



The Status of Civil Servants' Pension Fund Inheritance: A Comparative Fiqh Study between Bahtsul Masa'il NU and the Majelis Tarjih Muhammadiyah

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Abstract

One way to acquire wealth in Islam is through inheritance, where the estate left by a deceased person is distributed to their heirs based on Islamic principles of justice. However, in practice, disputes often arise regarding the status of a civil servant's (PNS) pension upon their death-whether it should be considered inheritance (*tirkah*) or not. This study aims to examine the principles of inheritance in Islamic law and analyse the views of Bahtsul Masail NU and Majelis Tarjih Muhammadiyah regarding the status of civil servant pensions. This research is library-based and employs a descriptive-analytical comparative method. The findings reveal that both organisations agree that a civil servant pension is not part of the *tirkah* and cannot be inherited in the traditional sense, but rather belongs to designated recipients such as the spouse or children. The difference lies in their methodological approaches: NU refers to the fatwas of scholars (*qaul*), while Muhammadiyah relies on the general (*mujmal*) wording of hadith. Both organisations also agree that Indonesia's regulations on civil servant pensions are not in conflict with Islamic law.

Keywords: Inheritance, Pension Fund, Civil Servant, Bahtsul Masa'il, Tarjih Tajdid, NU, Muhammadiyah.

Introduction

Allah SWT revealed the Qur'an as a guide to life to regulate the lives of mankind, both in this world and in the hereafter. Its main purpose is to realise happiness and prosperity for mankind, both in this world and in the hereafter. In the Qur'an, Allah SWT regulates various aspects of human life which can be divided into two main categories: first, matters relating to human relationships with Allah SWT, such as worship, morals, and obedience to Him; second, matters relating to human relationships, including how humans should interact with each other, their families, communities, and the universe around them.¹

¹ Riyanta Riyanta, "Kewarisan Beda Agama (Studi Pandangan Muaz Bin Jabal)," *Asy-Syir'ah: Jurnal Ilmu Syari'ah Dan Hukum* 46, no. 1 (2012).

One of the rules governing human relations established by Allah SWT is inheritance. Inheritance is the process of giving the testator's property to his heirs after the testator dies. In this case, the property left by the testator needs to be clearly regulated regarding who is entitled to receive, how much the share of each heir, and how the distribution mechanism is in accordance with the provisions of Islamic law.²

Inheritance in Islam is not an optional issue, but is regulated by strict rules. These rules are derived from the Qur'an and Hadith. Although Islamic law has established clear rules regarding the distribution of inheritance, the times have raised various new issues that are sometimes not found explicitly in the Qur'an and Hadith.³

Islamic law regulates inheritance in a very structured, systematic and fair manner. In it, there are property rights for every individual, both men and women, in accordance with legal provisions. Islam also regulates a person's ownership rights and the share received, both for adults and children, who are all legally entitled. The Qur'an explains in detail the laws relating to inheritance that must be implemented by Muslims throughout the world. However, people often tend to prioritise lust in obtaining inheritance rights, without realising the laws established by Allah and state regulations, thus causing family divisions due to injustice in the distribution of inheritance.⁴

A phenomenon that often occurs in society is when a Civil Servant (PNS) dies and leaves a large pension. Then, there are some parties who want the pension to be distributed like the distribution of inheritance in general according to Islamic law. However, the provisions regarding inheritance (pension money) pose a dilemma, whether it is better to follow the rules of Islamic law or refer to the applicable provisions in the Civil Service Law. This is stated in Law No. 8 of 1974, articles 7 to 10.

Following Islamic law will refer to the inheritance verses in the Qur'an, namely:

وَلِكُلٍّ جَعَلْنَا مَوَالِي مِمَّا تَرَكَ الْوَالِدَانِ وَالْأَقْرَبُونَ وَلِلَّذِينَ عَقَدْتَ أَيْمَانُكُمْ فَآتَوْهُمْ نَصِيبَهُمْ إِنَّ اللَّهَ كَانَ عَلَىٰ كُلِّ شَيْءٍ شَهِيدًا⁵

In addition, based on the Prophetic traditions that explain inheritance, for example the Hadith narrated by Bukhari:

²Wirjono Prodjodikoro, *Hukum Warisan Di Indonesia* (Bandung: Sumur Bandung, 1983). P. 13.

³ Abdul Manan, *Aneka Masalah Hukum Perdata di Indonesia*, cet. ke-1 (Jakarta: Kencana, 2006), hlm. 204-205.

⁴ M Idris Ramulyo, *Perbandingan Hukum Kewarisan Islam*, (Jakarta: CV Pedoman Ilmu Jaya, 1992), pp.78.

⁵ An-Nisā (4): 33.

