks the honor or good name of a person, by accusing something that meant clearly so that it is known to the public, it can be in the form of writing or pictures that are broadcast, displayed or posted. In public.²²

In classical fiqh, nothing is found that defamation is a barrier to inheritance. The provision of defamation in Islam is included in the criminal sanctioned. Defamation is a despicable act aimed at humiliating fellow Muslims. However, to find the formulation of the argument why it is a forbidden act whose position is equal to murder, the author finds a discussion: qazaf.

Sayyid Sabiq explained that qazaf literally means to throw with a stone or something else, as Allah said to Moses as., in QS. Thaaha (20): 39, "Meaning: "Put him (Moses) in a chest, then throw him into the river (Nile) ... ".

While the meaning of the term qazaf is also taken from this understanding which is throwing (accusing) committing adultery.²³

The reason qazaf is forbidden is that. Islam upholds in maintaining the honor of a servant and maintaining his honor. Therefore, it is also forbidden to say bad words, spread disgrace in society, and demean one's dignity in society. The person who commits this act is subject to worldly punishment in 80 lashes. His testimony will not be accepted forever. He is classified as a wicked person, cursed and cut off from God's grace. In the hereafter, he is entitled to receive a painful punishment. This is based on the word of Allah QS. al-Nur (24): 4-5 and QS. al-Nur (24): 23-25. Furthermore, Allah also warns about the dangers of not keeping the tongue. in QS. al-Nur (24) : 19.

Rasulullah SAW said :

عن أبي هريرة رضي الله عنه : عن النبي ص.م قال : اجتنبوا السبع الموبقات . قالوا : يا رسول الله , وما هن ؟ قال : الشرك بالله , و السحر , و قتل النفس التي حرم الله ألا بالحق , و أكل الربا , و أكل مال اليتيم , و التوأي يوم الزحف , و قذف المحصنات المؤمنات الغافلات .

"Meaning: From Abi Hurairah ra. From the Prophet SAW said: keep away from you seven things that destroy, Sababa asked: O Messenger of Allah, what are they? The Prophet replied: Associating partners with Allah, magic, killing souls that Allah has forbidden except for the right reasons, eating usury, eating orphans' property, running away during the war and accusing a holy believer of adultery."²⁴

Such is a great threat and position for someone who does not guard his tongue and tries to humiliate others, because as explained earlier, Islam highly upholds one's self-respect and glory. So this 'illat can also be attached to defamation, for it can damage a person's good name and demean a person's dignity in certain social circles or the general public, especially in the child of Article (2) KHI Article 173 above, defamation is deliberately carried out until the heir is sentenced to 5 years imprisonment or even more severe. Therefore, defamation is not an easy matter. Thus everyone must maintain the dignity of others because a servant has the right to maintain his dignity.

Wabbah al-Zuhaili explains his views on this right in the book of *Fiqh al-Islamiy* was Adilatuhu. Rights are gifts from God based on sources from which a law can be established. The source of all rights is Allah; no right comes from habit or reasoning. Rights only come from God because only God establishes a law.

There are two obligations for someone that must be carried out concerning money rights:

²² Moeljatno, *Kitab Undang-Undang Hukum Pidana*, 114.

²³ Sabiq, *Fiqh Sunnah*, 279.

²⁴ Abu Abdillah Muhammad bin Ismail Bukhari, *Al-Jami' Al-Shabih* (Kairo: Maktabah Salafiyah, 1979), 295.

- 1) It is generally obligatory for everyone to respect the rights of others, and it is forbidden to oppose (go beyond the limits) these rights.
- 2) It is especially obligatory for someone who holds this right to practice this right so that he does not get harmed in this world and the hereafter.²⁵

This special right owned by a person is maintained by religion by providing restrictions that oblige every other individual to respect a person's rights, property, self-respect, and soul. Religious provisions prohibit a person from exceeding the limits of one's rights. If not, then that person can be punished. The basis of this provision is that a Muslim must take care of other Muslims, as the Prophet SAW said:

عن أبي هريرة قال : قال رسول الله ص.م ... : كل المسلم على المسلم حرام . دمه و ماله و عرضه مسلم

“Meaning: The blood, property and, honor of a Muslim are forbidden for other Muslims.”

With this explanation, it can be concluded that a Muslim is obliged to maintain the self-respect of other Muslims so that it is unlawful to commit defamation.

