



Tirkah Distribution Obligation Rules According to *Fiqh Al-Awlawiyyat*

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Abstract

Fiqh al-awlawiyyat is the science of putting something in its position with the various standards (dhawabith al-awlawiyyat) used. Some of these standards are seen from various aspects such as the level of benefit, keeping mudharat away, and the efficiency of implementation time. This article is a literature research with a normative juridical approach. The methodology used is a descriptive study of analysis with primary sources in the form of literacy regarding fiqh al-awlawiyyat. The secondary source used is literacy that discusses fiqh and ushul al-fiqh which are relevant to the research variables. The results of the study concluded that the orderly distribution obligations of tirkah must have an orderly order, namely; the obligation of distribution of common property rights, the obligation of distribution of the cost of handling the remains, the obligation of distribution of the cost of repayment of mayit debts, the obligation of distribution of wills, and the obligation of distribution of inherited property.

Keyword: *Distribution, Tirkah, Fiqh al-Awlawiyyat*

Abstrak

Fiqh *al-awlawiyyat* merupakan ilmu untuk meletakkan sesuatu pada posisinya dengan berbagai standar (*dhawabith al-awlawiyyat*) yang digunakan. Beberapa standar itu dilihat dari berbagai aspek seperti tingkat kemaslahatan, menjauhkan mudharat, dan efisiensi waktu pelaksanaan. Artikel ini merupakan penelitian pustaka dengan pendekatan yuridis normatif. Metodologi yang digunakan adalah studi deskriptif analisis dengan sumber primer berupa literasi mengenai fiqh *al-awlawiyyat*. Sumber sekunder yang digunakan adalah literasi yang membahas tentang fiqh dan ushul *al-fiqh* yang relevan dengan variabel penelitian. Hasil penelitian menyimpulkan bahwa tertib kewajiban distribusi tirkah harus memiliki urutan tertib yaitu; kewajiban distribusi hak harta bersama, kewajiban distribusi biaya pengurusan jenazah,

kewajiban distribusi biaya pelunasan utang mayit, kewajiban distribusi wasiat, dan kewajiban distribusi harta warisan.

Kata Kunci: Distribusi, Tirkah, Fiqh al-Awlawiyyat

Introduction

Islam as a perfect religion has regulated all sides of human life to create benefit as well as to prevent injustice between fellow humans as a result of the desire to have property in wrong way. Based on the rules of Fiqh al-Muamalah, the process of transferring and ownership of property has been regulated in detail, correct and effective way so that the property that has changes hand from one person to another actually becomes the property that is lawful to be owned. The criterion of a lawful property is that if it is not obtained from unjustly ways what has been determined by Allah; *“And do not consume one another’s wealth unjustly...”* (QS. Al-Baqarah: 188).

In the study of Islamic law, justice in the distribution of property is one of the indicators in various sectors. This is included in the joints of Maqasyid Sharia, namely the point of 'safeguarding property'. Guarding here is not limited to protection so that the property is not lost, more than that how the position of the property lies with the owner who is rightfully his. The most common problem is in the division of inheritance. A grandson, for example, is veiled by his uncle if his father has already passed away. Logically, why classical Islamic law does not give inheritance to grandchildren (in this condition) is because the uncle is responsible for paying attention to it.

The reality on the ground, often the uncle takes the inheritance rights from his nephew, but does not care about the condition of his nephew. They are struggling to maintain life, maybe even starving because there is no longer a father as the backbone of the family. Therefore, such an Islamic legal system received reforms based on circumstances and conditions. Even a grandson may sue the sharia court if indeed the right to his inheritance is misappropriated by his uncles.

Similarly, in the context of inheritance for sons and daughters compared to 2 and 1. In classical times, it was relevant because normally women were rarely the backbone of the family. Only men work and only men leave the house peacefully. Unlike modern times, many women have been independent, women work, not even a few women who are the backbone of the family. A woman (an older sister), for example, cares more about raising her younger siblings than her brother. In this condition, justice is more appropriate if the share of women is equal or more than that of their brothers. This needs to be considered in modern times, considering that culture and life trends often change far from the classical period.

