



## **Legal Analysis of Daughters' Inheritance *Mahjub* Siblings According to Ibn Abbas**

**Latifatul Fajriyyah<sup>1\*</sup>, Muhammad Maulana<sup>2</sup>**

Sekolah Tinggi Agama Islam Samarinda, Indonesia<sup>1</sup>

Sekolah Tinggi Agama Islam Samarinda, Indonesia<sup>2</sup>

Corresponding Email: [fajriyyahlatifatul@gmail.com](mailto:fajriyyahlatifatul@gmail.com)\*

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### **Abstract**

In the decision of the Panel of Judges with Case Number 247/Pdt.P/2020/PA.Smd, only the wife and daughter of the Heir are entitled to inherit the inheritance. The Heir's brothers and sisters are hindered from inheriting by the daughter. Meanwhile, this provision differs from the provisions in fiqh, which do not mention siblings who may inherit together with daughters. This study aimed to analyze the decision of the Samarinda Religious Court in case Number 247/Pdt.P/2020/PA.Smd and to find out why the Judge took the opinion of Ibn 'Abbas and overruled the opinions of other Ulama. This study uses a qualitative research method with a normative legal approach. The study results explain that the Panel of Judges determined case no. 247/Pdt.P/2020/PA.Smd concerning the determination of heirs where a daughter obstructs the inheritance rights of a sibling of the Heir, referring to the Supreme Court Jurisprudence Number 86 K/AG/1994, as well as inheritance provisions concerning the principle of *hijab-mahjub* in Book II Revised Edition 2013, which contains the legal principle "a daughter may obstruct the inheritance rights of a sibling of the heir", based on the opinion of Ibn 'Abbas. However, the Panel of Judges did not fully understand Ibn 'Abbas' opinion because, according to Ibn 'Abbas, a daughter may obstruct the inheritance rights of a female heir, but he does not make the daughter close the rights of a male heir as an heir.

**Keywords:** *Daughters' Inheritance, Mahjub, Siblings.*

### **Introduction**

The problem of inheritance is a Muslim problem that often causes hostility in family relationships in the present and since pre-Islamic times, namely the jahiliyyah period (Satria Efendi, 2004). In the Jahiliyyah period, the procedure for distributing inheritance in society was based on the relationship of lineage or kinship. Still, even that was only given to male relatives. These namely men were mature and could use weapons to defend family honour, conduct wars, and seize war property so that neither sons nor daughters will get an inheritance (Holden & Chaudhary, 2013). That will cause a split in family relations due to injustice in the

distribution of inheritance (Umi Sakinah, 2014). The law of inheritance itself is a law that regulates the transfer of ownership of the Heir's property (*tirkah*), determining who is entitled to become heirs and how much each share is (Vatuk, 2022). The verses related to inheritance law that have an important position in Islamic law and are the main rules in the issue of inheritance that Allah has determined are Surah An-Nisa verses 11, 12 and 176, which provide a detailed explanation of the heirs, the amount of parts of each Heir who is entitled to receive, detailing the conditions and circumstances of people who are entitled to inheritance and who are not entitled to it. The Qur'an also explains the situation of each Heir when he receives his share with certainty and when he receives *'ashobah* (Nurul Khairiyah Ritonga, 2019). In addition, several hadiths explain the distribution of inheritance, among others:

أَحْفُوا الْفَرَائِضَ بِأَهْلِهَا فَمَا بَقِيَ فَهُوَ لِأَوَّلَى رَجُلٍ ذَكَرَ

"Give the inheritance to those entitled to it, and the remainder to the closest male relatives."

