



An Examination of Substitute heirs in Islamic Civil Law in Indonesia: An Interpretative Analysis of Legal Verses

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Abstract

In Islamic inheritance law, inheritance occurs because of the relationship between sababiyah and nasabiyah. From these two relationships, the dzawil faraid', 'Asabah and dzawil Arham groups were born. Dzawil Arham is a group that is often overlooked in inheritance, because there are no absolute provisions, especially for grandchildren whose parents died before their grandfather or successor heir. Even though there is inheritance law to realize justice and benefit in the family. Thus, in this study we will examine in more depth related to replacement heirs from the perspective of the Al-Qur'an, with the aim of realizing replacement heirs in the Al-Qur'an. The method used by liberal research is an analytical descriptive approach. The results of this study are that basically in Islamic inheritance law the term substitute heir is not found in the Koran as a source of Islamic law. However, Hazairin through his ijtihad interpreted the lafaz mawali in the Qur'an 4:7 as a substitute heir. This meaning was then formulated in KHI article 185 paragraphs 1 and 2. As a contribution to this study, realizing justice and benefit is a necessity. Grandchildren as substitute heirs for their parents should be a provision in Islamic inheritance.

Keywords: Substitute heirs, Islamic inheritance, Legal Verses

Abstrak

Dalam hukum kewarisan Islam, terjadinya saling mewarisi karena hubungan sababiyah dan nasabiyah. Dari kedua hubungan tersebut lahirlah golongan dzawil faraid', 'Asabah dan dzawil Arham. Dzawil Arham golongan yang sering terabaikan dalam kewarisan, karena tidak ada ketentuan secara mutlak, terlebih bagi cucu yang orangtuanya lebih dulu meninggal daripada kakeknya atau ahli waris pengganti. Padahal adanya hukum kewarisan untuk mewujudkan keadilan dan kemaslahatan dalam keluarga. Dengan demikian, dalam kajian ini akan mengkaji lebih dalam terkait ahli waris pengganti dalam perspektif Al-Qur'an, dengan tujuan merealisasikan ahli waris pengganti dalam Al-Qur'an. Adapun metode yang digunakan library resech dengan pendekatan diskriptif analitis. Hasil dari kajian ini, bahwa pada dasarnya dalam hukum kewarisan Islam istilah ahli waris pengganti tidak ditemukan Al-Qur'an sebagai sumber hukum Islam. Akan tetapi, Hazairin melalui ijtihadnya memaknai lafaz mawali dalam Qur'an 4:7 dengan ahli waris pengganti. Makna



AN INVESTIGATION OF SURROGATE HEIRS IN ISLAMIC CIVIL LAW IN INDONESIA: AN INTERPRETATIVE APPROACH TO LEGAL VERSES

ID: 9353

Abstract:

In Islamic inheritance law, basically the term substitute heir is not found in the Al-Qur'an and hadith. However, in its development to realize the values of justice and benefit in the family, a reform was carried out in Islamic law known as KHI by formulating that rights are given to children whose parents have died before the heir, which is regulated in KHI article 185 paragraph 1 and 2. This is in line with Hazairin's thoughts in interpreting the words *mawali* with substitute heirs in Surah An-Nisa' verse 33. In this case, the author tries to trace the system of substitute heirs in the verses inheritance as the focus of his study. The method used is analytical descriptive, with the aim of realizing an inheritance system from the perspective of the Qur'an. As for the results of searching these verses, it was found that the replacement heir system, apart from being the result of Hazairi's *ijtihad*, in the Al-Qur'an the system was well regulated and was found through the *munasabah* of inheritance verses. This system is then regulated in KHI article 185 paragraphs 1 and 2.

Keywords: *Substitute heirs, Islamic inheritance and the Qur'an*

Dalam hukum kewarisan Islam, pada dasarnya istilah ahli waris pengganti tidak ditemukan dalil dalam Al-Qur'an dan hadits. Namun dalam perkembangannya untuk mewujudkan nilai-nilai keadilan dan kemaslahatan dalam keluarga, dilakukanlah pembaharuan dalam hukum Islam yang dikenal dengan KHI dengan merumuskan bahwa diberikannya hak bagi anak yang orang tuanya telah meninggal dunia lebih dulu dari pewaris, yang diatur dalam KHI pasal 185 ayat 1 dan 2. Hal tersebut sejalan pemikiran Hazairin dalam menafsirkan kata *mawali* dengan ahli waris pengganti dalam surat An-Nisa' ayat 33. Dalam hal ini, penulis berusaha menelusuri sistem ahli waris pengganti dalam ayat-ayat kewarisan sebagai focus kajiannya. Metode yang digunakan adalah diskriptif analitis, dengan tujuan untuk merealisasikan sistem ahli waris dalam perspektif al Qur'an. Adapun hasil penelusuran ayat-ayat tersebut didapatkan bahwa sistem ahli waris

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pengganti, selain sebagai hasil ijtihad Hazairi, dalam Al-Qur'an telah diatur sistem tersebut dengan baik dan ditemukan melalui munasabah ayat-ayat kewarisan. Sistem tersebut kemudian diatur dalam KHI pasal 185 ayat 1 dan 2

Kata Kunci: *Ahli waris pengganti, kewarisan Islam dan Al-Qur'an*

A. Introduction

Inheritance of inherited property is regulated in the Koran. The Qur'an is present by regulating all aspects of people's lives without exception with the law of inheritance. There is inheritance law as a result of death. If there is no death, then there will be no law that deals with inheritance. Meanwhile, death is the termination of everything related to worldly life.

In inheritance law, property is one element of the three elements of inheritance, namely heirs, heirs and inheritance.¹ These three elements are interrelated in terms of inheritance. When an heir dies, all the inheritance owned by that heir will become the right of the heirs he left behind.

Heirs are people who are related to the testator. This relationship is of course related to nasabiyah and sababiyah. In this case, the heirs who will never be hindered in terms of inheritance are the father, mother, children, husband and wife. Thus, the heir with the greatest right to inheritance is the person who is closest in relationship to the testator.

In the Qur'an, the transfer of inheritance to heirs has been explained systematically, both for male heirs and female heirs. This is as stated in Surah Al-Nisa' verse 7 as follows

لِّلرَّجَالِ نَصِيبٌ مِّمَّا تَرَكَ الْوَالِدَانِ وَالْأَقْرَبُونَ وَلِلنِّسَاءِ نَصِيبٌ مِّمَّا تَرَكَ الْوَالِدَانِ وَالْأَقْرَبُونَ مِمَّا قَلَّ مِنْهُ أَوْ كَثُرَ ۚ نَصِيبًا مَّفْرُوضًا

¹ Oemar Moechtar, *Perkembangan Hukum Waris: Praktek Penyelesaian Sengketa Kewarisan Di Indonesia*, (Jakarta: Prenadamedia Grup, 2019), h 14-15

This means: For men there is a right to share in the inheritance of their mother and father and their relatives, and for women there is a right to share in the inheritance of their mother and father and their relatives, whether a little or a lot according to the portion that has been determined.

This verse contains the message that men and women have the right to share in the inheritance of their mother and father and their relatives, whether few or many. This is a sign that Allah SWT eliminates forms of injustice between men and women in carrying out inheritance laws. Between men and women there is no difference in terms of inheritance but in terms of rights and obligations. However, in this case, the implementation of inheritance distribution in Indonesia is greatly influenced by the kinship system in force, namely the patrilineal system, matrilineal system and parental/bilateral system. Based on the kinship system, there are parties who are marginalized in terms of inheritance. The result of this exclusion causes conflict between families. In fact, the main aim of inheritance law is for the benefit, harmony and peace in the family.

In essence, inheritance law has a very important role in human life because inheritance law cannot be separated from death. Therefore, Rasulullah SAW recommended to his people to study and teach the science of faraid.

عن أبي هريرة رضي الله عنه أن النبي صلى الله عليه وسلم قال: تعلموا الفرائض وعلّموا فاءنه

نصف العلم وانه ينسى وهو أول ما ينزع من أمتي (رواه ابن ماجه والدارقطني والحاكم)²

Meaning: From Abu Hurairah r.a. that Rasulullah SAW has said: learn the science of faraidh and teach it, because it is half of the knowledge and is forgotten by people and it is the first knowledge that will be revoked from my people.

In the Al-Qur'an, the division of inheritance is explained in detail, starting from heirs who are related by nasabiyah to heirs who are related by sababiyah. These two relationships give rise to three groups of heirs who are included in the

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² Ibnu Majah al-Daraquthni dan Al-Hakim, *Fiqh Sunnah*, Juz 3. Cet. 4 (Beirut, Libanon: Dar al-Fikr, 1973), h 425

division of inheritance. These three groups are the *zawil faraidh* group³ the *zawil ashabah* group⁴ and the *zawil arham* group.⁵ Of these three groups, some of them are grandchildren. Grandchildren are the children of a Grandfather and Grandmother. However, in its development, grandchildren as heirs are often ignored in the distribution of inheritance, if their father has died before their grandfather. This is because in the inheritance provisions, grandchildren inherit as heirs who are veiled by their children (father's siblings), especially if the grandchildren are in the *zawil arham* group. Therefore, grandchildren have no right to inherit property from their grandfather.