One of the properties that transfers ownership rights from one person to another is inheritance (*mirats*) with changes hands on the basis on the *ijbari's* principle (Solihah, 2017). In other words, the transfer of inheritance occurs automatically by Allah’s desire when someone is declared dead. (Muttaqin, 2021, p. 192) In the process of transferring the property, the heirs are obliged to ensure that the property left by the heir is on the right target distribution, starting from sorting out the assets which will be the heir’s property to the distribution of the assets that are the rights of each heir. Ignorance of the heir regarding the rules of

tirkah distribution obligation will result in a conflict of each party based on their interest who has the right of the *tirkah*.

Literature Review

Research related to this paper has been discussed in several papers. The first paper is written by Fidaweri entitled *Kewajiban Ahli Waris Terhadap Harta Peninggalan*. According to this paper, it is known that in order to make the heritage property become inheritance, the heirs are obliged to pay the funeral expenses, paying the debts off the testator, and paying the testator's will without mentioning the arguments of the rules of distribution obligations (Firdaweri, 2017).

The second paper is written by Norita binti Kamaruddin entitled *Hak-Hak Harta Pusaka Sebelum Pembagian Kepada Ahli Waris*. Based on this paper, it is known conceptually that before the distribution of the inheritance is carried out, all rights related to the heritage property of the heirs' property should be settled, such as the completion of funeral expenses, settlement of debts, execution of wills, and distribution of joint property (Kamaruddin, 2018). which are positioned in the last order without mentioning the arguments from the orderly sequence as what has been mentioned in the rules of distribution of debt repayments and wills.

Likewise, the discussion mentioned by *Fuqaha* regarding the distribution of inheritance (*mirats*) to the heirs has indeed been described in various references related *fiqh al-mawarits*, one of which is as described by Zakiuddin Sya'ban and Ahmad Al-Ghundur in *Ahkam al-Washiyah wa al-Mirats wa al-Waqf* (1984, الغندور). Theory to practice of inheritance distribution is recognized by worldwide as the most unique and interesting system of property rights that the world has never seen before (Cheema, 2021). However, the discussion related to the rules distribution of the inheritance of the heirs (*tirkah*) before it becomes the inheritance (*mirats*) has not been discussed in detail in the order of distribution so that it still opens up gaps in property ownership in a unjustly way, especially when there is a conflict of interest in distribution priorities, remembering, there are some categories of rights of the inheritance (*tirkah*) which must be distributed before being determined as legal inheritance (*mirats*) for the heirs (Kamaruddin, 2018).

In general, inheritance (*tirkah*) must be issued for various categories of distribution without explicitly mentioning the argument for the order of distribution, starting from distribution for paying off the debts of the heirs (Rahmad, 2017) paying the cost of *tajhiz al-mayyit* including the cost of taking care of the heirs (Hasnita & Zubair, 2019). Moreover, based on the context of inheritance law that grow in Indonesia, there is another distribution that must be carried out which is the distribution of joint property (Zubaidi, 2020). Based on all the above literacy, there has not been found a similarity that is identical coherently and thoroughly. Shows the author's research has uniqueness and research gaps from previous publications.

Research Method

Therefore, the discussion of the rules of distribution inheritance obligation (*tirkah*) is interesting to be studied for the realization of legal certainty over the problem of the rules of *tirkah* distribution obligations which will be studied

through the perspective of *fiqh al-awlawiyyat* through a normative juridical approach by using secondary legal materials from various books of *fiqh al-awlawiyyat*, *fiqh* and *ushul al-fiqh* which were analyzed by using qualitative descriptive methods in deductive conclusions.

Definition of Heritage Property (*Tirkah*)

The word *at-tirkah* (التَّرِكَه) or *at-tarikah* (التَّرِيكَة) literally is *ism al-masdhah* (noun) which means *maf'ul* (object) which means الشَّيْءُ الْمَتْرُوكُ (something left behind) (Manzhur, 1993). Therefore, when it is called *tarikah al-mayit*, it means whatever that inherited by the inheritance. The plural form of the word *tarikah* is *tarikat* (تَرِكَات) (Kementerian Wakaf dan Urusan Keagamaan Kuwait, 1983). In terminology, *at-tarikah* according to the majority of *al-Malikiyah*, *as-Syafi'iyah*, and *al-Hanabilah* are defined by:

التَّرِكَه هِيَ كُلُّ مَا يُخَلِّفُهُ الْمَيِّتُ مِنَ الْأَمْوَالِ وَالْحُقُوقِ الثَّابِتَةِ مُطْلَقًا

“At-tarikah is everything that is left by deceased from various property and rights that remain (as his) absolutely.” (Kementerian Wakaf dan Urusan Keagamaan Kuwait, 1983, p. 206)

From this definition, it can be understood that the scope of *tarikah* includes two things which are all types of property and all types of property rights which left by deceased (heir). This is accordance with the words of the prophet that combine of two types of *tirkah*, either in the form of property or in the form of rights, into something that becomes the property of his heirs:

عَنْ أَبِي هُرَيْرَةَ رَضِيَ اللَّهُ عَنْهُ، عَنِ النَّبِيِّ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ قَالَ: مَنْ تَرَكَ مَالًا فَلِوَرَثَتِهِ، وَمَنْ تَرَكَ كَلًّا فَلِإِنِّنَا.
(رَوَاهُ الْبُخَارِيُّ، ٢٢٦٨)

“From Abu Hurairah r.a, from Muhammad Peace be upon Him (PbuH), he said whoever (died) left property then it belongs to his heirs, and whoever (died) left burden/dependents (no family member to support him or nobody pay his debt off) then it is on us.” (Narrated by Bukhari, No. 2268). (Al-Bukhari, 1993)

In general, the scope of *tirkah/tarikah* includes various property and rights as stated in the principle that the original law of rights and property is inherited unless there is an argument that states right are not included into something that is inherited like property (Rusydi, 2004). There are five kinds of *tirkah*, namely: *First*, various object, either moving or immovable objects. *Second*, various income rights either from various objects such as rights from income of drinking water sources, etc or the rights of those who are not from the income of an object such as *hak syuf'ah*, and *hak khiyar* in a sale and purchase contract such as *khiyar al-syarth*,

khiyar al-ru'yah and *khiyar al-ta'yin*. (Kementerian Wakaf dan Urusan Keagamaan Kuwait, 1983).

Third, various attempt which are made by testator before he died, such as a trap that is set before he died and the trap catch prey after the heir died. *Fourth*, the right of paying *diyath* for the death of the testator due to accidental or mistaken murder (Aldizar, 2004). *Fifth*, intellectual property rights of the deceased that occur with the akad *tarkhis* (intellectual property rights license agreement) when *murakkhas lahu* (the recipient of the intellectual property license) dies, the ownership of the *tarkhis* pass to the heirs (Sapi'i, 2021). This intellectual property right or copyright belongs to *tirkah* that can be object of inheritance in the category of dynamic objects that are intangible (Fransiskus, 2016). As well as being an object of joint property (Mazlan, 2022).

Fiqh al-Awlawiyyat and its Function

The word *al-fiqh* (الْفِقْهُ) means الْعِلْمُ وَالْفَهْمُ. In Indonesian, it means knowledge and understanding (Nurhayati, 2018). According to the terminology, *fiqh* is the science that regulates mechanically in *furu'* problems (non-*ushul* branch problem) (Sumarjoko & Ulfa, 2019). In other word, *fiqh* also means knowledge of *syara'* laws which contain character of *'amaliyah* (practiced) which is known from detailed arguments (2018, الغامدي) While the word *al-awlawiyyat* (الأَوْلِيَّاتِ) is plural form of the word *al-awla* (الأَوْلَى) and is *ismuttafdhil* or a word that shows the most appropriate meaning (الأَجْدَرُ) and more suitable (الأَخْرَى). The use of the term *al-awlawiyyat* has actually been mentioned by previous scholars as in the example of the sentence *hadza al-fi'l awla min dzaka* (هَذَا الْفِعْلُ أَوْلَى مِنْ ذَلِكَ) which means this act is more appropriate than it. However, the term was not yet a separate branch of science. The definition of *al-awlawiyyat* according to Muhammad Al-Wakili is:

الأَعْمَالُ الشَّرْعِيَّةُ الَّتِي لَهَا حَقُّ التَّمَقُّدِمْ عَلَى غَيْرِهَا عِنْدَ الْإِمْتِنَالِ أَوْ عِنْدَ الْإِنْجَازِ

"All syari'i actions that have the rights to take precedence over others when done or carried out." (الوكيلي, 1997)

