

# Indonesian Islamic Inheritance Law Reform: Case Study on Heirs Substitutes in Malay Societies

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Abstract: It is found in many cases that children whose fathers died before the grandfathers live in poverty, while the fathers' brothers live in sufficiency. Although, among many cases there is some dispensation in which grandfathers make his will to their orphaned grandchildren, they often die before doing so. Islamic inheritance law in Indonesia stated in KHI (the Compilation of Islamic Law) has introduced the new model of heirs substitute institution in handling cases of children whose fathers die before the grandfathers, as stated in article 185. This study is to investigate and analyzes the implementation of heir's substitution of the Malay community in Langkat. The formulation of the problems in this study is: (1) How was society perspective about heirs substitute as inheritance law reform in Indonesia? (2) How it was implemented in the society? This study uses qualitative method, particularly phenomenological approach; this study found that the absence of the implementation of heirs of the Malay society is related and influenced by Islamic and customary law as rules in Malay society.

## 1 INTRODUCTION

Studies on substitute heirs in inheritance law of Islam is a new study and it was previously unknown by jurists in the literature of classical *fiqh*. This is a new thing in the settlement of inheritance for children (read: grandchild) of the heirs (the father) who are first dies from his (grandfather). According to the Islamic child's school of jurists classified in a position *zaw al-arham* that his father died in advance of the heir (his grandfather), they are unable to obtain and receive the inheritance.

In fact, it is often seen that children whose father's death in advance of a grandfather are living in poverty, being his father's brothers live in sufficiency. This condition causes the orphans children not only suffer of the loss of his father, but at the same time they lost the right to get the inheritance because they veiled by his father's brothers. Indeed, among many cases there are some dispensations in which a person intestates grandfather to grandchildren orphaned, but often he died before doing so.

Given this reality, the legislation in some Moslem countries no longer follows the rules of classical *fiqh* doctrine which does not compose the decision of the case in his sect, but has held several changes regarding the rights of children, especially his father

whose father died before his grandfather. Islamic inheritance law in Indonesia stated in KHI (Compilation of Islamic Law) has also introduced their institution substitute heirs in handling cases of a child who his father died before his grandfather, as enshrined in Article 185, which reads:

- a. Heirs who died, before the heir to his position can be replaced by their children, unless they are mentioned in Article 173.
- b. Part substitute heirs must not protrude from the heirs equivalent to being replaced.

Institutionalization substitute heirs in KHI is done by way of modification. This means:

(1). Institutionalization is done through compromise approach to customary law or the values of European law. (2). The method does not follow its development through a convoluted approach as some countries, such as Egypt, but its immediately accept the compromises juridical substitute and it is form and formulation. (3). The acceptance of the institution is not unanimous, but in a modified form in it's implementation, such as: the replacement heir part which shall not exceed the replacement. If the successor heir is only one and his father only has a sister, then his part as an heir to the successor should not be greater than the part of his father's sister, then

the inheritance is divided into the successor heir and his aunt.

Base the motivation of legal institutionalization substitute heirs in the Compilation of Islamic inheritance law is on a sense of justice and humanity. It is inhuman to punish a person who does not receive the inheritance obtained from his father, only because of the fact that his father died earlier than the grandfather should.

When the grandfather died and all his children were rich and conversely his grandson was orphaned and poor, all his rights were eliminated, his father's grandchild would have right to receive the inheritance if their father had died first.

In accordance with the demands of the times and the needs of humankind, the introduction of inheritance through substitute heir institutions as stated in KHI is considered very important to provide justice and welfare especially to children whose fathers die before their grandparents.

This study analyzed the implementation of substitute heirs to the Malay community in Tanjung Pura district - the largest sub-district in Langkat with the majority of the Malay Muslim community. The problems in this study are (1). How do people view substitute heirs as inheritance law reform in Indonesia? and (2) How is it applied in the community?

The Methods used in this study is a phenomenological qualitative method.

### 1.1 Heirs Substitute in KHI (Islamic Law Compilation in Indonesia)

The term "heir substitute" in Indonesia is known in a formal law Religious Courts that is stated in the Compilation of Islamic Law (KHI). It is applied in Indonesia, by Presidential Instruction No.1/ June 10, 1991 concerning the dissemination of Islamic Law Compilation. The Minister of Religious Affairs Decree No154 of 1991 dated on 22 July 1991 on the implementation of Presidential Instruction No1/ 1991.

The term substitute heirs were listed in article 185 of KHI;

(1) Heirs who died first of the heir, the position can be replaced by their children, unless they are mentioned in Article 173.

(2) Section for substitute heirs must not protrude from the heirs equivalent to being replaced.

Regarding the background of substitute heirs, then in this case, Muhammad Daud Ali said that in the beginning, this term comes from Hazarin opinion, because he was the one who first put forward the

theory. Originally, the term is derived from the treasury of customary law in Indonesia. Hazarin found, lifted, and put them in terms of inheritance law of Islam. He said that the inheritance laws of Islam found in the *Qur'an*. It recognizes and enforces the provisions concerning substitute heirs are. Later, KHI adopted a term coined by the Hazarin. This version means that the term substitute heirs in KHI were from Hazarin.

