

Heirs Waiving their Financial and Real Rights according to Islamic Jurisprudence

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Abstract

This research highlights several Islamic jurisprudential rulings related to heirs or some of them who waive their financial or real rights to the dead's legacy. Such a waiver is frequently granted for many reasons, the most important of which are: taking into account an heir's financial or in-kind need, unlike others who are financially self-sufficient. They are not poor or needy like this heir. This individual or collective waiver must be granted with the renouncer's full consent. S/he shall not be coerced or threatened to do so. This waiver should not be granted out of a self-interest that harms one of the heirs. This inheritance waiver must be fully registered at the accredited notaries so that the assignor's offspring could not deny or abuse it. Thus, the research investigates a set of rulings and conditions related to waiving inheritance rights according to Islamic jurisprudence. Therefore, this research aims to achieve some objectives, the most important of which are:

- 1-Discern and regulate rulings related to inheritance waiver.
- 2- Explain the means of registering this waiver.
- 3- Achieve community solidarity with poor relatives.
- 4- Clarify mistakes made during waiving the inheritance.
- 5-Clarify jurisprudential regulations governing inheritance waiver.

Keywords: *Waiver, inheritance, registration, regulations, properties.*

INTRODUCTION

The waiver of rights is one of the most important issues raised among people in society. The essence of this waiver is the transfer of various properties from the assignor to the assignee, in accordance with many legal regulations governing this waiver. On the one hand, this preserve rights and prevents any dispute that may arise between the assignor's family and the assignee, or between the former and the latter's family, especially after the death of the two. Consequently, this research contributes to the clarification of these

important regulations, in addition to other issues related to this inheritance waiver.

Significance of the Research:

The significance of the research lies in its close relationship with heirs waiving their shares of inheritance. This is not easy task, due to people's economic conditions. A person who waive his/her right to inheritance is only a person willing to provide assistance to those who are in in need. There are other reasons for this waiver. Knowing these reasons is important for any researcher. Another importance is attached

to the jurisprudential regulations related to full or partial waiver and revealed by this research.

Statement of the Problems and Research Questions:

This research addresses a fundamental question based on: What is inheritance waiver?

This fundamental question leads to subsidiary questions about giving a precise definition of inheritance waiver, and about indicating the extent to which Sharia provisions prohibit it. Is there a proposed document for this waiver? What are the regulations governing it? There are also jurisprudential questions closely related to it.

The most important reasons for choosing this topic:

The reasons can be limited to three:

First: the urgent desire to identify Islamic jurisprudential rulings on waiving one's share of inheritance.

Second: waivers granted without official legal registration, which led to many legal disputes between the assignors' families and assignees' families.

Third: the large number of fatwas that are related to heritage waiver and submitted to the eminent scholars of fatwas.

Research objectives:

The most important objectives of the research are five:

First: provide a literature on Islamic jurisprudence related to inheritance waiver.

Second: raise awareness of Islamic jurisprudence related to issues on inheritance and heirs' rights. The research also aims at knowing the regulations of waiving financial and real rights received by way of inheritance.

Third: demonstrate the greatness of Sharia rulings, and its ability to regulate new contemporary dealings related to waiving rights in general, and waiving inheritance rights in particular.

Fourth: explain the means of registering this waiver.

Fifth: clarify mistakes made during waiving one's share of inheritance.

Literature Review:

The researcher read a study, whose table of contents was only published. It was made by Sultan Al-Tawala and published in the University of Sharjah Magazine No. 1, 2022AD, and it is entitled: Waiver of Inheritance: A Jurisprudential Study. According to the table of contents, his study - focuses on the elements of waiver, its conditions, waiver process after and before the inheritor's death, and reversing the waiver. Repeating these issues is avoided in this research, which includes five themes. The last of which includes ten precise conditions of inheritance waiver.

Methodology

The analytical inductive approach is adopted for research purposes. This approach is based on revealing jurisprudential aspects to inheritance waiver, and authenticating them in terms of inference, regulations, definitions, and discussion.

Research Procedures

The research is limited to an introduction, six themes and a conclusion.

