MUSLIMS’ INHERITANCE LAW IN MINDANAO – PHILIPPINES: A GUIDE FOR BEGINNERS

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By

ALIAH MARUHOM PUMBAYA
NIM : O200120011

ISLAMIC STUDIES DEPARTMENT
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Proposed by:
ALIAH MARUHOM PUMBAYA
O200120011

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Approved to be examined by:

First Consultant

Prof. Dr. Suparman Syukur, M.A.
ABSTRACT

This study was generally design to simplify one of the complex branches of Islamic Law (Shari’ah) – Inheritance. The main objective of this study is to discover and explore the Muslims’ Inheritance law in Mindanao – Philippines as a guide for beginners. Although Philippines is Christian dominated country, the Code of Muslim Personal Laws of the Philippines also known as P.D. 1083 has been introduce in 1977. Before that, there was not even a single set of comprehensive codification of rules available on Islamic law specifically on Islamic law of Inheritance for the Muslims in Mindanao – Philippines in general. Due to lack of moral teachings and learnings, lack of awareness and lack of English textbooks and review materials on Islamic Inheritance in Mindanao - Philippines, the researcher chooses this topic rather than any other because it has been neglected and because it has been discussed but not properly or fully.

This study seeks to answer the following questions, namely: 1) What are the Muslims’ Inheritance laws in Mindanao - Philippines?; 2)What are the Islamic Rulings on Muslims’ Inheritance laws in Mindanao - Philippines?; 3)What are the requisites of succession for Muslims’ Inheritance laws in Mindanao - Philippines? and 4)What are the Procedures of Succession on Muslims’ Inheritance law in Mindanao - Philippines? This study uses conceptual approach, statute approach and legislation approach to seek information in order to answer the research questions.

To answer the problems mentioned above in this study scientifically, hence the researcher used the following data sources: first, the data sources which are adopted as a binding law such as P.D. 1083 otherwise known as the Code of Muslim Personal laws of the Philippines and from Holy Qur - an and Prophetic traditions (Hadith), Qiyas and Ijma on Islamic law of Inheritance; Second, the data sources which are adopted as a results of study through many books, literatures, magazines, journals, newspapers, and thesis. Third, the data sources which are explanations from primary and secondary materials such as encyclopedia and dictionary. The qualitative data taken from the data sources are
analysed through logical analysis. The analytical tools used are as follows: first, legal interpretation; Second, theological interpretation; and finally, juridical analysis.

The result shows that the Muslims’ Inheritance law in Mindanao – Philippines was codified and became a binding law in 1977. The codification of Muslim Personal Laws is one of the greatest achievements of the Muslims in the Philippines. A total of 47 codified Islamic laws on Inheritance can be found in Book III of Presidential Decree 1083 otherwise known as The Code of Muslim Personal Laws of the Philippines. These are from article 89 to article 136. The Islamic Rulings on Muslims’ Inheritance law in Mindanao - Philippines are commandments of Allah (S.W.T.). There are thirty-five verses of the Quran which refer to Mirath or its derivatives in one form or the other. There are 3 main verses in the Quran giving specific details of inheritance shares (4:11-12, 4:176). At least seven verses (2:180-182, 2:240, 4:33, 5:106-107) deals directly to testamentary disposition. Some of the Islamic rulings are taken from Prophetic Traditions, Qiyas, Ijma and Ijtihad like that of Special Cases. The Requisites of Succession for Muslims’ Inheritance Law in Mindanao – Philippines is that the death of the decedent is ascertained; the successor is alive at the time of the death of the decedent; and the successor is not disqualified to inherit. The Procedures of Succession on Muslims’ Inheritance Law in Mindanao – Philippines is that under the Code of Muslim Personal Laws of the Philippines, the order of preference of claims mentioned in Article 135 and Procedures for distribution of estate is as follows: “The estate of a decedent shall be applied to claims and charges in the following order: (a) Unpaid taxes; (b) Reasonable funeral expenses; (c) The expenses for probate, administration and other judicial expenses; (d) The debts of the decedent; (e) The legacies to the extent of the disposable one-third; (f) The distribution of shares among heirs; and (g) Unpaid dower.” When distributing shares, we encounter four main situations, namely: Inheritance is distributed only amongst Dhul-Fard (Primary Heirs); Inheritance is distributed amongst Dhul-Fard and Al-Asabat Nasabiyyah; Inheritance is distributed only amongst Al-Asabat Nasabiyyah and Inheritance is distributed amongst Dhawul-Arham. Finally, if there are no distant kindred or still some residue left, then it goes to Bait-ul-Maal. Partition and Settlement of Special Cases on Muslims’ Inheritance Law in Mindanao - Philippines varies depending upon on the case may be. It is important to note that if there are differences of opinions among the Orthodox School (madhahib) on Islamic Inheritance, the degree of authenticity of the Islamic evidence is given with much preference over the opinions of the madhahib. Therefore, although most of the Muslims in Mindanao - Philippines are following the Shafi’i Madhhhab, the degree of authenticity of the Islamic evidence is given with much preference over the opinion of him.

