

## [ ARTICLE ]

# ISLAMIC INHERITANCE LAW: A Comprehensive Examination of the Principles and Status of Successor Heirs in the Division of Inheritance in Indonesia


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## History

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**Abstract:** It is interesting to study inheritance law in the social and cultural context of Indonesian society. This is due to the fact that inheritance law in Indonesia is still pluralistic in nature. There are three distinct types of inheritance laws: the first is Islamic inheritance law, as found in the field of *faraid* the second is customary inheritance law, which is highly pluralistic and unwritten; and the third is inheritance law based on the Civil Code (KUH Perdata)/BW. The legal issues discussed are the Principles of Islamic Inheritance Law in the Distribution of Inheritance and the Position of Successor Heirs in the Perspective of the Compilation of Islamic Law. For this study, a normative juridical approach is employed, utilising legislation as the basis. The research findings indicate that the principles of Islamic inheritance law consist of integrity or the principle of sincerity, *ta'abbudi* (self-devotion), *hukukul maliyah* (property rights), *ijbari*, basic rights (*hukukun thabi'iyah*), bilateral, individual, fair justice, death, peaceful division of inheritance, and social and humanitarian principles. The position of the successor heir must be clearly defined in the event of the demise of the inheritor. Otherwise, the lawsuit may be deemed inadmissible due to obscurity.

**Keywords:** division of poverty, inheritance, compilation of Islamic law

**Abstrak:** Sangat menarik untuk mempelajari hukum kewarisan dalam konteks sosial dan kultural masyarakat Indonesia. Ini disebabkan oleh fakta bahwa hukum kewarisan Indonesia masih bersifat pluralistik. Ada tiga jenis hukum kewarisan yang berbeda: yang pertama adalah hukum kewarisan yang didasarkan pada syari'at Islam, seperti yang ditemukan dalam ilmu *faraid*; yang kedua adalah hukum kewarisan adat, yang sangat pluralistik dan tidak tertulis; dan yang ketiga adalah hukum kewarisan yang didasarkan pada Kitab Undang-Undang Hukum Perdata (KUH Perdata)/BW. Permasalahan hukum yang dibahas adalah Asas-Asas Hukum Waris Islam dalam Pembagian Warisan, Kedudukan Ahli Waris Pengganti dalam Perspektif Penyusunan Hukum Islam Dalam penelitian ini, yuridis normatif digunakan, menggunakan pendekatan peraturan perundang-undangan. Hasil penelitian menunjukkan bahwa asas-asas hukum kewarisan Islam terdiri dari integritas atau asas ketulusan, *ta'abbudi* (penghambaan diri), *hukukul maliyah* (hak-hak kebendaan), *ijbari*, hak-hak dasar (*hukukun thabi'iyah*), bilateral, individu, keadilan yang adil, kematian, perdamaian saat membagi harta warisan, dan asas sosial dan kemanusiaan. Posisi ahli waris pengganti harus jelas jika pewaris meninggal dunia. Jika tidak, gugatan dapat dinyatakan tidak dapat diterima sebagai akibat dari ketidakjelasan.

**Kata Kunci:** pembagian harta waris, warisan, kompilasi hukum Islam.



## A. Introduction

Studying the social and cultural aspects of Indonesian culture in connection to inheritance law is always an intriguing topic of discussion. This is because Indonesia's inheritance law remains pluralistic, implying that each communal group possesses their own distinct set of laws. There are three types of inheritance law that are currently in effect and applicable in society.<sup>1</sup> These include: inheritance law based on Islamic Shari'a, specifically in the field of faraid; a diverse and unwritten customary inheritance law; and inheritance law based on the Civil Code. The prevalence of Islam among the Indonesian population, combined with the presence of numerous distinct tribes, inevitably leads to the implementation of unique inheritance practises based on their respective family systems. Under Islamic inheritance law, the transfer of property from a deceased individual to a live individual is permissible.<sup>2</sup> This principle of property transfer is referred to by various appellations. Islamic legal literature employs various terminology to refer to the law of inheritance, including Faraid, Fiqh Mawaris. These terminologies vary as a result of the utilisation of diverse perspectives in the discourse.