Introduction: it summarizes the research topic, its significance, statement of problems, questions, the reasons for choosing this topic,

its objectives, literature review, methodology, and its outline.

First Theme: Linguistic and Technical Definition of Waiver

The first requirement: Linguistic Definition of waiver.

The second requirement: Technical Definition of Waiver.

Second Theme: Technical Definition of Inheritance Waiver and its Restrictions

Third Theme: Five Sharia rulings of inheritance waiver

Fourth Theme: Document of Waiver

Fifth Theme: Regulations of Inheritance waiver, which are listed in the literature review.

Sixth Theme: Research Findings and Recommendations

First Theme: Linguistic and Technical Definition of Waiver

The first requirement: Linguistic Definition of waiver.

Waiver is a form of interaction. It is derived from verb “nazala”, the Arabic equivalent to descend. This form indicates two parties, one of which is an assignor, and the other is an assignee. This is a benevolent attitude and the two parties have kind feelings for each other because the first is a donor and the second is the recipient. The word “tanazol” the Arabic equivalent to waiver is derived from “tanazala”, the Arabic equivalent to waive one's right and give it to another party. Linguistically, the Arabic root “nazala” indicates several meanings, one of which is to fall from a higher place to a lower place, as they say: He descended from the roof, descended from the top floor to the bottom. It also denotes

coming down to a place as they say “Nazala al madina”, the Arabic equivalent to “he entered the city” “nuzul” is also the Arabic equivalent to guesthouse.

All these meanings revolve around the issue of renouncing and leaving something.

The second requirement: Technical Definition of Waiver.

The term “waiver” was not mentioned as such in books authored by jurists. However, they expressed its meaning, and they used the following instead: “abdicate right”, and “relinquish right”. These two clauses express well the meaning of waiver. However, they are longer than the term “waiver. It is preferable to shorten terms as much as possible.

We find this meaning in many themes of their books such as choice in selling, preemption, custody, blood ransom, gift, revival of the dead, marriage and so on. Anyone who ponders over the jurisprudential exegesis on these two clauses notes their relationship to the rights relinquished by their owners to other parties for reasons that impel forgiveness and abdication. This waiver is permissible according to some scholars and forbidden according to others.

The Islamic jurists use the clause “leave the right” as a perfect definition of the term “waiver”. It is a valid use about which there is no dispute. There is no dispute about the use of the second either so as to indicate the meaning of the clause which is common among them.

In light of these jurisprudential applications, it can be argued that the technical definition of waiver is to relinquish one's right partially or fully of their own accord to another party for a certain reason.

Second Theme: Technical Definition of Inheritance Waiver and its Restrictions

In the light of the general definition of the term waiver, it can be argued that: Inheritance waiver means that heirs or some of them relinquish their full right to inheritance or part of it of their own accord to another heir or another person who is not an heir for a certain reason that impels it. This heir must inform everyone when he relinquishes his/her inheritance.

This definition includes several vocabularies that contribute to a precise jurisprudential definition:

To leave is to dismiss. It is said: To leave something is to dismiss it on purpose and by choice, or forced and coerced. Allah the Exalted said: On that Day, We will let them surge 'like waves' over one another. Allah the Exalted also said: And leave the sea parted. The second: Imagine how many gardens and springs the tyrants left behind because of the torment meted to them. So-and-so's legacy is what s/he leaves to his heirs after his death.

Ibn Faris stated that leaving something is relinquishing it [6], which is a precise meaning that alludes to the thing left behind, not to the person leaving, as if this thing was relinquished by the person and became lonely not under anyone's control. This is of course not meant by jurists. Anything owned by Anyone must be under his/her control. If the owner is not known, it is something found and owned by the person who found it until the owner appears.

Relinquishing something is of two types, one is done voluntarily and the second is done involuntarily and out of one's hand. The dead's estate is what he left to his heirs after his death. S/he has no choice but to leave them this estate because death is inevitable. The dead's properties are transferred to his/her heirs. These properties are transferred to them involuntarily and relinquished by them voluntarily.