Hazarin's opinion is derived from his understanding of the context of the verse in Surah an-Nisa 'verse 33 which reads as follows:

وَلِكُلِّ جَعَلْنَا مَوَالِي بِمَا تَرَكَ الْوَالِدَانِ وَالْأَقْرَبُونَ وَالَّذِينَ عَقَدَتْ  
إِيمَانَكُمْ فَأَتَوْهُمْ نَصِيْبُهُمْ إِنَّ اللَّهَ كَانَ عَلَىٰ كُلِّ شَيْءٍ شَهِيدًا

According Hazarin, the verse implies that: for every one of God held *mawali* for inheritance parents and close family, and (if there are) people who you had sworn allegiance with them, then give them their happiness

Based on the verse, then according to Hazarin there are three important terms which must be explained from that paragraph; the terms are *mawali*, *walidani* and *aqrabun*. According to the interpretation of Hazairin, the two terms: *walidan* and *aqrabun* mean heirs, but because the words are a family term, he says that it is a relationships, and the relationship is always on the ground, then *walidan* and *aqrabun* can also be heir, *walid* for his son, and *aqrabun* for fellow.

The Holy Qur'an also says that *Ulu al-Qurba* is not a heir to one person but the continuation of this person who is as a deputy of communication. This would give an understanding that among *Ulu al-Qurba*, one cannot be the heir to another *Ulu al-Qurba*.

Thus it can be concluded that the *aqrabun* is interpreted as a close family that can inherit one another, while *Ulu al-Qurba* is a distant family that cannot possibly inherit (become heirs and heirs).

### 1.2 The Motivation of Heirs Substitute

The Motivation to instituted heir substitute is based on a sense of justice and humanity. It is not worth and inhuman to punish a person not to receive the inheritance that should be acquired by their father, just because their father is dead before their grandfather. Moreover, if it is attributed to the fact when the grandfather died, his children were all rich and well established, the grandson by being left as orphans, destitute and living in poor conditions will have the inheritance.

In connection with the matter, M. Daud Ali stated that one of the missions performed by the substitute

heirs in KHI is a realization of the rule of justice in Islam. Furthermore, he said that in the principle of impartial justice as one of the five principles of inheritance contained in KHI, can also be included in the heir's replacement put forward by Hazarin as it is laid down in Article 185 of the substitute heirs.

Meanwhile, according to M. Daud Ali's reason to post about the heir replacement to the principle of justice, it is impartial due to problems of grandchildren whose parents died in advance of the heir.

Thus, the intent and purpose of the institutionalization of substitute heirs in KHI is to create justice in the Islamic inheritance law in Indonesia so that children can live worthy of his father's death and did not suffer from the loss of a father, and loses the right of inheritance.

### **1.3 Malay Societies' Views to Heir Substitute as Indonesian Inheritance Law Reform**

#### **1.3.1 Local Opinions about Heritage Treasure**

Inheritance, according to Islamic law is everything left by the testator who is legally able to switch to his heir. In this sense, it can be distinguished among the possessions of the Community views regarding the implementation of substitute heirs which is closely related to the society's view of inheritance, the determination of heirs and the division of the inheritance.

Inheritance is something left by a person who died at his death, while the estate is entitled to receive the property and is owned by the heirs.

The term inheritance is the most widely used in society. The term is derived from Malay language. In addition, the term "heritage" is derived from Arabic. The next term "legacy" comes from Malay language. Of these terms, the reality prevailing in the society that treasure (either inheritance or legacy) is the entire property of both objects that are moving or not moving left by heir after his death.

According to the people who became the object of inheritance that there are all the properties owned by the testator, either a movable property or immovable property left by the dead are for the testator. It is almost identical to the definition proposed by Islamic law and KHI.

If the testator dies then all the possessions of the heir is to be treasures in the form of land, fields, and gardens, houses or buildings, livestock, money and jewelry, and household furnishings.

On other occasions, it is not common that the treasures are given to the less economic value as rewards. There was a treasure which was never distributed as castles (traditional house), tools hereditary regalia like a dagger, Jaunty, cap, *teromba*, gong and others, certain items that were in the hands of the heir son the oldest male

In connection with the grouping of treasures mentioned above, it appears that there are some habits in a society that does not comply with the laws of Islamic inheritance as grouping a treasure-trove of heirlooms that will be distributed to heirs. While in the inheritance law of Islam, it is if the entire inheritance left (*tirkah*) should be distributed to the heir.

Habits of the people who are considered contrast to the laws of inheritance in Islam is like giving treasures in the form of goods to the less economic heir that they are not included in the category of heirs. According to Islamic inheritance law, there is a provision that goods such treasures as a whole, must be indivisible distributed to the heirs of the deceased.