In Islam, inheritance is an integral aspect that cannot be separated. Therefore, in order to be implemented correctly in Islam, its presence must be described with factual accuracy. In this scenario, the principles of inheritance must be implemented within the established societal framework of the family system. Among all the regulations in effect within society, the law pertaining to marriage and inheritance stands as the sole determinant and manifestation of the family structure, which is also an integral aspect of civil law.<sup>3</sup>

The history of Muslims exhibits divergences in their perspectives on the implementation of inheritance. Islam, as a moral framework, motivates individuals who follow the Muslim faith to implement the principles found in the Qur'an. Islam regulates the connection between humanity and the divine. Islam mandates its adherents to adhere to the entirety of Islamic principles and prohibits them from succumbing to the desires of Satan.<sup>4</sup> Inheritance law is a crucial component of family law, alongside marriage law, as it not only determines but also reflects the societal system and legal structure. The law of inheritance is intricately linked to the domain of human existence, since it asserts that every individual will inevitably undergo a universal legal occurrence known as death.

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<sup>1</sup> Mainake Yosepphus, "Hak Waris Anak Luar Kawin Menurut Hukum Perdata, Hukum Islam, dan Hukum Adat," *Jurnal Law Review* 13, no. 1 (2013).

<sup>2</sup> Haris Wandu, "Penggolongan Ahli Waris," Hariswandu, 2017.

<sup>3</sup> Syamsulbahri Salihima, *Perkembangan Pemikiran Pembagian Warisan dalam Hukum Islam dan Implementasinya pada Pengadilan Agama* (Jakarta: Prenadamedia, 2015).

<sup>4</sup> Suharto, "Hak Waris Anak Angkat menurut Hukum Islam di Indonesia," *Jurnal Studi Hukum Islam* 1, no. 1 (2014).

In accordance with Islamic law, the concept of heritage differs from that of inheritance in Western law, as outlined in BW and customary inheritance law. In Islamic law, an inheritance refers to a specific quantity of property and all the rights possessed by the deceased in an untarnished condition, after subtracting any outstanding obligations owed by the deceased and other expenses arising from the death of the heir. Islamic inheritance law universally applies to all Muslims worldwide. However, inheritance law in the country is shaped by Islamic national norms and the way of life, which are influenced by various elements, such as :

Initially, while the Qur'an provides a comprehensive elucidation of the legal foundation of Islamic inheritance, the Prophet has addressed the challenges that occur in the Qur'an but has not had the opportunity to practically expound upon them. Consequently, the law remains unresolved. Furthermore, it is important to note that the study of law, notably Islamic law which encompasses inheritance law, falls under the realm of social sciences rather than being classified as an exact science. Hence, inheritance law is a subject on which legal experts may hold differing opinions, particularly on verses that offer room for multiple interpretations. The field of civil inheritance encompasses the following terminology.

The departed individual bequeaths their assets to others. An heir is a relative of the deceased individual who assumes the responsibilities of the testator in matters of inheritance law following the testator's death. Inheritance law regulates the disposition of a deceased individual's estate, the transfer of the property left by the deceased, and the fate of that property. This legislation also governs the disposition of a person's assets after their demise.

Following the introduction of Islam in Indonesia, the community was provided with guidelines on inheritance that align with Islamic principles. Subsequently, the arrangement became a customary practise within the community, evolving in accordance with the cultural norms of the local populace. This demonstrates that Islam, as a doctrine, has evolved with civilization, preserving the fundamental principles of Shari'a while adjusting them to suit the societal circumstances. The Compilation of Islamic Law (KHI), encompassing the doctrines and application of Islamic law in its entirety, was established after to Indonesia's attainment of independence.<sup>5</sup> The KHI provides a legitimate legal framework for the incorporation of Islamic law into the existing legal system in Indonesia. In light of this context, the author aims to examine the concept of inheritance as governed by Indonesian Islamic law.

Islamic law governs every facet of the life of individuals who adhere to Islam. This case also encompasses the matter of inheritance. The encounter between indigenous Indonesians and traders from the Arabian Peninsula initiated the

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<sup>5</sup> Sidik Tono, "Dasar Pertimbangan Hukum Mahkamah Agung RI tentang Wasiat Wajibah," *Jurnal Millah* 16, no. 1 (2014).

dissemination of Islamic jurisprudence across society. These merchants not only engaged in commerce, but also disseminated the principles of Islam to the inhabitants of Indonesia. The Islamic beliefs mentioned are based on the Qur'an, Sunnah, Ijma', and Ijtihad, particularly in relation to inheritance law. Islamic principles ultimately provided a fundamental basis for legislation in Indonesian society.<sup>6</sup> The Islamic community in Indonesia strictly abides by the inheritance regulations, encompassing the specified conditions and challenges associated with inheritance. The Compilation of Islamic Law was promulgated in 1991, following Indonesia's attainment of independence. This compilation amalgamates Islamic law statutes with Islamic legal texts. Social change is inevitable in human relations, such change must be in harmony with the rule of law. A social phenomenon that cannot be avoided, one of which is related to the replacement of the position of heirs. This concept presents several different views from various circles both academics, practitioners and scholars who are pro and con about successor heirs as part of legal inheritance.

