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Study of Jinayah Fiqh and Indonesian Criminal Law**

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of Inheritance in Sasak Tribe's Muslim Community**

Mubammad Syafi'i, Abdullah, Muslibun, Mutawali & Husna Jamaludin

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TABLE OF CONTENTS

Volume 23, Nomor 1, June 2025

- 1-36 **Human Rights in the Control of Digital Public Space Freedom: A Collaborative Approach Based on Islamic Law Principles**
Chaerul Shaleh, Fauzan Ali Rasyid, Adang Sonjaya and Manswab Mahsen Abdulrahman
- 37-72 **Fraud in the Digital Space: A Comparative Study of Jinayah Fiqh and Indonesian Criminal Law**
Hisam Ahyani, Parhan, Muhtolib, Ahmad Berizi, Nurhasana and Nurul Ilyana Muhd Adnan
- 73-104 **Peace Agreement on Maslahah in Distribution of Inheritance in Sasak Tribe's Muslim Community**
Muhammad Syafi'i, Abdullah, Muslihun, Mutawali and Husna Jamaludin
- 105-144 **Integration of Maqasid al-Shari'ah in the Criminal Law Reform to Achieve Justice and Human Dignity**
Zumiyati Sanu Ibrahim, Suud Sarim Karimullah, Andi Istiqlal Assaad, Rina Septiani and Huseyin Okur
- 143-174 **Madzhab Moderation in Fiqh Thought and its Implications for the Development of Islamic Law in the Modern World**
Achmad Kholiq, Makrum, Anne Haerany, Ahmad Asrof Fitri, Raudlotul Firdaus Fatah Yasin
- 175-200 **Sanctions for Inheritance Embezzlement in Indonesia: Analysis of Qiyas and Maslahah**
Akhmad Dulfikar, Syibli Syarjaya, Yusuf Somawinata, Nafan Tarihoran, B. Syafuri

Sanctions for Inheritance Embezzlement in Indonesia: Analysis of *Qiyas* and *Maslahah*

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Abstract

Although embezzlement of inheritance property often occurs in Indonesia, Islamic law does not regulate sanctions for embezzlement of inheritance



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rights, including the Compilation of Islamic Law as the basis for Islamic inheritance law. This study examines the sanctions for embezzlement of inheritance property in Islamic law and how they are applied in Indonesia; it adopts the normative juridical method with statutory, conceptual, and case approaches. The study findings show that in classical *fiqh*, there are no sanctions for embezzlement of inherited property. However, based on *qiyas* and *mashlahat mursalah*, sanctions against embezzlement of inheritance property in Islamic law are in the form of moral sanctions (*gibah*) and *takzir*, whose levels are left to the imam and *mujtahid*. In Indonesia, a case of embezzlement of inheritance property is included in a criminal case. The sanction for this is imprisonment for a maximum of 4 years or a maximum fine of 900 rupiah as laid down in Article 372 of the Criminal Code. The author argues that the criminal sanction based on *qiyas* is a *takzir* sanction set by the *government*. This study offers an integrative normative framework between classical inheritance *fiqh* and contemporary positive law and provides a clear legal understanding for the protection of inheritance rights.

KEYWORDS: *Embezzlement; Inheritance; Qiyas; Sanction; Takzir*

Abstrak

Hukum Islam tidak mengatur sanksi untuk penggelapan hak waris termasuk Kompilasi Hukum Islam sebagai landasan hukum waris Islam di Indonesia, padahal penggelapan harta waris sering terjadi di Indonesia. Penelitian ini mengkaji tentang sanksi terhadap penggelapan harta waris dalam hukum Islam dan bagaimana penerapannya di Indonesia. Penelitian ini mengadopsi metode yuridis normative dengan pendekatan perundang-undangan, konseptual dan kasus. Temuan penelitian adalah bahwa dalam fikih klasik tidak ditemukan sanksi untuk penggelapan terhadap harta waris. Namun, berdasarkan qiyas dan mashlahat mursalah, sanksi terhadap penggelapan harta waris dalam hukum Islam berupa sanksi moral (gibah) dan takzir yang kadarnya diserahkan kepada imam dan mujtahid. Di Indonesia jika ada kasus penggelapan terhadap harta waris termasuk dalam kasus pidana. Sanksi terhadap hal tersebut adalah pidana penjara paling lama empat tahun atau denda paling banyak sembilan ratus rupiah sebagaimana Pasal 372 Kitab Undang-undang Hukum Pidana. Penulis berargumen bahwa, sanksi pidana tersebut berdasarkan qiyas merupakan sanksi takzir yang ditetapkan pemerintah. Penelitian ini menawarkan kerangka normatif integratif antara fikih waris klasik dengan hukum positif kontemporer dan memberikan pemahaman hukum yang jelas untuk perlindungan hak waris secara adil.

KATA KUNCI: *Harta Waris; Penggelapan; Qiyas; Sanksi; Takzir*

Introduction

In Indonesia, Islamic inheritance law is governed by the Kompilasi Hukum Islam (KHI), which serves as a guideline for Muslims in matters of inheritance distribution. Article 176 of the KHI clearly states that a male's share is twice that of a female (2:1), which follows proportional justice based on the weight of the responsibilities carried by men. This shows that the KHI is a representation of Islamic law.³¹³ However, despite the KHI providing a clear legal basis for the division of inheritance rights, there remains a legal void regarding sanctions for embezzlement of inheritance rights.³¹⁴ In practice, embezzlement of inheritance rights is common, ranging from inheritance distribution embezzlement to neglecting the rights of legitimate heirs.³¹⁵

The Indonesian Penal Code (KUHP) regulates embezzlement; this means that the KUHP does not specifically regulate sanctions for inheritance embezzlement containing elements of embezzlement (i.e., Articles 372–377).³¹⁶ However, these embezzlement articles have a high possibility of being applied in cases of inheritance embezzlement, especially those related to the delict of embezzlement.