In response to the above problems, Islamic law as positive law in Indonesia has undergone several changes regarding Islamic law. Among them is the implementation of the Compilation of Islamic Law as material law within the Religious Courts. The Compilation of Islamic Law was enforced through the Instruction of the President of the Republic of Indonesia Number 1 of 1991 dated 10 June 1991, and the Decree of the Minister of Religion of the Republic of Indonesia No. 154 of 1991, July 22 1991. One of the concepts of reforming Islamic inheritance law in the Compilation of Islamic Law is the granting of the rights of heirs who have

³ The heirs of *dzul fara'idh* are the heirs whose share has been determined by the Sharia'. Amin Husein Nasution, *Hukum Kewarisan Suatu Analisis Komparatif Pemikiran Muftahid Dan Kopilasi Hukum Islam* (Jakarta: Rajawali Pers, 2014), h 103

⁴ *Ashabah* in Arabic means a male child from a relative on the father's side. Scholars have agreed that they are entitled to inherit. As for the heirs who have a position as Companions, the provisions that have been explained in advance (*dzawil farudh*) do not apply to them. If a person dies and has no heirs who inherit a certain share (*dzawil farudh*), then the inheritance is all handed over to the companions. However, if one of the heirs gets a certain share, then the rest becomes the share of the Companions. The heirs of these companions are divided into three parts, namely: private companions, *bi ghairi* companions and *ma'al ghairi* companions.. Mardani, *Hukum Kewarisan Islam Di Indonesia*, (Jakarta: PT RajaGrafindo, 2014), h 38

⁵ *Dzul arham* is a person who actually has a blood relationship with the heir, but because the provisions of the text do not give a share, then they are not entitled to receive a share.. Mardani, 41

died to their living descendants. These rules are stated in article 185 of the Compilation of Islamic Law (KHI) which reads⁶

a. Heirs who die before the heir can be replaced by their children except those mentioned in article 173.⁷

b. The share of the replacement heir may not exceed the share of the heir who is equal to the one being replaced.

Referring to the description above, a research was conducted by Fauzi Shaleh regarding the broken titi which applies in Acehese customary inheritance law. In an interview it was explained that grandchildren are prohibited from inheriting by the surviving sons and daughters of the deceased. However, to pursue the rights of justice and honor, inheritance rights can be given to grandchildren from the *tirkah* (heir's inheritance) which in Acehese terms is called *raheung* rights (the right to witness inheritance) and this portion is not referred to as inheritance but is called a grant or gift.⁸

The concept of substitute heirs is a reference in settling inheritance in Indonesia, especially the inheritance of grandchildren. This concept of substitute heirs is strongly suspected to be an adoption of the thoughts of one of the Islamic law experts in Indonesia, namely Hazairin. In his work "Bilateral Inheritance Law according to the Al-Qur'an and Hadith" Hazairin proposed a concept regarding the inheritance of grandchildren, known as substitute heirs.

⁶ Tim Redaksi Fokus Media, *KHI*, (Bandung: Fokusmedia, 2005), h. 60.

⁷ Article 173 reads: a person is prevented from becoming an heir if, by a judge's decision that has permanent legal force, he is punished for: a) being blamed for killing or attempting to kill or severely persecuting the heir. B) is accused of slanderously having filed a complaint that the heir committed a crime that is punishable by 5 years in prison or a heavier punishment..

⁸ Fauzi Fauzi, 'The Concept of Patah Titi: The Problem of Inheritance and Its Solution in Aceh Tengah', *Studia Islamika*, 26.1 (2019), doi:10.15408/sdi.v26i1.6529.

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Referring to the problem above, a replacement heir is something that is not found in the Koran. However, in current developments, replacement heirs are part of the heirs who can inherit. Therefore, the problem of substitute heirs is a concept that requires in-depth study, with a focus on studying the concept of substitute heirs from the perspective of the Koran.

In studying this problem, the author uses the library research method with a descriptive analytical approach. This research was conducted by reviewing library literature as written source material. Data collection techniques carry out a review of references that are relevant and related to the problem being studied. Then, these references are grouped into primary materials, secondary materials and tertiary materials. The primary material is Hazairin's work related to Waris. Then, these materials require explanations in the form of the Koran, interpretations, theories and thoughts of experts which are called secondary materials. Meanwhile, the broadcast materials are in the form of dictionaries and encyclopedias and so on.⁹ This study aims to realize the concept of substitute heirs from the perspective of the Qur'an.

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B. Concept of Substitute Heirs

a. Definition of substitute heir

Substitute heirs are heirs who initially did not receive inheritance rights from the testator. However, he then received inheritance rights because he replaced the rights of his parents who had died first. The term substitute heir simply consists of waris (وارث) and substitute (الواكلة). The word warasa (وارث) is the first inheritance word used in the Qur'an.

In the Qur'an, the word inheritance is found with several forms of meaning, including changing position, in Surah an-Naml verse 16, namely *وَوَارِثَ سُلَيْمَانَ دَاوُدَ*¹⁰

⁹ Soerjono Soekanto dan Sri Mamudji, *Penelitian Hukum Normatif: Suatu Tinjauan Singkat* (Jakarta: Rajawali, 1985), h 14-15

¹⁰ Ahmad Rofiq, *Hukum Islam Di Indonesia*, Cet. 4, (Jakarta: PT Raja Grafindo, 2000) , h 355

(and Solomon inherited David), gave or bestowed him, in Surah Az-Zumar verse 74, namely وقالوا الحمد لله الذي صدقنا وعده وأورثنا الأرض ننبؤاً من الجنة حيث نشاء فنعم أجر العاملين (And they said "all Praise be to Allah who has fulfilled His promise to us and has (given) us this place while we are (allowed) to occupy a place in heaven wherever we wish). Meanwhile, the meaning of inheriting or receiving an inheritance can be found in Surah al-Maryam verse 6 is (يرثني ويرث من آل يعقوب واجعله رب رضياً) (who will inherit me and inherit part of Jacob's family; and make him, O my Lord, a blessed person) apart from that, it is also found in a hadith of the Prophet, namely العلماء ورثة الانبياء¹¹

In Indonesian legal literature, this term is often used as a law that explains the transfer of assets of someone who has died to someone who is still alive. In the Compilation of Islamic Law, article 171 letter a, it is stated that Islamic inheritance law is the law that regulates the transfer of ownership rights to inherited property (tirkah), heirs, determining who has the right to be an heir and how much each person will share.¹²

In Islamic inheritance law, a person can have the right to inherit if there are 3 things, namely

1. Kinship or hereditary relationships, such as parents, children and grandchildren, brothers and so on.
2. Marriage is the occurrence of a sharia marriage contract between a man and a woman.
3. Al-wala, namely kinship due to legal reasons.

Apart from the existence of reasons for inheriting, there are also conditions for being able to inherit, namely the death of a person, both in essence and legally,

¹¹ Imam Jalaluddin 'Abdurrahman bin Abi Bakar bin Muhammad bin Sabiquddin al-Suyuti, *Al-Jami'u Al-Saghir Min Hadits Al-Basyir Al-Nazir*, Juz 2, (Beirut: Dar Al-Kutub, 1994) h. 11.

¹² Cik Hasan Bisri, *Kompilasi Hukum Islam Dan Peradilan Agama Dalam Sistem Hukum Nasional* (Logos, 1999), hal 45. Lihat juga. Dwi Putra Jaya, *Hukum Kewarisan Di Indonesia*, (Kota Bengkulu: Zara Abadi, 2020), h. 2.

the existence of living heirs when the testator dies, and all heirs knowing the exact line of kinship between the testator and the heirs. Of course, these requirements do not necessarily translate into inheritance rights. This will also affect the attitude of the heirs. The heir's rights will be effective if the heir does not have one of the things that could invalidate his inheritance rights, namely: someone who has the status of a slave, a murderer, and is of a different religion or an apostate.

Meanwhile, the word substitute (الواكلة) is simply interpreted as replacing something. This means that when something does not exist, it is replaced by something that exists. In inheritance law, the term replacement is not found in Islamic inheritance. However, this substitute can be found in customary and civil law. Thus, the meaning of the term substitute in inheritance is someone who can appear to replace an heir who has died before the distribution of inheritance. In Hazairin's view, the term successor is interpreted as mawali, meaning people who become heirs because there is no longer any connection between them and the heir.¹³ Mawali or substitute heir means the person who should have received the inheritance if he was still alive, but he died before the testator. In this case, the inheritance rights are replaced by the descendants.

In Dutch, the term replacement heir is called plaatsvervulling. A substitute in inheritance law is called a substitute heir. Change of heir is defined as someone appearing as a replacement for their parents as heir. In conventional Fiqh law, this system of changing heirs is not known. However, this system appears in discussions of inheritance law in the Civil Code.

The replacement heir system is a new breakthrough to protect the deceased grandchildren of the deceased person whose parents have died, according to this

¹³ Hazairin, *Hukum Kewarisan Bilateral Menurut Qur'an Dan Hadits*, Cet. 5 (Tintamas, 1982), h 33. In Arabic, the term mawali is the singular form of al-mawla (المولى) (which is the plural form of al mawali (الموالي) which means al-maliku wa as-sayyidu (الملك والسيد) (meaning king or master, neighbor friend, sons) and so on. Louis Ma'luf, *Al-Munjid Fi Al-Luqati Wa Al'alam Al-Maktabah Al-Syarkiyah* (Beirut, Lebanon: 1986), h 916.

rule, the grandchildren can inherit. In Islamic countries, protection for grandchildren is carried out by providing a mandatory will for the grandchildren. This law is updated by implementing mandatory wills for grandchildren whose parents have died. The first mandatory will was implemented by Egyptian inheritance law in 1946. Later, this was followed by other countries such as Morocco, Syria and Tunisia. After Kuwait implemented this law, Algeria, Iraq and Jordan also did the same.

In the Civil Code, changing heirs is done by positioning the replacement heir to be the same as the person being replaced in accordance with the provisions of articles 841-848 of the Civil Code. Change of heirs is one of two forms of inheritance based on law. Another form is the direct acquisition of heirs *Uit Eigen Hoofde*, namely based on article 852 paragraph 2 of the Civil Code which states that; "They inherit head by head, if with the deceased they are related in the first degree and each has rights except for themselves..."¹⁴

Thus, what is meant by substitute heir is a substitute in the distribution of inheritance. If the heir dies before the heir, then the inheritance can be received by the children of the deceased heir¹⁵ In other words, replacement heirs are heirs who initially did not have the right to inherit. Because he replaced the rights of his parents who had died, he was able to inherit.