Then there were mixed responses, for example, the provision of successor heirs, although not mentioned in fiqh as a mandatory will, but this is intended to provide justice to the heirs. Judging from its purpose, the renewal of inheritance law is intended to resolve problems and avoid disputes. In this regard, *Soepomo* in his book even said that the emergence of the institution of change of place was based on the school of thought that property in the family from the beginning was indeed provided as the material basis of the family and its descendants. If a child dies while his parents are still alive, the children of the deceased person will take the father's place as heirs to his grandfather's property.<sup>7</sup>

However, the KHI also limits that the property obtained by the grandson is not the entirety of the property that should be obtained by the father, but only 1/3 of the share. This can be understood from article 185 paragraph (2) by expressing 'shall not exceed'. Which has indirectly given a limit on the share received. However, in the reforms that took place in several other Muslim countries such as Egypt, Tunisia and Pakistan, in this context the grandson could end up spending all of his father's inheritance that passed to him because the father had passed away first. The formulation of article 185 paragraph (1) which uses the phrase "replaceable" creates uncertainty in the appearance of successor heirs. The word "may" contains a *facultative* or *tentative* meaning so that it can be interpreted that there are heirs who may be replaced and some who may not be replaceable.

Regarding the *tentative nature* of article 185, according to *Raihan A.Rasyid*, it is a very appropriate arrangement, because the purpose of the inclusion of the

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<sup>6</sup> Soraya Siregar, "Akibat Hukum Pengangkatan Anak Terhadap Harta Warisan Orang Tua Angkatnya Pada Etnis Tionghoa," *Jurnal Hukum* 1, no. 1 (2017).)

<sup>7</sup> Akmal Hidayah Halim, *Administration of Estates in Malaysia, Law and Procedure*. Subang Jaya: Sweet & Maxwell Asia. (2012)

replacement of heirs in the KHI is because in some cases, there is pity for the grandson of the heir. This means that the application of the provision for the replacement of heirs is casuistic, so that the function of the judge is decisive in determining whether or not heirs can be replaced or cannot be replaced.

The methodology in this work is normative legal research, also known as legal research.<sup>8</sup> The purpose of legal research is to identify and propose answers to legal challenges by offering specific guidelines for addressing the raised concerns. The purpose of legal research is to determine the validity and consistency of a legal rule with legal norms, the alignment of a legal norm with legal principles, and the conformity of an individual's actions with legal norms and principles, rather than solely adhering to legal rules. The writing employs the statutory approach, often known as the statute approach, as well as the conceptual approach.<sup>9</sup>

## B. Principles of Islamic Inheritance Law in The Division of Inheritance

A principle refers to a fundamental concept that is broad and influential in a legal system. It encompasses the specific interpretations found in laws and judicial rulings, which are considered positive laws and can be identified via the examination of specific regulations.<sup>10</sup> Comprehending the principle from two different viewpoints. First principles, in the context of law, are fundamental truths that serve as the foundation for reasoning and forming opinions, particularly in the field of law enforcement. Furthermore, the idea serves as a guiding principle for resolving any legal issues.

The concepts of Islamic inheritance law and the sunnah of the prophet Muhammad (peace be upon him) can be comprehended by studying the corresponding passages.<sup>11</sup> The principle of Ijbari, sometimes known as coercion, is a fundamental concept. Under Islamic jurisprudence, the transmission of assets from a deceased individual to their surviving heirs occurs automatically in accordance with the divine decrees of Allah, irrespective of the endeavours or desires of the heirs. The specific transition being referred to is known as the ijbari principle. Consequently, after an heir deceases, they are relieved from the burden of contemplating the utilisation and distribution of their assets. Upon his demise, the property is transferred to his heirs in a preset fashion without the need for any additional action.