Modifying this waiver by inheritance indicates one of the types of this waiver. There are other types such as be a debt relief or a deposit granted to the one who keeps it.

The definition is limited to heirs or some of them to indicate two things:

First: inheritance waiver is done by a real heir who is linked to the deceased by marriage, or loyalty, and linked to the assignee by brotherhood, fatherhood, maternity, or other ties that unite the heirs. Therefore, the brother can waive his share of the inheritance and leave it to his brother, mother, father, or those deserving inheritance.

Second: That waiver may be a comprehensive for all heirs, so their inheritance is transferred to one of the poor heirs. The assignors could be more than assignees, or less, or equal in number. All of these cases occur as evidenced by many court cases and hearings.

The definition must include the heir's full consent to indicate that the waiver is done on this condition. This will be elaborated in the ninth condition of inheritance waiver.

Everyone must be informed of this waiver for three reasons:

First: consider all other heirs who have not waived their shares in the inheritance as reliable witnesses to the waiver. Their unanimous testimony bestows accreditation of this waiver in case of registering it. The more witnesses to rights issues, the more credibility.

Second: because one of these heirs who is a witness or some of them may argue with the heir about his/her intention to relinquish his /her right to inheritance and verify the waiver and his full legal capacity. An heir may declare his intention to waive his/her right but may be poor, needy, or a bachelor who is going to

marry, in which case the waiver is not truly justified and all other heirs will dissuade him from this waiver and persuade him to gain his right to inheritance.

Third: this assignor may be indebted to one of the heirs, and the witnesses may ask him/her to pay off his/her debt, in which case the judge or notary registers this waiver directly.

The other party, whether an heir or not heir, indicates that the right waived will be transferred to another heir or not an heir, both of whom are poor and needy, or be a debtor who owes this assignor money.

The last restriction in the definition “for a certain reason that impels it” indicates the reason for which the heir waived his share of the inheritance. According to his/her declaration to the judge or notary, this reason is registered in the waiver minutes for the purpose of making the whole waiver document more transparent.

Third Theme: Five Sharia rulings on inheritance waiver

Five sharia conditions are attached to the inheritance waiver:

1- Obligation: the inheritance must be waived if it is proven that the heir has no legitimate relationship with the inheritor, as is the case with the adopted infant, whether an orphan, or a child of unknown parentage. The head of a family adopts him and authenticates documents, according to which this orphan or this child of unknown parentage bears the title of the family. According to Islamic jurists, to adopt is to take somebody else's child into your family. Men in the pre-Islamic era used to adopt another man and let him have the right to inherit just like other sons. [7]

2- Desirability: It is desirable to waive inheritance on three conditions:

First: the assignor must be rich.

Second: the heir who is the assignee must be poor and needy.

Third: inheritance must be something simple and does not have a significant financial value.

3- Prohibition: inheritance waiver is prohibited in two cases:

the first: If the right is waived for the purpose of blackmailing one of the heirs who does not behave well because of his/her incapacity or lack of experience and does not know the value of the inheritance whether real or financial.

Second: The assignee uses the money that has been transferred to him from the assignor to commit something necessarily prohibited, such as opening a brewery or brothel or employing him in the drug trade and the like.

4- Undesirability: inheritance waiver is undesirable in two cases:

the first: If the assignor shows displeasure with what their father left them, and there was a bad relationship between him and his deceased father. Then, may think that s/he does not need his share of the inheritance and what his deceased father left him/her.

Second: If the assignor is declared bankrupt and denied access to his wealth by a judge, it will be undesirable to waive his share of the inheritance. This share may have contributed to the payment of part of his debts.

5- Permissibility: waiver is permissible if waiving and keeping one's right are on the same footing. It is permissible if it does not meet the four previous Sharia specifications.