Another understanding of the term *al-awlawiyyat* is something that is ordered by the *syari'* to take precedence in its implementation or to end it when various actions are gathered at one time. (2018, الغامدي, p. 1887) Muhammad Al-Wakili argues that the person who defines that the term *fiqh al-awlawiyyat* as a new branch of knowledge in Islam is Yusuf Al-Qardhawi in his book *أَوْلِيَّاتُ الْحَرَكَةِ الْإِسْلَامِيَّةِ فِي الْمُرَحَلَةِ الْقَادِمَةِ*. He interprets *al-awlawiyyat* with the meaning:

وَأَمَّا فَهْمُ الْأَوْلِيَّاتِ فَنَعْنَى بِهِ وَضْعُ كُلِّ شَيْءٍ فِي مَرْتَبَتِهِ

"As for what we mean fiqh al-awlawiyyat is put something in its position." (الوكيلي, 1997)

On the basis, *fiqh al-awlawiyyat* means:

الْعِلْمُ بِالْأَحْكَامِ الشَّرْعِيَّةِ الَّتِي لَهَا حَقُّ التَّقْدِيمِ عَلَى غَيْرِهَا بِنَاءً عَلَى الْعِلْمِ بِمَرَاتِبِهَا وَبِالْوَاقِعِ الَّتِي يَتَطَلَّبُهَا

“Knowledge about the syara’ laws have the priority right of charity over others based on knowledge of the position and circumstances and it needs to take precedence.” (الغامدي, 2018)

According to the definition above, *fiqh al-awlawiyyat* has a major role in making decisions, especially those related to eligibility and propriety/ priority so that a legal decision or legal action will be free from various personal interests (مَصْلَحَةُ الْفَرْدِ) or a group of people interest (vested interest). It is based on *fiqh al-awlawiyyat* uses standards that apply in *the syari’at* (الْمَعْيَارُ الشَّرْعِيُّ) to determine a legal decision or legal action which is the most important of the important ones (Al-Qardhawi, 1995). The standard contains various priority distributions including everything that is obligatory take precedence over *sunnah*, leaving something prohibited is more is more considered that carrying obligations, something with greater benefit is prioritized over the least beneficial, something is easy is more beneficial to take precedence over something difficult (الغامدي, 2018).

In-depth discussion of the standard of priority rules (ضَوَائِطُ الْأَوْلَوِيَّاتِ) has been mentioned by Muhammad Al- Wakili in *fiqh al-awlawiyyat*. He stated that there are twenty two standards that must be considered where there is a conflict or priorities in implementation of an act, including: *First*, something with more benefit is prioritized to be done than something with less benefit. *Second*, something that is more dangerous is more important to avoid than something that is less dangerous. *Third*, something *fardhu* and *ushul* are preferred to be done from *nawafil* and *furu’* practices. *Fourth*, something that has a short execution time and is required to be done immediately (*fauri*) is prioritized to be done over something that has a long implementation time and is not required to be implemented immediately (*tarakhi*). (الوكيلي, 1997).

The Rules of Distribution of Heritage Property (*Tirkah*) According to *Fiqh al-Awlawiyyat*

Jumhur fuqaha argues that there are four kinds of obligations that must be fulfilled from the heritage property, which includes the obligation to pay for the funeral expenses (*tajhiz al-mayyit*), the obligation to pay off the debt of the deceased, the obligation to fulfil the will and the obligation to distribute the inheritance to the heirs (Kementerian Wakaf dan Urusan Keagamaan Kuwait, 1983). However the rules distribution of these obligations must be further expanded into five distribution areas, especially for people who recognize the existence of joint property rules in marriage, as will be explained in this paper.

1. The obligation to distribute joint property rights belonging to the widower or the widow

In the study of *fiqh*, the discussion of joint property has not been specifically discussed because the discussion of joint property is not found textually either in *Al-Qur'an* or *Sunnah*, so that the jurists of the 13th century A.D have not specifically discussed joint property yet. The discussion of joint property emerged around the 16th century A.D which can be traced in the study of local Indonesian *fiqh* (Wahyudi, 2021). The death of marriage couple in Indonesia has an impact on the property left behind, especially on property acquired during the marriage.