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<sup>8</sup> I M Dianthi, *Metodologi Penelitian Hukum Normatif dalam Justifikasi Teori Hukum* (Jakarta: Prenada Media Group, 2017).

<sup>9</sup> Susanti Ochtorina, Dyah, dan Efendi, *Penelitian Hukum (Legal Research)* (Jakarta: Sinar Grafika, 2014).

<sup>10</sup> Setiawan Ridwan, Dini Destiani, dan Cepi Slamet, "Perancangan Sistem Pakar untuk Pembagian Waris Menurut Hukum Islam (Fara'id)," *Jurnal Hukum* 1, no. 1 (2014).

<sup>11</sup> Mohd Salleh, "Penyelesaian Harta Pusaka Mafqūd Menurut Perspektif Undang-Undang Islam (A Solution For Inheritance Property Of Lost Person (Mafqūd) From Islamic Law Perspective)," *Jurnal Umran* 4, no. 1 (2017).



The term "ijbari" has a lexical definition of "forced", indicating the act of doing something against one's volition. The passages of the Qur'an, including sura an-Nisa verses 11, 12, and 176, highlight the aspect of coercion (ijbari) through the recognition of the right of heirs to inherit and the determination of the amount they get.<sup>12</sup> The term "mafrudan" denotes a pre-determined portion and signifies the shape of ijbari in relation to the received quantity. The term "ijbari" is defined as "absolute law".

In Islamic inheritance law, the bilateral principle allows an individual to inherit from both their male and female relatives, regardless of their ancestry. This idea is mentioned in the Qur'an, specifically in surah An-Nisa/4 verses 7, 11, 12, and 176. It pertains to two aspects of inheritance:<sup>13</sup> (1) the distribution of inheritance between children and their parents, and (2) the distribution of inheritance between brothers in the absence of children and orphans. The Qur'an, namely in surah An-Nisa verses 7 and 11, affirms that both men and women have an equal right to inherit from their parents. Surah An-Nisa verses 4 and 11 establish that both fathers and mothers have the right to inherit from their children, including sons, with the share of a son being equal to that of a daughter.

Furthermore, mutual inheritance can also take place among childless siblings. According to verse 12 of Surah An-Nisa in the Qur'an, if a male heir passes away and has a living brother, the brother or sister is eligible to receive the deceased's inheritance. Similarly, in verse 4 of surah An-Nisa verse 12, it is stated that if a female heir passes away without any surviving descendants, but has a living brother or sister, they are entitled to inherit her assets. Furthermore, according to the legal provision mentioned in verse 176 of Surah An-Nisa in the Qur'an, if an individual does not have any children but has sisters, his sisters are eligible to inherit his assets. Similarly, this applies to an individual who is childless and has siblings.

**Individual Principle:** The individual principle states that each individual successor has the right to a portion of the heir's property independently, without being connected to other heirs, similar to how collective heirs are treated under common law. Consequently, the portion of the testator's estate that is inherited by the heirs is owned separately, and the remaining heirs have no connection to this portion.

The Principle of Balanced Justice refers to the equitable distribution of rights and obligations between individuals in relation to their estate and living expenses. Men and women are assigned roles that align with the specific obligations they will assume in both domestic and societal contexts. According to verse 2:233, it is the duty of a man to take care of his family, including providing for his children and wife

<sup>12</sup> Mohamed Hamid, "Anggapan Kematian Al-Mafqud menurut Undang-Undang Sipil Dan Syariah: Satu Penilaian Semasa," *Jurnal Ilmu Hukum* 1, no. 3 (2014).

<sup>13</sup> Ridwan, Destiani, dan Slamet, "Perancangan Sistem Pakar untuk Pembagian Waris Menurut Hukum Islam (Fara'id)."

based on their capabilities. The competence of his wife and the assistance required by his children are irrelevant. Responsibility is unchanged regardless of the circumstances.

In Islamic inheritance law, posthumous inheritance refers to the practise of distributing an individual's assets only after their demise. Put simply, while a person is alive, their property cannot be transmitted through inheritance. While living, he possesses the authority to oversee his property, but this authority is limited to his personal requirements and does not extend after his death.

