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The Terminology of Al-Tirkah in the Perspective of Al-Syansyūrī Al-Syāfi'ī and Its Relevance to Inheritance Issues in Indonesia

Islamic Inheritance

Istilah Al-Tirkah Menurut Pandangan Al-Syansyūrī Al-Syāfi'ī dan Relevansinya dengan Masalah Pewarisan di Indonesia

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ABSTRACT

Various existing studies related to inheritance generally focus on the result in the form of Islamic legal views on compensation funds and the like, and not many have studied the meaning of *al-tirkah* (inheritance) in terms of terminology, especially from the Syāfi'ī scholars, who are the school of thought of the majority of Indonesian society. This research aims to determine al-Syansyūrī al-Syāfi'ī's views on the definition of *al-tirkah* (inheritance) and its relevance in solving contemporary inheritance problems in Indonesia, such as pension funds, severance pay, compensation, and so on. This research uses a descriptive-qualitative method with the type of library research. The results of the research show that al-Syansyūrī al-Syāfi'ī defines *al-tirkah* as a right that allows it to be divided and assigned to anyone who has the right after an individual dies, namely for those who have a kinship between the two or for other reasons. Thus, to find out whether pension funds, severance pay, bereavement pay, and the like are part of the heir's rights to be inherited or not, the contract between the deceased and his place of work is very important and decisive. *Al-tirkah* applies to compensation funds and the like, which are based on *istiṡmāri* and *wadī'ah* contracts, whereas if the contract is in the form of *tabarru'*, such as gifts or grants, then these funds are not included in *al-tirkah*.

Keywords: *Al-Tirkah*, Al-Syansyūrī, Compensation, Pension, Inheritance

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ABSTRAK

Pelbagai kajian sedia ada berkaitan harta pusaka umumnya tertumpu kepada hasil akhir berupa pandangan perundangan Islam terhadap dana pampasan dan seumpamanya, dan tidak ramai yang mengkaji pengertian *al-tirkah* (pewarisan) dari segi istilah, khususnya dari ulama mazhab Syāfi'ī, yang merupakan mazhab majoriti masyarakat Indonesia. Kajian ini bertujuan untuk mengetahui pandangan al-Syansyūrī al-Syāfi'ī tentang definisi *al-tirkah* (pewarisan) dan kaitannya dalam menyelesaikan masalah pusaka kontemporari di Indonesia, seperti dana pencen, bayaran pesangon, pampasan, dan sebagainya. Penyelidikan ini menggunakan kaedah deskriptif-kualitatif dengan jenis kajian perpustakaan. Hasil kajian menunjukkan bahawa al-Syansyūrī al-Syāfi'ī mendefinisikan *al-tirkah* sebagai hak yang membolehkannya dibahagikan dan diserahkan kepada sesiapa yang mempunyai hak selepas seseorang meninggal dunia, iaitu bagi mereka yang mempunyai pertalian kekeluargaan atau atas sebab-sebab lain. Justeru, untuk mengetahui sama ada dana pencen, gaji pencen, gaji kehilangan dan seumpamanya adalah sebahagian daripada hak waris untuk diwarisi atau tidak, kontrak antara si mati dan tempat kerjanya adalah sangat penting dan kritikal. *Al-tirkah* berlaku untuk dana pampasan dan seumpamanya, yang berdasarkan akad *istiṡmāri* dan *wadī'ah*, sedangkan jika akad tersebut berbentuk *tabarru*', seperti hadiah atau hibah, maka dana tersebut tidak termasuk dalam *al-tirkah*.

Kata Kunci: *Al-Tirkah*, Al-Syansyūrī, Pampasan, Pencen, Harta Pusaka

INTRODUCTION

The science of Arabic is one of the tools of science that is the main door to Islamic sciences such as the science of *fiqh*, the science of the origins of *fiqh*, the science of exegesis, the science of hadith, and so on. Nurhayati & Misnatun (2023) positions Arabic as a scientific tool in Islamic studies, especially in the context of searching for the truth or explaining the content of the main sources of Islamic studies, namely the Al-Qur'an and Hadith.