In this hadith, the Prophet ordered that the distribution of inheritance starts from *'ashabul fraud*, namely heirs who get a definite share, then if there is a remainder, it is given to the closest male relatives in *'ashobah*. Broadly speaking, the heirs in Islam can be divided into 3 groups: First, *Dzawil furudh*, the heirs who have been determined in the Quran, and the heirs who always get a certain fixed share that does not change. *Second*, *'Ashabah* in Arabic means "sons and relatives from the father's side". *'Ashabah*, according to the teachings of Imam Syafi'i, is a group of heirs who get an open part of the remaining part. So the part of the heirs that is first issued is *dzawil furudh*, namely the part that has been determined in the Qur'an. After that, the rest is given to *'ashabah*. *Third*, *Dzawil arham* is any relative of the Heir who is not entitled to inherit; in other words, relatives of the Heir who are not *dzawil furudh* nor include *'ashabah*. Hazairin in his book bilateral inheritance law, explains *dzawil arham*, namely all people who are not *dzawil furudh* and not *'ashabah*, generally consisting of people who include members of the patrilineal family of the son-in-law or members of the son-in-law or members of the family of the father and mother (Hazairin, 1968).

Although the problems of inheritance have been thoroughly explored and explained in detail by the Qur'an and hadith, putting the Qur'an and hadith into practice is not easy because it is evident from the time of the Companions that many have encountered difficulties and caused several differences in understanding in deciding inheritance issues due to differences in their interpretation of the nash (text) or the lafadz discussed is the same. This is because the Arabic words that are the original text of the argument sometimes have more than one meaning, leading to wide differences of opinion, both from the clarity of the meaning, the content of the understanding, and the indication of the law. For example, the difference between Sayyidina Umar and Ibn Abbas on the issue of the mother's share. According to Sayyidina Umar, the mother gets 1/3 of the remaining property after the husband/wife's share is taken, while according to Ibn Abbas, the mother gets 1/3 of the property. This happens because of differences in interpretation and understanding of the same verse, namely al-Nisa verse 11. In addition, there are problems in interpreting the word *walad* in the inheritance verses contained in surah an-Nisa verse 176 (Muhammad Abrar Pratama, 2018).

Three systems of inheritance law apply in Indonesia, namely inheritance based on Western civil law (BW), customary law and Islamic law. Regarding Islamic inheritance law in Indonesia, a regulation was established and ratified, namely the Compilation of Islamic Law (KHI) through Presidential Instruction of the Republic of Indonesia Number 1 of 1991 as a meeting point and as a reference in the implementation of Islamic law for the Islamic community in Indonesia. And for the issue of Islamic inheritance law itself is regulated in KHI Book II regarding the Law of Inheritance in Articles 171-214 KHI (Amir Syarifuddin, 2015).

According to the provisions of Islamic inheritance law, daughters have the same position and position as the testator's brothers in receiving inheritance from the testator, as confirmed in the Qur'an letter an-Nisa 176. This is in line with the view of most scholars regarding the *walad* referred to in the Qur'an, which is understood to be a son. So, the effect of this view is that the testator's brother can get the inheritance if the testator does not leave a son. Another understanding that is in line is that if the testator leaves only daughters, then the brother can get an inheritance. If the testator leaves a son, the brother is veiled and is not entitled to inheritance. The conclusion is that sons have the position of *hijab* or obstruction of inheritance rights (Wahbah al-Zuhailiy, n.d.).

Even KHI has also explained the size of the inheritance of girls. It is in article 176 KHI, which reads, "the daughter if only one she gets half the part (1/2), if two or more they together get a two-thirds part (2/3), and if the daughter together with the son becomes '*ashabah*', then the son's share is two against one with the daughter. Meanwhile, the siblings and fathers of the testator are the '*ashabah*' bonefish group; if the dzawil furudh group has received their respective shares but there is still money left over, then they have the opportunity to spend the rest of the distribution of the property according to existing rules. So, suppose the two heirs have collected daughters together with the testator's siblings. In that case, we will find that fiqh mawaris determines the share of a daughter by half (1/2) and the share of the siblings is '*ashabah*' while the one father's brother is *mahjub* by the siblings (Nurul Khairiyah Ritonga, 2019, pp. 5-6).