Several previous studies have examined sanctions for inheritance embezzlement. For instance, Sidhi, et al.'s research analyzed the legal implications of refusing inheritance in relation to the *ijbari* principle.³¹⁷

³¹³ Supriyadi Supriyadi and Sukron Ma'mun, "Contemporary Inheritance: Application Of Inheritance Division In Juridical, Psychological, Sociological And Economic Perspectives," *MILRev : Metro Islamic Law Review* 2, no. 2 (2023): 142, <https://doi.org/10.32332/milrev.v2i2.8037>.

³¹⁴ Jamrud Qomaruz Zaman et al., "The Influence of Positivism and Empirism in The Enforcement of Islamic Inheritance Law in Indonesia," *Substantive Justice International Journal of Law* 7, no. 1 (2024): 48, <https://doi.org/10.56087/substantivejustice.v7i1.267>.

³¹⁵ Suwarti Suwarti, Decha Khunmay, and Stepan Abannokovya, "Conflicts Occurring Due to the Application of Different Legal Inheritance Systems in Indonesia," *Legality: Jurnal Ilmiah Hukum* 30, no. 2 (2022): 214–27, <https://doi.org/10.22219/ljih.v30i2.21020>.

³¹⁶ Hindia Belanda, "Kitab Undang-Undang Hukum Pidana," Pub. L. No. 0 (2021), 86-87. <https://jdih.mahkamahagung.go.id/legal-product/kitab-undang-undang-hukum-pidana/detail>.

³¹⁷ Syailendra Sabdo Djati Purnomo Sidhi, Suhuf Subhan, and Faisal Wofiasandy, "Asas Ijbari Dalam Hukum Waris Islam Dan Implikasinya Dalam Penolakan Waris,"

Yusnita's research evaluated Islamic family inheritance law in various Muslim countries and the associated cybercrime issues.³¹⁸ Syailendra, et al.'s study analyzed forms of inheritance embezzlement under Indonesian law.³¹⁹ Research conducted by Yasim, et al. explains the inheritance system in the Civil Code.³²⁰ A study by Karjoko, et al. explains the legal considerations of judges in deciding land grant dispute cases at the Selong Religious Court, West Nusa Tenggara.³²¹ Arsyam, et al. examines the procedure of inheritance litigation in religious courts, including the legal impact and sanctions in case of embezzlement, such as the cancelation of wills and penalties for perpetrators of disputes.³²²

Previous research still leaves various spaces regarding aspects of sanctions for inheritance embezzlement. The mechanism of moral and social sanctions by the community against perpetrators of inheritance distribution embezzlement in Indonesian Muslim society has not been studied in depth. Moreover, the effectiveness of the application of administrative sanctions against notaries or heirs who facilitate the embezzlement of inheritance property in the context of dualism of Islamic law and national law has not received in-depth analysis. The description of classical fiqh sanctions and contemporary judicial practices in addressing heirs' rejection of inheritance rights has not been clearly explained.

Al-Usariyah: Jurnal Hukum Keluarga Islam 3, no. 1 (March 2025): 90–105, <https://doi.org/10.37397/al-usariyah.v3i1.811>.

³¹⁸ Yusnita, "Islamic Family Inheritance Law in a Global Legal Perspective: Influence of Cyber-Crime," *Repository.Jainbengkulu.Ac.Id* 17, no. 1 (2023): 72–84, <https://doi.org/10.5281/zenodo.4766605>.

³¹⁹ Moody Rizqy Syailendra, Dzikrina Aulia, and Nanda Divabuena Purba, "Penggelapan Harta Waris Menurut Peraturan Perundangan Di Indonesia (Studi Kasus: 1264/PDT.G/2020/PA.PRA)" 5, no. 4 (2023): 1735–43, <https://doi.org/10.31933/unesrev.v5i4>.

³²⁰ Sulastri Yasim, M. Fadhlan Fadhil Bahri, and Muh. Chaerul Anwar, "Hapusnya Hak Waris Atas Tindak Pidana Pemalsuan Surat Wasiat," *Alauddin Law Development Journal* 4, no. 3 (December 2022): 771–81, <https://doi.org/10.24252/aldev.v4i3.34488>.

³²¹ Lego Karjoko et al., "Islamic Court's Approach to Land Dispute in Inheritance Cases," *Ahkam: Jurnal Ilmu Syariah* 21, no. 2 (2021): 213–38, <https://doi.org/10.15408/ajis.v21i2.21864>.

³²² Arsyam Arsyam, Siti Musyahidah, and Malkan Malkan, "Islamic Law Perspective on Settlement of Inheritance Disputes," *International Journal of Contemporary Islamic Law and Society* 3, no. 1 (2021): 15–27, <https://doi.org/10.24239/ijcils.vol3.iss1.25>.

This study fills the void and develops previous research, examining the sanctions for embezzlement of inheritance property in Islamic law and its implementation in legislation to strengthen the protection of the rights of heirs and ensure justice in inheritance property distribution. Theoretically, this research enriches the treasures of Islamic law regarding sanctions for embezzlement of inheritance rights by offering an integrative normative framework between classical inheritance *fiqh* and contemporary positive law to provide a clear legal understanding for the protection of inheritance rights.

Methods

This study adopted the juridical-normative method with a statutory, conceptual, and case approach to find the application of sanctions for embezzlement inheritance based on a search of the texts of the Qur'an and Sunnah. The research data sources included a review of Qur'anic verses, Prophetic traditions, tafsir, classical *fiqh* literature, contemporary Islamic legal works, and court decisions available in the Directory of Supreme Court Decisions. The data were collected and assessed to provide a strong theoretical basis regarding the mechanism of *ta'zir* sanctions in cases of embezzlement of inherited property. Inductive logic and reasoning were used to draw general conclusions from the facts and legal propositions contained in the texts of the Qur'an, Sunnah, and other Islamic legal literature. Meanwhile, deductive logic and reasoning were used to apply these general principles to specific cases relating to inheritance crimes. In analyzing this issue, this study is based on the theory of *qiyas* (analogy) and *mashlahah mursalah* (public interest). *Qiyas* and *mashlahah mursalah* are used to connect similar Sharia evidences in the context of inheritance embezzlement sanctions, thereby enabling the formulation of an appropriate legal analogy for inheritance embezzlement.