The tandhikh concept should be taken into account while distributing inheritance, particularly for assets like *mauruts* or *tirkah* that differ in shape and worth.<sup>14</sup> Harmony is a component that contributes to the validity of an action, whereas a condition relies on the presence of *shari'a* law outside of the law itself, and its absence leads to the absence of a law. To attain the status of an heir, please peruse the Heirs part provided on this platform. Inheritance is contingent upon three conditions: the demise of the beneficiary (*muwarrist*), the survival of the successor after the *muwarrist*'s death, and the absence of any impediments to the transfer of assets. The distribution of inheritance is determined by three principles, specifically *Al-Muwarrist*, which refers to the individual who inherits the property.<sup>15</sup> The requirement for *al-Muwaris* is to establish the legal, juridical (*hukmi*), or imaginary death of the individual. The significance of these estimates pertains to instances when an individual is on the brink of death, such as when a doctor predicts a life expectancy of three months due to an untreatable illness. An *Al-Waris* is an individual who is recognised as having familial ties, either via blood or marriage, with *Al-Muwarrist*. As a result, they are eligible to inherit the assets left behind by *Al-Muwarrist*, after accounting for expenses related to preserving the estate, settling debts, and carrying out the instructions outlined in the will.

In Islamic law, the inheritance rights of an heir are determined based on two factors: the kinship or marital relations between the heir and the deceased. Kinship relationships in inheritance refer to the familial connections based on blood or parent-child relationships, whereas marital links are developed through consanguinity. According to Verse 7 of Q.S. An-Nisa, sons are entitled to a portion of the inheritance from their mother, father, and relatives, while women are entitled to a portion of the inheritance from their mother, father, and relatives, subject to specific conditions.<sup>16</sup>

The law of inheritance regulates the entitlement of heirs to possess the property they receive through inheritance. Hence, inheritance is intricately linked to

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<sup>14</sup> Tono, "Dasar Pertimbangan Hukum Mahkamah Agung RI tentang Wasiat Wajibah."

<sup>15</sup> Komari, "Eksistensi Hukum Waris Di Indonesia Antara Adat Dan Syariat," *Asy Syariah* 17, no. 2 (2015).

<sup>16</sup> Sukris Samardi, *Dekonstruksi Hukum Progresif Ahli Waris Pengganti dalam Kompilasi Hukum Islam* (Yogyakarta: Aswaja Presindo, 2012).

human existence as it pertains to the inevitable legal occurrence known as death. The principles of Islamic law have built a comprehensive and equitable framework for governing inheritance and property matters. Islam grants property rights to both men and women, ensuring that their assets be distributed to their heirs upon their death.

According to Islamic law, the distribution of the estate will occur once all obligations such as managing the corpse, paying off debts, fulfilling zakat, and executing the will have been taken care of, including any outstanding debts owed by the person who made the will.<sup>17</sup> Islamic law differentiates between men and women in terms of their inheritance shares. The principle of *ijbari* plays a crucial role in the application of Islamic inheritance law as it compels the immediate distribution of the opened inheritance to the rightful heirs. The heir, although being missing (*mafqud*), retains the entitlement to the inheritance. However, the portion of the inheritance allocated to the missing heir may be subject to alteration based on the uncertainty surrounding their status of being alive or deceased. Hence, the principle of *ijbari* can be applied in two scenarios: firstly, when the heirs of *mafqud* need to seek a ruling from the Religious Court institution, and secondly, when there are temporary circumstances that do not necessitate a ruling from the Religious Court Institution. The missing heir might exert influence over the portion of other co-heirs who are present, such as being the sole "*ashobah*" who conceals other heirs, or the heirs of the missing heir can diminish the share of other heirs due to the presence of missing heirs. Thus, in order to safeguard the interests of other beneficiaries, it is highly probable that the principle of *ijbari* will be employed in the inheritance of heirs whose own heirs are missing or absent.<sup>18</sup> According to the principle of *ijbari*, inheritance must be distributed to each heir, even if there is uncertainty about the status of a missing heir. This ensures that the distribution is fair and open.

Islamic inheritance law, also known as *faraid* in Islamic legal literature, is a component of Islamic law that governs the distribution of property from a deceased individual to a surviving one. Islamic inheritance law is a religious law that is primarily based on Allah's revelation through the Prophet (peace be upon him). It encompasses certain elements that, to some extent, also apply to human-made inheritance law. Moreover, Islamic inheritance law exhibits a distinct framework in specific instances, diverging from other inheritance laws. The Qur'an and Al-Hadith serve as the foundation for the development of Islamic law, specifically in the area of inheritance law. The two legal foundations encompass several principles of Islamic inheritance law, including integrity, *ta'abbudi* (self-servitude), *hukukul maliyah* (material rights), *ijbari*, basic rights (*hukukun thabi'iyah*), bilateral, individual,

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<sup>17</sup> Yosepphus, "Hak Waris Anak Luar Kawin Menurut Hukum Perdata, Hukum Islam, dan Hukum Adat."