However, in the determination of the Samarinda Religious Court No. 247/Pdt.P/2020/PA.Smd. Regarding the case of a petition for heirs, the deceased had three daughters and seven siblings (consisting of three boys and four girls); apart from the Plaintiffs mentioned above, there were no other heirs of the deceased Muhammad Noor Efenddi bin Soewandi. Then, the contents of the ruling of the Panel of Judges of PA Samarinda stipulated that the heirs entitled to the inheritance of the testator were only the wife and daughters of the testator. As for the testator's brothers and sisters, they are hindered by the testator's daughter.

The reason for the Panel of Judges to determine the decision is because, according to the Panel of Judges if someone has a child, whether it is a son or a daughter, then the siblings of the Heir, whether male or female, will be veiled by the existence of the child. The Panel of Judges here uses the view of the meaning of the word *walad* in Surah an-Nisa verse 176, which includes sons and daughters in line with the opinion of Ibn Abbas. The opinion of Ibn Abbas is weak, but the Panel of Judges still uses it as a guideline in deciding inheritance cases. Although there is a stronger view or opinion, namely the opinion of the Jumhur Ulama, which states that the word *walad* only includes sons. So, in this case, a daughter should not be able to

cover the brothers of the testator because the daughter has a definite share of 2/3 because more than one, and the brothers of the testator will get a share of '*ashabah*' with a share of 2 : 1 between men and women.

Previously, several studies discussed specific inheritance issues in daughters with paternal brothers and inheritance in general (Amalia, 2020). Some studies, including research is written by Raja Sitonga et al, explain that *hijab* and *mahjub* are the processes of preventing someone from getting an inheritance or getting more shares because of someone who has a close relationship with the testator and based on the concept of *syajarotul mirats*, the main Heir automatically prevents the next Heir (Raja Sitonga et al., 2022). Then, the journal written by Zulpahmi Lubis and M. Nur Hussein Daulay explained that an alternative solution to divide the inheritance of daughters who inherit with their paternal brothers could be done by the concept of *shadaqah wajibah*. That is, the daughter of the deceased still gives the inheritance by way of *shadaqah* according to the level of provisions so that it is not from the inheritance path (Zulpahmi Lubis & M. Nur Husein Daulay, 2024).

Syahrul Mubarak Subeitan, in his article, concluded that to apply inheritance law, the parameters of legal justice cannot be determined correctly unless determined by the applicable law. Of all the existing inheritance provisions, the choice of law in Indonesian Muslim communities is different, but still to achieve benefits for each party (Syahrul Mubarak Subeitan, 2021).

Based on several studies described above, there are differences between the research and discussion conducted by the author. Although both discuss the inheritance of Islamic law, it has differences with the research conducted by the author both in terms related to the problems studied, the place of research, the decision that became the object of research, as well as those concerning the methods and approaches used in the research. The author wants to know the reasons for the Judge's consideration in deciding the heirs of the *mahjub* daughter of the father's brother / Heir in inheritance and to find out the reason for the Judge in taking the opinion of Ibn 'Abbas and overruling the opinions of other Ulama.

## **Literature Review**

### **Daughters' Inheritance with Siblings**

Based on this verse, scholars have concluded that the word *walad* includes all children, boys and girls, whether they are adults or not. The right of inheritance of children, if it consists of a male and a female, then the male will get twice the share of the female (Mualifah et al., 2021)v. If it consists of one daughter, she will get half the property; if two or more, they will get two-thirds of the property. If it consists of men only, they will share equally. However, regarding the discussion of the inheritance of daughters with the Heir's brothers, the Qur'an in Surah an-Nisa verse 176:

يَسْتَفْتُونَكَ قُلِ اللَّهُ يُفْتِيكُمْ فِي الْكَلَالَةِ إِنَّ أَمْرًا هَلَكَ لَيْسَ لَهُ وَلَدٌ وَلَهُ أُخْتٌ فَلَهَا نِصْفُ مَا تَرَكَ وَهُوَ يَرِثُهَا إِنْ لَمْ يَكُنْ لَهَا وَلَدٌ فَإِنْ كَانَتَا اثْنَتَيْنِ فَلَهُمَا الثُّلُسُ مِمَّا تَرَكَ إِنْ كَانُوا إِخْوَةً رِجَالًا وَنِسَاءً فَلِلَّذَكَرِ مِثْلُ حِظِّ الْأُنثَيَيْنِ يُبَيِّنُ اللَّهُ لَكُمْ أَنْ تَضِلُّوا وَاللَّهُ بِكُلِّ شَيْءٍ عَلِيمٌ