Fourth Theme: Document of Inheritance Waiver

An heir waives his share of inheritance and grant it to another needy heir and, consequently, is rewarded by God. According to Sharia, everything should be done perfectly. Therefore, this waiver should be registered accurately to prevent the assignor's offspring from claiming that their father's right to inherit was infringed. The waiver document proves this waiver which is done of the assignor's own accord for a certain reason. The most important elements needed for this document are the following:

- 1- The assignor's personal data should be mentioned: his name, ID number and address. A copy of the national ID and any identity proving it such as passport, birth certificate and the like, shall be put in the file that the notary has.
- 2- The assignee's personal data shall be mentioned too: his name, ID number and other things mentioned in the assignor's data.
- 3- An explicit and clear sentence that contains the acknowledgment of the inheritance waiver.
- 4- Specifications of the thing relinquished whether money or in kind.
- 5- Confirm that the waiver has been done at the of the assignor's own accord.
- 6- End the waiver form with the date and the two parties' signatures: the assignor and the assignee's, and signature of at least two witnesses two witnesses. Copies of the witnesses' ID numbers should be put in the file that the notary has.

The notary may add any elements that he deems are important for regulating the waiver document, which is an official legal document, marked with official seals recognized by the

responsible authorities such as the Ministry of Justice and the judiciary.

Waiver forms are numerous, but most of them include the aforementioned elements.

The difference in forms does not affect the credibility of the document, and this is a form proposed by the researcher for an inheritance waiver.

In the name of Allah, the All Merciful, the Ever Merciful

Inheritance Waiver

I am -----
Holder of a national card ID No.
..... Religion

Resident of District Building No. W/ 8 Apartment Number

I hereby relinquish my share of my father's inheritance "...." Deceased on

My share of my father's estate is Or a land that covers an area of.

Located at by virtue of a legal document of division of inheritance extracted from an office

The Registrar NO Date

This waiver was done by me of my own accord, not coerced by anyone and in my full mental capacity.

This waiver is done by me for the benefit of Holder of a national card ID No.

Religion Resident of District Building No. W/ 8 Apartment Number

The assignor's name and signature: usually appointed by the judiciary. Otherwise, he receives the vehicle which is transferred to him/her after the division of inheritance.

The assignee's name and signature: Second Regulation: Right to inheritance is only waived after other heirs are informed.

The first witness's name and signature: If anyone is not informed of an heir's waiver but notices that another heir gets double his/her share, this will lead to mistrust and accusations.

The second witness's name and signature: Third Regulation: Waiver is only done with full legal capacity

The notary's name and signature: The young, insane, patient with a long coma, dementia, advanced age, and the like, who have intellectual deficiency, cannot be approved to waive their his share of inheritance for the following reasons:

Document date 1- Loss of mental capacity by which the assignor recognizes the essence of waiver.

Seal of Notarial Office 2- Lack of will on which the waiver is based.

..... 3- Loss of the presumption indicating the assignor's consent.

Fifth Theme: Regulations of Inheritance Waiver 4 - Some of the heir's nonrelatives take advantage of the heir's mental health and may deceive him in order to let him sign a waiver of his share and transfer it to this nonrelative. He does so in collusion with an immoral notary for a commission that the notary will obtain after this deceiver has received inheritance.

The researcher noticed some regulations that should be mentioned here because of their great impact on the regulation of waiving one's right to inheritance. They will be also mentioned here to ensure transparency and will be listed in a way similar to those regulations listed in jurisprudential books.

First regulation: Inheritance waiver is done only after the heir receives his share of inheritance.

Fourth regulation: The legal attorney acts for the assignor.

This is every heir's right that s/he receives after the division of inheritance or else his share is transferred to his/her bank account. If it is an estate, s/he should receive the key or the legal document in which the specifications and limits of this estate are mentioned. This is done according to an expert in real estate division, Sometimes the assignor cannot follow the procedures for waiving his right to inheritance because he is abroad and unable to come back. He could be so sick that he cannot write, read or refer to anything. Therefore, he can give the authority to a reliable person or a certified notary who can do so on his behalf. This proxy should show proof of this authorization. The direct notary who registers the waiver can

communicate with the institution that this authorization for the purpose of verification and reassurance. Islamic jurists are unanimous about the previously mentioned, and they state that all declarations signed by the proxy are like the ones signed by the assignor [1]

The fifth regulation: The needs of the assignee, whether relatives or nonrelatives, should be taken in consideration.