<sup>18</sup> Salihima, *Perkembangan Pemikiran Pembagian Warisan dalam Hukum Islam dan Implementasinya pada Pengadilan Agama*.



balanced justice, death, dividing up inheritance, peace in dividing inheritance, and social and humanitarian principles. The principles of Islamic inheritance law serve as a crucial framework for establishing the allocation of inheritance in Islam. Moreover, the tenets of Islamic inheritance serve as the foundation for Muslims in addressing issues related to inheritance. Due to its basis in the agreed-upon Islamic law established by the fuqaha'.

### C. The Position of Successor Heirs in The Perspective of the Compilation of Islamic Law

Ahmad Azhar Basyir stated that heirs can only receive inheritance if they meet three (three) conditions:<sup>19</sup>

1. The testator passes away, either physically or legally, as a result of a judge's ruling declaring the heir (al-mafqud) to be absent without knowing his circumstances.
2. When the heir is declared deceased, the heir is actually declared living.
3. The heir's entitlement to inherit the testator's assets is explained as having a cause or justification.

Obstacle for Heirs While Islamic law establishes the foundation for inheritance, certain circumstances may result in an heir losing or not being able to receive their assets. Among these conditions are the ones listed below. Heirs vary from one another in their religious beliefs. The hadith that Bukhari and Muslims relate, which declares that a Muslim cannot inherit another Muslim, is the basis for this restriction.<sup>20</sup>

The heir assassinates himself. According to a hadith recounted by Tirmidhi and Ibn Majah, the monarch is immune to inheritance. Nevertheless, a murderer's mistake, incapacity, obligation, or "old age or self-defense" do not bar an heir from receiving the heir's estate. the inheritors' right to possess property. This can include assets, obligations, or receivables that the heir grants in compliance with testator's will or the regulations of Islamic law. Article 187 paragraph (2) of the Compilation of Islamic Law states that an expert who inherits property is not allowed to refuse the property until the expert passes away or becomes a convert.

The requirement states that while it is generally not acceptable for heirs to reject the property they have inherited, there are instances in which they may do so as long as they are mature, reasonable, and not under duress. Furthermore, inheritance that complies with specific legal requirements, like patents, may also be refused. Apart from these clauses, Islamic law also protects ethics and morality,

<sup>19</sup> Ahmad Rofiq, *Hukum Perdata Islam Di Indonesia* (Jakarta: Raja Grafindo, 2013).

<sup>20</sup> Fikri dan Wahidin, "Konsepsi Hukum Waris Islam Dan Hukum Waris Adat," *Al Ahkam Jurnal Ilmu Syariah dan Hukum* 1, no. 2 (2016).

therefore it is wrong to reject or contest an inheritance that has been granted.<sup>21</sup> The reason is that an unlawful connection that has previously transpired can be broken by rejection or inheritance disputes. Requirements for Heirs: When someone passes away, all of their affairs both settled and unresolved must be left behind. The job falls to the heirs of the deceased person. In addition to assets and receivables, an heir also takes on his successor's debts. As a result, the heir has to give the departed heir the following: The cost of maintaining the corpse (*tajhiz al-janazah*) is borne by the heir. Verse 67 of Q.S. Al-Furqan states that the heirs bear the burden of covering the burial expenses, which must be paid in a reasonable amount. Based on the practicalities of caring for the corpse which doesn't require exorbitant expenses or be very "miserly" this reasonableness is established.

Settle the debts (*wafa' al-duyun*) that have already been repaid by his successors. The inheritor is obligated to settle their unresolved financial obligations. Verse 11 of Surat An-Nisa stipulates that the distribution of inheritance is contingent upon the fulfillment of any existing will or the settlement of outstanding obligations. Debt can manifest as monetary obligations, physical possessions, or the fulfillment of certain tasks. For instance, the heirs of Fulan were obligated to fulfill the late Fulan's commitment to assist him in constructing structures within his residence throughout his lifetime. Furthermore, a will (*tanfiz al-wasaya*) entails the transfer of property rights to a designated individual in the event that the heir passes away and leaves such a testament. Verse 180 of Surah Al-Baqarah states that when someone is on the verge of death and possesses a significant amount of property, they should bear witness to their mother, father, and near relatives in a manner that is just and virtuous. It is the responsibility of the pious. As per Muhammad Ali Hasan, if the heir passes away within the period when the zakat payment is due, the heir's zakat must also be paid by the heir.