Mastery of Arabic language knowledge and grammar is also one of the prerequisites for obtaining the title of *mujtahid*, whereby a *mujtahid* has competence in carrying out *istinbāt aḥkām*, which comes from legal sources in Arabic (mainly the Al-Qur'an and *al-Sunnah*). Ibnu Qudamah (1998) states in his book *Rauḍah al-Nāżir* that the knowledge of Arabic language and the knowledge of *Nahwu* will make it easier for a *mujtahid* to understand Arabic *khitāb*, especially in distinguishing between *ṣarīḥ, żahir, mujmal, haqīqah, majāz, lafaż ām* and *lafaż khās, muhkām* and *mutasyābih*, *nāṣ*, *mafhūm*, and others.

Not a few of the *khilāfiyah fiqhiyah* problems stem from differences between scholars in defining a legal object. For example, there are differences in views regarding the meaning of the word *al-yād* as part of *wuḍū* (ablution), whether the limit is only from the palms to the wrists, up to the elbows, or even including what is above the elbows. This difference in the meaning of *al-yād* has implications for differences in the procedures for performing ablution in *fiqh*. Ibnu Rusyd (1994) concluded that the cause of the differences of opinion on the issue of *al-yād* was the differences between the relevant scholars regarding the definition of *al-yād* as understood by Arabs.

In this case, it is clear how urgent the terminology is in a *fiqh* issue, including in matters of inheritance. In inheritance issues, several differences in jurisprudence originate from differences in defining the term *al-tirkah* (inheritance). For example, the legal status of severance pays or pension money, whether it is part of *al-tirkah* (inheritance) or not. Likewise, the status of insurance policy money, compensation money, and other assets circulating to the heir after the death.

Several studies have explored the inheritance status of pension funds for heirs of Civil Servants (Pegawai Negeri Sipil, PNS). Rohim (2020), in his study Status Warisan Dana Pensiun PNS Menurut Bahtsul Masa'il NU dan Majelis Tarjih dan Tajdid Muhammadiyah, examined the perspectives of two major Islamic organizations—NU and Muhammadiyah. He concluded that PNS pension funds are not classified as part of *al-tirkah* (inheritable estate) and, as such, their distribution under existing regulations does not contradict Islamic Sharia.

Similarly, Syahadah (2019), in his study Studi Analisis Pemikiran Ulama Kabupaten Demak Tentang Uang Pensiun Pegawai Negeri Sipil (PNS) sebagai Warisan, analyzed the opinions of religious scholars in Demak. His findings were consistent with Rohim's, reaffirming that PNS pension funds are excluded from *al-tirkah* and can be distributed according to current legal frameworks without conflicting with Islamic law. In contrast, Aseri (2023), in his study Pembagian Warisan Pegawai Negeri Sipil Muslim di Indonesia, presented a different perspective. He argued that PNS pension funds should be considered part of *al-tirkah*, as these assets, although managed as social insurance, were essentially owned by the civil servant during their active employment.

Other research focuses on compensation funds or insurance policies, such as Ababil (2022) entitled *Penentuan Ahli Waris Premi Asuransi Jiwa Ketika Pewaris Meninggal Dunia Perspektif Kompilasi Hukum Islam* and Mandiri (2022) entitled *Pembagian Polis Asuransi Jiwa dalam Harta Waris menurut Hukum Islam.* These two studies conclude that insurance compensation is part of *al-tirkah*, so the distribution is directed to the main heirs only, which conflicts with the rules of inheritance jurisprudence. The research of Ulya (2016) entitled *Penetapan Ahli Waris Penerima Santunan Jasa Raharja dalam PP No. 18 tahun 1965* also concluded that the rules for distributing compensation were not fully in line with Islamic law, but this could be said to be quite fair because the funds collected were not from the victims or the deceased but from the owners or entrepreneurs of road traffic transportation equipment.

The root of differences in views regarding assets of the deceased in the form of pension money, compensation funds, insurance policies, and the like in the studies mentioned above is one of the causes of differences in defining the terminology of *al-tirkah*. This means that differences in the meaning of the term *al-tirkah* will have a different legal impact on assets or pension funds, compensation funds or insurance policies, and the like.

In a theory or rule that is very familiar among scholars, namely *al-ḥukmu 'alā syai' far'u 'an taṣawwurihi*, it is understood that the law regarding something is a branch of the nature of that thing. Regarding this rule, al-'Utsaimīn (2001) explains that mentioning something and its definition should be done first, before mentioning the law, so that the law of something is in accordance with the knowledge or essence of that thing. Thus, a study that focuses on placing the terminology and meaning of *al-tirkah* in the perspective of inheritance jurisprudence is considered very important so that all forms of funds circulating to the heir after one's death, such as pension funds, compensation funds, insurance policies, and the like, can know the status of the law. Previous studies that have been carried out still focus more on the result in the form of Islamic legal views on these funds, and no one has studied more fundamentally the terminology or meaning of *al-tirkah* according to the views of the ulama, especially from among Syāfi'ī scholars, who are the school of thought of the majority of Indonesian society.