لا يرث المسلم الكافر ولا الكافر المسلم⁶

One of the problems that often arise and cause disharmony in family relationships is differences in understanding of inheritance law. In fact, Islamic inheritance law has explained several principles related to the division of inheritance, namely the Ijbari principle, which states that the transfer of property belonging to someone who has died to the heirs applies automatically. The Individual principle refers to the division of inheritance that can be given to heirs to be owned personally. Meanwhile, the Bilateral principle confirms that both men and women have the same right to inherit from both sides of the lineage, both from the father and mother. In addition, the principle of inheritance in Islam also states that the transfer of property only takes effect after the person who owns the property dies. However, in many literatures, it is often not explained in detail about what types of assets are included in the inheritance category.⁷

Referring to the decision of the NU Batsul Masail, that civil servant pension funds are not included in the *tirkah* (estate of the dead). This is based on the applicable laws in Indonesia which explain that the source of the pension fund comes from the APBN / D given to the wife, which means *irzaq* (gift) and not *ujroh* (wages, salaries) from the work of the husband. Because the pension fund is not included in the *tirkah*, it is not included in the calculation of inherited property.⁸

Civil servant pension is a sum of money given by the government to the last civil servant / former civil servant before stopping as a civil servant or because he has died. The establishment and implementation of a pension fund has been stipulated in government regulations, as stated in Indonesian Law Number 11 of 1969 concerning Employee Pensions and Employee Widows / Widowers Pensions. The money has been budgeted by the state and taken from the APBN / D (State or Regional Revenue and Expenditure Budget) as an old age guarantee as well as an appreciation for their services in government service.

This pension comes from savings taken from a portion of the pension recipient's salary while still active and the amount of pension received by the employee after retirement. If the employee receiving the pension dies, the money will be given to his wife. The size of the pension given is calculated by the amount of salary received by the employee while still active. Not everyone

⁶ Al-Imam Abu Abdillah Muhammad ibn Ismail ibn al-Mugirah ibn Bardizbah al- Bukhari, Sahih al-Bukhari, Juz 4, (Beirut Lebanon: Dar al-Fikr, 1410 AH/1990 CE), p. 194, Sayid al-Iman Muhammad ibn Ismail ash-San'ani, Subul as-Salam Sarh Bulugh al-Maram Min Jami Adillat al-Ahkam, Juz 3, Egypt. 194, Sayid al-Iman Muhammad ibn Ismail ash-San'ani, Subul as-Salam Sarh Bulugh al-Maram Min Jami Adillat al- Ahkam, Juz 3, Egypt: Mushthafa al babi al-Halabi Wa Auladuh, 1379 AH/1960 CE, pp. 98.

⁷ Amir Syarifudin, *Hukum Kewarisan Islam*, (Jakarta: Prenada Media, 2004). pp.16.

⁸ Central Java Batsul Masail Institute, in admin@lbm-jateng.org accessed 5 March 2015.

is entitled to get a pension. Because the government has set several conditions that must be met.⁹

Meanwhile, Majlis Tarjih & Tajdid Muhammadiyah stated in its decision that pension property is not included in the category of inheritance property, but is the right of the wife. In addition, the pension will also stop when the widow remarries or dies, and the right to pension funds for the wife cannot be inherited to her children. Here what distinguishes between the opinions of Bahtsul Masa'il NU and Majlis Tarjih & Tajdid Muhammadiyah is in the aspect of taking the law, if Bahtsul Masa'il NU uses *aqwal al-mujtahidin* (*opinions of the mujtahidin*).ⁿ (opinion of the mujtahids) which is *mutlaq* or *munta'ab* while Majlis Tarjih & Tajdid Muhammadiyah explicitly uses the Qur'an, sunnah, ijma', qiyas, istihsan, al-Urf, istislah or maslahatul mursalah. All of these methods are used but what is preferred or commonly used is the benefit of the people, because according to Muhammadiyah the benefit of the people is something that must be realised.¹⁰

Departing from the above background, it is necessary to discuss how the actual views of Bahtsul Masa'il NU and Majlis Tarjih & Tajdid Muhammadiyah above. So the problem is that if the person who dies is a civil servant (PNS), there is automatically a transfer of pension salary to the wife, husband and children whose amount is not limited until the husband or wife remarries or dies, that the salary is still growing and continues for the heir, this is the focus of discussion in this thesis specifically. The author will discuss the status of the inheritance of civil servant pension funds and the method of taking the law according to Bahtsul Masa'il NU and Majlis Tarjih & Tajdid Muhammadiyah. Based on the background of the problem that has been stated previously, the focus of this research is: How is the status of civil servant pension funds according to Bahtsul Masa'il NU and Majlis Tarjih & Tajdid Muhammadiyah? and How is the method of legal istinbat of inheritance of civil servant pension funds according to Bahtsul Masa'il NU and Majlis Tarjih & Tajdid Muhammadiyah?

Methods Research

This research is based on *library research*. That is, research that uses books as a source of data.¹⁰ The initial effort to collect data in the preparation of this thesis is to conduct research on books related to legal issues, both from the decision of Bahtsul Masa'il NU and from Majlis Tarjih & Tajdid Muhammadiyah even from the law of the Republic of Indonesia¹¹ of 1969 concerning Employee Pensions and Employee Widow / Widower Pensions The nature of the research used is descriptive¹¹ comparative. That is, this research

⁹ Abdul Aziz, "Status Warisan Gaji PNS (Studi Pemikiran Tokoh NU Salatiga dan Kabupaten Semarang)" Skripsi, Fakultas Syari'ah STAIN Salatiga (2009). pp. 47.

¹⁰ Sutrisno Hadi, *Metodologi Reseat*, (Yogyakarta: Andi Offset, 1990), pp. 9.