Essentially, heirs have the obligation to assume the life rights of the individual being succeeded, not alone in the context of inheritance.<sup>22</sup> The Qur'an and Sunnah do not explicitly address the issue of subsequent heirs. Consequently, scholars held divergent opinions regarding the status of grandchildren as inheritors in the line of succession. Since the era of the companions, discussions regarding successor heirs have been place, although the specific term was never explicitly defined.

Zaid bin Thabit, a companion of the Prophet, asserted in his *ijtihad* that the grandson should inherit his father's position. Zaid bin Thabit suggests that it is conceivable that only grandchildren and daughters procreated. Definition: The male and female descendants of male offspring (via male offspring) are considered equivalent to children in the absence of any surviving male offspring. Grandsons are treated as sons, and granddaughters as daughters. They have the same inheritance

<sup>21</sup> A Kadir, *Memahami Ilmu Faraidh Tanya Jawab Hukum Waris Islam* (Jakarta: Amzah, 2016).

<sup>22</sup> Fariani, "Problematisa Pembagian Harta Warisan Pasca Tsunami Di Kecamatan Johan Pahlawan Kabupaten Aceh Barat," *Jurnal Ilmiah Islam Futura* 14, no. 1 (2014).

rights and obligations as sons, but they do not inherit alongside their own children when there are surviving boys. Zaid bin Thabit made significant progress in addressing the matter of grandchildren's inheritance with the aim of assisting the remaining heirs. Ijtihad Zaid bin Thabit exemplifies a mindset that challenges the practice in patrilineal civilizations of excluding granddaughters from positions based only on their bloodline.<sup>23</sup> As to Islamic inheritance law, the father's inheritance can only be succeeded by the son's son, whereas the son's daughter cannot inherit from her mother.

In the evolution of Indonesian inheritance legislation, the entitlement of grandchildren to inherit when their parents pass away before their grandparents is recognized as successor heirs. Hazairin states that Islamic inheritance law follows the bilateral inheritance system, as derived from the interpretation of verse 11 of the Qur'an which states, "Allah decrees for you about (the distribution of inheritance to) your children".<sup>24</sup> The inheritance of a son is equivalent to the combined inheritance of two daughters. However, if there are more than two girls, they will receive two-thirds of the total inheritance. On the other hand, if there is only one daughter, she would receive half of the inheritance. In the case of two parents, if the deceased individual had children, or if the deceased kid had no children and was inherited by their parents, then each mother would be entitled to one-sixth of the remaining property. These divides occur once he has fulfilled his vow or paid the loan. It is uncertain which of your parents and children will provide you with the most advantages. This decision is divinely ordained, Verse 11 in Surah An-Nisa states that Allah is truly omniscient and supremely wise.

This demonstrates the transmission of genetic traits from parents to their offspring, with sons and daughters inheriting characteristics from both their fathers and mothers, while fathers and mothers inherit traits from their sons and daughters. This demonstrates that the right of inheritance is equitable for both parties, allowing them to inherit from individuals without regard to their gender.<sup>25</sup> Hazairin had an opinion on the position of the succeeding heir based on his understanding of Surah An-Nisa verse 33. The passage states that the heirs of a person will inherit any property left by their paternal grandmother and other close relatives. If you have made a vow to be loyal to certain individuals, then allocate a portion of your resources to them. God oversees everything, Quran 4:33:

"And for each of those I (Allah) have made mawali for the estate of father and mak, immediate family, and tolan of your covenant, therefore give portions of his inheritance" (Hazairin, 1982). Hazairin interpreted the term "mawali" in Burgerlijk

<sup>23</sup> Annur Rohim Faqih, *Mawaris Hukum Waris Islam* (Yogyakarta: UII Press, 2017).

<sup>24</sup> A Hasan, "Pengertian Harta Warisan/Pustaka yang Dibagikan," *Jadi Pintar*, 2016, <http://www.jadipintar.com/2013/04/Pengertian-Harta-Warisan-Pusaka-yang-Di-bagikan.html>.