Discussion

Sanctions Inheritance Embezzlement in Islamic Law

In classical *fiqh* works, it is almost impossible to find—if not entirely absent—examples of the application of *ta'zir* (discretionary punishment) for inheritance embezzlement. This raises the following question: why does this happen? After all, as a violation, the wrongful possession of inheritance, the delay in distribution, or the division of inheritance shares contrary to Shariah principles was not an unlikely occurrence during that period. According to the Islamic creed, Muslims must submit to and obey all of Allah's laws.³²³ However, as an undeniable reality, crimes will continue to occur, whatever they may be, including inheritance crimes. To answer this question, the following three factors underpin it:

First, classical *fiqh* places greater emphasis on inheritance distribution in accordance with the rules of *faraid*, without including formal sanctions to punish violators. Scholars tend to focus on legal-normative resolutions with full compliance, rather than imposing sanctions. One of Abu Hanifah's students, Muhammad bin Al-Hasan Al-Syaibani, in "*Bab Al-Qadha' fi Al-Mawarits wa Al-Washaya*" (Decision of Inheritance and Wills) narrated from Abu Hanifah that a Christian died, and then his Muslim wife came and said, "I embraced Islam after his death," while the other heirs said, "He embraced Islam before his death." Then, the determination was taken based on the statement of the heirs. Until the end of this chapter, from pages 396 to 399, there is not the slightest mention of statements or indications that provide sanctions for embezzlement of inheritance rights. Al-Syaibani only mentioned juridical-normative solutions for cases that arose based on Abu Hanifah's

³²³ Ihsan Yilmaz, "Muslims, Sacred Texts, and Laws in the Modern World," in *Handbook of Contemporary Islam and Muslim Lives*, vol. 1 (Cham: Springer International Publishing, 2021), 20, https://doi.org/10.1007/978-3-030-32626-5_5.

history. The same pattern was also stated by Imam Malik, Al-Syafi'i, and Ahmad bin Hanbal, with differences in their opinions.³²⁴

Second, reconciliation and mediation. During that period, inheritance disputes were more often settled through family mediation or the mechanism of *tahkim* (arbitration). Embezzlement of inheritance rights was considered a private offense, which was more appropriately resolved through mutual consultation without the need for state intervention or formal sanctions. In classical *fiqh*, the focus was more on ensuring the correct division of inheritance as per Shariah than on the sanctions that should be imposed. For instance, Al-Zubaidi stated that reconciliation among heirs in the division of inheritance is permissible, even when there are differences or disputes regarding the portion of the estate left by the deceased, whether it consists of goods, livestock, or a mix of various items. However, this reconciliation must be done under the condition that each heir knows their rightful share of the inheritance, whether or not it is explicitly stated in a document or not. If the heirs are unaware of their rightful share, the reconciliation would not be valid because reconciliation in this case is considered like a sale, and a sale involving something unknown (uncertain) is not valid in *fiqh*.³²⁵

Third, the historical-cultural factor; this is closely tied to power and *'ashabiyyah* (tribalism). Power serves to seize and defend rights, while *'ashabiyyah*, in its simplest to most complex forms, functions as a construction of power. With these two elements, ownership rights, including inheritance rights, are acquired. In other words, rights or even

³²⁴ Muhammad bin Al-Hasan Asy-Syaibani, *Al-Jami' Al-SHatgghir*, ed. 'Abdul Hayy Al-Laknawi, 1st ed. (Beirut: 'Alam Al-Kutub, 1986), 396; Malik bin Anas bin Malik bin 'Amir Al-Ashbahi Al-Madani, *Al-Mudawwanah*, 1st ed., vol. 2 (Beirut: Dar Al-Kutub Al-'Ilmiyyah, 1994), 594; Ali bin Muhammad Al-Mawardi, *Al-Hawi Al-Kabir Fi Fiqh Madzhab Al-Imam Al-Syafi'i*, vol. 10 (Beirut: Dar Al-Kutub Al-'Ilmiyyah, 1999), 329-334; and Ahmad bin Hanbal, *Al-Jami' Li 'Ulum Al-Imam Ahmad*, ed. Khalid Al-Ribath and Sayyid Izzat Id, 1st ed., vol. 10 (Fayum: Dar Al-Falah, 2009), 216.

³²⁵ 'Utsman bin Al-Makki Al-Tawzari Al-Zubaidi, *Tawdhih Al-Ahkam Syarh Tuhfat Al-Hukkam*, vol. 1 (Rades Medina: Al-Mathba'ah Al-Tunisiyyah, 1920), 206.

laws are built upon power and *'ashabiyyah*.³²⁶ Through these forces, those who possess power and occupy the highest social hierarchies often win inheritance embezzlement; these issues rarely surface publicly. Ultimately, inheritance disputes are buried within the confines of family, controlled by the powerful. From the perspective of *'ashabiyyah*, another face of inheritance disputes emerges in the form of conflicts over wealth between siblings. For noble clans, such issues become a shame that must be concealed. As a result, inheritance disputes are submerged and only discussed privately within the confines of the home.