Translation: "They ask you for a fatwa (about *kalālah*). Say: "Allah has given you a fatwa on *kalālah*, which is that if a man dies and has no children but has a sister, her share is one-twelfth of what he leaves behind. But his brother inherits (the sister's entire estate) if she has no children. But if there are two sisters, they shall share two-thirds of the property left behind. If they (the heirs consist of) several brothers and sisters, a brother's share is equal to the share of two sisters. Allah has explained this to you so that you may not go astray. Allah knows all things."

In these words of Allah, there are different interpretations, including the meaning of *walad*. The word *walad* mentioned here relates to the requirement of the Heir's brother being a "*kalālah*". In this verse, it is mentioned that the brother of the testator is called *kalālah* if he does not leave a *walad*, which means that the existence of a *walad* means that the brother of the testator is not entitled to inheritance (Adelina Nasution, 2017)

Understanding the word *walad* in verse above in the concept of *kalālah* There are many differences among the Ulama. Some scholars interpret the word *walad* to mean sons only, but other scholars interpret it to mean not only sons but also daughters. Therefore, here are some of the scholars' opinions in interpreting the meaning of *kalālah*: (Muhammad Abrar Pratama, 2018, pp. 60-61).

1. According to the majority of Sunni scholars

The majority of scholars are of the opinion that *walad* here refers to sons only. So that the daughter does not close the possibility of brothers and sisters inheriting because its existence does not affect the meaning of *kalālah*. The opinion of the majority of scholars is based on two things, namely:

- a. Use of urf (custom / daily custom) of the word *walad*. This means that in Arabic custom, the word *walad* is used for sons, not daughters, even though in the essence of shar'i usage the word *walad* means both sons and daughters;
- b. By the hadith of the Prophet Muhammad SAW narrated by Ibn Mas'ud regarding the division of inheritance for the case of daughters, granddaughters, and sisters. Ibn Mas'ud said: "I will decide according to what the Messenger of Allah (SAW) decided, daughters get half, daughters of sons get one-sixth to complete two-thirds, while the rest is for sisters" (Muhammad Ahmad Isawi, 2009).

From the explanation above, it can be understood that most scholars interpret *kalālah* as a person who does not have a father and also does not have a son. Thus, the daughter does not veil the male and female brothers of the Heir because its existence does not affect the meaning of *kalālah*. So in cases of inheritance of a daughter if inheriting together with male siblings or sisters, then the brother and sister are positioned as '*ashabah*', only the term is different: the brother is called '*ashabah binafsih*' while the sister is called '*ashabah ma'a ghairih*'.

Then, the majority of scholars continued regarding which daughters do not block siblings. The brothers who daughters cannot veil are siblings and fathers. Whereas a daughter veils a mother's brother, the consideration is because the relationship of a mother's brother to the Heir is only through a woman and therefore his position is weak.

2. According to Ibn 'Abbas

Ibn 'Abbas said that "*kalālah*" is someone who leaves no children. In this case Ibn 'Abbas argued that children are not only limited to sons, but also include daughters. He interpreted *walad* following the lughawi and shar'i meanings. The evidence he used was the text of the Qur'an itself, such as in Surah An-Nisa verse (11), Allah says using the word *awlad* (jama' of the word *walad*) which means: "Allah has obliged you concerning awlad (your children), for a son is like the share of two daughters". The word *awlad* in the verse includes both sons and daughters. In line with the girl, the word *walad* in surah An-Nisa verse (176) mentioned above, according to him, also includes boys and girls (Adelina Nasution, 2017, pp. 8-9)

