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The Implementation of the Qur'an in the Concept of Ijtihad by Substitute Heirs

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Abstract

General Background: Islamic inheritance law is fundamentally oriented toward justice and the protection of vulnerable family members, yet its practical application often raises challenges in contemporary contexts. **Specific Background:** In Indonesia, grandchildren whose parents predeceased the testator are frequently excluded from inheritance despite close kinship ties, prompting the emergence of the substitute heir doctrine in Article 185 of the Compilation of Islamic Law (KHI). **Knowledge Gap:** Although this doctrine is normatively applied, its Qur'anic foundation—particularly the interpretation of QS. an-Nisā' (4):33—and its ijihad construction remain contested, as classical jurists largely rejected the notion of heir substitution. **Aims:** This study aims to analyze the Qur'anic implementation in the concept of substitute heirs, examine Hazairin's ijihad, and assess its legal implications in Indonesian inheritance law. **Results:** The findings demonstrate that the substitute heir concept represents a synthesis of Qur'anic reinterpretation, customary law, civil law influences, and Hazairin's bilateral inheritance theory, positioning mawālī as descendants of predeceased heirs. **Novelty:** The study highlights that this concept constitutes not merely social adaptation but a reconstructive Qur'anic ijihad strengthening the protection of orphaned grandchildren. **Implications:** The research underscores the need for firmer and more consistent enforcement of substitute heir provisions to ensure justice and legal certainty in inheritance distribution in Indonesia.

Highlights:

- ♦ Emphasizes the role of *ijihad* in reconstructing Qur'anic interpretation to address contemporary inheritance issues.
- ♦ Highlights the protection of orphaned grandchildren through the substitute heir concept in Indonesian Islamic law.
- ♦ Stresses the need for consistent legal enforcement to ensure justice and certainty in inheritance distribution.

Keywords: Islamic Inheritance Law, Substitute Heirs, Ijtihad, Qur'anic Interpretation, Legal Reform

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Introduction

Islam is a religion that governs all aspects of human life.[1] The values taught by Islam contain solutions for every human problem, one of which is inheritance.[2] Islamic inheritance law is one of the sources of law that is basically regulated according to its sources.[3] Islamic inheritance law is often referred to as farā'id because the distribution of inheritance is precisely determined by sharia, and it is also known as the science of mawā'irith which discusses the transfer of inherited property from the deceased to the living.[4] This rule aims to provide legal certainty and fairness in the division of inheritance, taking into account family relationships and support responsibilities within the family.[5] For example, men usually receive twice the inheritance of women because of the financial responsibility they bear.

In Indonesia, Islamic inheritance law is regulated in the Compilation of Islamic Law (KHI), which contains detailed provisions regarding heirs and their shares of inheritance, as well as accommodating aspects of the implementation of inheritance law according to Islamic principles and the needs of the community.[6] Thus, Islamic inheritance law is an important part of Islamic law that regulates the social and economic aspects of the Muslim community in a fair and structured manner. Essentially, Islamic inheritance law embodies the spirit for parents to protect the weaker members of the family in accordance with the following texts:

وَأَلِيْحُشْنَ الْآذِينَ لَوْ تَرَكَوْا مِنْ خَلْفِهِمْ ذُرِّيَّةً ضِعَافًا خَافُوا عَلَيْهِمْ فَلْيَتَّقُوا اللَّهَ وَلْيَقُولُوا قَوْلًا سَدِيدًا ﴿

"And let those fear Allah who, if they leave behind them weak offspring, are concerned for their welfare. Therefore, let them be mindful of Allah and speak words of truth."

وَعَنْ سَعْدِ بْنِ أَبِي وَقَّاصٍ رَضِيَ اللَّهُ تَعَالَى عَنْهُ قَالَ : قُلْتُ يَا رَسُولَ اللَّهِ ، أَنَا ذُو مَالٍ ، وَلَا يَرْتُنِي إِلَّا ابْنَةٌ لِي وَاحِدَةٌ ، أَفَأَتَصَدَّقُ بِثُلُثِي مَالِي ؟ قَالَ : لَا قُلْتُ : أَفَأَتَصَدَّقُ بِشَطْرِهِ ؟ قَالَ : لَا قُلْتُ : أَفَأَتَصَدَّقُ بِثُلُثِهِ ؟ قَالَ : الثُّلُثُ ، وَالثُّلُثُ كَثِيرٌ ، إِنَّكَ إِنْ تَذَرْتَهُ وَرَثَتَكَ أَغْنِيَاءَ خَيْرٌ مِنْ أَنْ تَذَرَهُمْ عَالَةً يَتَكَفَّفُونَ النَّاسَ (مَنْفَقُ عَلَيْهِ)