One of the scholars from the Syāfi'ī school who is known to have a prominent position in scholarship, especially related to inheritance, is 'Abdullāh bin Muḥammad bin 'Abdullāh bin 'Ālī al-'Ajami al-Syansyūrī al-Miṣrī al-Farḍī al-Azharī al-Syāfi 'ī. Al-Farḍī is an attributive name related to the science of *farā'iḍ* (inheritance jurisprudence) because of its fame and contribution to *farā'iḍ* science, al-Syāfi'ī is a *nisbat* to the school of jurisprudence in which it operates, namely the Syafi'i school, and al-Azharī is a sign of a scientific journey that cannot be separated from al-Azhar clerics up to al-Syansūri accepted positions as *khatib* at the al-Azhar Jami' Mosque. The breadth of al-Syansūri's knowledge and intelligence can be seen from the many books he has written from various branches of science, such as *fiqh*, *farā'iḍ*, hadith, and others, most of which are still handwritten, only a small portion of his works have been printed and disseminated. Therefore, it is interesting to explore further how al-Syansyūrī's views are related to the terminology or meaning of *al-tirkah* and its relationship to the inheritance issues that were mentioned previously.

Based on the description above, this research was conducted with the aim of finding out al-Syansyūrī al-Syāfi'ī's views on the definition of *al-tirkah* (inherited property) and its relevance in solving contemporary inheritance problems in Indonesia, such as pension funds, severance pay, compensation, and so forth. This research focuses on examining the meaning of *al-tirkah* according to al-Syansyūrī in his book of *Fatḥul Qarīb al-Mujīb bi al-Syaraḥ Kitāb al-Tartīb* and also the explanation of his book, *Hasyiah al-Bājūri 'alā Syarḥi al-Syansyūrī 'alā al-Rahabiyah*. These two books are the main reference for religious judges in Indonesia as well as the main reference in preparing the Compilation of Islamic Law (*Kompilasi Hukum Islam*, KHI) (Umam 2017). Al-Syansyūrī's views are considered relevant in Indonesian jurisprudence, where the majority of the population is of the Syāfi'ī school of thought, considering that al-Syansyūrī is one of the scholars of the Syāfi'ī school of thought and is a reference to the Syafi'ī school of thought in inheritance jurisprudence.

RESEARCH METHODOLOGY

Considering that the object of this research is al-Syansyūrī's view of *al-tirkah* terminology, the method used is descriptive-qualitative research, which is a type of library research (Creswell and Creswell 2017; Mulyadi, Basuki, and Prabowo 2019). In this research, researchers used two data sources, namely primary and secondary data sources. The primary data source comes from two books by al-Syansyūrī, *namely Fatḥul Qarīb al-Mujīb bi al-Syaraḥ Kitāb al-Tartīb* and *Hasyiah al-Bājūri 'alā Syarḥi al-Syansyūrī 'alā al-Rahabiyah*. Meanwhile, secondary data comes from various sources of literature, such as books, previous research, and journal articles related to the research theme, namely the terminology of *al-tirkah* in al-Syansyūrī's perspective and its relevance in Indonesia.

RESULTS AND DISCUSSION

Profile of al-Syansyūrī and His Contribution to *Farā'iḍ* Science

Al-Syansyūrī was born in the 10th century Hijriah, specifically during the reign of the Uśmāniyah Daulah, in the year 935 AH, and he passed away in 999 AH (Al-Husaini 2017). He hailed from Egypt, specifically from a village called Syansur, which later became associated with his name, al-Syansūri. His full name is 'Abdullāh bin Muḥammad bin 'Abdullāh bin 'Ālī al-'Ajami al-Syansyūrī al-Miṣrī al-Farḍī al-Azharī al-Syāfi'ī. Al-Farḍī indicates his expertise in the science of farā'iḍ (inheritance jurisprudence), reflecting his significant contributions to this field. The title al-Syāfi'ī denotes his affiliation with the Syāfi'i school of jurisprudence, while al-Azharī signifies his scholarly journey connected to the esteemed clerics of al-Azhar, where he eventually served as *khatib* at the al-Azhar Jami' Mosque (al-Gazzi 1998). Al-Syansūri's extensive knowledge and intellect are evident in the numerous books he authored across various disciplines, including fiqh, farā'iḍ, hadith, and more, many of which remain in handwritten form. Only a small portion of his works have been printed and disseminated, including:

1. In the field of *farā'iḍ* science, namely:
   a. The book of *Fatḥul Qarīb al-Mujīb bi al-Syarah Kitāb al-Tartīb* is a *syaraḥ* (explanation) from the book of *Tartib al Majmū' by Sabt al-Mardinī*, this book was published in 1301 Hijriah;
   b. The book of *al-Durratul al-Madiyah fī Syarḥ al-Fāridiyah* is a *syaraḥ* (explanation) from the book of *al-Manẓūmah al-Fāriḍiyah*, a discussion of the science of *farā'iḍ* in the view of Hanabilah scholars. This book was published in 1381 Hijriah;
   c. *Al-Fawā'id al-Syansyuriyah fī Syaraḥ al-Manẓumiyah al-Rahbiyah* which is a *syaraḥ* (explanation) from the book of *Bagiyah al-Bāhiṡ*, the work of al-Rahbiyah (Al-Husaini 2017).

2. In hadith science, namely:
   a. *Al-Mukhtaṣar fī Musṭalah Ahl al-Aṡar* is a concise and very useful meditation in the field of hadith science;
   b. *Khulasah al-Fikr fī Syaraḥ al-Mukhtaṣar fī Musṭalah Ahl al-Aṡar* is the *syaraḥ* (explanation) from the previous book.

From his works, especially in the science of *farā'iḍ*, it can be seen how much attention he paid to the learning and development of the science of *farā'iḍ*, where he taught the three main scientific qualities in this science (Al-Husaini 2017).

Definition of *Al-Tirkah* According to al-Syansyūrī

Among the books by al-Syansyūrī that explain the meaning of *al-tirkah* clearly, both in terms of etymology and terminology, is the book of *Fatḥul Qarīb al-Mujīb bi al-Syarah Kitāb al-Tartīb*. In the book, al-Syansyūrī describes words that are synonyms of *al-tirkah*, namely the words *al-mīrāṡ, al-maurūṡ*, and *al-irṡ*, which linguistically mean *al-baqa'* (sustainable), *al-aṣlu* (origin), and *al-baqiyah* (what remains of it), so that in general it means the transfer of something from one person to another, a legacy from a previous person to those who succeeded him.

As for Sharia terminology, al-Syansyūrī defines *al-tirkah* (Al-Syansyuri 1927):

حق قابل للتجزي يثبت لمستحق بعد موت من كان له ذلك لقرابة بينهما أو نحوها

> *"Rights that allow for distribution and are assigned to anyone who has the rights after death (the heir), namely those who have a kinship relationship between the two or for other reasons."*

From the definition above, several meanings can be explained, namely:

a. The meaning of *al-ḥaq* (right) includes rights in the form of property and other than property, such as *khiyār* (choice) rights in buying and selling, syuf'ah rights in partnership contracts, and also rights in qiṣas law;
b. The meaning of *lil-tajzī* (can be divided) means issuing several types of rights that cannot be shared between individuals, such as the right of *al-wilāyah* (to be a guardian), such as a marriage guardian, where the marriage guardian's rights are allocated to one of the guardians in order for the main one to be impossible to break down into parts (Al-Syansyuri 1927);
c. the meaning of *al-mustaḥaq* (who has rights) is for those who have reasons such as family relations (*nasab*) and others such as marriage reasons (Al-Bajuri t.t.);
d. the meaning of *ba'da maut* (after death), means issuing rights that existed before the death of the testator in the nature of patent ownership, such as the occurrence of sales and purchase agreements, gifts, and others.

The conclusion that can be drawn from al-Syansūri's definition is that inheritance can consist of both tangible assets and inheritable rights. These rights must be divisible, not singular, and can be determined after the death of an individual. They are then distributed to all legitimate heirs who have a valid claim to the inheritance.

Relevance to Inheritance Problems in Indonesia

The inheritance problems referred to here are as discussed previously, namely those related to money received after an individual dies, such as pension funds for civil servants, severance pay, compensation, and the like, which often occur in Indonesian society.