Even regarding the opinion of Ibn Mas'ud, which he based on the Prophet's ruling, in a situation where the heirs consist only of daughters and granddaughters with a sister, the sister will become '*ashabah*', after which the daughters and granddaughters take their rights (*ashabah ma'a ghairih*). Ibn Abbas opposed this opinion because, according to him, the sister is not '*ashabah*' and therefore, is not entitled to inherit together with daughters or granddaughters. Ibn Abbas rejected the hadith of Ibn Mas'ud above because he said: "There is something that you do not find in the Book of Allah or in the ruling of the Messenger of Allah, but you find it in what applies to all people, namely half for daughters and half for sisters. As Allah SWT has said: ...If a person dies and leaves no children....and so on (QS. An-Nisa verse 176)".

Regarding the meaning of *walad*, Ibn Abbas interpreted it to include boys and girls, namely in the interpretation attributed to him as follows:

(إن امرؤ هلك) مات (ليس له ولد) و لا والد (وله أخت) من أبيه و أمه أو من أبيه (فلها نصف ما ترك) الميت من المال (وهو يرثها) إن ماتت (إن لم يكن لها ولد) ذكرأو أنثى

The interpretation of Ibn Abbas affects the right of inheritance of sisters (Abu Al-Fida Isma'il, n.d.) Another narration mentioned in the interpretation of Ibn Kathir, Ibn Abbas' view on this issue is described as follows:

و قد نقل ابن جرير و غيره أنَّ ابن عباس و ابن الزبير أنهما يقولان في الميت ترك بنتا و أختا إنه لا شيء لأخت لقوله (إن امرؤ ليس له ولد و له أخت فلها ترك) قال: فإذا ترك بنتا فقد ترك ولد فلا شيء للأخت

From the explanation above, according to Ibn Abbas the daughter can *hijab* the inheritance of the sister of the Heir, but does not make the daughter *hijab* the inheritance of the brother of the Heir because if the brother is with a person who has a definite share (*furudun muqaddarah*), then the share is given to him while the rest of the property is given to the brother (Syaiikh Muhammad bin Shalih al-'Utsaimin, 2006). This is determined for the

brother based on the hadith in the book of Shaihain, from Ibn Abbas from the Messenger of Allah SAW; he said:

أَحْفُزُوا الْفَرَائِضَ بِأَهْلِهَا فَمَا بَقِيَ فَهُوَ لِأَوَّلَى رَجُلٍ ذَكَرَ

"Give the inheritance to those who are entitled to it, and the remainder to the closest male relative. (HR. Bukhori).

### **About the Term *Hijab* (Inhibition of Inheritance Rights)**

*Hijab* comes from the word *hajab* - *yahjubu* - *hijban* -wa *hijaban*, which according to the language means cover or barrier. Whereas *hijab* according to *shara'* is a state of obstruction of the Heir to get all the inheritance or from the largest share (Akhter, 2022). This is because of the distant kinship between him and the testator and the existence of heirs who are closer to the testator. The Heir who is prevented is called *hajib*, and the Heir who is prevented is called *mahjub*. The prevention situation is called *hijab* (Akhmad Haries, 2019).

There are two barriers to inheritance, namely *hajb bi washfin* (by nature) and *hajb bi syakhsin* (by a person); *First, Hijabul washfi* is the *hijab* of all inheritance because there are characteristics contained in the heirs that can prevent inheritance such as heirs who kill or different religions with the mayyit (Heir). *Second, Hijabul bisaykhsi* is the existence of heirs who are more entitled to inheritance than other heirs, this *hijab* is divided into two types, namely :

1. *Hijab Nuqsan*, is preventing which results in reducing the share of the Heir who *mahjub* get the biggest share, for example, the wife, who should get 1/4, because with the child his share is reduced to obtain 1/8, or the mother who should get 1/3, because together with the children/grandchildren of the testator or with two or more siblings of the testator his share is reduced to obtain 1/6.
2. *Hijab Hirman*, is a complete prevention. As a result, the rights of heirs who are *mahjub* are completely prevented from getting inheritance by the existence of heirs who oblige them. Example of siblings together with the son of the testator, who is entitled to inherit the property is the son of the testator and the siblings are prevented from getting the property (Raja Sitonga et al., 2022, pp. 26-29)