Keywords: Muslims’ Inheritance law, Islamic Inheritance law and Succession.
1. INTRODUCTION

Mirath means inheritance to be shared from the property of the deceased among his successors. The study of Mirath in shariah gives rules as to who inherits and who is to be inherited and what shares go to the heirs. The death of a person brings about transfer of most of his rights and obligations to persons who survive him and are called Wuratha that is heirs and representatives. (Abdul Hamid Siddiqui 2005).

Moreover, the compulsory transferring of the deceased’s property to his heirs is called inheritance. Islamic Inheritance (Faraidh) is one of the complex branches of Islamic law (Shari’a). A source of significant controversy both inside and outside the Muslim community is the Islamic law of inheritance. Who can inherit at all is not the controversy. Rather, the dispute centers around the "share" that is to be inherited.

Furthermore, There are thirty-five verses of the Quran which refer to Mirath or its derivatives in one form or the other e.g Quran says, “And Allah will be the One to inherit everything in the heavens and the earths and to him belong the knowledge of the hidden”.

The Holy Qur’an states "Allâh has purchased from the believers their persons and their wealth in lieu of Jannah." Man is a trustee of the wealth that he owns for the duration of his life. When his term of life expires, his trusteeship over his wealth and property expires. It has then to be redistributed in accordance with the directive of The

1 Abdul Hamid Siddiqui, Inheritance in Islam, (IslamOnline.net-Shariah and Humanity 2005)
3 Kakhakel, Syed Shabbir Ahmed “Islamic Inheritance Law – Calculations Simplified” 15 Jamad ud Thani, 1427 H, p. 02
Absolute Owner - Allah Ta'āla. Directives regarding the distribution of wealth after the demise of the provisional owner are explicitly detailed in the Holy Qur'ān.

In recent years, the study on Islamic Inheritance in the Philippines focuses only on its basic principles. There has been less interest lately in the concept of Special Cases in Muslims’ Inheritance law not only in the Philippines but also in other Muslim countries. In connection to these, the researcher chooses this topic rather than any other because it has been neglected and/or because it has been discussed but not properly or fully.