In this regard, there is also a hadith that can be analogized with the application of *ta'zir* for inheritance embezzlement. Al-Bukhari narrated from Abu Hurairah r.a. that the Prophet Muhammad (PBUH) said, "The delay in repaying a debt by someone who is able to repay it makes it lawful to dishonor them (to gossip about them) and subject them to punishment." Sufyan (the narrator) said, "What is meant by dishonoring them is to speak ill of them (to gossip), and what is meant by the punishment is imprisonment."³²⁷ The aforementioned hadith of al-Bukhari has a preface in this context. The Prophet Muhammad (PBUH) said, "Delaying the repayment of a debt by someone who is able to pay it is oppression, and if the debt of one of you is transferred to someone who is wealthy, then accept it."³²⁸

³²⁶ Jawad Ali, *Al-Mufashshal Fi Tarikh Al-'Arab Qabla Al-Islam*, 4th ed., vol. 10 (Beirut: Dar Al-Saqi, 2001), 144.

³²⁷ Hadits no. 2270, "*Kitab Al-Istiqradh wa Ada' ad-Duyun wa Al-Hajr wa at-Taflis*", Muhammad bin Ismail Al-Bukhari, *Shahih Al-Bukhari*, ed. Mushthafa Dib Al-Bugha, 5th ed., vol. 2 (Damascus: Dar Ibn Katsir, 2002), 845; Hadits no. 2427, "*Kitab Al-Shadaqat*", Al-Qazwaini, *Sunan Ibn Majah*, II: 811; Hadits no. 3571, "Awwal Kitab Al-Aqdhiyyah", Sulaiman bin Al-Asy'ats As-Sijistani, *Sunan Abi Dawud*, vol. 5 (Beirut: Dar Al-Risalah Al-'Alamiyyah, 2009), 425; and Hadits no. 6243, "*Kitab Al-Buyu*", Ahmad bin Syu'aib Al-Nasa'i, *Al-Sunan Al-Kubra*, ed. Hasan Abdul Mun'im Syalabi, 1st ed., vol. 6 (Beirut: Mu'assasah Al-Risalah, 2001), 89.

³²⁸ Hadits no. 2270, "*Kitab Al-Istiqradh wa Ada' ad-Duyun wa Al-Hajr wa at-Taflis*", Al-Bukhari, II: 844.; and Hadits no. 1564, "*Kitab Al-Masaqat*", Muslim bin Al-Hajjaj Al-Naisaburi, *Shahih Muslim*, ed. Fuad Abdul Baqi, vol. 3 (Beirut: Dar Ihya' Al-Turats Al-'Arabi, 1955), 1197.

Although the hadith is related to debt and loans, al-Bukhari included it under the title “*Kitab Al-Istiqraḍ wa Ada’ Al-Duyun wa Al-Hajr wa at-Taflas*” (The Book of Loans, Debt Repayment, Deferral, and Bankruptcy).³²⁹ Based on the title created by al-Bukhari, this hadith falls under the category of *mu’amalah* (social and economic interactions). However, the hadith clearly states that a person who refuses to repay a debt, despite having the means to do so, is liable to be punished. Even though the reasons for incurring the debt may vary, the Prophet Muhammad (PBUH) clearly imposed a sanction on those who refused to pay their debts.

In this context, the question arises whether inheritance embezzlement can be analogized with the delay in debt repayment, so that the *ta’zir* for inheritance embezzlement can be likened to the punishment for delaying debt repayment. This reasoning is referred to as analogy (*qiyas*).³³⁰ There are several important points to consider in answering this question:

First, the *ashl* (text from *Qur’an* or *Hadith*) in the analogy (*qiyas*). In essence, *qiyas* involves equating the legal ruling and benefits found in the *ashl* to the *far’* (the analogous case).³³¹ In this case, the hadith reported by al-Bukhari begins with the Prophet Muhammad (PBUH) saying, “Delaying payment of debt by someone who is capable is an injustice, and if a debt is transferred to a wealthy person, then you accept it.”³³² This *hadith* provides the *ashl* for the analogy—delaying the payment of a debt when one is able is a form of injustice, and the creditor is entitled to sanctions. In the case of inheritance embezzlement, if an heir delays or unlawfully retains the inheritance owing to another rightful heir, this can

³²⁹ Al-Bukhari, *Shahih Al-Bukhari*, II: 841.

³³⁰ Ahmad Yani Anshori and Landy Trisna Abdurrahman, “History of the Development of Mazhab, Fiqh and Uṣūl Al-Fiqh: Reasoning Methodology in Islamic Law” 9, no. 1 (2025): 273–98, <https://doi.org/http://dx.doi.org/10.22373/sjhc.v9i1.25355>.

³³¹ Muhammad Sa’id Ramadhan Al-Buthi, *Dhawabith Al-Mashlahah Fi Syari’ah Al-Islamiyyah* (Beirut: Muassasah Al-Risalah, 1973), 216; Sakirman, “Metodologi Qiyas Dalam Istibath Hukum Islam,” *Yudisia* 9, no. 1 (2018): 37–55.

³³² Al-Bukhari, *Shahih Al-Bukhari*, II: 844.

be likened to delaying the repayment of debt. Just as delaying the payment of a debt, when the debtor is able to pay, makes him liable to *hajr* (detention) and exposes his wrongdoings, similarly, unlawfully withholding or delaying inheritance distribution can be seen as a violation that deserves exposure and possible detention. Therefore, based on this *qiyas*, the *ta'zir* punishment for inheritance violators would similarly be exposure of the wrong and detention, or other forms of social sanction, such as public shaming. Interestingly, this sanction of exposure of wrongdoings is a unique approach that is rarely found in modern legal systems, making it a distinctive feature of Islamic legal thinking. Thus, inheritance embezzlement, particularly in cases of withholding or misappropriating inheritance, can be analogized to the delay of debt repayment, and the corresponding punishment can involve public exposure of the violator's actions and potential detention, as prescribed by the *ta'zir* principle.