Based on the discussion of *hijab hirman*, there is no mention of siblings or fathers who can be veiled by daughters based on the Sahih Hadith of Ibn Mas'ud, but there is a statement made by Ibn Abbas who said that daughters can veil both biological brothers and biological sisters. Although the opinion is weak, meaning the opposite of the Jumhur opinion, but the opinion of Ibn Abbas is stated in the book of Tafsir Ibn Kathir in Surah An-Nisa verse 176 (Abu Al-Fida Isma'il, nd).

In Article 182 of the Compilation of Islamic Law, the drafters of KHI stipulate that the existence of children determines the share of siblings. As in the Qur'an, KHI states that the brother will only get the inheritance if the testator does not leave children. The difference is, if the children mentioned in the Qur'an are further explained by the views of the 'Ulama,

especially Sunni, which states that what is meant by *walad* is a son, KHI does not explain who the child in question is. Is it only a boy, a boy, or a girl (Euis Nurlaelawati, 2012).

## **Research Method**

The type of research conducted is normative juridical research, which examines the Samarinda Religious Court Decision No. 247/Pdt.P/2020/PA.Smd. The sources of this research are taken from library materials and laws and regulations relating to the issues to be discussed, namely related to the reasons for the Judge to grant the petitioner's application in part, namely, determining the testator's biological daughter as the Heir of the abandoned property and rejecting the petitioner's application against the testator's siblings as heirs which resulted in the testator's siblings not becoming heirs. The approach used in this research is a qualitative approach, which is descriptive analysis.

## **Result and Discussion**

### **Analysis of Religion Court Decision Number 247/Pdt.P/2020/PA.Smd**

On May 06, 2019, a man named MNE passed away due to illness and left behind a wife and three daughters, as well as 7 (seven) siblings, namely 3 boys and 4 girls, and also left an inheritance in the form of a sum of money in the form of goods. To transfer the name of the goods, the wife, children, and siblings of MNE applied for the determination of heirs at the Samarinda Religious Court Partnership. Based on these reasons, the petitioners request that the examining Panel of Judges be pleased to decide of the heirs of the deceased as written in Determination of the Religious Court No. 247/Pdt.P/2020/PA.Smd. The Panel of Judges decided to grant the petitioners' petition in part, determining that the heirs of the deceased MNE are his wife and 3 daughters, rejecting the petition in addition and for the rest.

#### **Judges' Legal Considerations Regarding the determination of heirs;**

1. Based on the evidence and testimony of 2 (two) witnesses at trial, it is known that the testator left a wife and 3 (three) daughters and left 7 (seven) siblings.
2. The purpose of the Plaintiffs applying for this case is to obtain a Determination of Heirs so that the Plaintiffs can be determined as heirs of the Heir on behalf of MNE. Furthermore, it is also to transfer the name of a number of goods in the form of land and other assets belonging to the deceased MNE.
3. Based on the facts of the trial, it was proven that the Plaintiffs were MNE's wives, children and siblings (the Heir). It was also proven that both the Plaintiffs and the Heir were Muslims. Furthermore, it was also proven that the relationship between MNE and the Plaintiffs went well during his lifetime. In contrast, the death of the Heir was due to illness.
4. Based on these considerations, the Panel of Judges is of the opinion that the applicants can prove that they are the heirs of MNE. However, the Panel of Judges needs to address the principle of *hijab-mahjub* in the jurisprudential provisions of the Supreme Court of the Republic of Indonesia.