Raihan A. Rasyid gives two meanings related to changing heirs, namely replacement heirs and substitute heirs. According to Raihan A. Rasyid,¹⁶ A successor heir is a person who was not an heir from the beginning, but due to certain circumstances, he became an heir and received his inheritance in the status of an heir. For example, an heir dies and leaves a grandson and a granddaughter from the

¹⁴ Muhammad Norchalis, 'Konsep Keadilan Dalam Hukum Waris Menurut Zahirin, Tahun 2017, h. 87', *Dalam Journal Istimbath.*, Vol XII no (2017), p. 87.

¹⁵ Yan Pramadya Puspa, *Kamus Hukum Edisi Lengkap Bahasa Belanda-Indonesia-Inggris* (CV Aneka Ilmu, 1997), h 320.

¹⁶ A. Rasyid, Raihan dkk, *Kompilasi Hukum Islam Dalam Sistem Hukum Nasional* (Jakarta: Logos Wacana Ilmu, 1999), h. 81.

son. These grandchildren act as heirs. This case is called a successor heir. Meanwhile, the successor of the heir is a person from the beginning who was not an heir but due to certain circumstances and certain considerations he received the inheritance. However, it remains in non-heir status. For example, an heir dies and leaves a child with a grandchild whose parents died before their grandfather. The grandchild's position here is as a successor to the heir.

In the Compilation of Islamic Law, the previous heirs have become living law in the life of the community. This is based on the policy of the Dutch East Indies government, including Christian Snouk Hurgronje. The Dutch tried to unite the Indonesian nation both by association and assimilation. Both of them aim so that the Indonesian nation can unite with the Netherlands, especially in the unification of law. Snouk repeatedly said that the foundation of the Dutch kingdom was strengthened by the association of Indonesians with Dutch culture.¹⁷

The concept of substitute heirs developed by the Dutch East Indies government in Indonesia is strongly suspected to have originated from Dutch law and gradually became customary law in the lives of Indonesian society. This is evident from research by Ter Haar BZn and Soepomo that in West Java customary law of inheritance the term replacement heir is known as "change of position".¹⁸

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¹⁷ Aqib Suminto, *Politik Islam Hindia Belanda* (Jakarta: Pustaka LP3ES Indonesia, 1985), h. 39.

¹⁸ R. Otje Salman S. Mustafa Haffas, *Kesadaran Hukum Masyarakat Terhadap Hukum Waris*, Cet. 2 (Bandung: Alumni, 2007), h. 61, dan Eman Suparman, *Hukum Waris Indonesia*, Cet. 2, (Bandung: PT Refika, 2007), h. 64.

¹⁹ R. Subekti, *Pokok-Pokok Hukum Perdata* (Jakarta: Intermasa, 1995), h. 100-101.

According to the Civil Code / BW, a person becomes an heir due to the existence of a marriage and blood relationship, whether legal or illegal. This is regulated in article 832 paragraph 1 Burgerlijk Wetboek. People who are closely related by blood are entitled to receive inheritance rights.

In inheritance law, the principle also applies that if a person dies, at that moment all his rights and obligations are transferred to his heirs, as regulated in article 833 Burgerlijk Wetboek. This means that the family member who dies replaces the position of the heir in the field of wealth law because of the death of the testator. The heir occupies the position of the deceased in matters involving the assets of "Saisine" article 833 (1) Burgerlijk Wetboek.²⁰

In Hazairin's view, successor heirs in the perspective of the Koran have been arranged in such a way that there are three pillars of inheritance, namely al-mawarris, al-Waris, and al-Maurus.²¹ Hazairin explained, according to the main line of succession as applied in Indonesia, what is meant by heir is every person in a group of priorities provided that between him and the heir there is no link or there is no longer a link that is still alive, namely the link that no longer exists. In the individual system, the heir must die before the distribution of assets and in the collective system the heir must die before the inheritance.²²

b. Legal Basis for Substitute Heirs.

In Islamic inheritance law, the source of law can be seen from two sources, namely the source of sharia and the source of fiqh. The sources of sharia consist of the Al-Qur'an and hadith and the sources of fiqh consist of ijma' and ijtihad. In this study, the source presented is the Koran. In the Al-Qur'an, inheritance issues are

²⁰ Effendi Perangin, *Hukum Waris* (Jakarta: RajaGrafindo Persada, 2018) h 8.

²¹ Zulfan Efendi Hasibuan, 'Menelaah Hukum Ahli Waris Dalam Ilmu Fara'id', *Dalam Jurnal Al-Maqashid*, Vol. 4. No (2018), p. 50.

²² Habiburrahman, *Rekonstruksi Hukum Kewarisan Islam Di Indonesia* (Jakarta: Kencana, 2011), h. 138.

explained a lot in Surah An-Nisa' starting from verses 7, 8, 9, 10, 11, 12, 13, 14, 33, 176, and Surah al-Anfal verse 75. Verses- These verses are interrelated, interrelated or complementary, so that from the interrelationship of these verses, a law can be created that can be used as a guide in community life, such as the law of successor heirs in Islamic heritage.

In Hazairin's view, the Islamic inheritance system is a "bilateral individual system". The Al-Qur'an mentions in Surah An-Nisa' verses 7, 8, 11, 12, 33 and 176. This is a characteristic or specification of the Islamic inheritance law system according to the Al-Qur'an. In the bilateral teachings put forward by Hazairin, it is known that there are three groups of heirs, namely dzul fara'id heirs, dzul qarabah²³ heirs and mawali heirs.²⁴

This mawali group replaced the position of their father who died earlier than the heir. The legal basis used for the inheritance of substitute heirs is Surah An-Nisa' verse 33.

a. An-Nisa' : 7.

لِّلرِّجَالِ نَصِيبٌ مِّمَّا تَرَكَ الْوَالِدَانِ وَالْأَقْرَبُونَ وَلِلنِّسَاءِ نَصِيبٌ مِّمَّا تَرَكَ الْوَالِدَانِ وَالْأَقْرَبُونَ مِمَّا قَلَّ مِنْهُ أَوْ كَثُرَ نَصِيبًا مَّفْرُوضًا

Meaning: For men there is a right to share in the inheritance of their mother and father and close relatives, and for women there is a right to share (also) in the inheritance of their mother and father and their relatives, whether a little or a lot according to the portion that has been determined.

²³ Dzul karabah is an heir who gets an unspecified amount of inheritance or is also called acquiring an open portion or residual portion, or is also called ashabah. Sayuti Thalib, *Hukum Kewarisan Islam Di Indonesia* (Jakarta: Sinar Grafika, 2016), h 101.

²⁴ Mawali is a substitute heir, that is, an heir who replaces another heir to obtain the part of the inheritance that the person being replaced would have previously obtained. Thalib. h 102.

b. Surat An-Nisa' : 8.

وَإِذَا حَضَرَ الْقِسْمَةُ أُولُو الْقُرْبَىٰ وَالْيَتَامَىٰ وَالْمَسْكِينُ فَأَرْزُقُوهُمْ مِنْهُ وَقُولُوا لَهُمْ قَوْلًا مَعْرُوفًا

Meaning: And if during the distribution there are relatives, orphans and poor people present, then give them (just enough) of the property and say good words to them.

c. Surat An-Nisa' : 11.

يُوصِيكُمُ اللَّهُ فِي أَوْلَادِكُمْ لِلذَّكَرِ مِثْلُ حَظِّ الْأُنثَيَيْنِ فَإِنْ كُنَّ نِسَاءً فَوْقَ اثْنَتَيْنِ فَلَهُنَّ ثُلُثَا مَا تَرَكَ وَإِنْ كَانَتْ وَاحِدَةً فَلَهَا النِّصْفُ وَلِأَبَوَيْهِ لِكُلِّ وَاحِدٍ مِّنْهُمَا السُّدُسُ مِمَّا تَرَكَ إِنْ كَانَ لَهُ وَلَدٌ فَإِنْ لَمْ يَكُنْ لَهُ وَلَدٌ وَوَرِثَتْهُ أَبَوُهُ فَلِلثَّلَتَيْنِ ثُلُثُ مِمَّا تَرَكَ إِنْ كَانَ لَهُ إِخْوَةٌ فَلِلْأُمِّهِ السُّدُسُ مِنْ بَعْدِ وَصِيَّةٍ يُوصِي بِهَا أَوْ دَيْنٍ لِأَبَائِكُمْ وَلِأُمَّاتِكُمْ لَا تَدْرُونَ أَيُّهُمْ أَقْرَبُ لَكُمْ نَفْعًا فَرِيضَةٌ مِنَ اللَّهِ إِنْ الْإِلَهُ كَانَ عَلِيمًا حَكِيمًا

Meaning: Allah has prescribed for you regarding (distribution of inheritance to) your children, namely that the share of one son is the same as that of two daughters, and if the children are all more than two daughters, then for them two-thirds of the property left behind, if there is only one daughter, then she gets half the property. And for two parents, they each share one-sixth of the property left behind if the deceased has children, if the deceased does not leave any children and he is inherited by his parents, then the mother gets one-third, if the deceased has several siblings, So his mother got one-sixth, (the divisions) above after fulfilling the will she made and after paying her debts. Regarding your parents and your children, you do

not know which of them is closer (of many benefits to you). This is a decree from Allah. Indeed, Allah is All-Knowing and All-Wise.

d. Surah An-Nisa': 12.