The concept of joint property is based on customary law in Indonesia law, which has dispute resolution by customary judges through unwritten customary deliberation procedures (Harun, 2009). In Aceh, joint property in marriage is called "*harta sihareukat*", in Javanese, it is called "*harta gono-gini*", in West Sumatera, it is called "*harta surang*", in Madura, it is known "*ghuna-ghana*" (Zubaidi, 2020, p. 32), in Kalimantan, it is known "*barang perpantangan*", in Sulawesi, it is known "*barang cakara*" in West Java, it is called "*guna kaya*" or "*campur kaya*" (Nawawi, 2018). Even in other countries beside Indonesia such as Malaysia also recognize this joint property as "*harta sepencarian*" which was adopted from customary law Malay (Kamaruddin, 2018). Therefore, in customary law, each spouse who lives longer gets a share of joint property with different terms and portions.

Various customary laws related to joint property that developed in the community then recognized by the government and adopted into positive law as unification to overcome potential problems in marriage (Nawawi, 2018). One of the provisions relates to the right of ownership of half of joint property of the spouse who is living longer as stated in the first paragraph of article 96 of the Compilation of Islamic Law (KHI). Furthermore, article 97 of the KHI states that divorced widows or widowers are each reserved to get one-half of the joint property as long as it is not specified otherwise in marriage agreement. Therefore, the distribution of joint property in the case of divorce by death is 50: 50 (Imran, 2020).

Referring to positive law, article 1 letter f of KHI states that joint property is property that obtained either individually or together with husband and wife during the marriage bond without questioning whether it is registered in the name of anyone (Zubaidi, 2020). The concept of joint property in marriage is analogous to *syirkah al-abdan* contract which means if there are two parties who are allied to each other to run a business, either the same distribution or different in term of profession, along with suitability of *hirfah* (job description). For instance, cooperation which is conducted between two people who both work as tailors, or cooperation between two people in different profession, such as tailors and spinners (Al-Anshari, 2001).

Besides, Islamic jurists in Indonesia also determine custom (*'urf*) as a source Islamic law (Wahyudi, 2021). as stipulated in the principle: "*A custom (something that is continuously done by humans and can be accepted by common sense) can be used as a legal basis*" (As-Sayuthi, 1983). Indonesian legal experts see that the joint property is a consequence of the material relationship of a man and a woman who during their marriage produce assets from their business called

syirkah between husband and wife, which then bears joint property rights as one of the consequences of the law (Wahyudi, 2021). Based on these provisions, one of the obligations that must be carried out from *tirkah al-mayyit* is the distribution of joint property rights belonging to the widower or widow as a spouse who lives longer.

This joint property distribution occupies the first position that must be distributed. This is because from the total accumulated assets acquired and owned by both husband and wife since the marriage took place, they belong to each of them with a fifty-fifty (50:50) ownership proportion as long as it is not specified otherwise stated in the marriage agreement. Therefore, when the husband or wife (one of the spouse) dies, it is important to separate half of the joint property which is then distributed to the spouses who live longer. It means that the assets to be distributed to the heirs must be 100% of the heirs' property while a half of the assets accumulation acquired during the marriage is not 100% owned by the testator but half of the heirs' spouse who live longer.

In addition, the distribution of joint property in the first order is also in accordance with one of the standard priority rules (ضَوَابِطُ الْأَوْلَادِيَّاتِ), namely:

الْأَكْثَرُ مَصْلَحَةً أَوْلَىٰ بِالتَّقْدِيمِ مِنَ الْأَقَلِّ مَصْلَحَةً

"Something that has more benefit is prioritized to be done than something that has less benefit." (الوكيلي, 1997)

In Indonesia, wives also have a contribution that is no less large than a husband in helping the economy and family welfare. Wives play a role in taking care of the household chores that tend to be unpaid and some of them work to earn money for the family. (Sari, 2019) In which the obligation to provide primary income in the study of *fiqh* is actually borne to the husband, such as providing food, drink, clothing and shelter, besides to fulfil her biological needs. (Armansyah, 2020, p. 194) Therefore, based on the wife's contribution this is no less large than the husband's contribution, the first distribution of joint property for couples who live longer is a big benefit that deserves to be prioritized over other distribution.