Death is inevitable and all souls shall test death. For the fact that death is a channel through which every living soul must pass through, when it comes, the deceased usually leaves behind an estate which is to be shared among his relations as ordained by Allah (S.W.T.). Therefore, without the knowledge on how to solve the basic and special cases in Islamic Inheritance, an important commandment of Allah (s.w.t.) will not be carried out or will be done wrongly.\(^5\)

The Islamic Inheritance Law (Faraidh) has been pre-ordained by Allah s.w.t. in a wise and gradual manner in order to allow for its compatibility with the judiciary and human nature which might find it difficult to change their normal practices. At the early stage, Islam perpetuated the inheritance laws of the Jahiliyah, a temporary system based on kinship and Hijrah. The system was then overruled and replaced by the inheritance distribution by will system (wasiat) to parents and

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kinsfolk based on verse 180 from Surah al – Baqarah. At the final stage, all previous systems were abolished and replaced with the current Islamic Inheritance Law.⁶

The law was derived from the commandments of Allah s.w.t. based on the Mawarith verses which are verses 11, 12 and 176 of Surah al-Nisa. The Islamic Inheritance Law today is a complete and comprehensive system for the rightful beneficiaries, the portions for each beneficiary and all non-rightful beneficiaries to the inheritance using al-Hajb doctrine or method. Allah (s.w.t.) has determined the rulings and methods to distribute inheritance among all beneficiaries with the purpose to act fairly to all levels of beneficiaries and to avoid discrepancies among them.⁷

Today students lack an urge to learn and their spirit to serve the religion has also waned. Things have to be made easy for a quick grasp. Number of practitioners from the religious seminaries is reducing rapidly and those from the conventional schools and colleges are not interested to learn them. Students consider it to be the domain of the intelligent only.⁸

Teachers complain about lack of interest and calibre of students to learn it. Both in their own stride are right. Not only the students lack capacity and calibre but the methods teachers are constrained to use make it difficult and it can be understood by the wise only. Keeping these constraints in mind there is a need to be simplistic in approach.

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⁶ Awang, Mohd Ridzuan “The Islamic Inheritance Law (Faraid): The Manifestation of Comprehensive Inheritance Management in Islam”, Islamic Law Department, Universiti Kebangsaan Malaysia, Kuala Lumpur, Malaysia, p. 01
⁷ Ibid.
⁸ Ibid.
Rather than untying the complicated mathematical equations, it is best to explain them simply; using the terminology in vogue today.⁹

The researcher has gone extra-mile to explain the basics before discussing certain aspects for more clarity. This is to enable and encourage Muslim brothers and sisters especially those that acquired strictly western education to better appreciate this knowledge despite its complexity. Most existing study on Islamic Inheritance has been based on general principles on Islamic law of inheritance and surprisingly, this aspect of special cases of Muslims’ Inheritance law has not been given much attention. In addition, most of the research on Islamic inheritance which can be found in literature pertains to the application of the basic calculation of Islamic inheritance. Studies of Special Cases in Muslims’ Inheritance law are very rare in nature.

Therefore, due to Lack of moral teachings and learnings, lack of awareness and lack of English textbooks and review materials on Islamic Inheritance in Mindanao - Philippines, the researcher chooses this topic rather than any other because it has been neglected and because it has been discussed but not properly or fully.

2. RESEARCH METHOD

This research uses Descriptive and Qualitative Research Method. Aquino gives this definition. This study is also a kind of library research where the research data and information obtained from major books which are related to this research. Thus, as a descriptive and / or qualitative research, this research has detailed descriptions of the Muslims’ Inheritance law in Mindanao - Philippines.

⁹ Ibid.
Since the researcher is one of the Muslim Citizens of the Philippines at the same time a Foreign Student at Muhammadiyah University of Surakarta, Indonesia, the venue of this study was conducted at MSU – Main Marawi City, Lanao del Sur, Mindanao - Philippines where the researcher resides on second semester of academic year 2014 – 2015.

In this study, descriptive and qualitative research approach in gathering, evaluating and handling data was utilized. Through applying descriptive and qualitative methods can ensure reliability in the research. In addition, an inductive approach was used. It is an approach that searches for a specific data related to this research from a variety of data sources in order to acquire essential knowledge and information. Moreover, conceptual approach is also used which examines the legal principles relating to Islamic Inheritance and Inheritance according to Islamic Law compilation. Finally, statute approach is also used in this study because the focus of this study is to understand and explain the position of Presidential Decree 1083 also known as the Code of Muslim Personal laws of the Philippines on Islamic Inheritance Law in Mindanao - Philippines. Therefore the legislation approach is used to seek information in order to answer the research questions.