Then what about the argument that formulates defamation as a barrier to inheritance in Article 173 of the KHI? Why does this happen? So it is better to repeat the study of the argument.

In compiling these laws, the committee paid great attention to the consideration of benefit to humankind, especially regarding matters that fall into the category of *ijtihadi*. The discussion of defamation concerning inheritance law, as far as the author examines, no reference mentions it. Therefore, the author intends to explore the arguments from the sources of the formulation of the Islamic law described in the previous chapter.

Among the *fuqaha*, the word "dalil" is loosely translated as a "proof" is interpreted as: "something in which there is a teaching indication, either which can convey something that is convincing or to a strong suspicion that is not convincing". Among the scholars of *uṣūl fiqh* the word "dalil" is interpreted: "something that conveys to the demands of the *khbari* with *shabih* thinking". From the formulation of the definition of *uṣūl Fiqh*, something that does not convey a claim or that conveys a claim that is not *khbari*, or that conveys a wrong thought, is not called a "dalil" in this sense.²⁶

Wahhab al-Zuhaili in the book *Al-Wajiz* states that the *dalil* are divided into two kinds. First, the *dalil* agreed upon by the majority of scholars are four, namely the *Qur'an*, *Sunnah*, *Ijma'* and *Qiyas*. While the second, the *dalil* that are not agreed upon by the majority of scholars are seven kinds of the most famous, namely *Istihsan*, *Istiṣlah*, *Istiṣhab*, 'Urf, *Madhhab al-Shababi*, *Syar'u Man Qablā* and *Sadd al-Dzari'*. The four arguments agreed upon by the *jumhur* must be followed in the order above. This means, as added by Abdul Wahhab Khalaf in the book *Ilmu al-Uṣūl al-Fiqh*, if a problem is found, then look for a solution in the *Qur'an* first, if it is not found then look for it in the *Sunnah*, if it is not found in the *Sunnah* then look for it. on the agreement of scholars who agreed to *ijma'* at that time, so that if not found, then a *mujtahid ijtihad* by using *qiyas* on texts containing laws with the same *illat*.²⁷

Because there is no evidence regarding defamation as a barrier to inheritance in the agreed upon *dalil*, the next order is to explore whether there are *dalil* in the part of the *dalil* that are not agreed upon. Among *Istihsan*,

²⁶ Amir Syarifuddin, *Uṣūl Fiqh I* (Jakarta: Kencana, 2011), 52.

²⁷ Abd al-Wahab Khallaf, *Ilmu Al-Uṣūl Al-Fiqh* (Iskandariah: Maktabah Da'wah Islamiyah, 2002), 21.

²⁵ Wahbah Az-Zuhaili, *Fiqh Islam Wa Adillatuhu Jilid 1* (Depok: Gema Insani, n.d.), 9-10.

Istiṣḥāb, *Istiṣḥāb*, 'Urf, *Madhhab al-Shahabi*, *Syar'u Man Qablah and Sadd al-Zarai'* the one that best fits this discussion is *Istiṣḥāb* or better known as *maṣlahab mursalah*. According to 'Abd al-Wahāb Khallaf *maṣlahab mursalah* means something that is considered good but there is no legal firmness to enforce it and there are no certain arguments either supporting or rejecting it, so it is called *maṣlahab mursalah* (*maṣlahat* that is free from specific *dalil*).²⁸

So the conclusion is that the daily formulation of defamation as a barrier to inheritance is *maṣlahab mursalah*. Because there is no detailed argument that discusses this matter, there are problems to be addressed by way of *ijtihad* in the formulation of this Compilation of Islamic Law. Especially in defamation, Islam has emphasized that Muslims must look after each other in terms of life, property, and self-respect of fellow Muslims. Allah has been given a right as an individual right of a servant as the hadith in Sahih Muslim mentioned.

REVIEW OF MAQĀSĪD SHARI'AH IN PERSECUTORY AND DEFAMATION AS BARRIER TO INHERITANCE

As stated at the beginning of this paper, there is no provision in Islamic Inheritance Law that persecution and defamation/defamation are barriers to inheritance. Therefore, this study focuses on examining the provisions of the Compilation of Islamic Law used as the legal basis in Indonesia.