Second, the legal *'illat* (cause of the law). *'Illat* refers to the underlying cause or reason for a legal ruling. One way to identify the *'illat* is when it is explicitly mentioned in the religious text (*manshush*) and determined through *ijma'* (consensus). When a *washf munasib* (an appropriate description) reaches this level of consideration, the *'illat* is regarded as *mu'aththir* (effectively influencing the legal ruling). This kind of *'illat* is sufficient to replace *maslahah* (public interest) and can be considered the strongest form of *masalik 'illah* (legal causality).³³³ In this context, the hadith specifically mentions that injustice occurs because of the delay in paying debts by someone who has the means to pay. Therefore, any injustice in *mu'amalah* (transactions) may be subject to sanctions. Similarly, in the case of inheritance embezzlement, such as the wrongful possession of inheritance by one or more heirs, or the failure to distribute the inheritance to the rightful heirs, these acts can also be regarded as acts of injustice. Delaying debt repayment by someone who is

³³³ Al-Buthi, *Dhawabith Al-Mashlahah Fi Syari'ah Al-Islamiyyah*, 230.

able to pay is punished by detention and exposure of their wrongdoing. Similarly, the wrongful possession of inheritance or failure to distribute it to rightful heirs should also be punished with detention and public exposure of the wrongdoing. Thus, the *'illat* of injustice (which is caused by delaying or withholding rightful payments) is directly applicable to inheritance embezzlement, as both are acts of oppression that harm the rightful beneficiaries. Therefore, the same *ta'zir*, including detention and public exposure, can be applied to those who violate inheritance laws.

Third, the variety of conditions. The contractual scheme and legal consequences become important considerations in the *maslahah* (public interest) of transactions related to wealth.³³⁴ Based on the text of the hadith, not every delay in debt repayment results in detention and exposure of wrongdoing. Other factors may prevent a debtor from being subjected to *ta'zir*. For instance, a debtor may be facing financial difficulty, resulting in the transfer of the debt to another party (*hiwalah*), or there may be a peace agreement between the debtor and the creditor. Similarly, the wrongful possession of inheritance or other reasons that prevent the rightful heirs from receiving their share of the inheritance cannot automatically result in *ta'zir* penalties such as detention or public exposure of wrongdoing. The possession of inheritance could be due to the presence of minor heirs, the inheritance being consolidated and difficult to divide, or the heirs are still waiting for a buyer at a fair price so the proceeds can be distributed among them. Such conditions must be considered. In short, before imposing *ta'zir*, a greater *maslahah* (public benefit) must justify the imposition of the punishment.

Therefore, by combining this hadith with the previous one, which is also narrated by al-Bukhari, "Delaying the payment of a debt by someone who is able to pay is injustice, and if a debt is transferred to a wealthy person, then accept it,"³³⁵ it can be concluded that applying *ta'zir* to a

³³⁴ Al-Buthi, 83.

³³⁵ Al-Bukhari, *Shahih Al-Bukhari*, II: 844.

violator of inheritance rights can be analogized to the violation of inheritance rights based on the underlying cause (*'illat*) of injustice.

Ibnu Al-Baththal, the commentator of *Shahih Al-Bukhari*, stated that jurists interpret the Prophet's statement, as mentioned by Sufyan, to mean that it is permissible to gossip about the person (*ghibah*) and to imprison them. They also noted that the same principle, which is the permissibility of discussing someone's condition (*yuhillu 'irdhahu*), is mentioned in Surah Al-Nisa, verse 148: "Allah does not like the public mention of bad speech except by one who has been wronged." This verse was revealed regarding someone who refuses to offer hospitality, and it is permissible to call such a person miserly or disrespectful, and similar expressions. As for the meaning of "*uqubatahu*" (his punishment), it refers to a situation where it is expected that the debtor will have the means to repay the debt. However, if the debtor is proven to be in difficulty, they must be given a grace period, and they should not be imprisoned because the condition that warrants imprisonment—the ability to repay the debt—has been removed.³³⁶

The interpretation of the hadith by the scholars presented by Ibnu Al-Baththal is not the only one. As per Al-Nawawi, the punishment in this context is not limited to what is explicitly stated in the hadith but also includes various forms of *ta'zir* and all its conditions and considerations. He states that it is permissible to expose the fault of a debtor who delays payment by saying, "He has wronged me by delaying his debt." Therefore, the punishment (*ta'zir*) can be detention. In other words, alternative *ta'zir* punishments can also be applied in addition to detention and exposure.³³⁷ This interpretation is further supported by the author of *Tuhfat Al-Abrar Syarh Mashabih al-Sunnah*, who states that if someone is capable of paying their debt but delays or refuses to do so, their fault can be exposed,

³³⁶ Ibnu Baththal Ali bin Khalaf, *Syarh SHahih Al-Bukhari*, ed. Yasir bin Ibrahim, 2nd ed., vol. 6 (Riyadh: Maktabah Al-Rusyd, 2003), 523.

³³⁷ Abu Zakariya Muhyiddin Yahya bin Syaraf Al-Nawawi, *Al-Minhaj Syarh Shahih Muslim Bin Al-Hajjaj, Syarh Al-Nawawi 'ala Shahih Muslim*, 2nd ed., vol. 10 (Beirut: Dar Ihya' Al-Turath Al-'Arabi, 1973), 277.

and they can be punished by discrediting their honor, detaining them, and even beating them until they repay their debt.³³⁸ However, this differs as per al-Asqalani, who narrates from Waki' that the term *'irdhahu* in the hadith refers to discrediting a person's honor by filing a lawsuit in court.³³⁹ In modern *muamalah* practices, as stated by Najib and Sofiani, the implementation of such sanctions manifests in the form of fines.³⁴⁰ This means that the failure to repay a debt is not because of an inability to pay. The opinions and narrations about how and to what extent punishment should be applied are interpretations of the hadith. In other words, the Prophet (PBUH) merely stated that the person who delays debt repayment should be punished. However, the specifics of the punishment, the form of *ta'zir*, and its extent are left to the discretion of the *mujtahids* (juridical scholars).³⁴¹

According to the texts of the Sharia (the Qur'an and Sunnah), there are no sanctions for inheritance embezzlement. In fact, classical fiqh literature does not mention any sanctions for inheritance embezzlement. However, after conducting *qiyas* (analogy) on the hadith regarding the delay of debt payment by someone who is able and based on *mashlahat al-mursalah* (public interest), inheritance embezzlement are subject to *ta'zir* sanctions, the form of which is left to the discretion of the imam or *mujtahid*.