5. Based on the Jurisprudence of the Supreme Court Number 122 K/AG/1995, dated April 30, 1996 contains the rule of law: "The heir who left a daughter, then the brothers of the heir rights become *hijab* or closed".
6. That based on the Jurisprudence of the Supreme Court Number 86 K/AG/1994, dated July 27, 1995 contains the rule of law, namely: "As long as there are sons and daughters, the inheritance rights of people who have blood relations with the testator become closed (ter-*hijab*), except parents, husband and wife".
7. Based on the Supreme Court Jurisprudence 184 K/AG/1995, dated September 30, 1996 contains the rule of law: "The existence of the daughter of the testator, then the siblings of the testator closed".
8. The Panel of Judges thinks that when analyzed further, the Supreme Court Jurisprudence above contains the rule of law "that daughters can *hijab* the siblings of the heir", it is based on the opinion of Ibn'Abbas who stated that *walad* contained in the Qur'an Surah an-Nisa 176 regarding the provisions of inheritance, is not only limited to mean sons, but also includes the meaning of daughters.
9. The Judges also need to address the provisions in the letter of the Chief Justice of the Supreme Court No. KMA/032/SK/V/2006 related to the implementation of Book II Guidelines for the Implementation of Duties and Administration of Religious Courts and the provisions in the letter of TUADA Agama No. 14/TUADA-AG/IX/2013 related to the technical guidelines of Book II Revised Edition of 2013 containing the provisions of inheritance with respect to the principle of *hijab mahjub* among others regulates that, "Sons and daughters and their descendants *hijab* siblings (siblings, fathers, mothers) and their descendants, paternal and maternal uncles and aunts and their descendants".
10. By referring to the above Supreme Court Jurisprudence as well as the provisions in the decree of the Chief Justice of the Supreme Court and the provisions in the letter of TUADA Agama, the Panel of Judges believes that the brothers and sisters of the testator in this case are veiled by the 3 (three) biological daughters of the testator.
11. Therefore, the Panel of Judges believes that due to the principle of *hijab mahjub* as considered above, the heirs of the testator in this case are the wife and 3 (three) biological daughters of the testator. The other petitioners, namely the 7 (seven) siblings of the testator, are veiled (Decision Number 247/Pdt.P/2020/PA.Smd)

Based on the Judge's determination in the above case, the author concludes that the brother of the testator was veiled by the daughter of the testator, the Judge gave consideration based on the situation where the daughter together with the brother became heirs, using Supreme Court Jurisprudence Number 86 K/AG/1994 dated July 27, 1995, Supreme Court Jurisprudence Number 122 K/AG/1995 dated April 30, 1996 and Supreme Court Jurisprudence Number 184 K/AG/1995 dated September 30, 1996, then the provisions in the letter of the Chief Justice of the Supreme Court Number KMA/032/SK/V/2006 related to the implementation of Book II of the guidelines for the implementation of the duties and administration of the Religious Courts and the provisions in the letter of TUADA Agama Number 14/TUADA-AG/IX/2013 related to the technical guidelines of Book II of the Revised Edition of 2013 containing the provisions of inheritance with regard to the principle of *hijab mahjub* including regulating that: "Sons and daughters and their descendants *hijab* siblings

(siblings, fathers, mothers) and their descendants, paternal and maternal uncles and aunts and their descendants".

### **Reasons for Judges to Apply the Concept of *Hijab-Mahjub* According to Ibn Abbas**

In the decision, the panel of judges argued that various Supreme Court Jurisprudence, when analyzed further, contains the rule of law that daughters can *hijab* the siblings of the Heir. In this case, the Supreme Court Jurisprudence relied upon by the Panel of Judges of the Religious Court is based on Ibnu 'Abbas' interpretation of the word *walad* in the Qur'anic verse Surat an-Nisa verse 176. In understanding the word *walad* in the Qur'anic verse, Ibn 'Abbas said the word *walad* is not only limited to mean sons but also includes daughters.

The reason Ibn 'Abbas interpreted the word "*walad*" (child) and its cognates used in the Qur'an not only for boys but also for girls because he interpreted *walad* in accordance with the lughawi and shar'i meaning, while the evidence he used was the *zahir nash* verse of the Qur'an itself, such as in Surah an-Nisa verse (11), Allah said by using the word *awlad* (*jama'* word from the word *walad*) which means: "Allah has obliged you regarding *awlad* (your children), for a son is like the share of two daughters".