Meaning: *And from Sa'd Bin Abi Waqqash r.a. he said: I said, "O Messenger of Allah, I am a person who has a lot of wealth (rich) and the only heir I have is a daughter. Should I give two-thirds of my wealth in charity?" The Prophet replied: No! Then I asked again: Should I give half of it? He replied: No! I asked again: Should I give one-third of it? He said: One-third is much. Indeed, leaving your heirs wealthy is better than leaving them in a state of poverty, having to beg from others. (Agreed upon)*

However, the reality at present is that the heir's grandchild does not have parents, and this grandchild is still in close family ties with the heir and is potentially vulnerable because, being without parents, they are actually restricted from obtaining the inheritance when there is another male child (a parent's sibling) who receives a share. In line with the times and the many inheritance issues arising, such as those affecting orphaned grandchildren in society, it is considered necessary to develop new interpretations and ijtihad so that inheritance law can accommodate the legal needs of the community. That is why an Indonesian Muslim thinker like Prof. Hazairin emerged, aiming to provide a refreshing contribution to society regarding inheritance law issues.

Prof. Hazairin offered a new interpretation of inheritance, one of which discusses the substitution of heirs. They tend to grant inheritance rights to grandchildren even if their father has passed away. This issue is a matter of ijtihad, and it turns out that the inheritance fiqh developed by classical scholars also contains problems that need to be resolved in a contemporary context. Therefore, this paper is written to provide a broader understanding of the concept of substitute heirs as well as the process of using the Qur'an in the concept of ijtihad regarding substitute heirs.

Method

This research uses a qualitative descriptive method, where this method is a series of writing steps that produce data that can be elaborated from a specific problem, whether in the form of written issues or phenomena directly observed. The type of data used is secondary data sourced from journals and books related to the research topic.

Results and Discussion

A. The Concept of Substitute Heirs in Indonesia

Islamic inheritance in Indonesia, which is regulated in the Compilation of Islamic Law (KHI), represents a middle path in reconciling the Ahl al-Sunnah understanding with the broad bilateral inheritance concept. [7] One of the concepts of legal reform in Islamic inheritance in Indonesia is the concept of substitute heirs. Substitute heirs are individuals who have a relationship with the deceased, mediated by heirs who passed away before the deceased.[8] Substitute heirs are listed in KHI Article 185, which states:[9]

1. Heirs who die before the testator can be replaced by their children, except for those mentioned in Article 173.
2. The share of the substitute heir must not exceed the portion of the heir of the same rank as the one being replaced.

The compilation of Islamic Law itself is considered a legal breakthrough in resolving inheritance issues and is regarded as fair, especially for Indonesian society. However, before the inheritance articles in the Compilation of Islamic Law (KHI) were established, replacement inheritance law was first listed and regulated in the Civil Code articles 841 - 847, which read:

Article 841: Subrogation grants the rights to the person who substitutes to act as a replacement to the same extent and with all the rights of the person they are substituting.

Article 842: Substitution that occurs in the direct downward line, which is legitimate, continues indefinitely. Such substitution is allowed under all circumstances, whether children and deceased individuals become heirs together with their descendants and a deceased child, or whether all their descendants inherit together, each with one another in different degrees of family relation.

Article 843: There is no substitution for collateral relatives in the direct upward line. The closest collateral relatives at any time exclude all relatives of a more distant degree.

Article 844: In the collateral line, substitution is permitted for the benefit of all children and descendants of the deceased person's brothers and sisters, whether they inherit together with their uncles or aunts, or if the inheritance, after the death of all the deceased siblings, must be divided among all their descendants, each of whom is related by family to varying degrees.

Article 845: Substitution is also permitted in inheritance in the collateral line, if in addition to the person closest in blood to the deceased, there are still children or descendants of brothers or sisters, and those mentioned first.

Article 846: In all cases, when substitution is permitted, the distribution is carried out stake by stake; if a stake has several branches, further distribution in each branch is also carried out stake by stake, whereas among people in the same branch, distribution is carried out head by head.

Article 847: No one may substitute a person who is still alive.

The concept of a substitute heir is actually similar to one of the Egyptian laws on compulsory bequests, which stipulates that a grandchild whose parents have passed away can take the portion that the deceased parent would have received. The difference is that in Egyptian law, this is wrapped in the concept of a will, which cannot exceed one-third. In contrast, under the substitute heir concept in Indonesia, a grandchild whose parents have both passed away can receive their parent's share outright, without being limited by the one-third restriction prescribed in a compulsory will.