2. Obligation of Distribution of Funeral Expenses

The word *tajhiz* according to language means the preparation of everything needed for a matter (Kementerian Wakaf dan Urusan Keagamaan Kuwait, 1983). Therefore, *tajhiz al-mayyit* means the preparation of everything needed by the corpse when he dies. The fuqaha have agreed that the law for doing *tajhiz al-mayyit* is *fardhu kifayah*, it means that if some people have implemented the *tajhiz al-mayyit* then the obligation to do it falls for others who do not participate in carrying it out. The obligation of *tajhiz al-mayyit* on corpse is based on a *hadits* which narrated by Ibn Abbas that the prophet ordered to perform *tajhiz al-mayyit* on corpse that died from a broken neck when he fell from his mount: *"Bath him with water and bidara leaves, and cover him with two cloths."* (Narrated by Al-Bukhari, No. 1265) (Al-Bukhari, 2001).

The distribution for the cost of the *tajhiz al-mayyit* has second discussion in this paper and the distribution takes precedence over the payment of the

deceased's debt, will and the distribution of the inheritance because the funeral ceremony must be conducted as soon as possible when someone pass away. The command is as commanded by the Prophet:

عَنْ أَبِي هُرَيْرَةَ عَنِ النَّبِيِّ ﷺ قَالَ: أَسْرِعُوا بِالْجِنَازَةِ فَإِنْ تَكَ صَالِحَةً فَخَيْرٌ تُقَدِّمُونَهَا إِلَيْهِ وَإِنْ يَكُ سِوَى ذَلِكَ فَشَرٌّ تَضَعُونَهُ عَنْ رِقَابِكُمْ. (رَوَاهُ الْبُخَارِيُّ، 944)

"Bring the corpse up with you, because if the corpse is good then you have brought it closer to goodness. And if the corpse is bad, then you have removed it from your shoulders." (Narrated by Al-Bukhari, No 1265) (Al-Bukhari, 2001).

The cost of performing the *tajhiz al-mayyit* is taken from the inheritance property left by the deceased if he leaves the property. However, if the deceased does not have assets at the time of his death, then the cost of recitation of *tajhiz al-mayyit* is charged to the person who is obliged to provide him as long as he lives, so that in this case a wife is not included in the category of parties who are obliged to bear the cost of *tajhiz al-mayyit*. And if there is none, then it will be charged to the Baitul Mal. Then, also if there is not provide, then it is charged on the muslims as *fardhu kifayah* (Kementerian Wakaf dan Urusan Keagamaan Kuwait, 1983). In addition, the distribution of the cost of processing the corpse in the first order is also in accordance with one of the standard rules (صَوَابُ الْأَوْلَادِ), namely:

الْفَوْرِيُّ أَوْلَىٰ بِالتَّقْدِيمِ مِنَ التَّرَاخِيِّ

"Something that has a short implementation time and is required immediately (fauri) is prioritized to be done from something that has a long implementation time and is not required to be implemented immediately (tarakhi)." (الوكيلي, 1997)

The immediate settlement of the *tajhiz al-mayyit* is a priority that must be carried out before the payment of the deceased's debt because it contains of complex urgent demands in it, starting from the settlement of hospital expenses when the testator dies to burial, those are *fauri*.

3. Obligation to Distribute the Cost of Paying Off Debts

Debt in *fiqh* terms means:

الدَّيْنُ مَا وَجِبَ فِي الدِّمَّةِ بِعَقْدٍ أَوْ اسْتِهْلَاكِ، وَمَا صَارَ فِي ذِمَّتِهِ دَيْنًا بِاسْتِيفْرَاضِهِ

"Debt is a liability that must be borne due to the existence of a contract, or the result of spending/damaging (other people's goods) or because for a loan." (Al-Hanafi, 1966)

From this understanding (debts/ burden that must be borne) is based on three things; *First*, debt that occurs as a result of a contract, like a sale and purchase contract in instalments and a rental contract with salary at the end. *Second*, debts that occur as a result of spending or destroying other people's property, like accidentally breaking someone else's house glass. *Third*, debts that occur as a result of debts/loans of gold, money or other means of payment.

The distribution for the settlement of the corpse's debt is the third discussion in this paper and the distribution takes precedence over the distribution of the will, because settlement of the corpse's debt is obligatory which is *fauri* (demands to be repaid immediately) if assets are available for repayment. The obligation to pay the debt can be understood from the words of the Prophet.