¹¹ Sutan Rajasa, *Kamus Ilmiah Populer*, (Surabaya: Karya Utama, 2002), pp. 110.

is expected to provide a detailed description, as well as describe and compare the concept of *istinbat* of taking the law and the status of inheritance of pension funds according to Bahtsul Masa'il NU and Majlis Tarjih & Tajdid muhammadiyah. the data collection technique used is literature study, namely by reviewing and examining various books and books that have relevance to the subject matter. In compiling this thesis, the authors took the data source from the decision of Bahtsul Masa'il NU and the Decision of Majlis Tarjih. The approach that the compiler uses in this case is a normative approach model, which is a way of approaching the problem under study by seeing whether it is appropriate or not, good or bad according to the prevailing norms based on an understanding of the Qur'an, laws, and opinions of scholars or imams of the mazhab. This research is qualitative research. The analysis used is deductive analysis, which is analysing general literature, then processed to obtain specific conclusions. The author also uses comparative analysis, which is a way of retrieving data by comparing two or more objects and then looking for which data is stronger or the possibility of reaching a compromise.

Legacy of Civil Servant Pension Fund in NU's Batsul Masail

In the NU Bahtsul Masail, civil servant pension funds are not included in *tirkah* (corpse inheritance), based on the laws in force in Indonesia which explain that the source of the pension fund comes from the APBN / D given to the wife, which means *irzaq* (gift) and not *ujroh* (wages, salaries) from the work of the husband.¹² Because the pension fund is not included in the *tirkah*, it is not included in the calculation of inherited property. Hence the ruling is *haraam*, because it is receiving funds that are not meant for that purpose. In the book *at-ta'rifat* it is stated as follows:

التركة هو المال الصافي أن يتعلق حق الغير بعينه¹³

The basis for taking the law as a corroboration of the above reasoning is as follows:

قوله : (تركة) هي ما تخلف عن الميت ولو بسبب أو غير مال كما ختصاص ولو خمرًا تخللت بعد موته في

سبكة نصبها قبله وإن انتقبل ملك الشبكة للوار ودية قتل ولوبعفو عن قصاص من وارثه¹⁴

The basis for the ruling on this issue can also be seen in the book *I'annah al-Thalibin*, where it is stated:

فرع) الهدايا المحمولة عند محتان ملك للأب, وقال جمع للإبن فعليه يلزم الأب قبولها ومحل انحلاف اذا اطلق

¹² Central Java Batsul Masail Institute, in admin@lbn-jateng.org accessed 5 March 2015.

¹³ Ali bin Muhammad al-Jurjani, *At Ta'rifat*, (Beirut: Darul Kutub Ilmiyah, 2009 CE), p. 49.

¹⁴ Shihabuddin Qulyubi and Shaykh Amiroh, *Al-Qalyubi*, juz III, (Beirut: Darl Fikr, 2005), pp. 125

المهدي فلم يقصد واحدا منهما والا فهي لمن قصده¹⁵

To facilitate understanding of the legal basis above, the NU Bahtsul Masail is explained as follows: Civil servant pension is a sum of money given by the government to the last civil servant / former civil servant before stopping as a civil servant or because he has died. The establishment and implementation of a pension fund has been stipulated in government regulations, as stated in Indonesian Law Number 11 of 1969 concerning Employee Pensions and Employee Widow / Widower Pensions. The money has been budgeted by the state and taken from the APBN / D (State or Regional Revenue and Expenditure Budget) as an old age guarantee as well as an appreciation for their services in government service. This pension comes from savings taken from a portion of the pension recipient's salary while still active and the amount of pension the employee receives after retirement. If the employee who receives the pension dies, the money will be given to his wife.

The size of the pension given is calculated by the amount of salary received by the employee while still active. Not everyone is entitled to get a pension. Because the government has set several conditions that must be met, including:

A. Those entitled to give pensions are:

- 1) The official who has the right to dismiss the employee concerned,
- 2) under the supervision and coordination of the Head of Employee Affairs Office.

B. Those who are entitled to a pension are :

- 1) An employee is honourably discharged as a public servant if at the time of his/her discharge he/she is still a public servant. Or has reached the age of at least 50 years and has a service period for retirement of at least 20 years. Or he is declared unable to work anymore in any position due to physical or mental condition. Or the employee has a service period of at least 4 years and is declared by a body/official appointed by the Ministry of Health to be unable to work in any position whatsoever due to physical or mental condition, which is not caused by and due to the performance of his/her official duties.
- 2) A civil servant who is dismissed or released from his/her employment with honour as a civil servant (PNS) due to abolition of positions, changes in the composition of the civil service,

¹⁵ Ahmad ibn Muhammad as-Shawy, *l'anatu al-Thalibin*, Juz III, (Birut: Darul Hadith, t,t), pp. 154.

disciplining the state apparatus or for other official reasons and is not subsequently re-employed as a civil servant and at the time of his/her dismissal as a civil servant is at least 50 years old and has at least 10 years of service for retirement.