وَلَكُمْ نِصْفُ مَا تَرَكَ أَزْوَاجُكُمْ إِنْ لَمْ يَكُنْ لَهُنَّ وَلَدٌ فَإِنْ كَانَ لَهُنَّ وَلَدٌ فَلَكُمْ الرُّبْعُ
مِمَّا تَرَكَنَّ مِنْ بَعْدِ وَصِيَّةٍ يُوَصِّينَ بِهَا أَوْ دَيْنٍ وَلَهُنَّ الرُّبْعُ مِمَّا تَرَكَتُمْ إِنْ لَمْ يَكُنْ لَكُمْ وَلَدٌ
فَإِنْ كَانَ لَكُمْ وَلَدٌ فَلَهُنَّ الثُّمُنُ مِمَّا تَرَكَتُمْ مِنْ بَعْدِ وَصِيَّةٍ تُوَصُّونَ بِهَا أَوْ دَيْنٍ وَإِنْ كَانَ
رَجُلٌ يُورِثُ كَلَّةً أَوْ امْرَأَةً وَلَهُ أَخٌ أَوْ أُخْتُ فَلِكُلِّ وَاحِدٍ مِّنْهُمَا السُّدُسُ فَإِنْ كَانُوا
أَكْثَرَ مِنْ ذَلِكَ فَهُمْ شُرَكَاءُ فِي الثُّلُثِ مِنْ بَعْدِ وَصِيَّةٍ يُوصَى بِهَا أَوْ دَيْنٍ غَيْرَ مُضَارٍّ وَصِيَّةً
مِّنَ اللَّهِ وَاللَّهُ عَلِيمٌ حَلِيمٌ

Meaning: And for you (husbands) half of the property left by your wives, if they leave no children. If your wives have children, then you get a quarter of the assets they leave after fulfilling the will they made or (and) paying their debts. Wives get a quarter of the property you leave if you don't have children. If you have children, your wives will receive one-eighth of the property you left behind, after fulfilling the will you made or (and) after paying your debts. If a person dies, whether male or female, who does not leave behind a father and does not leave children but leaves behind a brother (only one mother) or one sister (one mother only), then to each of the siblings one sixth of the property, but if there is more than one sibling, then they are in partnership in that third, after fulfilling the will that has been made or (and) after paying the debt and not giving harm (to the heirs) (Allah has established this as) the true Shari'a. Correct from Allah, and Allah is All-Knowing, Most Forgiving.

e. Surah An-Nisa' : 33.

وَلِكُلِّ جَعَلْنَا مَوَالِي مِمَّا تَرَكَ الْوَالِدَانِ وَالْأَقْرَبُونَ ۚ وَالَّذِينَ عَقَدَتْ
أَيْمَانُكُمْ فَأَوْتَاهُمْ نَصِيْبَهُمْ ۚ إِنَّ اللَّهَ كَانَ عَلَىٰ كُلِّ شَيْءٍ شَهِيدًا ﴿٣٣﴾

Meaning: For each of us we make a mawali for what is left behind by their parents and close relatives, and if there are people who have sworn allegiance to them, then give them their share. Indeed, Allah witnesses everything.

f. Surat An-Nisa' :176

يَسْتَفْتُونَكَ قُلِ اللَّهُ يُفْتِيكُمْ فِي الْكَلَالَةِ ۚ إِنِ امْرُؤٌ هَلَكَ لَيْسَ لَهُ وَلَدٌ وَلَهُ أُخْتٌ فَلَهَا نِصْفُ مَا تَرَكَ ۚ وَهُوَ يَرِثُهَا إِن لَّمْ يَكُن لَهَا وَلَدٌ ۚ فَإِن كَانَتَا اثْنَتَيْنِ فَلَهُمَا الشُّلْثُ مِمَّا تَرَكَ ۚ وَإِن كَانُوا إِخْوَةً رِّجَالًا وَنِسَاءً فَلِلَّذَكَرِ مِثْلُ حِظِّ الْأُنثَيَيْنِ ۚ يُبَيِّنُ اللَّهُ لَكُمْ أَن تَضِلُّوا ۚ وَاللَّهُ بِكُلِّ شَيْءٍ عَلِيمٌ ﴿١٧٦﴾

Meaning: They ask you for a fatwa (regarding kalalah): Allah gives you a fatwa regarding kalalah, namely that if a person dies and he has no children and he has a sister, then for the female sibling half of the property he left behind and the male sibling inherits (sister's entire estate), if she has no children. But if there are two sisters, then divide both two-thirds of the property left behind. And if they (the heirs consist of) brothers and sisters then one man's share is as much as the share of two sisters. Allah explains (the law) to you so that you do not go astray. And Allah is All-Knowing of everything.

c. Substitute heirs from the perspective of the Qur'an and the views of Tafsir scholars

Commented [A6]:

Commented [A7R6]: You need to explain what these verses have to do with your research, not just list the verses.

Tracing the verses of the Qur'an mentioned above, there are 25 people who can become heirs, consisting of 10 women and 15 men. All of these heirs are a result of the existence of nasabiyah and sababiyah relationships.²⁵ The class of heirs from nasabiyah relations are heirs who are blood related to the testator. This relationship can be differentiated into three types, namely a straight line downwards (*furu' al-manyit*) such as children, grandchildren, a straight line upwards (*ushul al-manyit*) such as fathers, grandfathers, and a straight line sideways (*al-hawasyi*) such as brothers, uncles, , and its derivative children.²⁶ A sababiyah relationship is an inheritance that occurs because of a marriage relationship. This relationship means that husband and wife can inherit property from both of them. Apart from that, there is also a service relationship (freeing slaves). However, in the current context, this relationship no longer exists as in the time of the Prophet SAW, so this right is no longer enforced.

Regarding nasabiyah relationships, the straight line down is children and grandchildren. Children in the Qur'an are called *al-walad* (الولد) which means children are general, that is, they apply to both men and women. Meanwhile, for special meaning, men use the word *ibn* and women use the word *bint*. The word *al-walad* (الولد) is found in the Qur'an 33 times and 23 times in the plural form, namely *awlad*. In the inheritance verses, the word *al-walad* (الولد) is mentioned eight times and once with *awlad*.²⁷

²⁵ Ahmad Rofiq, *Hukum Perdata Islam Di Indonesia, Edisi Revisi*, (Jakarta: Rajawali Pers, 2015), h 303.

²⁶ Nasution. h 72

²⁷ Amir Syarifuddin, *Hukum Kewarisan Islam*, Edisi Kedu (Jakarta: Kencana Prenada Media Group, 2004),h 58. 4

In Surah al-Nisa' verses 11 and 12 the mention of the word al-walad (الولد), the scholars agree on the meaning of child which applies to boys and girls.²⁸ However, the word al-walad (الولد) contained in Surah Al-Nisa' verse 176, the scholars do not agree on the meaning of boys and girls. According to him, the word al-walad (الولد) in this verse relates to the requirements for an heir to become a kalalah.

Meanwhile, grandchildren are not specifically mentioned in the Koran. The term grandson emerged through an understanding of the expansion of the word al-walad (الولد) which in Nasabiyah relations is second in line after children in furu' al-manyit relations. Thus, it is not surprising that the distribution of inheritance among grandchildren is often ignored, especially towards grandchildren whose parents have died before their grandfather as heir. This is because in Islamic inheritance law the conditions for being able to receive inheritance from an heir are being alive when the testator dies, not being veiled by the closest heir, and legally there are no obstacles.²⁹ between heir and heir. Referring to these provisions, children and

²⁸ The children who are entitled to receive inheritance from simanyit consist of sons and daughters with the provision that sons get two shares and daughters get one share. The basis of the provision is explained in Surat Al-Nisa' verse 7 and also 11. Muhammad Thaha Abul Ela Khalifah, *Hukum Waris Pembagian Warisan Berdasarkan Syari'at Islam* No Title (Solo: Tiga Serangkai, 2017), h 57-94

²⁹ As for the reasons why he is prevented from receiving inheritance, it is reviewed in terms of his nature, which is called the term mammu', which consists of three qualities, namely murderer, different religion and sahaya servant (slave). Killing is a reprehensible behavior that is not allowed in religion. Doing what is forbidden by religion means breaking God's order. In Islamic inheritance law, committing murder results in the heirs being prevented from inheriting. This is based on a hadith narrated by Abu Daud. عن أبي هريرة عن النبي صلى الله عليه وسلم قال: القاتل لا يرث (From Abu Hurairah from the Prophet Muhammad SAW said: a murderer cannot inherit. Religious differences. One of the conditions for mutual inheritance is Islam. A person cannot inherit if he is not of the same religion (In a hadith it is explained that bin Zaid رضي الله عنهما ان النبي صلى الله عليه وسلم قال: لا يرث المسلم الكافر ولا الكافر المسلم (From Usamah bin Zaid (may God be pleased with him) that the Prophet Muhammad SAW said: a Muslim does not inherit a non-Muslim and a non-Muslim does not inherit a Muslim). According to Islamic jurists, slaves cannot inherit and cannot be inherited because they are considered destitute and everything a slave has is owned by his master. Therefore, if a slave inherits, the owner of the inheritance will be the master because the one who has the right to it is the master. Thus, slaves have no right to inherit even against their own family. In

grandchildren have no obstacles in receiving inheritance, but rather whether they are close to the heir or not.

On the other hand, grandchildren are the heirs who are veiled by their children (uncles). However, in the current context, in upholding the values of justice, grandchildren are given the right to inherit as a replacement for the heir who has died before the testator. This breakthrough was carried out by Hazairin based on Surah Al-Nisa' : 33.

وَلِكُلِّ جَعَلْنَا مَوَالِيَ مِمَّا تَرَكَ الْوَالِدِ وَالْأَقْرَبُونَ^ق وَالَّذِينَ عَقَدَتْ أَيْمَانُكُمْ فَآتَوْهُمْ نَصِيْبَهُمْ^ق
إِنَّ اللَّهَ كَانَ عَلَى كُلِّ شَيْءٍ شَهِيدًا^ع

Exploring this verse, the key words in tracing this verse are the words mawali and the expression wa allazina 'qadat aimanukum, while the words al walidan and al-aqrabun tend not to be discussed.