³³⁸ Al-Qadhi Nashir Al-Din Abdullah ibn Umar Al-Baydhawi, *Tuhfat Al-Abrar Syarh Mashabih Al-Sunnah*, ed. Nur Al-Din Thalib, 1st ed., vol. 2 (Kuwait: Wizarat Al-Awqaf wa Al-Syu'un Al-Islamiyyah bi-Kuwait, 2012), 269.

³³⁹ Ahmad bin Ali bin Hajar Al-Asqalani, *Fath Al-Bari Bi Syarh Shahih Al-Bukhari*, ed. Muhammad Fuad Abdul Baqi and Muhibb Al-Din Al-Khatib, 1st ed., vol. 5 (Cairo: Maktabah Al-Salafiyyah, 1970), 62.

³⁴⁰ Moh Ainun Najib dan Triannah Sofiani, "Penyelesaian Wanprestasi Akibat Itikad Tidak Baik Pada Perjanjian Kerjasama (Ijarah) Antara Pengusaha Batik Dengan Pengrajin Batik Di Kota Pekalongan," *el hisbah: Journal of Islamic Economic Law* 3, no. 1 (31 Mei 2023), 10. https://doi.org/10.28918/el_hisbah.v3i1.7361.

³⁴¹ Zul Anwar Ajim Harahap, "Reconstruction of Online Gambling Sanctions in Indonesia: A Comparative Analysis of Ta'zir Sanctions and Penalties of the Electronic Information and Transaction Law," *Al-Istinbath: Jurnal Hukum Islam* 10, no. 1 (2025): 140, <https://doi.org/10.29240/jhi.v10i1.11314>.

Implementation of Sanctions in Cases of Embezzlement of Islamic Inheritance in Indonesia

Article 372 of the KUHP states, “Anyone who intentionally and unlawfully possesses an item wholly or partially belonging to another person, but the possession is not due to a criminal act, is threatened with embezzlement, punishable by imprisonment for a maximum of four years or a fine of up to nine hundred rupiah.” This is referred to as the embezzlement article. The most crucial aspect of embezzlement is the meaning of “possess.” In this context, “possess” for it to be considered a criminal offense means to have something as if one is the owner of the item or to control an item belonging to another person contrary to the nature of the rights held by the perpetrator over that item.³⁴² This has been affirmed by the Supreme Court regarding cases of inheritance embezzlement, regardless of whether any benefit arises from the object under control.³⁴³

Another equally important element is “the possession is not due to a criminal act.” Regarding this matter, the Supreme Court states that an item is said to be under someone’s control if they can use it directly without needing any further action. Control of another person’s property that is not because of a criminal act—such as through safekeeping or rental—is an element of embezzlement. For embezzlement, the item does not have to be entirely owned by someone else.³⁴⁴ If the embezzler is a notary, restoration to the original state can be performed.³⁴⁵

³⁴² Yanto Yanto and Akhmad Suparmin, “Analyzing Embezzlement in Office in Indonesian Law: Legal Responsibility, Moral Implications, and Recommendations for Reform,” *Jurnal Hukum UNISSULA* 40, no. 2 (2024): 4–5, <https://doi.org/10.26532/jh.v40i1.38905>.

³⁴³ Direktori Putusan Mahkamah Agung Republik Indonesia, Putusan Mahkamah Agung Nomor: 74 K/PID/2016 (2016), 35.

³⁴⁴ Direktori Putusan Mahkamah Agung Republik Indonesia, 36.

³⁴⁵ Afif Azy’ari Taufik, “TRANSFORMING CONFLICT RESOLUTION: RESTORATIVE JUSTICE IN LAND DEED REGISTRATION,” *PETITA: JURNAL KAJIAN ILMU HUKUM DAN SYARIAH* 9, no. 2 (August 2024): 802–15, <https://doi.org/10.22373/petita.v9i2.386>.

Generally, in decisions of the Religious Courts, acts of embezzlement of inheritance assets committed by one or several heirs are sanctioned by distributing the inheritance as per each heir's rightful share. The case of control of inherited property by one of the heirs has been decided by the Bandung Religious Court (PA) with Number: 3124/Pdt. G/2018/Pa. Badg. Money amounting to Rp. 2,573,529,412.00 (two billion five hundred seventy-three million five hundred twenty-nine thousand four hundred twelve rupiah) is in the control of Defendant II, while Defendant I controls money amounting to Rp. 1,426,470,588 (one billion four hundred twenty-six million four hundred seventy thousand five hundred seventy-eight rupiah). The combined amount of money is the inheritance of the deceased Hj. Kiki Rukiyah. The Court ordered the Plaintiffs (Plaintiffs I–VI) and Defendants I and II to distribute the inheritance in accordance with their respective portions.³⁴⁶

The control of the inheritance property was decided by the Bandung Religious Court Number: 3494/Pdt. G/2018/PA.Badg. Plaintiff I is a joint wife (new wife) with the deceased, while Plaintiffs II and III are his children, male and female. The Defendant is the son of the old wife. The lawsuit arose because the Defendant controlled the estate of the deceased, his father. In its consideration, the Panel of Judges proved that the Plaintiffs and the Defendant were legitimate heirs based on Article 171 letter b jo Article 174 paragraph (1) KHI, which states that the heirs are people with blood or marriage relations with the testator. The Majelis Hakim also decided their inheritance share, according to faraid, with portions: Plaintiff I received 1/8, Plaintiff II received 1/5, and Plaintiff III and Defendant each received 2/5.³⁴⁷

³⁴⁶ Moch Fachril Faizal Rachman dan Husni Syawali, "Gugatan Akibat Penguasaan Harta Warisan oleh Salah Satu Ahli Waris Secara Melawan Hukum berdasarkan KUHPerdara dan Hukum Islam," *Bandung Conference Series: Law Studies* 2, no. 2 (6 Agustus 2022), 1127–28. <https://doi.org/10.29313/bcsls.v2i2.2584>.