As al-Syansyūrī understands inheritance, namely that inheritance or *al-tirkah* is not only in the form of property left by the deceased but is also related to rights such as *khiyār* rights in sales and purchase contracts and other rights. It is necessary to resolve inheritance issues by knowing the existing contract between the deceased and his place of work so that it can be more easily determined whether it is related to the heir's rights or not.

As far as the researcher's investigation of several previous studies and literature related to this matter goes, the researcher classified the implementation of contracts used in pension funds for civil servants, severance pay, compensation, and the like into several contracts, including:

First, the *tabarru'* contract, which is a voluntary contract originating from one party, such as a grant, gift, or alms, where the donor is free to give according to his wishes without being bound by the recipient of the gift. In the world of insurance, an agreement like this is the basic contract for sharia insurance. In this contract, the participant, or in this case, the deceased, deposits certain funds as insurance premiums with the aim of volunteering or helping fellow insurance members. The incoming funds will be managed by the insurance company as the participant's representative, and the results will be returned to the insurance participant in the form of assistance and prizes according to mutually agreed rules (Ramadhan 2022).

If viewed from the definition and limitations mentioned by al-Syansyūri, compensation funds and the like that use contracts like this cannot be categorized as rights because they are voluntary on the part of one party, so they cannot be categorized as *al-tirkah*, but only as donations or grants to the deceased's family in accordance with applicable rules and agreements. Thus, this fund may not necessarily form part of the deceased's estate (*al-tirkah*) because it is regarded as financial assistance rather than a contractual entitlement as in conventional insurance.

Second, the *istiṡmāri* contract. An *istiṡmāri* contract is an agreement in the context of economics related to investment. The term "*istismari*" comes from the Arabic word *istismar*, which means "investment." This contract refers to a type of transaction in which one party (the investor) provides capital to another party (the manager) to be managed in a business or project with the aim of generating profit, in accordance with Islamic principles.

In insurance practices, conventional insurance typically uses this method or contract, where the policyholder, in this case the deceased, pays premiums not as voluntary donations but in the form of a business transaction expecting a specific return. The funds collected from members do not belong to the members themselves but are entirely owned by the insurance company. The company holds ownership rights, as is typical in business transactions, and is obligated to distribute entitlements according to the agreed-upon insurance policies (Abdullah 2018).

Considering that the policy for this type of insurance is the right of the insurance participant (the deceased), the definition of al-Syansyūrī as part of *al-tirkah* applies to it. However, the problem then is that the legal origin of insurance practices like this contains elements of garar and usury, so even though these funds are considered *al-tirkah*, they should be avoided because these transactions are part of a practice that is prohibited, unless they only take capital from funds that have been deposited.

Third, the *wadī'ah* contract, namely the deposit contract that occurs between two contracting parties, between the depositor and the person receiving the deposit, is trustful in nature and is returned at the agreed time (Oktayani 2018). If the deceased, during his lifetime, deposits a certain amount of funds regularly using a *wadī'ah*, or deposit agreement, then the heir, of course, has the right to take back the items he has entrusted, so that when the depositor dies, the rights he left behind are automatically returned to his heirs and are categorized as *al-tirkah*, which must be divided according to *farā'iḍ* rules.

If we look at the facts of the various contracts that occur in all forms of compensation money, it is natural that the legal conclusions that follow will also vary according to the facts of the contracts that occur between the deceased and the insurance company, workplace, or government.

CONCLUSION

According to al-Syansyūrī's definition, *al-tirkah* is not only property left by the deceased but also relates to the rights left by him. Thus, to find out whether pension funds, severance pay, bereavement pay, and the like are among the heir's rights to be inherited or not, it is first necessary to establish the contract that occurred between the deceased and his place of work. There are at least three possible contracts that have been implemented in Indonesia, namely the *tabarru', istiṡmāri*, and *wadī'ah* contracts. If the compensation given is in the form of a *tabarru*' contract, such as a grant or alms, then the compensation funds do not include *al-tarikah*, so the distribution is returned to the donor. If the contract is *istiṡmāri* and *wadī'ah*, then the compensation fund can be categorized as *al-tarikah* because it is the right of the deceased to be passed on to his heirs. Future research needs to discuss other types of contracts so that it can add broader insight regarding types of *al-tirkah*, especially those related to inherited rights.

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