- 3) A public servant who, after performing a state duty, is not re-employed as a public servant. He is also entitled to receive an employee-pension if he is honourably discharged as a public servant and at the time of his discharge as a public servant he has reached the age of at least 50 years and has a service period for pension of at least 10 years.
- 4) If the civil servant at the time of his dismissal as a civil servant has at least 10 years of pensionable service but has not yet reached the age of 50 years, the pension shall be granted to him at the time he reaches the age of 50 years. However, the granting of an employee's pension will cease if the recipient of the employee's pension is reappointed as a civil servant or reappointed to a public office.
- 5) Furthermore, if the civil servant or employee pension recipient dies, then the person entitled to receive the pension is his wife (wife-wife) for male civil servants or her husband for female civil servants, who has previously been registered with the Employee Affairs Office. If the civil servant or male employee pension recipient referred to above has more than one wife, then the widow's pension is given to the wife who has existed the longest at that time and whose marriage has not been interrupted.
- 6) A wife's entitlement to a pension can be extinguished by the government if the marital relationship with the registered husband is broken or the widow/widower remarries another man.
- 7) If the civil servant receiving the pension does not have a wife/husband who is entitled to receive the widow/widower's pension or widow's share of the pension, the pension is given to his/her children who meet the criteria set by the government.
- 8) The right to receive an employee's pension or a widow's or widower's pension shall be extinguished if the recipient of the employee's pension without the permission of the government becomes a member of the army or civil service of a foreign country or is found guilty by a competent authority of having committed an act or being involved in a movement contrary to loyalty to the State.
- 9) The abolition also applies if it turns out that the information submitted as material for the determination of the granting of

employee pensions / widow / widower pensions / widow's
pension shares, is incorrect and the former civil servant or widow
/ widower / child concerned is actually not entitled to a pension.

The strictness of the government's stipulations on this pension issue indicates that the government is very careful in allocating these benefits. The government stipulates that to obtain an employee's pension according to the law. The civil servant concerned is required to submit a request for pension to the Head of the Employee Affairs Office, accompanied by a certified copy of the decree on his/her dismissal as a civil servant, a list of employment history, a list of family composition and several other certificates.

From the explanation that has been presented at length above, the status of pension money is not inherited property. But this pension is closely related to two terms that are familiar among fiqh intellectuals, namely *Ujroh* (wages, salaries) and *Rizq* (gifts). Because if viewed from one side, at first glance, the characteristics of pension money are similar to *Ujroh* (wages). This is because the money comes from savings taken from part of the salary of employees receiving pensions while still actively working and serving the government.

But on the other hand, if you look at the reality, the pension given to the pension recipient is not entirely derived from the amount of savings of the pension recipient, because if there is a permanent civil servant who has only worked for six months, for example, then he dies, then his wife is entitled to receive a pension during his lifetime, provided that he does not remarry someone else. On the other hand, if there is a civil servant who has worked for 40 years, then dies and after 5 months his wife remarries, then the wife is no longer entitled to receive a pension, even though according to reasonable calculations, her ex-husband's savings are still large. *Rizq* (gift) and *Ujroh* (wage) are not two words that mean the same thing. They are different from each other as explained in the book of *Dzakhoir*. Furthermore, in the book, *Rizq* is defined as a gift that is sufficient for a person and his family, while *Ujroh* is a term for something that is given on the basis of mutual willingness (like).¹⁶ Imam al- Mawardi himself explained that among those entitled to get *Rizq* is the soldiers who fight jihad to fight for Islam.¹⁷

They get it if their names are already listed in the salary recipient book. So those whose names are not listed will not get it. In addition, the salaries are distributed evenly to their wives and children.¹⁸ This explanation confirms that the pension is a *Rizq*. This is because civil servants are also listed in the

¹⁶ Abu Zakariya *Muhyiddin* Yahya bin Syarof al-Nawawi, *al-Majmu` Syarh al- Muhadzab*, Juz: 3, (Beirut: Darl Fikr, t,t) pp. 89.

¹⁷ Al-Mawardi, *Al-Hawy Fi Fiqh al-Shafi`i*, Juz: 8, (Beirut: Darl Fikr, tt). pp. 443

¹⁸ Shihabuddin al-Qalyubi and Ahmad al-Burlusi`Umairah, *Hasyiyata al-Qalyubi Wa` Umairah*, Juz: 3, (Cairo: Dar al-Kutub, t,t), pp. 125.

salary book and are based on the determination of the imam (supreme leader) just like the soldiers. In the case of jihad, the soldiers will receive *Rizq* from the imam so that they can focus on jihad and not think about their family expenses. This situation is also the same as that of civil servants.

Shaykh Nawawi in *his Tausyih* also explains that it is permissible for the imam to allocate the remaining salaries of those who receive *Rizq to Mashalih al-Muslimin* (the interests of the Muslims). This includes those who are scholars or clerics, and even their children will receive the money after they die. From the above explanation, it is appropriate for the government to also allocate the pension fund to the Kiai and their children.¹⁹

Based on the above, it can be concluded that the pension is permissible and comes under the heading of *Irzaq* (gift). Although some scholars, such as Shaykh Muhammad al-Hamid in his book *Rudud 'Ala Abathil*, do not allow taking the pension on the grounds that there is no form of work that is worthy of reward, because he is no longer considered an employee. When we refer to the opinion that allows pensions, is money included in the *tirkah* (estate of the deceased)? Firstly, we must know the definition of *tirkah*. In the book *Hasyiata Qulyubi Wa 'Umairah*, the monumental work of two prominent scholars, Shaykh Imam al-Qalyubi and Imam al-Burlusi, it is stated that the meaning of *tirkah* is as follows:

ما تخلف عن الميـت ولو بسبب أو غير مال كا ختصاص²⁰

From the definition of *tirkah* above, it can be concluded that something left behind can be considered *tirkah* if it is already owned by the deceased, not something that will be owned.²¹ This can be understood from the *ibarat* (text) which uses *fi'il madli* (past work). Thus, pensioners' salaries cannot be considered as inherited property because it is a sum of money that will be received and will pass to the heir. So it can be concluded that the pension is not included in the calculation of the bequeathed property. It is also not recognised in the classical fiqh books, so there is no specific term to refer to the pension. Because it is only a benefit whose rules have been set by the government.