From the explanation above, according to the opinion of Ibn 'Abbas the daughter can *hijab* the inheritance of the sister of the Heir, but he did not make the daughter *hijab* the inheritance of the brother of the Heir because if the brother is with a person who has a definite share (*furudun muqaddarah*), then the share is given to him while the rest of the property is given to the brother. This is determined for the brother based on the hadith in the book of Shaihain, from Ibn Abbas from the Messenger of Muhammad SAW; he said: Give the inheritance to the person who is entitled to receive it, while the rest is for the closest male relative. (HR. Bukhori).

In contrast to the interpretation of Ibn 'Abbas, the majority of Sunni scholars who mean *walad* in al-Qur'an Surah al Nisa Verse 176 are sons only. So that daughters do not close the possibility of the Heir's siblings, both male and female, to inherit, because their existence does not affect the meaning of *kalālah* (Amir Syarifuddin, 2015). The opinion of the majority of Sunni Ulama is not unreasonable, they reason with the use of the word *walad* in urf (custom) in Arabic which uses the word *walad* only for boys and not for girls, and rely on the hadith, which means as follows:

Jabir bin Abdullah reported: "*The widow of Sa 'ad came to the Messenger with her two daughters. Then she said: "O Messenger of Allah these two daughters of Sa'd were martyred with you in the battle of Uhud. Their uncle took their father's estate and gave nothing to them. Both of them did not get any property." The Prophet said: Allah will lay down the law in this case." Then the verses on inheritance were revealed. The Prophet called this uncle and said: "Give two-thirds to Sa'd's two sons, one-eighth to Sa'd's wife, and the rest take for yourself."* (HR. five Imams except Nasai).

According to the author, the analysis carried out by the Panel of Judges in understanding the interpretation of Ibn 'Abbas related to the word *walad* in Surah an-Nisa verse 176 is less than perfect, because, according to the opinion of Ibn 'Abbas daughters can *hijab* the

inheritance of the Heir's sister, but he did not make daughters *hijab* the inheritance of the Heir's brother. So that if you analyze the interpretation of Ibn 'Abbas perfectly, it will lead to a rule of law that "the existence of sons and daughters or only sons alone will veil the brothers of male and female heirs and if there are only daughters, they will veil the sisters of the heir only." Although many Ulama differ in interpreting the meaning of *walad* with various meanings, the references used by them are the same, namely the Qur'an and Hadith, both of which are the main source of guidance for Muslims and the most important reference in determining the law of inheritance issues so that today we only need to follow the interpretations of previous scholars as the Judges did.

The author argues that the problem of inheritance is developing and dynamic, the problem of inheritance is a casuistic thing, it requires interpretation that is relevant to the case that occurs, so that the elements of legal certainty, justice and usefulness in a decision can be fulfilled properly. So, according to the author in this case the author agrees with the majority of Sunni scholars who only interpret the word *walad* with the meaning of sons only because in this case there is no strong reason that can make girls as *hijab* hirman for their uncles.

## **Conclusion**

The consideration of the Panel of Judges in Determination Number 247/Pdt.P/2020/PA.Smd is based on the Jurisprudence of the Supreme Court and Book II of the Provisions of the Law of Inheritance related to the principle of *hijab mahjub*, which contains the rule of law "that daughters can *hijab* the siblings of the heir", it is based on the opinion of Ibn 'Abbas who interpreted the word *walad* in Surah an-Nissa 176 to mean sons and daughters.

The Panel of Judges, in its decision, chose to apply Ibn's opinion even though it was less than perfect. Because according to Ibn Abbas, daughters can *hijab* the inheritance of the testator's sister and do not make daughters *hijab* the inheritance of the testator's brother. The judges may not follow existing court decisions (Supreme Court Jurisprudence) on the same issue if it is not relevant to the case at hand, and the judges should give more importance to the principle of a petition in Book II because the principle of the petition is more specialized in petition cases than the principle of *hijab mahjub*.

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