According to Ath-Thabari, this verse can be traced from two angles. For the first fragment, Ath-Thabari explains that there are two narrations related to the meaning of this verse, namely the meaning of the word al-mawali which means all

addition, there are also family influences such as patrilineal, bilateral and matrilineal. However, what often occurs in the Islamic heritage is hijab hirman and hijab nuqsan. Salihima, Syamsulbahri, *Perkembangan Pemikiran Pembagian Warisan Dalam Hukum Islam Dan Implementasinya Pada Pengadilan Agama* (Prenadamedia Grup, 2015), h.76. Lihat juga. Muhammad Ali As-Sabuni, *Hukum Waris Islam* (Depok: Fathan Prima Media, 2013). h 81. Lihat juga. Wahbah Az-Zuhaili, *Fiqh Imam Syafi'i; Mengupas Masalah Fiqhiyah Berdasarkan Al-Qur'an Dan Hadits*, Jilid 3, Terj. Muhammad Afifi, Abdul Hafiz (Jakarta: Al-Mahira, 2017). h. 109-110. Abu Bakar Jabir Al-Jaza'iri, *Minhajul Muslim Pedoman Hidup Ideal Seorang Muslim*, Terj. Andi Subarkah (Insan Kamil, 2008). h. 796-799.

heirs and secondly Ath-Thabari means ashabah. Therefore, Ath-Thabari chose the first one and then interpreted it.³⁰

ولكلكم أيها الناس جهلنا موالى يقول ورثة من بني عمه وأخوته وسائر عصبية يرثون به مما ترك والداه وأقربائه (For each person we make (make) a mawaliya, namely the (male) son of his uncle, brothers and other 'ashabah. Who will inherit the property left by their parents and relatives). In this case, Ath-Thabari in interpreting the verse did not elaborate on the lafaz al-walidan and al-aqrabun.

والذين عقدت dan ولكل جعلنا موالى مما ترك الوالدان والأقربون
أيما نكم فأتوهم نصيبهم

According to Ath-Thabari, there are some who think that the second verse has been narrated, then Ath-Thabari interprets it as "give to the people whose work you did in the era of ignorance their rights in the form of advice, views and other ordinary help."³¹

Al-Jassas also expressed his views by breaking down the verse into two parts, namely the first part is explained in the title Chapter al-'Asabah while the second part is explained in the Wala' al-muwala chapter, which regulates inheritance between a Muslim who converts another person to Islam, then the second they form a kind of brotherhood to help each other and bind each other. This bond is called al-mawali al-mu'aqidain. Therefore, both parties will inherit each other if the heirs of dzawil furud, dzawil 'asabah and dzawil arham do not exist.³²

According to Hazairin, the lafazh al-walidani wa al-aqrabun is the fi'il of the lafaz taraka. Meanwhile, lafaz mawaliya is maf'ul for ja'alna.³³ Thus, Hazairin interprets the verse that "for each person, Allah has made a mawali for the

³⁰ Ath-Thabathaba'I, *Al-Mizan Fi Tafsiril Qur'an*, Jilid 5, ((Beirut: Mu'asasatul A'lami), h 33

³¹ Ath-Thabathaba'I. h 36

³² Al-Jassas, *Ahkamul Qur'an*, Jilid 2, (Beirut: Dar al-Kitab al-'Arabi, t.th). h 183-186

³³ Hazairin. h. 49. ,

inheritance of his parents and close family, and if there are people who have sworn allegiance to them, then give them their share, verily Allah witnesses everything, something".

Based on this verse, according to Hazairin, there are three important elements that must be explained, namely mawali, aqrabun and walidani. The words walidan and aqrabun are interpreted as heirs. However, this word is a family term. The word is interpreted as relationship. Relationships are always mutual, so the words walidan and aqrabun can become heirs. The word walidan is used for his children and the word aqrabun is used for his relatives.³⁴

From the explanation above, it is clear that Hazairin interprets the word mawali in the verse as a substitute heir. Apart from that, the word substitute mewaris is also found in the interpretation of Ibn Abbas who interprets the word mawali as substitute mewaris or the person who replaces the heir.³⁵

Meanwhile, several other scholars such as Ibnu Katsir,³⁶ Quraish Shihab,³⁷ al-Maraghi,³⁸ Sayyid Quttub,³⁹ interpret the word mawali as heir or person who

³⁴ Hazairin. h. 27.

³⁵ Ibnu Abbas, *Tafsir Tanwirul Miqbas*, (Beirut: Dar al-Fikr). h. 69.

³⁶ Kata mawali dalam tafsir Ibnu Katsir ditafsirkan dengan pewaris atau para ahli waris, atau seperti disebutkan oleh Ibnu Jarir bahwa kata mawali adalah anak paman (saudara sepupu) dengan sebutan mawla seperti dikatakan oleh al-Fual Ibnu Abbas dalam salah satu baik syairnya yaitu مولا بني عمنا مهلا موالينا لا يظهرن بيننا ما كان مدفونا (Tunggulah hai anak-anak paman kami, mawali kami, jangan sekali-kali tampak diantara kita hal-hal yang sejak lalu terpendam). Ibnu Katsir, *Tafsir Al-'Adhim*, Juz 5, Terj. Bahrin Abu Bakar, (Bandung: Sinar Baru Algensindo, 2006), h. 89-90.,

³⁷ Quraish shihab, *Tafsir Al-Misbah*, Vol 2, Cet. VIII, (Jakarta: Lentera Hati, 2002) h. 421.

³⁸ Ahmad Mustafa Al-Maraghi, *Tafsir Al-Maraghi*, Terj. Bahrin Abu Bakar Dan Hery Noer Ali, Jilid V (Semarang: CV Toha Putra, 1993)., h. 39.

³⁹ Sayyid Quthub, *Tafsir Fi Zhilalil Qu'an*, Jilid 2, (Beirut: Dar al-Syuruq, 1988). h. 647.

inherits. According to Hazairin,⁴⁰ actually using the term substitute heir for the word mawali is actually not very appropriate. However, this term is also found in customary law. Therefore, Hazairin also interpreted the word mawali as a substitute heir. The meaning of the word mawali as substitute heir is Hazairin's own ijtihad. Nevertheless, Habiburrahman and Hajar M are of the view that the concept of substitute heirs is an adoption of customary law originating from the BW Civil Law.

The understanding above is very different from the understanding of the majority of faraid scholars who are of the opinion that the term mawali contained in Surah An-Nisa' verse 33 means heir. According to the majority of scholars, the heirs are the people who are still alive when the testator dies.⁴¹ If when the heir dies there are no particular heirs or it can be said to have died first, then his right to inherit is terminated.

This condition becomes a problem for the descendants of heirs who have died beforehand regarding their welfare. This is because apart from the offspring (grandchildren) having lost their parents, they are also cut off from having the right to inherit the property left by their grandfather/grandmother. Thus, in line with Hazairin's thoughts above and the development of thinking among Indonesian Muslims, a replacement heir is a necessity in inheritance law. The presence of substitute heirs in Islamic inheritance law is a solution to the transfer of inheritance which is carried out in a just and beneficial manner, whether related to the existence of grandchildren or others who are classified as *zawil arham* in Islamic inheritance.

Based on the explanation above, it is a necessity in Islamic inheritance law to provide replacement heirs, especially grandchildren whose parents have died before their grandfather is the heir. This is a big struggle for KHI⁴² in formulating a law that

⁴⁰ Abdul. Ghafur, *Filsafat Hukum Kewarisan Islam Konsep Kewarisan Bilateral Hazairin*, (Yogyakarta: UII Press Yogyakarta). h. 79.

⁴¹ Al-Jaza'iri. h. 788

⁴² The KHI formulation method according to Yahya Harahab can be seen from several approaches, namely the Al-Qur'an and Hadith approach, prioritizing current

is not found in the Al-Qur'an and also hadith. However, the Qur'an is universal and applies throughout time. He does not forget a single law in regulating all aspects of human life. These inheritance verses are interrelated and mutually beneficial, as in Surah Annisa verse 7 explains that for men and women there is a share from their parents and relatives. This verse indicates that there is no difference between men and women in receiving inheritance rights. In verse 8 it is also explained that if there are orphans and relatives in the distribution of inheritance, then give them a little wealth. This also signifies in a meaningful way that there is a recommendation to give up some assets to those who are not included in the provisions of dzawil faraid and dzawil 'asabah. These provisions are contained in the KHI and are an embodiment of upholding the values of justice and maqashid sharia in terms of protecting religion, souls, descendants, minds and property.

[This is where there is a difference between the Compilation of Islamic Law and classical inheritance law, where the KHI protects the benefit of the family and does not impose the hijab on grandchildren whose fathers have died. Meanwhile, in classical inheritance, the inheritance system is patrilineal by drawing a line next to the male, and the heirs who can receive inheritance are only those contained in the dzawil faraid and 'asabah.]

C. Conclusion

Substitute heirs are heirs who exist because they replace other people who have passed away. In the Qur'an, the term successor heir is not found in pronunciation. However, meaningfully, successor heirs have been arranged in such a way in the inheritance verses. The most focused verse as an argument for successor heirs is Surat An-Nisa verse 33, based on the ijtihaad of Hazairin in explaining the word mawali, i.e. successor heirs. The result of Hazairin's ijtihaad is an effort to create

solutions, Unity and Variety, and a compromise approach with Customary law. Harahab, Yahya, *Dalam Kompilasi Hukum Islam Dalam Sistem Hukum Nasional*, (Jakarta: Logos Wacana Ilmu, 1999). h. 39.

Commented [A8]: What is the contribution from your research?

values of justice in the distribution of inheritance to heirs. Creating the values of justice in the law of inheritance as a manifestation of maqashid. By giving rights to heirs who replace deceased heirs, harmony and honor can be maintained between heirs and conflict can be avoided in the family.