The Legacy of Civil Servant Pension Fund in Muhammadiyah Tarjih & Tajdid Assembly

It should be noted that one of the conditions for the distribution of

¹⁹ Abu Hamid Muhammad bin Muhammad al-Ghazali, *Ihya Ulumuddin*, Juz: 2 (Cairo: Matba'ah al-Misr, t,t), pp. 140.

²⁰ Shihabuddin Qalyubi and Shaykh Amiroh, *Al-Qalyubi*, juz III, (Beirut: Darl Fikr, 2005), pp. 125.

²¹ *Ibid.*

inheritance according to Islamic teachings is that the has died.²² Thus it can be said that if the testator has not died or in other words is still alive, then there is no distribution of inheritance. In relation to the funds of Civil (PNS), whether they are included in the inheritance or not, the actual problem that you are asking about, according to Islamic teachings or law, is not or has not become a matter of inheritance.²³

The giving of property by a person to a person who is still related, even if the giver dies, can bequeath property to the giver as long as the giver is still alive, cannot be categorised as inheritance and can be categorised as inheritance, but is categorised as a *grant*. In the case of gifts or grants to children, it is taught that the gift should be made fairly between one child and another. Mentioned in the hadith:

اعدلوا بين اولادكم في العطية²⁴

Ibn Qudamah in *al-Mughni* explains that it is permissible for parents to give more to their children than others in special circumstances, such as to children with disabilities, such as blindness or others, or because the child is preoccupied with studying and developing knowledge; and also the child may be kept away from the gift, if the gift is actually for sinning. In the case of giving more, parents should do so with wisdom and, as far as possible, with the knowledge or consent of their other children.

Similarly, Islam teaches that one should not give gifts to others that cause harm or misery to children. The Prophet's hadith states:

لا ضرر ولا ضرار²⁵

In another hadith relating to inheritance, the Prophet said:

إنك أن تذر ورثتك أغنياء خير من أن تذرهم عالة يتكفون الناس²⁶

The inheritance will only occur if the heir has passed away. However, pension assets are not included in the category of inherited assets, but are the rights of the wife. In addition, the pension will also cease when the widow remarries or , and the pension rights for the wife cannot be passed on to her

²² Muhammad Muhyiddin 'Abdul Hamid, *Ahkamul Mawarits fisy Shari'atil Islamiyah 'ala Madzahibil Arba'ah*, p. 13. 13, See also, H. Ahmad Azhar Basyir, M.A., *Hukum Waris Islam*, pp. 16.

²³ Decision of the Central Tarjih Council of Muhammadiyah, *Division of Inheritance*, Heard in Cirebon on Friday, 13 Zulqa'dah 1428 H / 23 November 2007 AD).

²⁴ Abi Abdullah Muhammad ibn Ismail Al- Bukhari, *Ṣaḥīḥ Bukhari*, 1st cet. edition, M. F. Muhibuddin al-Khotib (Cairo: Matba'ah as-Salafiyah, 1979 CE / 1400 AH), volume 1. No. 2650.

²⁵ Usman Mushlih, *Kaidah-kaidah Ushuliyah dan Fiqhiyah*, (Jakarta: Raja Grafindo Persada, 1997), p. 28.

²⁶ Abi Abdullah Muhammad bin Ismail Al- Bukhari, *Ṣaḥīḥ Bukhari*, 1st cet. edition, M. F. Muhibuddin al-Khotib (Cairo: Matba'ah as-Salafiyah, 1979 CE / 1400 AH), volume No. 4409.

children.²⁷

Furthermore, before the property is distributed to the heirs, it is first used for the cost of taking care of the corpse such as the cost of buying a shroud, the cost of digging a grave and others, paying debts if the deceased has debts, both debts to Allah SWT such as unpaid zakat, unfulfilled vows and so on and debts to others; and to fulfil the will if the corpse has made a will during his lifetime. Allah SWT says:

ولكم نصف ما ترك أزواجكم إن لم يكن لهن ولد، فإذا كان لهن ولد فلكن الربع تركن من بعد وصية يوصيها أو دين.²⁸

After the estate has been reduced by the costs of caring for the corpse and others as mentioned above, the next step is to distribute it to the heirs according to the provisions.