Article 173 letter states that: A person is prevented from becoming an heir if by a judge's decision which has permanent legal force, is punished because:

- a. Being blamed for killing or trying to kill or severely maltreating the heirs;

- b. Convicted of slanderously filing a complaint that the testator has committed a crime punishable by five years imprisonment or a heavier sentence.²⁹

With the *Istiqra'* method (deep research), it is clear that Islamic law is there to ensure the benefit of humankind. The existence of sanctions, punishment is to protect the needs of the five human's *ḍaruri*, be it religion, soul, mind, descendants of property and some even classify self-respect as a primary need that must be guarded, because these five things will ensure the fate of mortals not only in this world but also in the world after (afterlife). Furthermore, *dalil maṣlahab* is one of the *mukhtalif* *dalil* among scholars in terms of the use of methods in *ijtihad*, but the essence of all *ijtihad* is the same; for the benefit of humankind.³⁰

The substance of the Maqāṣid Syar'ah concept is a benefit, as stated by Ibn Qayyim al-Jauziyah, namely to prevent damage to humans and bring mutual benefit to them, control the world with truth, justice and virtue and explain the path that must be passed before the human mind. Maintaining the right to life is the most important thing that everyone must do because life is a sacred right that cannot be taken away. Maintaining this right to life has been explained in the Qur'an, and the hadith of the Prophet SAW, accompanied by threats for the perpetrators who violate it as stated in QS. An-Nisa verse 93.

Severe abuse can cause loss of limbs and is very harmful to others because the body is a very vital tool in human life. If one of them is not present, then life will be blemish, unhealthy, and less fluent in living daily life.

²⁹ Islam, "Kompilasi Hukum Islam."

³⁰ Agus Hermanto, "Konsep Maṣlahat Dalam Menyakapi Masalah Kontemporer (Studi Komparatif Al-Tūfi Dan Al-Ghazali)," *Al-Adalah* 14, no. 2 (2017): 433, <https://doi.org/10.24042/adalah.v14i2.2414>.

²⁸ Khallaf, 21.

Therefore, Islam is very protective of the human soul. Even though a person who has been severely persecuted is still alive, but he cannot do his job perfectly.³¹

Then how will the law be applied to those who simply persecute someone or defamation? If it is related to the provisions of Islamic inheritance law, which states murder as a barrier to inheritance? The Compilation of Islamic Law clearly explains in Article 173 of Articles (1) and (2) that molesting and defamation are the reasons for preventing a person from obtaining inheritance rights. However, in detail and clearly, neither the Qur'an nor the hadith The Prophet SAW leads to these two reasons being a barrier to obtaining inheritance rights.

Maqāshid al-syari'ah is the intent or purpose of the law in Islam. It is closely related to wisdom and *'illat*. The application of shari'a in life in the world is to create maslahat (benefit) for the creatures on earth, ultimately affecting individual fate in the afterlife. Because not all of the objectives of Shari' (Allah) can be known, it is obligatory for mujtahids to know and explore *maqāshid al-syari'ah* when understanding the texts before establishing the for the realization of Allah's law.

Making persecution and slander as a barrier to receiving inheritance certainly has a goal to be maintained in the determination of Article 173 of the Compilation of Islamic Law. So in this discussion, the author will describe it as follows::

1. Sources of Maslahat.

In general, the main purpose of implementing Shariah by Syari' (Qaṣḍu al-Syāri') is to bring harmony and benefit to each other (maslahat) in this world afterworld simultaneously. This is manifested in the needs of *arūriyyah*,

Hajjiyah and *Tabsiniyyah* (there will be further explanation). Even though there are no detailed arguments regarding persecution and slander as barriers to inheritance in the study of the dalil, the spirit to achieve the benefit that Syari' wants to realize is clearly here. After exploring the dalil with *qiyās* and *maṣlahah mursalah*, it was found that Shari' really wants to maintain the benefit of humans in the world by threatening those who threaten life as in QS. An-Nisa (4): 93 and obligated to respect the honor of other Muslims.

2. Based on the Core of the Targeted Malaḥat

Maqāshid Aṣli is the intention to be realized in advance of a *shari'a*. In this Article 173, *Maqāshid Aṣli*, of course, is to maintain property (*hifẓ al-māl*), so that an heir does not speed up the process so that he immediately gets an inheritance, then several new provisions are made regarding inheritance barriers; namely by persecuting or slandering. Both points have the original purpose (*maqāshid aṣli*) to keep the inheritance intact.