Basically, those who waive their rights are supposed to be wealthy not needy. In addition, their share of inheritance is of no value to them. Some people feel embarrassed at getting their share which could be needed by the poor heirs. Therefore, he seizes the chance to waive his share of the inheritance to those who are in dire need of it.

Sixth regulation: A waiver must be legally registered for the purpose of reserving rights and avoiding disputes.

As previously mentioned, the importance of the waiver document lies in reserving rights and preventing disputes. In addition, there are some people who are reluctant to issue an official legal document that states these regulations. Three copies should be made, the notary gets one, the assignor gets another, and the assignee gets the third.

Seventh regulation: Every mutual waiver should not have any suspicion of usury and should be for the benefit of both parties.

Mutual waiver could solve some inheritance problems. Some shares of inheritance are not suitable for some heirs. In other words, an expert in cars may inherit a camel, cow or sheep and has no experience in caring for or trading in cattle. Another heir may inherit a vehicle that he does not need because he has enough vehicles or because of his inexperience in trading in them. Here the two parties see that

there must be a mutual waiver in which cattle and vehicles of the same financial value are exchanged on condition that any kind of usury is not involved. For instance, two parties may relinquish two usurious things that have the same type but differ in amount. Here, exchange and comparability should be verified according to Islamic jurists.

Eighth Regulation: Every dispute about division of inheritance leads to a waiver which is made by means of voting.

Division of inheritance that is based on common consent should be based on the heirs' consent in the first place. If they quarrel, estates will be sold, and money is divided. If they refuse to sell parties, they conduct a poll because there is no compulsion in a poll. That which is not done by force is regarded as an act based on common consent such as selling. They must be convinced of the results of the poll. The waiver that satisfies all parties is only done.

Ninth regulation: No Inheritance waiver is done without the assignor's consent.

Waiver should not be done forcibly or involve any threat or fright or done after anesthetizing someone. It should not be carried out under anesthesia. All of this goes against the condition of consent. If anything of this occurs, the assignor still reserves his right to inheritance. He could sue the one who forced, threatened, frightened, or anesthetized him or caused him to lose unconsciousness or focus. The right of ownership will not be lost if the assignor does not freely consent to waive money and property.

Tenth regulation: No heir waives his right to non-existent inheritance.

There is no sense in issuing a waiver document, while the deceased did not leave anything for his heirs. On the one hand, division of

inheritance is conditional on the death of the person inherited. On the other hand, it is conditional on a definite legacy itself. There is no difference of opinion on this matter between Islamic jurists for the following reasons:

1- The waiver is a form that requires the existence of two parties, one of which is an assignor and the other is an assignee. If there is no share of inheritance that an heir receives and is willing to waive, there is no sense in talking about a second party who wants to get this share after having been waived.

2- It is nonsense to issue a document stating waiver of something that does not exist.

3- Another reason is that he may pay large financial fees for issuing a document that does not give him a right to money or property. This is a waste of money, which is prohibited in Sharia.

Conclusion, which includes the findings of the research and recommendations:

First: research results

1- “Tanazul”, the Arabic equivalent to waiver, is a form of interaction and is derived from the verb “nazala”, the Arabic equivalent to “descend”. This form indicates the presence of two parties, one of which is an assignor, and the other is an assignee. Moreover, this is a benevolent attitude and the two parties have kind feelings for each other because the first is a donor and the second is the recipient.

2 Ancient dictionaries of Arabic do not include a specific linguistic definition of “tanazul”, although it is frequently used in their speech. Therefore, contemporary linguists derive a definition of the term from the root “nazala” Some of them said: ((It means refraining from claiming and demanding. It is also said: The researcher assigns another meaning to the term

which is more accurate. It means giving up something so that another person receives it. As regards refraining from claiming and demanding, it results from the waiver not the waiver itself.

3 According to Islamic jurists, waiver means that one gives up all or part of his right with his full consent to another party for a certain reason.