Thus, an inevitability in a life to be able to do things that bring good including in the division of inheritance to pay attention to orphans and relatives.

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ABSTRACT

 This study will explain the concept of substitute heirs in the Al-Qur'an. As a source of Islamic law, the Qur'an regulates all aspects of people's lives without forgetting a single law. In Islamic inheritance law, there are heirs who receive inherited property from the heir. These heirs are the result of the nasabiyah and sababiyah relationship. From these two relationships, the *zawil faraidh*, *zawil ashabah* and *zawil arham* groups were born. Grandchildren are one of the *zawil arham* groups whose position is legally hijab with the position of children. Substitute heirs is a concept developed through the compilation of Islamic law. In the Al-Qur'an specifically there is no discussion related to the concept of substitute heirs. However, this concept can be found in the existence of munasabah between verses of the Koran. Apart from that, Hazairin introduced a replacement heir by interpreting the word *mawali* in Surah al-Nisa' verse 33 as a replacement heir. This is an effort to uphold the values of justice in the distribution of inheritance to heirs.

Key words: *Substitute heirs, Islamic inheritance and the Al-Qur'an*

Kajian ini akan menjelaskan mengenai konsep ahli waris pengganti dalam Al-Qur'an. Sebagai sumber hukum ajaran Islam, Al-Qur'an mengatur seluruh sendi kehidupan umat tanpa mealkan satu hukum pun. Dalam kewarisan hukum Islam terdapat diantaranya ahli waris untuk menerima harta waris dari pewaris. Ahli waris tersebut sebagai akibat adanya hubungan *nasabiyah* dan *sababiyah*. Dari kedua hubungan tersebut lahirlah golongan *zawil faraidh*, *zawil ashabah* dan *zawil arham*. Cucu adalah salah satu dari golongan *zawil arham* yang secara aturan posisinya terhibat dengan posisi anak. Ahli waris pengganti merupakan sebuah konsep yang dikembangkan melalui kompilasi hukum Islam. Dalam Al-Qur'an secara khusus tidak ditemukan pembahasan terkait dengan konsep Ahli waris pengganti. Akan tetapi, konsep tersebut dapat ditemukan dengan adanya munasabah antar ayat-ayat Al-Qur'an. Selain itu, Hazairin memperkenalkan ahli waris pengganti dengan memaknai kata *mawali* dalam surat al-Nisa' ayat 33 dengan ahli waris yang menggantikan. Hal ini sebagai usaha untuk menjunjung tinggi nilai-nilai keadilan dalam pembagian harta waris kepada ahli waris.

Kata kunci: *Ahli waris pengganti, kewarisan Islam dan Al-Qur'an*

INTRODUCTION

Heirs inherit inheritance as a rule stipulated in the Koran. As a guide to life, the Qur'an is present to regulate all aspects of people's lives without exception to the law of inheritance. Inheritance law will not occur without death. Meanwhile, death is the severance of everything related to the world. Worldly relationships include having property.

In inheritance law, property is one of three elements, namely heirs and heirs.¹ These three elements are interrelated in terms of inheritance. When an heir dies, all the inherited assets owned by the heir will become the rights of the heirs.

Becoming an heir cannot be separated from certain provisions. The relationship between nasabiyah and sababiyah is a condition for becoming a member of the heirs. In this case, the heirs who will never be hindered in terms of inheritance are the father, mother, children, husband or wife. Thus, the heir with the greatest right to inheritance is the person closest to the heir.

In the Al-Qur'an the transfer of inheritance to heirs has been explained systematically, both for male heirs and female heirs. This is as stated in Surah Al-Nisa' verse 7 as follows

لِّلرِّجَالِ نَصِيبٌ مِّمَّا تَرَكَ الْوَالِدَانِ وَالْأَقْرَبُونَ وَلِلنِّسَاءِ نَصِيبٌ مِّمَّا تَرَكَ الْوَالِدَانِ وَالْأَقْرَبُونَ مِمَّا قَلَّ مِنْهُ أَوْ كَثُرَ ۚ نَصِيبًا مَّفْرُوضًا

This means: For men there is a right to share in the inheritance of their mother and father and their relatives, and for women there is a right to share in the inheritance of their mother and father and their relatives, whether a little or a lot according to the portion that has been determined.

¹ Moechtar, Oemar, *Perkembangan Hukum Waris: Praktek Penyelesaian Sengketa Kewarisan Di Indonesia*, (Jakarta: Prenadamedia Grup, 2019)., h 14-25

This verse reflects that the assets left by an heir when he dies will become the rights of male and female heirs and their relatives in accordance with their respective provisions. Therefore, transferring inheritance from an heir who has died to the heirs left behind is not an easy thing. However, carrying out the transfer of inheritance often invites conflict between fellow heirs. In fact, the main aim of inheritance law is to maintain the benefits and order of harmony and peace within the family.

In the Qur'an, the division of inheritance is explained in detail, starting from heirs whose relationship is nasabiyah to heirs whose relationship is sababiyah. These two relationships give birth to three groups of heirs who are included in the division of inheritance. The three groups are the *zawil faraidh*² group, the *zawil ashabah*³ group and the *zawil arham*⁴ group. Of these three groups, some of them are grandchildren. Grandchildren are the children of a Grandfather and Grandmother.

However, in current developments, grandchildren as heirs are often ignored in the distribution of inheritance, if their father has died before their grandfather. This is because in the inheritance provisions the grandchildren inherit as heirs who are veiled by their children (father's siblings). Therefore, grandchildren have no right to inherit property from their grandfather.

Based on the phenomenon that has developed in the lives of the people so far, namely the position of grandchildren as heirs who are veiled with their children (uncles), then in national law such cases are called substitute heirs or substitute heirs.

² Amin Nasution Husein, *Hukum Kewarisan Suatu Analisis Komparatif Pemikiran Mujtahid Dan Kompilasi Hukum Islam*, (Jakarta: Rajawali Pers, 2014), h. 103

³ Ashabah in Arabic means the son of a relative on the father's side. The scholars have agreed that they have the right to inherit. As for heirs who have the position of ashabah, the provisions that have been explained previously (*dzawil farudh*) do not apply to them. If a person dies without having heirs who receive a certain share (*dzawil farudh*), then all the inheritance is handed over to the ashabah. However, if any of the heirs gets a certain share, then the rest becomes the ashabah's share. The heirs of this ashabah are divided into three parts, namely: *ashabah binafsihi*, *ashabah bi ghairihi* and *ashabah ma'al ghairi*. Mardani, *Hukum Kewarisan Islam Di Indonesia*, (Jakarta: PT RajaGrafindo, 2014), h. 38

⁴ Mardani. h, 41

The term substitute heir was introduced by Hazairin by elevating the status of grandchildren to heirs who could receive inheritance from the heir. From Hazairin's thoughts, it was revealed in an inheritance law regulated in the Compilation of Islamic Law article 185 paragraphs 1 and 2, namely

- a. Heirs who die before the testator can be replaced by their children, except for those mentioned in article 173.
- b. The share of the replacement heir may not exceed the share of the heir who is equal to the one being replaced.

Referring to the problem above, substitute heirs are something that is not found in the Koran. However, in current developments, substitute heirs are part of the heirs who can inherit. Therefore, the problem of substitute heirs is a concept that requires in-depth study, with a focus on studying the concept of substitute heirs from the perspective of the Al-Qur'an. This study aims to realize the concept of substitute heirs from the perspective of the Al-Qur'an, using analytical descriptive study methods.



CONCEPT OF SUBSTITUTE HEIRS

a. Definition of successor heir

Substitute heirs are heirs who initially did not receive inheritance rights from the testator, but then received inheritance rights because they replaced the rights of their parents who had died first. The term substitute heir simply consists of waris (ورث) and substitute (الواكلة). The words heirs are those who have the right to the inheritance left by their heirs.⁵ Thus, what is meant by substitute heirs are substitutes in the distribution of inheritance, If the heir predeceases the heir, then the inheritance can be received by

⁵ Ali; Parman, *Kewarisan Dalam Al-Qur'an: Suatu Kajian Hukum Dengan Pendekatan Tafsir Tematik* (Jakarta: Raja Grafindo Persada, 1995). h. 41

the children of the deceased heir.⁶ In other words, a replacement heir is an heir who initially did not have the right to inherit, because he replaced the rights of his parents who had died. then you can inherit.

Raihan A. Rasyid gives two meanings related to changing heirs, namely replacement heirs and substitute heirs. According to Raihan A. Rasyid,⁷ a substitute heir is a person who was not an heir in the first place, but due to certain circumstances, he became an heir and received his inheritance in the status of an heir. For example, an heir dies and leaves his son's grandson and granddaughter. This grandson acts as the heir. This case is what is called a substitute heir. Meanwhile, a substitute heir is someone who was not an heir to begin with but because of certain circumstances and certain considerations he received an inheritance. However, he remains in the status of not being an heir. For example, an heir dies and leaves his child with grandchildren whose parents died before their grandfather. The position of grandchildren here is as substitute heirs.

In Hazairin's view, the term successor is interpreted as mawali, meaning people who become heirs because there is no longer any connection between them and the heir.⁸ Mawali or substitute heir means the person who should have received the inheritance if he was still alive, but he died before the testator. In this case, the inheritance rights are replaced by the descendants.