Differences also occur in the concept of a substitute heir as stated in Article 845 of the Civil Code, which can apply to collateral heirs, that is, if the deceased's sibling has passed away and has children, those children receive their parent's share even if they have to share it with the aunt or uncle.[10] The method of formulating the Compilation of Islamic Law (KHI) is carried out through jurisprudence, primarily referring to the jurisprudence of judicial bodies that apply Islamic law and customary law. The presence of substitute heirs, as cited by Abdurrahman, is suspected to originate from customary law that has become a legal decision in judicial institutions in Indonesia. The prevailing customary law was reinforced by Cornelis van Vollenhoven (1874-1933) and Christiaan Snouck Hurgronje (1857-1936). Customary law was then refined into the inner spirit of the Indonesian people through ongoing education.[11]

Customary law contained in the Compilation of Islamic Law (KHI) is very likely an adoption from the Civil Code (BW) that has been in effect since 1847. In the Dutch legal system, codification was known during the period of Napoleon's expansion of power, which led to the Netherlands being annexed as part of the French Empire.[12] In 1810, the famous legal book known as the Codes Napoleon in civil law (code civil) was enacted in this annexed country by the authorities. When Napoleon's power collapsed, the law resulting from Napoleon's codification continued to apply to the Netherlands. When the Netherlands colonized Indonesia, this law became customary and is still used to this day. In 1810, the famous legal book known as the Codes Napoleon in civil law (code civil) was enacted in this annexed country by the authorities. When Napoleon's power collapsed, the law resulting from Napoleon's codification continued to apply to the Netherlands. When the Netherlands colonized Indonesia, this law became customary and is still used to this day.

B. The Use of the Qur'an in the Concept of Ijtihad by Substitute Heirs

The use of the Quran in the concept of substitute heirs' ijtihad holds an important position in the development of Islamic inheritance law, particularly in addressing the issue when an heir passes away before the testator. In this situation, a debate arises among scholars regarding whether the descendants of the deceased heir have the right to take their parent's place as heirs. Some scholars support the concept of obligatory bequest, while others develop the concept of substitute heirs. To strengthen the legitimacy of this concept, Islamic legal experts perform ijtihad by referring directly to the primary sources, namely the Quran and Hadith. The existence of substitute heirs is also mentioned in the book "Bilateral Inheritance Law According to the Qur'an and Hadith" by Hazairin. He uses the term substitute heir, meaning every heir who replaces someone who has passed away earlier to receive a share of the inheritance. According to Hazairin, substitute heirs come from the source of the Qur'an, Surah An-Nisa' verse 33, which states:

وَلِكُلِّ جَعَلْنَا مَوَالِي مِمَّا تَرَكَ الْوَالِدَانُ وَالْأَقْرَبُونَ وَالَّذِينَ عَقَدْتُمْ أَيْمَانَكُمْ فَأَتَوْهُم نَصِيْبُهُمْ إِنَّ اللَّهَ كَانَ عَلَىٰ كُلِّ شَيْءٍ شَهِيدًا

Meaning: *For everyone (male and female), We have appointed heirs for what is left by their parents and close relatives. Those with whom you have made a pledge, give them their due share. Indeed, Allah is All-Seeing of everything.*

However, before discussing Prof. Hazairin's thoughts, it is better for us to first understand the reasoning of the scholars regarding that verse:[13]

1. At-Thabari interprets the word mawali in the above verse with two meanings: first, as all heirs, and second, as relatives.
2. Zamakhsari revealed the structure of the above verse into three forms, namely:
 - a. Regarding all the inheritance of parents and family members, we designate mawali as part of the heirs who will manage and take control of those assets. The arrangement above makes syai` the mudhaf ilaih of the word kullun and makes walidan and so on the fa'il of taraka. In this structure, the verse consists of only one sentence and mawali is interpreted as a regular heir.
 - b. For each group that we made them as mawla (heirs), there is a portion of the inheritance from parents and family members. In this structure, ja'alnahum mawaliya becomes a characteristic for kullun; the pronoun hum which refers back to kullun is written here, whereas in the verse it is omitted.
 - c. For every person (heir) we make a mawali (heir) to their estate, namely: parents and relatives.

From these interpretations, it can be concluded that the scholars did not interpret 'mawali' as substitute heirs. However, according to Prof. Hazairin in his interpretation of the verse, the phrase 'al-walidani wa al-aqrabuna' is considered the subject (fa'il) of the word 'taraka'. Meanwhile, the word 'mawaliya' serves as the object (maf'ul) for 'ja'alna'. This means that every inheritance left by parents and close relatives is made by Allah to be inherited by certain heirs. Allah makes the heirs substitutes for those heirs who have passed away earlier. In this verse, Nasib, or what is understood as inheritance, is clearly instructed to be given to the 'Mawali,' which means the heirs. In his book, Prof. Hazairin captures the meaning of the verse by attempting to reinterpret it and trying to replace the word 'likullin' with 'lifullaanin' and 'ja'alna' with 'ja'alallahu', while the matter of those who pledge allegiance is simply left aside.