عَنْ أَبِي هُرَيْرَةَ أَنَّ رَسُولَ اللَّهِ ﷺ قَالَ: مَطْلُ الْغَنِيِّ ظُلْمٌ... (رَوَاهُ مُسْلِمٌ، 1564)

"From Abi Hurairah r.a. in fact the Messenger of Allah said: delaying the payment of debts for people who are already able is an injustice..." (Narrated by Muslim, No. 1564) (An-Naisaburi, 1955)

The distribution on the cost of paying off the debt of the *tirkah al-mayyit* is taken from the *tirkah* of the deceased as regulated in the words of Allah: *"... (the distribution of the inheritance mentioned above) after (fulfilling) any bequest he (may have) made or debt..."* (Surah an-Nisa: 11). (Elba Fitrah Mandiri Sejahtera, 2012). It is possible that the debt imposed on the deceased can be a debt to Allah for instance, the debt for *zakat*, *hajj* and *kafarat* and it can also be a debt by the deceased to human (Kamaruddin, 2018). The debt will still be the responsibility of someone who must be repaid even though he has died. This is as the prophet said:

عَنْ أَبِي هُرَيْرَةَ قَالَ: قَالَ رَسُولُ اللَّهِ ﷺ: نَفْسُ الْمُؤْمِنِ مُعَلَّقَةٌ مَا كَانَ عَلَيْهِ دَيْنٌ (رَوَاهُ أَحْمَدُ، 9679)

"From Abi Hurairah ra. He said: the messenger of Allah (PbuH): the soul of a believer is restrained (to reach his noble place) because of his debt until the debt is repaid." (Narrated by Ahmad, No. 9679) (Ahmad, 2001)

Even in another narration the Prophet was reluctant to pray for corpses that did not have *tirkah* to pay off their debts, it shows the urgency of paying off debts when someone dies as stated in the *Shahih Al-Bukhari*:

أَنَّ النَّبِيَّ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ أُتِيَ بِجَنَازَةٍ لِيُصَلِّيَ عَلَيْهَا، فَقَالَ: هَلْ عَلَيْهِ مِنْ دَيْنٍ؟، قَالُوا: لَا، فَصَلَّى عَلَيْهِ، ثُمَّ أُتِيَ بِجَنَازَةٍ أُخْرَى، فَقَالَ: هَلْ عَلَيْهِ مِنْ دَيْنٍ؟، قَالُوا: نَعَمْ، قَالَ: صَلُّوا عَلَيَّ صَاحِبِكُمْ، قَالَ أَبُو قَتَادَةَ: عَلَيَّ دَيْنُهُ يَا رَسُولَ اللَّهِ، فَصَلَّى عَلَيْهِ. (رَوَاهُ الْبُخَارِيُّ، 2295)

"A dead person was brought to the Prophet so that he might lead the funeral prayer for him, so he said: does he have a debt? they said: No, So the prophet then lit it. Then another corpse was brought, so the Prophet said: Does he have

a debt? They said: Yes, the Prophet said: Pray for your brothers. Abu Qatadah said: I bear the debt, O Messenger of Allah, So the Prophet lit it up.” (Narrated by Al-Bukhari No. 2295) (Muhammad, 2001)

In addition, the danger by the anger of the debtor after knowing that the heir has made the will first until the property is no longer sufficient to pay off the debt is certainly a *mafsadah* which must be avoided in accordance with one of the standard priority rules (ضوابط الأولويات) namely: “*Something that is more dangerous is more important to avoid than something that is less dangerous.*” (الوكيلي, 1997)

4. Obligation to Distribute Will

The word will (الوصية) literally means message, command and advice (Summa, 2005). Property will (الوصية بالمال) in *fiqh* terms means:

تَمْلِيكَ مُضَافٌ إِلَى مَا بَعْدَ الْمَوْتِ بِطَرِيقِ التَّبَرُّعِ، سِوَاءَ كَانَ ذَلِكَ فِي الْأَعْيَانِ أَوْ فِي الْمَنَافِعِ

“*Ownership that is based on (the period) after the death of (a person) voluntary, (which) ownership is either in the form of property or in the form of rights to benefits.*” (Kementerian Wakaf dan Urusan Keagamaan Kuwait, 1983)

In different definition, the will of property is the transferring property from owner to another party is effective after the death of the owner (Al-Munajjid, 2009) or any type of voluntary gift that is contingent upon his death (Ar-Ramli, 1984). The distribution for the will is the fourth discussion in this paper and it takes precedence over the distribution of inheritance because the orderly has been textually stated before the obligation to distribute inheritance: “...*(the distribution of the inheritance mentioned above) after (fulfilment of) the will he made or (and after paying) the debt with no trouble (to the heirs)...*” (Elba Fitrah Mandiri Sejahtera, 2012).