³⁴⁷ Aprilia Jessyca Kristiani, "Penguasaan Harta Warisan Oleh Salah Satu Ahli Waris Secara Melawan Hukum Di Tinjau Dari KUHPerdara Dan Kompilasi Hukum Islam Dihubungkan Dengan Putusan Pengadilan Agama Bandung Nomor: 3494/Pdt.G/2018/Pa.Badg," *Prosiding Ilmu Hukum SPESIA* 6, no. 2 (2020): 644–47, <https://doi.org/http://dx.doi.org/10.29313/v6i2.23783>.

The case of inherited property embezzlement has been decided by the Praya NTB Religious Court with Decision Number: 1264/Pdt. G/2020/PA.pra. The plaintiff was Kalsum, and the Defendant was her son Mahsun. The mother and son's lawsuit was related to the sale of land amounting to Rp. 240 million. In her lawsuit, Kalsum was supposed to get half of the money as joint and several properties. However, her son Mahsun, who sold his late father's land for Rp. 240 million, only gave Rp. 15 million to his mother. He then asked her to buy a new motorcycle. After a trial and mediation efforts by the court, Kalsum withdrew the lawsuit, and the Panel of Judges granted the settlement.³⁴⁸

However, if the embezzlement of inheritance assets cannot be proven, the claim will be dismissed.³⁴⁹ Similarly, inheritance certificate forgery results in the annulment of the inheritance decree.³⁵⁰ Cases involving the sale of inherited land by one or several heirs are also adjudicated as control over inheritance assets.³⁵¹ Even disputes regarding the sale of inheritance assets without the consent of other heirs, though resolved amicably, are interpreted as embezzlement.³⁵²

The case of embezzlement of SHM land (certificate of ownership rights) has also been decided by the Malang District Court with Decision Number: 15/Pid. B/2020/PN.Mlg. The embezzlement was committed by Defendant H. Alwi by leasing the land without the heir's permission to PT Kebon Agung. The owner of the land in question was the late H. Suki. Meanwhile, the Defendant, namely H. Alwi did not have rights to the land

³⁴⁸ Syailendra, Aulia, and Purba, "Penggelapan Harta Waris Menurut Peraturan Perundangan Di Indonesia (Studi Kasus: 1264/PDT.G/2020/PA.PRA)."

³⁴⁹ Direktori Putusan Mahkamah Agung Republik Indonesia, Putusan PA Surabaya Nomor 0563/Pdt.G/2017/PA.Sby (2017), 12.

³⁵⁰ Atika Puspita Sari, Ruf Hafidz, dan Abdul Qahar, "Penyelesaian sengketa Harta Warisan: Studi Kasus Di Pengadilan Agama Kolaka Putusan No. Perkara 0148/Pdt.G/P.A KLK/2017," *Journal of Lex Generalis (JLS)* 3, no. 2 (2022), 82. <https://www.pasca-umi.ac.id/index.php/jlg/article/view/758>; Direktori Putusan Mahkamah Agung Republik Indonesia, Putusan PA Kolaka Nomor 148/Pdt.G/2017/PA.Klk (2017), 1-13.

³⁵¹ Direktori Putusan Mahkamah Agung Republik Indonesia, Putusan PA Praya Nomor 1264/Pdt.G/2020/PA.Pra (2020).6.

³⁵² Direktori Putusan Mahkamah Agung Republik Indonesia, Putusan PA Pati Nomor 1300/Pdt.G/2023/PA.Pt (2023), 12.

with SHM 1420 located in Wonokoyo Village, Kedungkandang District, Malang City. He had no right to lease the land to another party because the land in question was owned by the late H. Suki, whose heirs were HJ. Siti Mutaini and her three children, namely, Witness H. Haris Herman Abibudin, and Witness Sri Utami and M. Khoiron Lutfi, who are minors; the Defendant is not a heir of the deceased Suki. Based on the Panel of Judges' consideration that Article 385 paragraph (4) of the Criminal Code has been fulfilled so that as a whole, namely "Whoever with the same intention, mortgages or leases a plot of land with uncertified land rights when it is known that another person has or shares the right to the land," then the Panel of Judges imposed a prison sentence of 5 months and 15 days. The maximum sanction, in accordance with the article, is 4 years of imprisonment.³⁵³

Likewise, control over gifted assets that should be accounted for as inheritance is interpreted as a limitation on the embezzlement of inheritance assets.³⁵⁴ Meanwhile, in the criminal realm, the control of inheritance assets by an heir is interpreted as embezzlement.³⁵⁵ From the examples of decision cases mentioned, it is clear that unauthorized control of inherited property is included in the civil context, and the sanction or solution is in the form of returning or restoring rights. Meanwhile, if the case of inheritance violation is related to the elements of embezzlement

³⁵³ Darma Syah Putra, "Penggelapan Barang Tidak Bergerak Dan Penyerobotan Hak Atas Tanah (Studi Kasus Putusan Nomor 15/Pid.B/2020/PN.Mlg)," *Law Proscientist* 1, no. 1 (2022): 46–60.

