



CHAPTER I

INTRODUCTION

A. Background of Research

Inheritance is one of importance problems in human life. With the rule of inheritance, right and obligation of wealth will be moved to other person. The inheritance is used by some people to measure the necessity. As a consequence, the inheritance distribution will open the chance of dispute.¹

Islamic law of inheritance is the knowledge to know the person who accept and do not accept property, the property shares, and the way of

¹Syakroni, *Konflik Harta Warisan*, (Yogyakarta: Pustaka Pelajar, 2007), p. 1.

inheritance distribution. In Islamic law, sources of inheritance law consists of Quran, Hadith, *ijma'*, and *ijtihad sahabat*. The provision argues both man and woman have the right to get the share of property, written in Quran verse 7 surah an-Nisa':

لِّلرِّجَالِ نَصِيبٌ مِّمَّا تَرَكَ الْوَالِدَانِ وَالْأَقْرَبُونَ وَلِلنِّسَاءِ نَصِيبٌ مِّمَّا تَرَكَ الْوَالِدَانِ وَالْأَقْرَبُونَ مِمَّا قَلَّ مِنْهُ أَوْ كَثُرَ نَصِيبًا مَّفْرُوضًا

“Men will have a share in what their parents and their near relatives leave; and women will have a share in what their parents and their near relatives leave: whether it be a little or much, they shall be legally entitled to their shares.”²

In *jahiliyah* period, woman and children did not obtain the right of inheritance property. The verse straightened and confirmed that man obtains his share and woman also obtains her share from his/her mother, father, and family.³

Beside regulated in the verse of Quran, inheritance regulation is also ruled by Islamic positive law. In article 71 (a) Compilation of Islamic Law, inheritance law regulates the transfer of inheritance right, determines the persons who has right to become heir, and how many each heirs get the share.

The article 71 (a) Compilation of Islamic Law explains that inheritance law is compilation of regulation which regulates the rule of inheritance. Principally, according to Islamic law of inheritance, distribution of inheritance is performed after the deceased passed away. Automatically the deceased leaves the

²Malik, *The Qur'an in English Translation Complete*, (t.t.: MidEastWeb, 2007), p. 29.

³Syakroni, *Konflik Harta Warisan*, (Yogyakarta: Pustaka Pelajar, 2007), p. 19.

property and distributed to the heirs. So, we can conclude that every heir has right to become the legal heirs.

The case happened in Geluran Village, Taman Subdistrict, Sidoarjo Regency shows that the deceased gave some of wealth to eldest son by means of *hibah* before the deceased passed away. However, in this family way, the *hibah* became inheritance object (the property). But it is not matter, because article 211 Compilation of Islamic Law have regulated that the parent's *hibah* can be computable as inheritance.

But sometimes distribution of inheritance is not appropriate with Islamic law. In this fact, the problem is the difference way in distributing the inheritance. The inheritance is not given to every heir (children). The case happened in Geluran Village, Taman Subdistrict, Sidoarjo Regency, firstly the inheritance was distributed by collecting all of separated properties. After the properties were collected, eldest son invited his brothers and sisters to talk the way of inheritance distribution. Finally, the result of meeting was agreed by all brothers and sisters. The properties were not distributed to all heirs. Some shares of the property were given as endowment, but another was saved by eldest son. Then if one of brother or sister wants to take the share of property (saved by eldest brother), he or she must loan the property. Someday, he or she must return the property to be saved again. Thus, the heir has not right to possess the property because when he or she loans the property, he or she must returns.

In this fact, the distribution is not appropriate with Islamic law. Because of in the rule of inheritance distribution, the heir should obtain the share of

property. The difference on the way of inheritance distribution becomes big question, how does *maslahah* view on converting inheritance right into saving and loan form. In addition, why do people convert inheritance right into saving and loan form. Therefore, researcher wants to study on the case with the view of *maslahah* as tool analysis. So, the researcher is intended to deeply research in thesis with title, "**Converting Inheritance Right Into Saving and Loan Form in *Maslahah* Perspective (Case Study in Geluran, Taman, Sidoarjo)**".

B. Statement of Problem

From the background of the problem, the questions will be proposed in the title are as follow:

1. Why do people convert inheritance right into saving and loan form?
2. How does *maslahah* view on converting inheritance right into saving and loan form?

C. Objective of Research

From the formulated problems above, the objectives of research are as follow:

1. To describe the people's reason converting inheritance right into saving and loan form.
2. To explore *maslahah* views on converting inheritance right into saving and loan form.

D. Significance of Research

1. Theoretically

The research result is expected to provide additional knowledge about concept of inheritance law. Besides, the research is also expected to be useful reference for developing legal knowledge, with giving additional of law thinking, especially in Islamic law of inheritance in Indonesia.

2. Practically

The research result is expected to make a contribution, used for policy makers in the implementation of inheritance law and can be used as reference for the judge of religion court in same case. Beside, the research result is also used as reference for society in distribution of inheritance.

E. Operational Definition

1. Saving and loan

Saving and loan is the saving collected together and loaned to members who need it. Thus, saving and loan is an activity to save and loan the savings are that collected together.

F. Structure of Discussion

To provide the thesis systematically and well relationing of each chapter, researcher describes the structures of the thesis as follows:

Firstly, Chapter I is the introduction of thesis that contains: background of research as the basis reason of writing the research. Then the next are the statement of problem and objective of problem. The statement of problem is the question of the research that must be answered. The objective of problem explains

the achieved result of the reseearch. Furthermore, the significance of the research provides the thinking on Islamic law of inheritance development. The last is structure of discussion that can give a good basis picture and systematic research plot.

Chapter II is a review of the related literature that consists of the previous researchs and the theories. Previous researchs are informations of research that had been done by previous researchers. Chapter II aims to review the concepts and theoretical basis for research analysis. The previous researchs mention the differences and similarities between previous and current researchs. The theories discuss Islamic law of inheritance. Then the theories are: Islamic Law of Inheritance, Legal Basis of Islamic Law of Inheritance, Islamic Law of Inheritance in Hazairin, Inheritance Right, *Maslahah*, *Ash-Shulhu*, and *Maqashid Syariah*. This chapter is intended to get the theoretical knowledge.

Then, Chapter III is a research method that is directive step of research as tool of research. This chapter provides the steps used to discuss the problem of research. The research method explains the tools and methods to analyze the data obtained.

Chapter IV is the findings and discussions of the research. This chapter provides the description of the case. This chapter focuses to see the description of the case, the commentaries of scholars, the reasons of converting inheritance right into saving and loan form, *maslahah* views on converting inheritance right into saving and loan form. This chapter will be processed with entering the data and

information from previous chapter. So, the result obtained is accurate and undoubtable.

Finally, Chapter V is closing. The last chapter provides conclusion of research discussion. Then it is completed with suggestion as additional thinking. The chapter is expected to understand about the research.