From this verse, two things can be understood related to the distribution of wills. The first is *tirkah al-mayyit* must be the first distribution of his will (if during his life there is a will) to the person in the will before it is distributed to the heirs as *mirats* (Al-Sabouni, 2005). This is done to fulfil as long as the pillars and conditions, namely: *First*, the testator (المُوصِي) with the condition that he must be reasonable, has reached puberty, must not be a slave, and has the intention of making a will on a voluntary basis without coercion. *Second*, the person who receives the will (المُوصِي لَهُ) on condition that he or she must be present/lives at the time the testator dies, is intelligent, has reached puberty, clearly the person, is not a murderer of the person who gives the will and is not also the heir of the person who gives the will. *Third*, pronunciation of will (الصِّيغَةُ) which can be oral or written contract. *Fourth*, integrity property (المُوصِي بِهِ) provided that the property is the property of testator, it is lawful, and the level of distribution is not more than one-third of the testator’s inheritance (Al-Sabouni, 2005).

Besides, the word *washiyyah* after the word *min ba'di* means: "...(*and the inheritance rights of those who have been mentioned*) after (*the execution of*) the will he made..." The sentence actually contains the meaning of orderly priority (*awlawiyyat*) is placing something in its position (1997, الوكيل) It means do the obligation of inheritance distribution after distributing the wills. Then, the verse also explains about the meaning of the word "not to make a trouble for the heirs" is actions such as bequeathing more than one third of the inheritance and the act in making a will with the intention of reducing the share of the inheritance of the heirs even if the amount is less than one third. According to Ibn 'Abbas ra, the actions that harm the heirs are a big sin (Al-Qurthubi, 1964).

5. Obligation to Distribute Inheritance

The distribution of inheritance to the heirs is the last obligation after *tirkah al-mayyit*. It is distributed for the various purposes above in accordance with the *Qur'an, Sunah* and *Ijma'* (Al-Sabouni, 2005). Besides, the distribution also applies on the basis of the five principles of Islamic inheritance (Muhibbin, 2009), namely: 1) the principle of *ijbari*, it means the transferring the property from the testator to the heirs is absolutely based on Allah's desire, 2) the bilateral principle, it means that the receipt of rights inheritance of an heir occurs through two parties both male and female relatives; 3) the individual principle, it means that the inheritance belonging to the heirs is owned individually; 4) the principle of balanced justice, it means that the inheritance received by the heirs is balanced between the rights and obligations and the balance between what is obtained and what is needed; and 5) the principle is caused of the death, it means that the transferring of the right of the inheritance to the heirs occurs automatically due to the death of the testator (Solihah, 2017).

Conclusion

Based on the discussion that has been mentioned, it can be concluded that *fiqh al-Awlawiyyat* is a science to position something in its position with various standards used (*dhawabith al-awlawiyyat*), including: *First*, something which has more benefit is prioritized to be done than something which has less benefits. *Second*, something which has more dangerous, is more important to avoid than less dangerous one. *Third*, something that has a short execution time and something that has a short execution time and is required to be done immediately (*fauri*) is prioritized to be done over something that has a long execution time and is not required to be implemented immediately (*tarakhi*).

The implementation of the standards (*dhawabith al-awlawiyyat*) along with other proponents of the distribution of inheritance (*tirkah*) has created a legal certainty related to the *tirkah* distribution obligation rules in order of priority; *First*, the obligation to distribute joint property rights. *Second*, the obligation to distribute the funeral expenses. *Third*, the obligation to distribute the cost of paying off debt repayment distribution obligation of the corpse. *Fourth*, the obligation to distribute will. *Fifth*, the obligation to distribute inheritance.

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