However, the Muhammadiyah Tarjih Council takes similarities in terms of Social Insurance (*Ta'min Ijtima'i*), is insurance (guarantee) given to certain communities, such as civil servants (PNS), retired people, people who are unable and others.²⁹

This insurance is usually organised by the government and is binding. For the record: education insurance is a type of insurance that provides certainty / guarantee of funds that will be used for future education costs. Education Insurance has two elements, namely Investment and Protection. Investment aims to create a number of funds / cash value to be able to beat the inflation rate, so that the funds or cash value created can be used for education fund purposes. Protection has the aim of providing health protection to the child or the main participant or the main insured, so that if there is a risk (illness) then this insurance will provide compensation, without reducing the funds that have been invested in this education insurance. With the protection provided, the funds that have been invested will not be disturbed because of a risk. In addition to protection of children's health, this insurance also provides investment facilities, when parents (savers) experience risks, then the company will take over to deposit into the child's account in this education insurance account until the child grows up. So with this protection, the certainty of funds for education is always available when needed. In terms of the object of sharia insurance, it only limits its

²⁷ The result of the session of the Muhammadiyah Tarjih Council on the Division of Inheritance, (Heard on Friday, 19 Rabiul Akhir 1429 AH / 25 April 2008 AD).

²⁸ An-Nisā (4): 12.

²⁹ Majelis Tarjih Muhammadiyah Purwokerto, Opinion of Ulama about Insurance in http://lkipurwokerto.blogspot.com/2013/02/asuransi-dalam-islam_18.html, accessed on 18 April 2015.

management to insurance objects that are halal and do not contain shubhat. Therefore, it is not allowed to make objects on things that are haram or syubhat, such as buildings used for immorality, or liquor and cigarette factories, even hotels that are not sharia. Conventional Insurance does not distinguish objects that are haram or halal, which is important to bring profit.

Comparative Analysis Between Bahtsul Masa'il Nu and Majlis Tarjih on the Status of Inheritance of Pension Funds for Civil Servants From the Aspects of Law-Making

In terms of law making, the NU LBM consistently follows the Imam of the four madhabs as stated in the following Fata>wi al-Kubra book.

وبأن التقليد متعين لأئمة الأربعة فقط قال لأن هذا هبهم انتشرت حتى ظهر وتخصيص عامها بخلاف غيرهم³⁰

This attitude of bermazhab is consistently followed up with efforts to take fiqh law from references (*maraji`*) in the form of fiqh books which are generally arranged systematically in several components, namely *worship*, *mu`amalah*, *munakahah* (family law) and *jinayah / qadla* (criminal / judicial). In this case, NU scholars orientate their *law-making* to the *aqwal al-mujtahidin* (opinions of the mujtahids) which are *mutlaq* and *muntashib*. If it happens to be found *qaul manshuh* (opinion that has been nashnya) then *qaul* that is held and if not found, it will switch to *qaul mukharraj* (opinion that has been *takhrij*). In the event of *khilaf* (difference of opinion), the strongest *qaul* is taken in accordance with the judgement of the *tarjih* experts.³¹

Meanwhile, Majlis Tarjih & Tajdid Muhammadiyah explicitly states that *ijtihad* is only a method of determining the law. Muhammadiyah basically accepts the *ijtihad* method that has been determined by previous *usul fiqh* experts. The *ijtihad* technique with the legal basis used is the Qur'an, *sunnah*, *ijma'*, *qiyas*, *istihsan*, *al-Urf*, *istislah* or *maslahatul mursalah*. All of these methods are used but what is preferred or commonly used is the benefit of the people. Because, according to Muhammadiyah, the benefit of the people is something that must be realised.

The method of *Ijtihad* in Majlis Tarjih & Tajdid Muhammadiyah is :

- a) Bayani (semantics) A method of legal *istimbat* with linguistic studies.
- b) Ta'lili (rational) method of *istimbat* law with the study of logical thinking (reasoning).
- c) Istislahi (philosophy) method of *istimbat* law with a benefit approach

³⁰ Shihab al-Di>n Ahmad Muhammad Hajar al-Haitami, *Al-Fatawa al-Kubra al-Fiqhiyah*, Juz 6, (Beirut: Dar al-Fikr, n.d.), p. 329.

³¹ Imam Ghazali Said and A. Ma`ruf Asrori (Editors), *Ahkamul Fuqaha: Solusi Problematika Aktual Hukum Islam*, ter. Djamaluddin Miri, (Surabaya: LTN NU and Diantama, 2005).

The scope of *ijtihad*:

- a) Issues contained in the *zhani* proposition
- b) Issues that are not explicitly addressed in the *Qur'an* and *Sunnah*

If there is a conflict between several arguments, each of which indicates different legal provisions (*ta'arudh ala adillat*), the steps taken are:

- a. *Al jamu' wa al talfiq* is accepting all arguments that are explicitly contradictory.
- b. *Al Tarjih* is choosing the stronger evidence to be applied and abandoning the weaker evidence.
- c. *Al naskh* means applying the evidence that comes later.
- d. *Al tawqquf* is to stop researching the evidence used by looking for new evidence.

The *tarjih* method carried out by *Majlis Tarjih Muhammadiyah* takes into account several aspects:

- 1. *Sanad*; *tarjih* on *sanad* is done by paying attention:
 - a. Quality and quantity of narrators
 - b. Form and nature of transmission
 - c. *Sighat* of receiving and giving *hadith*
- 2. *Matan*; *tarjih* on *sanad* is done by paying attention:
 - a. The *matan* that uses the *sighat* of prevention (*al nahyi*) takes precedence over the *matan* that uses the *sighat* of command (*al'amr*).
 - b. The *matan* that uses a specialised *sighat* (*al khas*) takes precedence over the *matan* that uses a general *sighat*.
- 3. Legal material
- 4. External

Principles of the development of Islamic thought:

- a) *Conservation* (*turats, al muhafadzah*)
- b) *Innovation* (*al tahdisi*)
- c) *Creation* (*ibtikari*)

The methodological framework for the development of Islamic thought is by using the *bayani*, *burhani*, and *irfani* approaches.