In the Compilation of Islamic Law, successor heirs have previously become living law in people's lives. This was based on the policy of the Dutch East Indies

⁶ Yan Pramadya Puspa, *Kamus Hukum Edisi Lengkap Bahasa Belanda-Indonesia-Inggris* (CV Aneka Ilmu, 1997), h. 320

⁷ Raihan A. Rasyid, dkk, *Kompilasi Hukum Islam Dalam Sistem Hukum Nasional* (Jakarta:Logos Wacana Ilmu, 1999), h. 81

⁸ Hazairin, *Hukum Kewarisan Bilateral Menurut Qur'an Dan Hadits, Cet. 5* (Jakarta: Tintamas, 1982). h 33 Dalam bahasa Arab istilah mawali adalah bentuk mufrad dari al-mawla (المول) yaitu jamak dari al mawali (الموالي) yang artinya al-maliku wa as –sayyidu (الملك والسيد) artinya raja atau tuan, teman tetanggan, anak-anak laki-laki dan sebagainya. Louis Ma'luf, *Al-Munjid Fi Al-Luqati Wa Al'alam Al-Maktabah Al-Syarkiyah* ((Beirut: Lebanon, 1986). h. 91.

government, including Christian Snouk Hurgronje. The Dutch tried to unite the Indonesian people both through association and assimilation. Both aim to ensure that the Indonesian nation can unite with the Dutch, especially in legal unification. Snouk repeatedly said that the foundations of the Dutch kingdom were strengthened by the association of Indonesians with Dutch culture.⁹

The concept of substitute heirs developed by the Dutch East Indies government in Indonesia is strongly suspected to have originated from Dutch law and gradually became customary law in the lives of Indonesian society. This is evident from research by Ter Haar BZN and Soepomo that in West Java customary law of inheritance the term replacement heir is known as "change of position".¹⁰

Thus, the successor heirs contained in the KHI originate from customary law and are an adoption of Dutch civil law (BW). Meanwhile, Dutch civil law originates from the Napoleonic Civil Code in France. Meanwhile, French civil law is a derivative of Roman law.

In Islamic inheritance law, the issue of successor heirs was initially unknown and there were no arguments explaining this matter. However, to avoid injustice in the process of dividing inheritance assets, the Compilation of Islamic Law strictly regulates replacement heirs in article 185. Therefore, the share obtained by the replacement heirs is not the same as the person being replaced and must also not exceed that of the siblings. other heir brothers.

In the Civil Code / BW, heirs are not differentiated based on gender. This is as stated in articles 841 BW to 848 BW, as well as article 975 BW which regulates this

⁹ Aqib Suminto, *Politik Islam Hindia Belanda, Cet. I* (Jakarta:LP3ES, 1985), h. 39

¹⁰ R.Otje Salman S. Mustafa Haffas, *Kesadaran Hukum Masyarakat Terhadap Hukum Waris, Cet. 2*, (Bandung: Alumni, 2007) h 61. Dan Eman Suparman, *Hukum Waris Indonesia, Cet. 2*, (Bandung: PT Refika, 2007) h 64.

issue by stating that it is possible for replacement heirs in the downward and lateral lines without distinguishing between men and women.¹¹

According to the Civil Code / BW, a person becomes an heir due to the existence of a marriage and blood relationship, whether legal or illegal. This is regulated in article 832 paragraph 1 Burgerlijk Wetboek. People who are closely related by blood are entitled to receive inheritance rights.

In inheritance law, the principle also applies that if a person dies, at that moment all his rights and obligations are transferred to his heirs, as regulated in article 833 Burgerlijk Wetboek. This means that the family member who dies replaces the position of the heir in the field of wealth law because of the death of the testator. The heir occupies the position of the deceased in matters involving the assets of "Saisine" article 833 (1) Burgerlijk Wetboek.¹²

b. Legal Basis for Heirs and Substitute Heirs

In Islamic inheritance law, the source of law can be seen from two sources, namely the source of sharia and the source of fiqh. The sources of sharia consist of the Al-Qur'an and hadith and the sources of fiqh consist of ijma' and ijtihad. In this study, the sources presented are the Al-Qur'an and hadith.

a. Sharia sources.

1. The evidence from the Al-Qur'an.

a. Surah An-Nisa' 7.

¹¹ Subekti, *Pokok-pokok Hukum Perdata*, (Jakarta: Intermasa, 1995), hal 100-101.

¹² Effendi Perangin, *Hukum Waris*, Cet IV, (Jakarta: Raja Grafindo Persada, 2003), h 8.

لِلرِّجَالِ نَصِيبٌ مِّمَّا تَرَكَ الْوَالِدَانِ وَالْأَقْرَبُونَ وَلِلنِّسَاءِ نَصِيبٌ مِّمَّا تَرَكَ الْوَالِدَانِ وَالْأَقْرَبُونَ مِمَّا قَلَّ مِنْهُ أَوْ كَثُرَ ۖ نَصِيبًا مَّفْرُوضًا

Meaning: For men there is a right to share in the inheritance of their mother and father and close relatives, and for women there is a right to share (also) in the inheritance of their mother and father and their relatives, whether a little or a lot according to the portion that has been determined.

b. Surah An-Nisa' 8.

وَإِذَا حَضَرَ الْقِسْمَةَ أُولُو الْقُرْبَىٰ وَالْيَتَامَىٰ وَالْمَسْكِينُ فَارْزُقُوهُمْ مِنْهُ وَقُولُوا لَهُمْ قَوْلًا مَعْرُوفًا

Meaning: And if during the distribution there are relatives, orphans and poor people present, then give them (just enough) of the property and say good words to them.

c. Surat An-Nisa' 9.

وَلْيَخْشَ الَّذِينَ لَوْ تَرَكَوْا مِنْ خَلْفِهِمْ ذُرِّيَّةً ضِعَفًا خَافُوا عَلَيْهِمْ فَلْيَتَّقُوا اللَّهَ وَلْيَقُولُوا قَوْلًا سَدِيدًا ﴿٩﴾

Meaning: And let those who fear Allah leave behind them weak children whose welfare they fear. Therefore, let them be devoted to Allah and let them speak the right words.

d. Surah An-Nisa' 10.

إِنَّ الَّذِينَ يَأْكُلُونَ أَمْوَالَ آلِيَتَمَىٰ ظُلْمًا إِنَّمَا يَأْكُلُونَ فِي بُطُونِهِمْ نَارًا ۖ وَسَيَصْلَوْنَ سَعِيرًا ﴿١٠﴾

Meaning: Indeed, those who devour the property of orphans in an unjust manner, in fact they swallow fire whole in their stomachs and they will enter the burning fire (hell).

e. Surah An-Nisa' 11.

يُوصِيكُمُ اللَّهُ فِي أَوْلَادِكُمْ لِلذَّكَرِ مِثْلُ حَظِّ الْأُنثَيَيْنِ ۚ فَإِنْ كُنَّ نِسَاءً فَوْقَ اثْنَتَيْنِ فَلَهُنَّ ثُلُثَا مَا تَرَكَ ۚ وَإِنْ كَانَتْ وَاحِدَةً فَلَهَا النِّصْفُ ۚ وَلِأَبَوَيْهِ لِكُلِّ وَاحِدٍ مِّنْهُمَا السُّدُسُ ۚ مِمَّا تَرَكَ إِنْ كَانَ لَهُ وَلَدٌ ۚ فَإِنْ لَمْ يَكُنْ لَهُ وَلَدٌ وَوَرِثَهُ أَبَوُهُ فَلِأُمِّهِ الثُّلُثُ ۚ فَإِنْ كَانَ لَهُ إِخْوَةٌ فَلِأُمِّهِ السُّدُسُ ۚ مِنْ بَعْدِ وَصِيَّةٍ يُوصِي بِهَا أَوْ دَيْنٍ ۚ لِأَبَائِكُمْ وَلِأَبْنَائِكُمْ لَا تَدْرُونَ أَيُّهُمُ أَقْرَبُ لَكُمْ نَفْعًا ۚ فَرِيضَةٌ مِّنَ اللَّهِ ۚ إِنَّ اللَّهَ كَانَ عَلِيمًا حَكِيمًا

Meaning: Allah has prescribed for you regarding (distribution of inheritance to) your children, namely that the share of one son is the same as that of two daughters, and if the children are all more than two daughters, then for them two-thirds of the property left behind, if there is only one daughter, then she gets half the property. And for two parents, they each share one-sixth of the property left behind if the deceased has children, if the deceased does not leave any children and he is inherited by his parents, then the mother gets one-third, if the deceased has several siblings, So his mother got one-sixth, (the divisions) above after fulfilling the will she made and after paying her debts. Regarding your parents and your children, you do not know which of them is closer (of many benefits to you). This is a decree from Allah. Indeed, Allah is All-Knowing and All-Wise.

f. Surah An-Nisa' 12.

﴿ وَلَكُمْ نِصْفُ مَا تَرَكَ أَزْوَاجُكُمْ إِنْ لَمْ يَكُنْ لَهُنَّ وَلَدٌ فَإِنْ كَانَ لَهُنَّ وَلَدٌ فَلَكُمْ الرُّبْعُ مِمَّا تَرَكَنَّ مِنْ بَعْدِ وَصِيَّةٍ يُوصِيَنَّ بِهَا أَوْ دَيْنٍ ^{قُلْ} وَلَهُنَّ الرُّبْعُ مِمَّا تَرَكَتُمْ إِنْ لَمْ يَكُنْ لَكُمْ وَلَدٌ فَإِنْ كَانَ لَكُمْ وَلَدٌ فَلَهُنَّ الثُّمُنُ مِمَّا تَرَكَتُمْ مِنْ بَعْدِ وَصِيَّةٍ تُوصُونَ بِهَا أَوْ دَيْنٍ ^{قُلْ} وَإِنْ كَانَ رَجُلٌ يُورَثُ كَلَلَةً أَوْ امْرَأَةً وَلَهُ أَخٌ أَوْ أُخْتٌ فَلِكُلِّ وَاحِدٍ مِّنْهُمَا السُّدُسُ فَإِنْ كَانُوا أَكْثَرَ مِنْ ذَلِكَ فَهُمْ شُرَكَاءُ فِي الثُّلُثِ مِنْ بَعْدِ وَصِيَّةٍ يُوصَى بِهَا أَوْ دَيْنٍ ^{قُلْ} غَيْرَ مُضَارٍّ وَصِيَّةً مِنَ اللَّهِ وَاللَّهُ عَلِيمٌ حَلِيمٌ ^{قُلْ}

Meaning: And for you (husbands) half of the property left by your wives, if they leave no children. If your wives have children, then you get a quarter of the assets they leave after fulfilling the will they made or (and) paying their debts. Wives get a quarter of the property you leave if you don't have children. If you have children, your wives will receive one-eighth of the property you left behind, after fulfilling the will you made or (and) after paying your debts. If a person dies, whether male or female, who does not leave behind a father and does not leave children but leaves behind a brother (only one mother) or one sister (one mother only), then to each of the siblings one sixth of the property, but if there is more than one sibling, then they are in partnership in that third, after fulfilling the will that has been made or (and) after paying the debt and not giving harm (to the heirs) (Allah has established this as) the true Shari'a. truth from Allah, and Allah is All-Knowing, Most Forgiving.

g. Surah An-Nisa' 13.