In this research, an in-depth reading and fact finding was employed in the primary and secondary data sources. To assess the validity of the instruments used in this research such as review of related literature and review of related studies content validity will be established where a recognised experts in the area of study (Thesis adviser, Thesis proposal professors, and other qualified persons) are asked to give their opinion on the validity of the tool.
To answer the problems mentioned above in this study scientifically, hence the researcher used in-depth reading and fact-finding on the following data sources: first, the data sources from a binding law such as P.D. 1083 otherwise known as the Code of Muslim Personal laws of the Philippines and from Holy Qur - an and Prophetic traditions (Hadith), Qiyas and Ijma on Islamic law of Inheritance; Second, the data sources from a results of study through many literatures, magazines, journals, newspapers, and thesis. Third, the data sources that are explanations from primary and secondary materials such as encyclopedia and dictionary.

The qualitative data taken from the primary data sources are analysed through a logical analysis. Finally, the information from the document review could also give clarity to the research questions. In addition, the analytical tools used are as follows, first, Legal Interpretation. It is a grammatical interpretation that explains and elaborates on the meaning of the provisions of laws and regulations, it uses everyday language or the language of the law; Second, Theological Interpretation. It is to interpret legislation in accordance with its purpose. Further analysis used is Juridical Analysis that examines, in depth and thoroughly explains and intertwined with each other, and evaluates legal material, as the elaboration of Islamic inheritance concept.

3. FINDINGS AND DISCUSSIONS

Muslims’ Inheritance law in Mindanao – Philippines was codified and became a binding law in 1977. The codification of Muslim Personal Laws in Mindanao – Philippines is one of the greatest achievements of the Muslims in the Philippines. A total of 47 codified Islamic laws on Inheritance can be found in Book III of Presidential Decree 1083 otherwise known as The Code of Muslim Personal Laws of the Philippines
or Muslim Code for short. These are from article 89 to article 136. The Book III of Muslim Code is subdivided into 4 titles, namely: Title I composed of articles that deals with the General Provisions On Succession, Title II composed of articles that deals with the Testamentary Succession, Title III composed of articles that deals with Legal Succession of which it is further subdivided into three chapters, namely: Chapter I composed of articles that deals with Sharers, Chapter II composed of articles that deals with Residuary Heirs and Chapter III composed of articles that deals with Distant Kindred, while Title IV composed of articles that deals with the Settlement and Partition of Estate.

Moreover, under Section 18 of RA 9054 provides that Subject to the provisions of the Constitution, the Shari'ah courts shall interpret Islamic law based on sources such as: (1) Al-Qur'an (The Koran);(2) Al-Sunnah (Prophetic traditions);(3) Al-Qiyas (Analogy); and(4) Al-Jima (Consensus). In other words, the Religious Courts must wear the Islamic law, and should not use the Civil Code and Customary Law as the legal basis for prosecuting cases of inheritance for the justice seekers.

Furthermore, Pursuant to Section 11 of Article XV of the Constitution of the Philippines, which provides that "The State shall consider the customs, traditions, beliefs and interests of national cultural communities in the formulation and implementation of state policies," the Muslim Code in the Philippines:

(a) Recognizes the legal system of the Muslims in the Philippines as part of the law of the land and seeks to make Islamic institutions more effective;

(b) Codifies Muslim personal laws; and
(c) Provides for an effective administration and enforcement of Muslim personal laws among Muslims.