- 1. The *bayani* approach is an approach to understanding and analysing the text in order to get the meaning it contains by using the four *amcam bayan*:
 - a) *Bayan al l'tibar* is an explanation of the condition of something which includes *al qiyas al -bayani* and *al khabar* which is certain.
 - b) *Bayan al l'tikad*, which is an explanation of the condition of something, including the meaning of *haqq mutasyabih* and *batil*.
 - c) *Bayan al ibarat* is an explanation of the state of something

which includes bayan zhair and bayan bathin.

- d) Bayan al kitab is a medium for quoting opinions, namely books.
2. Burhani opinion is a rational argumentative approach, which is an approach based on the power of the ratio through logical instruments and discursive methods (bathiniy).
3. The 'irfani approach is an understanding approach that relies on the instruments of inner experience, dhawq, qalb, wijdan, basirah and intuition.³²

Comparative Analysis Between Bahtsul Masa'il Nu and Majlis Tarjih on the Status of Inheritance of Pns Pension Funds from the Aspect of Legal Status

In the issue of Widow's pension and children are not included in *tirkah*, because it is not given to the husband, but directly given to the wife and children, Bahtsul Masail NU determines the basis for taking the law based on the decision of Bahtsul Masail NU Central Java as follows:

"Civil servant pension funds are not included in the *tirkah* (estate of the deceased), based on the laws in force in the State of Indonesia which explain that the source of the pension funds comes from the APBN / D given to the wife, which means *irzaq* (gift) and not *ujroh* (wages, salaries) from the work of the husband. Because the pension fund is not included in the *tirkah*, it is not included in the calculation of inherited property."³³

In the above decision, the *batsul masail nu* took reliance on books including:

- a. kitab *at-ta'rifat* is mentioned as follows:

التركة هو المال الصافي أن يتعلق حق الغير بعينه³⁴

The backing for taking the law (*istinbat hukum*) as a reinforcement of the above reasoning is as follows:

قوله (:تركة) هي ما تخلف عن الميت ولو بسبب أو غير مال كا خصاص ولو خمر
تخللت بعد موته في سبكة نصبها قبله وإن انتقبل ملك الشبكة للوارث ودية قتل ولو بعفو
عن قصاص من وارثه³⁵

- b. *I'anatu al-Thalibin*, where it is mentioned:

³² Faturrahman Jamil, *Metode Ijtihad Majlis Tarjih Muhammadiyah*, (Jakarta: logos, 1995), pp. 9.

³³ Decision of Batsul Masail NU Central Java, Kebumen, 30 January 2011.

³⁴ Ali bin Muhammad al-Jurjani, *At Ta'rifat*, (Beirut: Darul Kutub Ilmiyah, 2009 CE), pp. 49.

³⁵ Shihabuddin Qalyubi and Shaykh Amiroh, *Al-Qalyubi*, juz III, (Beirut: Darl Fikr, 2005), pp. 125.

(فرع) الهدايا المحمولة عند الختان ملك للأب, وقال جمع للإبن فعليه يلزم الأب قبولها ومحل الخلاف اذا اطلق المهدي فلم يقصد واحدا منهما والا فهي لمن قصده.³⁶

c. *Nihayatu al-Muhtaj*:

ان الزيادة الحا صله بعد الموت للورثة الخ³⁷

d. *Al-Majmu'*, also discusses this issue:

قال صاحب الذخائر, الفرق بين الرزق والأجرة ان الرق ان يطعمه كفايته ه وعيا والأجرة ما يقع به التراضي³⁸

While the Muhmmadiyah Tarjih Council based on the decision of the Muhmmadiyah Tarjih Council which was heard on Friday, 19 Rabiul Akhir 1429 H / 25 April 2008 M decided the results of its session as follows:

"Pension wealth is not included in the category of inheritance, but is the right of the wife. In addition, the pension will also cease when the widow remarries or dies, and the pension rights for the wife cannot be passed on to her children."

In relation to the giving of one's property to a who is still related, even if the giver dies, it can bequeath property to the giver as long as the giver is still alive, which cannot be categorised as inheritance, but is categorised as a grant. In the case of gifts or grants to children, it is taught that the should be made fairly between one child and another.

Mentioned in the hadith:

اعدلوا بين أولادكم في العطية³⁹

Ibn Qudamah in *al-Mughni* explains that it is permissible for parents to give more to their children than others in special circumstances, such as to children with disabilities, such as blindness or , or because children are preoccupied with studying and developing knowledge; and also children may be kept away from gifts, if the gift is actually for sin. Islam also teaches that it is not permissible to give gifts to others that cause harm or misery the child. The Prophet's hadith states:

³⁶ Ahmad bin Muhammad as-Shawy, *I'anatu al-Thalibin*, Juz III, (Birut: Darul Hadith, tt) p. 154

³⁷ Syaichul Islam Shamsuddin Muhammad bin Abul Abbas Ahmad bin Hamzah bin Shihabuddin al Ramli al Manufi al Mishri al Anshori, *Nihayatu al-Muhtaj*, Volume IV, (Cairo: Darul Kitab Ilmiah, 1423 AH - 2003 CE) p. 300.