<sup>25</sup> Alma'mun, S. *Islamic Estate Planning : Analysing the Malaysian Perception on Wasiyyah (Will) And Bequest Practices*. Doctoral Dissertation, Durham University. (2010).

Weetboek as "plaatsvervulling" or "successor heir", meaning that the heir who replaces the person he was to succeed but died before the heir. According to Kusmayanti (2019), the blood relationship between the heir and surviving family members determines the relationship between his grandson and mawali. Thus, the relationship between the child and his guardian is the relationship between the heir and his descendants through the relationship of his deceased child.

In Indonesia, the term "successor heir" was officially recognized in Islamic inheritance law after the implementation of the Compilation of Islamic Law. This compilation was developed through *ijtihad*, a process of independent legal reasoning, by Indonesian scholars (*fuqaha*). It encompasses various aspects of Islamic law, including marriage law, inheritance law, and *waqf*. The Compilation serves as the foundation for the Religious Court in making decisions within its jurisdiction. The legal idea of successor heirs or the substitution of heirs, referred to as *Plaatsvervulling* in Legal Science, is outlined in article 185 of the Compilation of Islamic Law :<sup>26</sup>

1. If heirs pass away before the testator, their children may inherit, save for those specified in Article 173.
2. The portion of the inheriting heirs cannot exceed the portion of the heirs they are replacing. Furthermore, the inclusion of the term "may" in article 185 paragraph (1) of The Compilation of Islamic Law (KHI) is regarded as provisional, pending the alteration of the heirs' position.

Successor heirs have the option to either replace their parents or not, and they may or may not receive an inheritance. During its development, the Supreme Court judges deemed the role of successor heirs to be significant. If the designation of succeeding heirs is not explicitly specified, the lawsuit may be deemed inadmissible due to its lack of clarity.<sup>27</sup> The legal rule outlined in Supreme Court Decision No. 334K/AG/2005 explicitly and unambiguously establishes the position of successor heirs in cases when the death of the heir who is being succeeded occurs prior to the death of the heir. If this condition is not fulfilled, the lawsuit may be deemed inadmissible due to its lack of clarity. According to this clause, grandchildren can inherit the position of their parents as successor heirs, but only if their parents are in the position of *zawi al-furud*. In that case, the grandchildren will be positioned as *zawil al-furud*. If his parents were heirs, then he would also inherit their position as heirs, entitling him to receive an equal portion of their assets if they were still alive. The Compilation of Islamic Law (KHI) explicitly acknowledge the presence of

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<sup>26</sup> Akhmad Faqih Mursid, Arfin Hamid, dan Muammar Bakry, "Penyelesaian Perkara Mafqud Di Pengadilan Agama," *Jurnal Analis* 3, no. 1 (2014).

<sup>27</sup> Kadir, *Memahami Ilmu Fara'idh Tanya Jawab Hukum Waris Islam*.

successor heirs, granting them legitimacy, notwithstanding their absence in the discussions of Islamic inheritance law in traditional fiqh publications.

#### D. Conclusion

With the Qur'an and Al-Hadith as the source of Islamic law, the legal principles of Islamic inheritance have been established. The principles of Islamic inheritance law contained in both legal foundations are integrity or the principle of sincerity, *ta'abbudi* (self-servitude), *hukukul maliyah* (property rights), *ijbari*, basic rights (*hukukun thabi'iyah*), bilateral, individual, just justice, death, peace when dividing inheritance, and social and humanitarian principles. When the heir who is replaced by the heir dies, the position of the successor heir must be clear and clear. Otherwise, the lawsuit may be declared inadmissible because it is vague. As successor heirs, the grandson can take over the position of his parents, if his parents are *zawi al-furud*. This position has legitimacy, but is not found in discussions of Islamic inheritance law in classical fiqh books. In Indonesia, the identified issue involves the legal and procedural aspects of inheritance, particularly those involving Muslim persons. The mixture of different laws adopted by the judges in arriving at a decision affects the distribution of the deceased's assets, which may not be in line with *Shariah* standards. This could affect the rights of entitled beneficiaries under the *Fara'id* principle while bestowing the distribution to those originally not entitled under the sacred law. The degree of issues faced by the two states is unmistakably severe and requires immediate attention, if not a solution from the respective authority, mainly the government. It is hoped that the identification of problems as well as the discussion in this paper can be useful to the stakeholders and the broader society in remedying the ongoing problems which occurs in cases of inheritance.

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