ولفلان جعل الله موالى مما ترك الوالدان والأقربون فأئوؤهم نصيبهم

According to Prof. Hazairin, so-and-so here is an heir who passed away before the deceased, while mawali refers to the descendants of that person. This verse is a great mercy bestowed by Allah upon His servant; without this mercy, what legal basis could be derived from the Qur'an for relatives not mentioned in the inheritance verses of the Qur'an? In line with this understanding, the verse can be translated as follows: 'For a deceased child, Allah makes the mawali heirs to the inheritance of the parents, and for a deceased relative, Allah makes the mawali heirs to the inheritance of that relative.'[14]"

Appointing a substitute heir is not easy. In one of the ijtihaads carried out by Hazairin to determine the inheritance rights of grandchildren when their parents passed away before their grandparents (the heirs), it gave rise to the concept of substitution. Although the ijtihaad he carried out had a different perspective and legal basis regarding the position of substitute heirs in the text, his idea received a positive response in Indonesia and was eventually included in Article 185 of the Compilation of Islamic Law.[15]

C. Legal Impact on the Concept of Substitute Heirs

Hazairin's thoughts greatly influenced the development of national inheritance law. The concept of a substitute heir developed in Indonesia, and in Dutch civil law, it is known as plaatsvervulling, where the focus is more directed toward the descendants of the deceased downward rather than upward. The practice of plaatsvervulling has developed to extend to upward lineage based on the principle of justice. According to the Civil Code, there are three types of plaatsvervulling replacement: replacement in the downward line (each child who dies first is replaced by all of their children, and so on), replacement in the lateral line as stated in articles 856 and 857 (if a sibling dies, whether a full or half sibling, the inheritance is replaced by their children), and lateral line deviation replacement, article 861 BW (grandfathers and grandmothers, both from the father's and mother's side, then the inheritance is passed on by) [8]

The concept of substitute heirs in Islamic inheritance law, particularly in the Compilation of Islamic Law (KHI), brings significant changes to the classical inheritance system. In traditional inheritance jurisprudence, substitute heirs such as grandchildren or nephews are not recognized to replace the position of parents or relatives who died before the testator. However, the KHI accommodates this concept by allowing judges to apply the replacement of heirs for the sake of justice and the continuity of inheritance distribution. This marks a shift from the principle of pure lineage towards a more flexible representation system. The impact of implementing substitute heirs is a change in the composition of inheritance distribution. With the inclusion of substitute heirs, the proportion of the inheritance received by core heirs such as children or spouses can change, and there may even be unexpected increases or decreases in their shares. This situation can create imbalances in the distribution of inheritance and trigger disputes among heirs, especially in families with many branches of descendants.

Therefore, the granting of inheritance rights to heirs as regulated in the KHI is imperative because it begins with the word "may," which means that in situations where it is beneficial, the presence of substitute heirs is required, and in certain circumstances, substitute heirs are not needed and thus are not applied. The only way to address the problem regarding the

position of substitute heirs is to implement heir replacement imperatively, meaning that every heir who dies before the testator must be replaced by their children. They are not given the opportunity to choose the position that is most advantageous, because if such an opportunity were given, other heirs would certainly be disadvantaged. The method used to change the tentative nature of Article 185 paragraph (1) is by removing the word “may” so that it reads: “Heirs who die before the testator are replaced by their children, except for those mentioned in Article 173.” By changing the wording of this article, there will no longer be an option to choose the advantageous portion, and the determination of substitute heirs will no longer depend on the judge's discretion. Thus, discriminatory nature, injustice, and legal uncertainty can be resolved. Before making changes to the wording of Article 185 of the KHI, it is hoped that the Supreme Court can issue regulations regarding guidelines for the application of Article 185 paragraph (1) by implementing it imperatively.

Conclusion

The implementation of the Qur'an in the concept of substitute heirs in Islamic inheritance law is based on the verse found in Surah An-Nisa, verse 33. In the context of substitute heirs, that is, a person who replaces an heir who has passed away, this principle is also acknowledged in the Compilation of Islamic Law (KHI) Article 185, which regulates that inheritance rights can be transferred to the descendants of a deceased heir, provided that the share received does not exceed the portion of the heir being replaced. Practically, the application of substitute heirs becomes an important legal solution in Indonesia, where Islamic inheritance law is integrated with local culture and jurisprudence. Substitute heirs, such as grandchildren replacing deceased parents, are considered to have inheritance rights based on a legitimate familial relationship. This concept not only reflects social justice in the distribution of inheritance but also affirms that inheritance is the right of the deceased's closest family.

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