³⁸ Al-Imam al-Allamah Abu Zakaria Muhyuddin bin Syaraf an-Nawawi ad- Dimasyqi, *Al-Majmu' Syarah Al Muhadzdzab*, Juz III, (Jakarta: Pustaka Azzam, t,t), pp. 137-138.

³⁹ Abi Abdullah Muhammad bin Ismail Al-Bukhari, *Ṣaḥīḥ Bukhari*, 1st ed. M. F. Muhibuddin al-Khotib (Cairo: Matba'ah as-Salafiyah, 1979 CE/1400 AH), volume 1, pp. 233, Hadith number 2586, "Kitāb al-ḥibah", "Bāb al-ḥibah li al-walad".

لا ضرر ولا ضرار⁴⁰

In another hadith relating to the giving of wills, the Prophet said:

يا رسول بلغني ما ترى من الوجع أنا ذو مال ولا يرثني إلا ابنة لي واحدة، أفأصدق بثلثي مالي؟ قال، لا .
قلت: فالثلث؟ قال الثلث، و الثلث كثير أو كبير إياك أن تذر ورثتك أغنياء خير من أن تذرهم عالة يتكففون الناس⁴¹

From the two arguments above, there are similarities between Bahtsul Masail NU and the Muhammadiyah Tarjih Council that civil servant pension funds are not included in inheritance (tirkah), and when a civil servant dies the pension fund becomes the right of his wife / husband or child according to the provisions of the law. The difference lies in taking the legal basis, namely if Bahtsul Masail NU adheres to the qaul / fatwa of scholars while the Muhammadiyah Tarjih Assembly takes its basis from the Qur'an hadith which is still general in nature. The compiler argues that Islamic law is formed from the Al-Qura'an and Al-Hadith, so to what extent is Islamic inheritance law when associated with the distribution of the applicable inheritance law or is there a necessity to use Islamic inheritance law in the distribution of inherited property. So basically, Islamic inheritance law functions as an effort to bridge if there is a dispute in the distribution of inheritance property. Islamic law provides solutions with verses of inheritance law, so that in the distribution of inheritance if all families are willing, sincere or agree that the division of inheritance is not in accordance with Islamic inheritance law it is permissible. The function of Islamic inheritance law if we pour it in everyday life is as a reference place if there is a dispute in the distribution of inheritance property. If it is associated with this research, the authors argue that pension property is not a tirkah or inherited property that can be distributed to other heirs in accordance with the distribution in Islamic inheritance law because pension property is property that is limited from ownership by the existence of a decree from the government (SK) which makes the property bound by the government from ownership rights and by the rules outlined in the law on widow / widower pensions, while inherited property in Islamic inheritance law tirkah is property that fully belongs to the deceased.

Conclusion

Based on the description of the inheritance of civil servant pension funds according to Bahtsul Masail NU and Majelis Tarjih & Tajdid Muhammadiyah which have been explained in the previous chapters of this thesis, the authors can draw the following conclusions: From the description that has been

⁴⁰ Usman Mushlih, *Kaidah-kaidah Ushuliyah dan Fiqhiyah*, (Jakarta: Raja Grafindo Persada, 1997), p. 28.

⁴¹ Abu al-Hasan Muslim ibn Hajaj al-Qusyairi, *Ṣaḥīḥ Muslim*, ed. by Muhyiddin al-Nawawiy (Beirut Lebanon: Dār al-Ma'rifah, 2007 CE/1428 AH), vol. 11, pp. 80, Hadith number 4180, "Kitāb al-Waṣīat," "Bāb al-Waṣīat bi al-Suluṣ".

presented previously, it can be concluded that Majelis Tarjih Muhammadiyah and Lembaga Bahtsul Masa'il NU, both position the Qur'an and Hadith as the main source in making legal decisions. The NU LBM is more concerned with preserving the heritage of the thought of the Ahlusunah Waljama'ah madzhab figures, while the Muhammadiyah Tarjih & Tajdid Council looks more at the contemporary context in giving its Tarjih decisions. The status of civil servant pension funds according to Bahtsul Masail NU and Majelis Tarjih & Tajdid Muhammadiyah calls it not including inheritance, because it becomes the right of his wife and or children as determined by the law. According to the regulations of Law Number 11 of 1969, pensions are old-age guarantees and as a reward for civil servants who have devoted themselves to the state for many years. Widow's or widower's pension, those entitled to the pension are the wives (wives) of male civil servants, or husbands of female civil servants who died / died, or recipients of civil servant pensions who died and they were previously registered as the legal wife / husband of the civil servant concerned and if the civil servant or pension recipient dies while he has no wife / husband who is entitled to receive a widow's or widower's pension, the widow's pension is given to his children / children, children as referred to are children who at the time the civil servant or employee pension recipient dies, the child is less than 25 years old or does not have his own income or is not married / has never been married. This regulation is contained in Law No. 8 of 1974 jo. Law No. 43 of 1999.

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