Regarding the payable accounts, most people say that the payment of payable accounts is the responsibility of the heirs, and a payment is always settled before the division of the inheritance. The reason why it must be settled is that there is a sense of fear that if the debt does not hasten then the deceased had not been clean before the Lord.

#### **1.3.2 Local Opinions on Determination of Heirs**

According to Islamic law, heirs are those who are entitled to the estate left by the deceased. According to Islamic law, a person is deemed eligible as the beneficiary for three reasons: marital relationship, *nasab* (relatives), and liberating a slave.

The determination of heirs in the community is consistent with Shari'a Islam including heir in the community such as husband/ wife, father, mother, grandfather. On the up position, they are: grandmother and so on up, son, daughter, and granddaughter. On the down, they are: granddaughter of the boys, brother from the same father and mother, sister from the same father and mother, brother from the same father, sister from the same father, brother of the same mother, the sister of the same mother, son of the brother of the same mother from the same father, son of the brother from the same father, the brother of the father of the same mother from the same father, the brother of the father from the same father, son of the brother of the father of the same

mother from the same father, son of the brother from the same father.

If the heirs mentioned above are all still alive, the one who receive a part or inheritance are just boys and girls, a husband or wife, father and mother.

Such an information clearly shows that the three heirs: sons and daughters, husbands and wives and fathers and mothers cannot be prevented, while the other do not get the treasure because they are covered by these three kinds of inheritance.

In determining the heir, the Religious Courts (PA) or the Religious Affairs Office (KUA) requires statement that any disputes in the determination of anyone who would be the heir, the parties to the dispute will apply to the Court of Religion (PA) in order to establish the heirs entitled to inheritance.

This fact shows that in resolving the issue of inheritance, society does not propose the establishment of the heir to the Religious Courts (PA), and usually the beneficiary will summon religious leaders in the community to determine who is the rightful heir and who is not entitled.

### 1.3.3 Local Opinions about the Division of Inheritance

Regarding the division of inheritance, many people believe that a small percentage of people who claim that part of the estate can be distributed to one to one or to men and women, and it must be approved by the heirs entirely. In this case, the community embraces individual inheritance system in which each heir is entitled to a portion of the inheritance to possess, cultivate, or transfer to another person.

The division of inheritance is usually started after the testator dies, and usually after the cleaning is done to property of the heir of all the debts and testamentary. Some say that it was done after seven days since the testator dies. Some people expressed over the past forty days, or after a hundred days passed. Some says that no strict time limit for implementing the division of the inheritance. Generally, people claim that the time-sharing is fully restored to the agreement of all the heirs.

From the description, it appears that in terms of the timing of the inheritance within the Malay community in the district of Tanjung Pura seems quite tolerant that inheritance can only be shared when all the heirs already unanimously to split, but if all the heirs are not urged to split, the inheritance remains employed together.

Referring to the views of people about how the implementation of the law of inheritance in the Malay community in the district of Tanjung Pura as

mentioned above, it can be seen that the implementation of inheritance law in this area cannot be separated from Islamic law and customary law. Both of these laws are laws that live in the community, go hand in hand, mingle and sometimes collide in filling the needs of the community law.

Although in theory, as a public acknowledgment that the Malay community in the district of Tanjung Pura is a fanatic Shafi sect which is the majority in society, but in the application and implementation of the law does not mean that the Malay community in the District is not affected by customary law which has long been rooted in their lives. This can be seen in the implementation of inheritance law within the Malay community in the district of Tanjung Pura. Most law appears to contradict Shafi.

### 1.3.4 Local Opinions of Implementation Heir Successor

Regarding the implementation of substitute heirs, then the public has not seen this as an Islamic inheritance laws that they know and apply.

Some people say that the one who does not implement substitute heirs in case of life and inheritance are: children (grandchildren) are veiled by the brothers of his father (uncle/ *makcik*) to inherit. Thus, he did not include the heirs, and this provision is derived from Shafi who are the majority sect in the community. According to the customs prevailing in the society that the children (grandson) whose his father died in advance of the heir (his grandfather) never gets the right of inheritance or replace his father. The term substitute heir as proposed Compilation of Islamic Law is never known even practiced by the community.

On the contrary, society has its own rules relating to children (read: grandson) that his father died in advance of the heir (grandfather) is. This is as a solution which is usually done by the community for the case of a child whose father died in advance of the heir. The child will be given a will by his grandfather, before his grandfather died. When the old man is first die before giving the will to grandchildren earlier, fathers brothers (uncles/ *makcik*) of the child is to provide a living until he grew up and to get married. Several factors cause failure in substitute heirs in inheritance law society. First, because some of the rules are a product of the new law, both heirs replacement is a breakthrough renewal of Islamic law considered to be contrary to the ideology they profess.

## 2 CONCLUSION

Islamic inheritance law in Indonesia stated in KHI (Compilation of Islamic Law) introduces the institution substitute heirs in handling cases of child because of the the death of his father as stated in the Article 185:

- a. Heirs who died before their children can replace the heir to his position as mentioned in Article 173.
- b. Part substitute heirs must not protrude from the heirs equivalent to being replaced.

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