³⁵⁴ Delvi Widhia Astuti et al., "Analisis Yuridis Pembagian Hibah Kepada Ahli Waris Yang Diperhitungkan Sebagai Warisan (Studi Putusan Nomor 0599/Pdt.G/2019/PA.Kdi)," *Jiic: JURNAL INTELEK INSAN CENDIKIA* 2, no. 1 (2025), 1140. <https://jicnusantara.com/index.php/jiic/article/view/2305>; and Andri Nurwandi Syam dan Nur Fadhilah, "Analisis Sengketa Harta Warisan Menurut Al-Qur'an dan As-Sunnah (Studi Putusan Pengadilan Agama Kisaran Studi Kasus No.353/Pdt./2010/PA.Kis)," *Jurnal Kewahyuan Islam* 3, no. April (2015), 58. <https://doi.org/http://dx.doi.org/10.30821/al-i'jaz.v7i1.9785>.

³⁵⁵ Ramon Agyl Muammar, Ani Triwati, dan Muhammad Iftar Aryaputra, "Pertanggungjawaban Pidana Notaris Dalam Pemalsuan Akta Keterangan Waris: Studi Kasus Putusan NO. 259/PID.B/2015/PN.CJR," *Semarang Law Review (SLR)* 1, no. 2 (12 Desember 2022), 90. <https://doi.org/10.26623/slr.v1i2.2761>; Direktori Putusan Mahkamah Agung Republik Indonesia, Putusan Pengadilan Negeri Metro Nomor 121/Pid.B/2021/PN. Met (2021), 57; Hutagalung, *Kriminalisasi Hak Waris*, 244-245.

and forgery, the sanction is criminal. The same sanctions applied to illegal logging³⁵⁶ and embezzlement of company assets.³⁵⁷

In Algeria, the unlawful acquisition of inheritance, such as embezzlement and forgery, is an offense punishable by *ta'zir* in accordance with the provisions of Article 363 of the Algerian Penal Code. This crime is penalized with imprisonment for a minimum of 3 months and a maximum of 2 years, along with a fine ranging from a minimum of 300 Algerian dinars to a maximum of 500 Algerian dinars.³⁵⁸ The difference with this research lies in the approach of *qiyas* (analogy) to legal text (*the Quran* and *Sunnah*) to identify the sanctions for inheritance crimes.

Article 49 of the Egyptian Inheritance Law of 2017, which imposes sanctions for the embezzlement of inheritance assets, is an implementation of Islamic criminal jurisprudence (*fiqh jinayah*) related to *ta'zir* for inheritance crimes.³⁵⁹ Similar to the previous article, this study aims to show the implementation of *ta'zir* in the law. However, neither of these articles uses Islamic legal texts (*the Quran* and *Sunnah*) to draw analogies regarding sanctions for inheritance crimes.

In Libya, embezzlement of inheritance rights is subject to criminal penalties under Article 5 of the Law on the Protection of Women's Inheritance Rights. This law imposes imprisonment ranging from 24 hours to 3 years for individuals who withhold a woman's share of inheritance and mandates the return of the inherited property. According to Masoud Shilandi, inheritance is a vital right protected by Islamic law. The

³⁵⁶ Redentor G.A. Obe and Ali Masyhar, "Position Of The Victim In Criminal Acts Illegal Logging," *Journal of Law and Legal Reform* 1, no. 3 (2020): 507, <https://doi.org/https://doi.org/10.15294/jllr.v1i3.35957>.

³⁵⁷ Chandra Andryanto, "Law Enforcement Against Fraud and/or Embezzlement (Study of KSP Intidana Central Java, Indonesia)," *Journal of Indonesian Legal Studies* 3, no. 1 (2018): 48, <https://doi.org/10.15294/jils.v3i01.23205>.

³⁵⁸ Abdel Kader Rahal, "Al-Bina Al-Qanuni li Jarimat Al-Istila ala Al-Tirkah bi Tariq Al-Ghish Dirasah Mawdhu'iyah Ijra'iyah Muqaranah," *Majallat Al-Dirasat Al-Huquqiyah* 9, no. 4 (2024): 179, <https://www.asjp.cerist.dz/en/article/238871>.

³⁵⁹ Ahmad Ali Shalih Dhabash, "Al-Tazir wa Dauruhu fi Al-Jara'im Al-Muta'alliqah bi Al-Mirats Dirasah Muqaranah bi Al-Qanun Raqm (219) li Sanah 2017," *Majallat Al-Dirasat Al-Islamiyyah wa Al-Buhuts Al-Akadimiyyah* 19, no. 109 (2024), 397, <https://doi.org/10.21608/mdak.2024.337300>.

does not set a penalty, the imam (government) or mujtahid may determine a sanction through the takzir mechanism based on their *ijtihad*. Thus, the sanction stated in Article 372 of the Criminal Code, namely, imprisonment for up to 4 years or a fine of up to 900 rupiah, is a *ta'zir* punishment for the crime of embezzlement.

Conclusion

The texts of Sharia (the *Qur'an* and *Sunnah*) state that there are no sanctions for inheritance embezzlement. Even classical *fiqh* literature does not mention any sanctions for inheritance embezzlement. However, after performing *qiyas* (analogy) on the *hadith* regarding the delay of debt payment by someone who is able and based on *mashlahat al-mursalah* (public interest), inheritance embezzlement is subject to *ta'zir* sanctions, the form of which is left to the discretion of the imam or *mujtahid*. The crime of embezzlement is not punished by *hudud* sanctions (such as cutting off the hand). In fact, the *Sunnah* does not specify any particular sanction for embezzlement. If Sharia does not stipulate a punishment, the imam (government) or mujtahid may determine sanctions through the *ta'zir* mechanism based on their *ijtihad*. Thus, the sanction stated in Article 372 of the Criminal Code, namely, imprisonment for up to 4 years or a fine of up to 900 rupiah, constitutes a *ta'zir* punishment for embezzlement of inheritance assets. Therefore, the integration of *fiqh* norms and Indonesian positive law is crucial to strengthen the legal protection of heirs as a whole. Further research suggests the enforcement of criminal sanctions for inheritance embezzlement related to falsification of documents in Islamic inheritance.

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