Meanwhile *Maqāshid Tabi'ah* is an intention that accompanies the original intention, it can also be an intermediary or a way to get the original intention. When talking about inheritance, then of course there are assets that this law wants to protect (*hifẓ al-māl*). Making persecution and defamation a barrier to inheritance means prohibiting these two heinous acts. Both are prohibited with the aim of keeping the inheritance intact in its place. But there is something else that is just as important. Persecution is prohibited with the aim of protecting the soul (*hifẓ al-naḥsi*) of the heir and defamation is forbidden to maintain the heir's honor (*hifẓ al-'ird*).

³¹ Ikhsan, "Penganiayaan Berat Sebagai Pengahalang Waris.": 78.

3. Based on the Coverage of the Intended *Maṣlahat*

Maṣlahat aimed at persecution and slander as a barrier to inheritance is as follows: first, in general (*Maqāṣid al-‘ammah*) of these two points is to maintain the benefit of inheritance (*hiḏ al-māl*). Second, specifically (*Maqāṣid al-kbāṣṣah*) these two provisions want to maintain special benefits within the scope of inheritance law.

4. Based on the Object That Will Get *Maslahat*

With the two provisions of persecution and defamation as a barrier to inheritance, a person will be protected from acts of persecution and slander. The object of *mashlahat* that wants to be protected here is *Maqāṣid al-Kullīyyah*, namely *maqasid*, which is focused on the benefit of returning to all people because this discussion is related to Islamic inheritance law used by all Muslims.

5. Based on the Source of Evidence for Getting *Maṣlahat*

Maṣlahat, which is aimed at the determination of persecution and defamation as a barrier to inheritance comes from *Maqāṣid al-Qaṭ’īyyah*, namely *maqasid* which is believed with certainty based on arguments that do not need to be interpreted again. Allah has threatened people who commit murder which later becomes the origin of the *qiyās* of persecution because they threaten human life and safety. As contained in QS. An-Nisa (4): 93. Likewise, the hadith of the Prophet SAW explains that a Muslim must maintain receiving an inheritance because of persecution and defamation

6. According to time on generating *Maslahat*

The benefit of persecution and defamation as a barrier to inheritance is

Maqāṣid al-Dunyawīyyah which provides benefits that are proven to be realized in the world.³²

7. Based on the Level of Benefit Needs

It has been firmly established with clear arguments that the law is put in place to realize human beings, either by bringing about benefits or resisting harm. This conclusion can be obtained after collecting and analyzing the arguments (*Istiqra*) as written by *al-Syaṭibiy* in his *al-Muwāfaqat*.

CONCLUSION

The article on severe persecution as an inheritance barrier as contained in the Compilation of Islamic Law Article 173 letter a and Defamation as an inheritance barrier in Article 173 letter b is interesting because the formulation is different from the inheritance barrier that has been in *fiqh*.

The concept of *Maqāṣid Syar’ab* is placed for the benefit of humans and to prevent damage. It also aims to control the world with truth and virtue before human reason. The most important thing that must not be violated is to protect the right to life of everyone because it is a sacred right and has been explained in the Qur’an and the Hadith of the Prophet SAW, which is accompanied by threats for those who violate these rights.

The study of severe persecution and slander as a barrier to inheritance physically does not have any evidence that stipulates it. However, after going through the *ijtihād* process and in the review of *Maqasid Syariah*, it was found that Article 173 letters a and b, which contain the formulation of severe persecution and defamation as barriers to inheritance are following the concept of *Maqāṣid Syar’ab*. The purpose of making severe persecution and defamation a barrier to inheritance in the Compilation of Islamic Law

³² Yusuf Ahmad Muḥammad Al-Badawiy, *Maqāṣid Al-Syari’ab ‘Inda Ibnu Taymīyyah* (Urdun: Dar al-Nafais, 1999), 124.

(KHI) Article 173 is a basic need (*ad-darūriyyat*), which if not guarded by this decree, will threaten the safety of humankind both in this world and in the hereafter. Keeping the soul (*hifẓ al-nafsi*), then guarding property (*hifẓ al-māl*) and then maintaining self-respect (*hifẓ al-'Ird*) are basic needs that enter the dharuriyat al-khamsah. Therefore, it is very appropriate

for people who persecute and slander not to receive inheritance rights because there are so many harms caused by themselves.

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