The term “waiver” was not mentioned as such in books authored by jurists. However, they expressed its meaning, and they used the following instead: “abdicate right” and “relinquish right”. These two clauses express well the meaning of waiver. However, they are longer than the term “waiver. It is preferable to shorten terms as much as possible.

5- The four pillars of the waiver are: The assignor, the assignee, the thing waived, and the form indicating the waiver.

Inheritance waiver means that heirs or some of them relinquish their full right to inheritance or part of it of their own accord to another heir or another person who is not an heir for a certain reason. This heir must inform everyone when he relinquishes his/her inheritance.

Relinquishing something is of two types, one is done voluntarily and the second is done involuntarily and out of one's hand. The dead's estate is what he left to his heirs after his death. S/he has no choice but to leave them this estate because death is inevitable. The dead's properties are transferred to his/her heirs. These properties are transferred to them involuntarily and relinquished by them voluntarily.

Modifying this waiver by inheritance indicates one of the types of this waiver. There are other types such as a debt relief or a deposit granted to the one who keeps it.

Inheritance waiver is done by a real heir who is linked to the deceased by marriage, or loyalty, and linked to the assignee by brotherhood, fatherhood, maternity or other ties that unite the heirs. Therefore, the brother can waive his share of the inheritance and leave it to his brother, mother, father or those deserving inheritance.

10 That waiver may be comprehensive for all heirs, so their inheritance is transferred to one of the poor heirs. The assignors could be more than assignees, or less, or equal in number. All of these cases occur as evidenced by many court cases and hearings.

11- Full consent is an important condition of waiving one's share of inheritance. Therefore, coercion, threat, intimidation or anesthetizing by any means to make the heir sign the waiver are all prohibited.

12- If anything of this occurs, the assignor still reserves his right to inheritance. He could sue the one who forced, threatened, frightened, or anesthetized him or caused him to lose unconsciousness or focus. The right of ownership will not be lost if the assignor does not freely consent to waive money and properties.

All other heirs who have not waived their shares in the inheritance are regarded as reliable witnesses to the waiver. Their unanimous testimony bestows accreditation of this waiver in case of registering it. The more witnesses to rights issues, the more credibility.

One of these heirs who is a witness or some of them may argue with the heir about his/her intention to relinquish his /her right to inheritance and verify the waiver and his full legal capacity. An heir may declare his intention to waive his/her right, but he may be poor, needy, or a bachelor who is going to

marry, in which case the waiver is not truly justified, and all other heirs will dissuade him from this waiver and persuade him to gain his right to inheritance.

This assignor may be indebted to one of the heirs, and the witnesses may ask him/her to pay off his/her debt, in which case the judge or notary registers this waiver directly.

- The thing relinquished is transferred to another heir or a person who is not an heir, both of whom are poor and needy, or indebted to this assignor.

16- Clarifying the reason for the waiver is required by law and by virtue of the assignor's statement before the judge or notary and in the presence of witnesses. This reason shall be recorded in the waiver minutes for the purpose of making the whole waiver document more transparent.

Five sharia conditions are attached to the inheritance waiver:

18- The importance of the inheritance waiver document lies in registering the waiver and preventing legal disputes between the parties. The waiver has six elements that the researcher has elaborated.

The notary may add any elements that he believes are important for regulating the waiver document, which is an official legal document, marked with official seals recognized by the responsible authorities such as the Ministry of Justice and the judiciary.

20- The templates of the waiver document are numerous, but in general they do not deviate from the previous elements. The difference in paper forms does not affect the credibility of the document. The researcher proposed a form of inheritance waiver document.

21- The researcher notices ten regulations that are strongly related to inheritance waiver which he explained in detail in the middle of the research.

Second: Research Recommendations

1- The rights of others that are registered or denied.

2- Regulations of unlawful properties according to Islamic jurists.

3- Signing: its effects and regulations in Islamic jurisprudence.

4- Resolving and preventing disputes among people: A contemporary jurisprudential study.

5- Notarization offices and relevant Sharia provisions and ethics.

6- The dispute among heirs and the jurisprudential rulings related to it.

7- The heir reversing his inheritance waiver: its conditions and rulings.

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