In addition, The Islamic Rulings on Muslims’ Inheritance law in Mindanao - Philippines are commandments of Allah (S.W.T.). There are thirty-five verses of the Quran which refer to Mirath or its derivatives in one form or the other. There are 3 main verses in the Quran giving specific details of inheritance shares (4:11-12, 4:176). At least seven verses (2:180-182, 2:240, 4:33, 5:106-107) deals directly to testamentary disposition. Some of the Islamic rulings are taken from Prophetic Traditions, Qiyas, Ijma and Ijtihad like that of Special Cases.

Inheritance is after Debt and Bequeath: [An-Nisa 4:11]

a. Distribution sequence:

“(Al – Qur-an, 4:11) … (The distribution in all cases is) after the payment of legacies he may have bequeathed or debts…”

“(Al – Qur-an, 4:12) … after payment of legacies that they may have bequeathed or debts…”

b. Mirath is an inheritance law ordained by Allah (swt):

“(Al – Qur-an, 4:11) … You know not which of them, whether your parents or your children, are nearest to you in benefit, (these fixed shares) are ordained by Allah. And Allah is Ever All-Knower, All-Wise.”

“(Al – Qur-an, 4:12) … This is a Commandment from Allah; and Allah is Ever All-Knowing, Most-Forbearing”

c. No loss should be caused to anyone in inheritance:

“(Al – Qur-an, 4:12) …so that no loss is caused (to anyone)..

Man and woman both inherit

a. Share for man and woman:

“(Al – Qur-an, 4:7) There is a share for men and a share for women from what is left by parents and those nearest related, whether, the property be small or large - a legal share. “
Share for relatives, orphans, needy:

“(Al – Qur-an, 4:8) And when the relatives and the orphans and Al - Masakin (the poor) are present at the time of division, give them out of the property, and speak to them words of kindness and justice”

“(Al – Qur-an, 4:9) And let those (executors and guardians) have the same fear in their minds as they would have for their own, if they had left weak offspring behind. So let them fear Allah and speak right words.”

“(Al – Qur-an, 4:33) And for all, We have made heirs to what is left by parents and relatives. And to those whom your oaths have bound [to you] – give them their share. Indeed Allah is ever, over all things, a Witness”

Male share is twice as female share: [An-Nisa 4:11]

a. Male / Female Ratio is 2:1:

“(Al – Qur-an, 4:11) Allah commands you as regards your children (inheritance); to the male, a portion equal to that of two females;”

Daughter’s Share: [An-Nisa 4:11]

a. 2/3, if two or more:

“(Al – Qur-an, 4:11) … if (there are) only daughters, two or more, their share is two thirds of the inheritance;”

b. 1/2, if only one:

“(Al – Qur-an, 4:11) … if only one, her share is half.”

Parent’s Share: [An-Nisa 4:11]

a. 1/6 for each parent, if deceased had children:

“(Al – Qur-an, 4:11) … For parents, a sixth share of inheritance to each if the deceased left children;”

b. 1/3 for mother, if deceased had no children:

“(Al – Qur-an, 4:11) … if no children and the parents are the (only) heirs, the mother has a third;”

c. 1/6 for mother, if deceased had a brother:

“(Al – Qur-an, 4:11) … if the deceased left brothers or (sisters), the mother has a sixth.”

Husband, Wife, Brother, Sister’s Share: [An-Nisa 4:12]

a. Husband’s Share 1/2, if no child:
“(Al – Qur-an, 4:12) In that which your wives leave, your share is a half if they have no child;

b. Husband’s Share 1/4, if child:

“(Al – Qur-an, 4:12) … but if they leave a child, you get a fourth of that which they leave after payment of legacies that they may have bequeathed or debts.

c. Wife’s Share 1/4, if no child:

“(Al – Qur-an, 4:12) … In that which you leave, their (your wives) share is a fourth if you leave no child;

d. Wife’s Share 1/8, if child:

“(Al – Qur-an, 4:12) … but if you leave a child, they get an eighth of that which you leave after payment of legacies that you may have bequeathed or debts.”

Brother/Sister Share 1/6 or 1/3, if no child: [An-Nisa 4:12]

“(Al – Qur-an, 4:12) … If the man or woman whose inheritance is in question has left neither ascendants nor descendants, but has left a brother or a sister, each one of the two gets a sixth; but if more than two, they share in a third; after payment of legacies he (or she) may have bequeathed or debts, so that no loss is caused (to anyone). This is a Commandment from Allah; and Allah is Ever All-Knowing, Most-Forbearing.”

Also, The Requisites of Succession for Muslims’ Inheritance law in Mindanao – Philippines is that the death of the decedent is ascertained; the successor is alive at the time of the death of the decedent; and the successor is not disqualified to inherit.

Likewise, The Procedures of Succession on Muslims’ Inheritance law in Mindanao – Philippines is that under the Code of Muslim Personal Laws of the Philippines, the order of preference of claims mentioned in Article 135 and Procedures for distribution of estate is as follows: “The estate of a decedent shall be applied to claims and charges in the following order: (a) Unpaid taxes; (b) Reasonable funeral expenses; (c) The expenses for probate, administration and other judicial expenses; (d) The debts of the decedent; (e) The legacies to the extent of the disposable one-third; (f) The distribution of shares among heirs; and (g) Unpaid dower.” When distributing shares, we
encounter four main situations, namely: Inheritance is distributed only amongst Dhul-Fard (Primary Heirs); Inheritance is distributed amongst Dhul-Fard and Al-Asabat Nasabiyyah; Inheritance is distributed only amongst Al-Asabat Nasabiyyah and Inheritance is distributed amongst Dhawul-Arham. Finally, if there are no distant kindreds or still some residue left, then it goes to Bait-ul-Maal. Partition and Settlement of Special Cases on Muslims’ Inheritance Law in Mindanao - Philippines varies depending upon on the case may be.

It is important to note that if there are differences of opinions among the Orthodox School (madhahib) on Islamic Inheritance, the degree of authenticity of the Islamic evidence is given with much preference over the opinions of the madhahib. Therefore, although most of the Muslims in Mindanao - Philippines are following the Shafi’i Madhhab, the degree of authenticity of the Islamic evidence is given with much preference over the opinion of him.

4. CONCLUSION

In Conclusion, Muslims’ Inheritance law in Mindanao - Philippines is patterned from the fundamental Sources of Islamic Law (Shari’a). Inheritance as an integral part of Islamic Shari’a Law and its application in Islamic Society is a mandatory aspect of Devine teaching of Islam. As a Muslim, Our obligation is to understand this issue so as to be able to implement it correctly. It is also an obligation on us to take the necessary steps to prevent misappropriating our estate after we die. As a Muslim we have no choice but to ensure that our possessions in this world are distributed in accordance with the rules outlined in the Shari’a. Our possessions have been given to us in trust by the almighty and we are ordered by the almighty to distribute our assets in accordance with the Qur-an.
This law has a clear policy and is comprehensive in nature because it is a commandment from Allah S.W.T. Who knows all things.

At the concluding remarks it can be said that by proper implementation of the Islamic Law of Inheritance as well as the other Laws of Islam in Philippines and also in other Muslim Countries, it is possible for us to make sure peaceful environment in this world and can ensure peace in the life hereafter.

It can also be told here that the findings of this study are not absolutely right and universe. With the amendments of the Code of Muslim Personal Laws, the result may vary. But, it will be treated as a matter of thinking for those who want to do further research on this topic.
REFERENCES


Kakhakel, Syed Shabbir Ahmed “Islamic Inheritance Law – Calculations Simplified” 15 Jamad ud Thani, 1427 H.


Luqman Haji Abdullah, “Islamic Inheritance Law among Muslim Minority Countries in South East Asia”, The Department of Fiqh and Usul al Fiqh, Academy of Islamic Studies, University of Malaya, ( 50603 Kuala Lumpur, Malaysia: 2012)