تِلْكَ حُدُودُ اللَّهِ ^{قُلْ} وَمَنْ يُطِيعِ اللَّهَ وَرَسُولَهُ يُدْخِلْهُ جَنَّاتٍ تَجْرِي مِنْ تَحْتِهَا الْأَنْهَارُ خَالِدِينَ فِيهَا ^{قُلْ} وَذَلِكَ الْفَوْزُ الْعَظِيمُ

Meaning: (these laws) are provisions from Allah. Whoever obeys Allah and His Messenger, Allah will surely enter them into Paradise where rivers flow, while they will remain eternal therein and that is a great victory.

h. Surah An-Nisa' verse 14.

وَمَنْ يَعِصِ اللَّهَ وَرَسُولَهُ وَيَتَعَدَّ حُدُودَهُ يُدْخِلْهُ نَارًا خَالِدًا فِيهَا وَلَهُ عَذَابٌ مُهِينٌ

Meaning: And whoever disobeys Allah and His Messenger and violates His provisions, Allah will surely put him in hell, while therein he will remain eternally in a humiliating torment.

i. Surah An-Nisa' 33.

وَلِكُلٍّ جَعَلْنَا مَوَالِي مِمَّا تَرَكَ الْوَالِدِ وَالْأَقْرَبُونَ وَلِلَّذِينَ عَقَدْتَ أَيْمَانُكُمْ فَاتُوهُمْ نَصِيبتَهُمْ إِنَّ اللَّهَ كَانَ عَلَى كُلِّ شَيْءٍ شَهِيدًا

Meaning: For each of us we make a mawali for what is left behind by their parents and close relatives, and if there are people who have sworn allegiance to them, then give them their share. Indeed, Allah witnesses everything.

j. Surah An-Nisa' 176.

يَسْتَفْتُونَكَ قُلِ اللَّهُ يُفْتِيكُمْ فِي الْكَلَالَةِ إِنْ امْرُؤٌ هَلَكَ لَيْسَ لَهُ وَلَدٌ وَلَهُ أُخْتٌ فَلَهَا نِصْفُ مَا تَرَكَ وَهُوَ يَرِثُهَا إِنْ لَمْ يَكُنْ لَهَا وَلَدٌ فَإِنْ كَانَتَا اثْنَتَيْنِ فَلَهُمَا الثُّلُسُ مِمَّا تَرَكَ وَإِنْ كَانُوا إِخْوَةً رِجَالًا وَنِسَاءً فَلِلَّذَكَرِ مِثْلُ حَظِّ الْأُنثَيَيْنِ يُبَيِّنُ اللَّهُ لَكُمْ أَنْ تَضِلُّوا وَاللَّهُ بِكُلِّ شَيْءٍ عَلِيمٌ

Meaning: They ask you for a fatwa (regarding kalalah): Allah gives you a fatwa regarding kalalah, namely that if a person dies and he has no children and he has a sister, then for the female sibling half of the property he left behind and the male sibling inherits (sister's entire estate), if she has no children. But if there are two sisters, then divide both two-thirds of the property left behind. And if they (the heirs consist of) brothers and sisters then one man's share is as much as the share of two sisters. Allah explains (the law) to you so that you do not go astray. And Allah is All-Knowing of everything.

k. Surah Al-Anfal 75.

وَالَّذِينَ آمَنُوا مِنْ بَعْدُ وَهَاجَرُوا وَجَاهَدُوا مَعَكُمْ فَأُولَٰئِكَ مِنْكُمْ وَأُولُوا الْأَرْحَامِ بَعْضُهُمْ أَوْلَىٰ بِبَعْضٍ فِي كِتَابِ اللَّهِ إِنَّ اللَّهَ بِكُلِّ شَيْءٍ عَلِيمٌ

Meaning: People who are related in part have more rights towards each other (than those who are not relatives) in the book of Allah. Indeed, Allah is All-Knowing of everything.

2. Evidence from Hadith.

a. Hadith Imam Bukhari.

عن ابن عباس رضي الله عنه عن النبي صلى الله عليه وسلم قال: الحقوا الفرائض بأهلها فما بقي فهو لأولى رجل ذكر.¹³

Meaning: Give faraid (the specified portions) to those who are entitled to it and give the rest to men from the closest male descendants.

b. Hadits Abu Dawud.

¹³ Al-Bukhari, *Sahih al-Bukhari*, Jilid IV, (Kairo: Dar wa Mat}ba' al-Sya'by, t.th), h. 181

عن جابر بن عبد الله قال: جاءت المرأة بآبنتين لها فقالت يا رسول الله هاتان ابنتا سعد بن الربيع قتل يوم أحد شهيدا واء ن عمهما أخذ ما لهما فلم يدع لهما مالا ولا تنكحان الا ولهما مال, قال يقضي الله في ذلك فنزلت آية الميراث فبعث رسول الله صلى الله عليه وسلم الي عمهما فقال: اعط ابنتي سعد الثلثين واعط أمهما الثمن وما بقي فهو لك¹⁴

Meaning: From Jabir bin Abdullah said: "Sa'ad's widow came to Rasulullah SAW with her two daughters." Then he said: "O Allah's Apostle, these are the two daughters of Sa'ad who were martyred with you in the battle of Uhud. Their uncle took their father's inheritance and gave them nothing. The two cannot marry without property." The Prophet said: "Allah will determine the law in this incident. "Then verses about inheritance came down. The Prophet called the uncle and said: "Give two-thirds to Sa'ad's two children, one-eighth to Sa'ad's wife and take the rest for you.

c. Hadits Riwayat Imam Bukhari

عن هزيل بن شرحبيل قال: سئل ابو موسى عن ابنة و ابنة ابن وأخت فقال للابنة النصف وللأخت النصف و أت ابن مسعود فسيتابعني فسئل ابن مسعود و أخبر بقول أبي موسى فقال لقد ضللت اذا وما أنا من المهتدين أأقضى فيها بما قضى النبي صلى الله عليه وسلم للابنة النصف ولأبنة ابن السدس تكملة الثلثين وما بقي فلاخة¹⁵

Meaning: From Huzail bin Syurahbil said: "Abu Musa was asked about the case of inheritance of a daughter, a son's daughter and a sister." Abu Musa Said: "For half daughters, for half sisters. Come to Ibn Mas'ud, of course he will say the same thing." Then Ibnu Mas'ud was asked and he answered: "I determined based on what was determined by the Prophet SAW, namely for daughters half, for granddaughters one sixth as a complement to two thirds, the rest for sisters."

d. Hadits Abu Dawud

عن عمران بن حصين أن رجلا أتى النبي صلى الله عليه و سلم فقال أن ابن ابني مات فمالى من ميراثه فقال لك السدس¹⁶

¹⁴ Abu Dawud, *Sunan Abi Dawud*, Jilid II, (Kairo: Mustafa al-Babiy, 1952), h. 109. Abu Isa Al-Tirmiziy, *Al-Jami'u al-Sahih*, Jilid IV, (Kairo: Mustafa al-Babiy, 1938), h. 414.

¹⁵ Al-Bukhari, *Sahih al-Bukhari*, h. 188; Abu Dawud, *Sunan Abi Dawud*, h. 108; Abu Isa Al-Tirmiziy, *Al-Jami'u al-Sahih*, h. 415

¹⁶ Abu Dawud, *Sunan Abi Dawud*, h. 108; Al-Tirmiziy, *Al-Jami'u al-Sahih*, h. 415.

Meaning: From 'Urwah bin Husein that a man came to the Prophet and said: that my son's son died, what can I get from his inheritance. The Prophet said: you get one sixth.

e. Hadits Abu Dawud.

عن قبيصة بن زؤيب قال, جاءت الجدة الى أبى بكر الصديق تسئله ميراثها فقال لها أبو بكر: مالك في كتاب الله شيء وما علمت لك في سنة رسول الله صلى الله عليه وسلم شيئاً فارجعي حتى أسأل الناس فقال المغيرة بن شعرة حضرت رسول الله صلى الله عليه وسلم فأعطاهما السدس. فقال أبو بكر هل معك غيرك فقام محمد بن مسلمة الأنصاري فقال مثل ما قال المغيرة ابن شعبة فانفذه لها أبو بكر¹⁷

Meaning: From Qubaishah bin Zueb who said: "a grandmother came to Abu Bakr asking for an inheritance from her grandson." Abu Bakr said to him: "I did not find anything for you in the Book of Allah and I did not know that there was any right for you in the Sunnah of the Prophet. Go back first, later I will ask other people about this. Mugirah bin Syu'bah said, I once attended the Prophet who gave grandmothers one-sixth of their rights." Abu Bakr said: "Is there anyone other than you who knows about it. Muhammad bin Problem stood up and said a blessing as Mugirah said. So finally Abu Bakar gave the grandmother her inheritance rights.

f. Hadits Riwayat Abu Dawud.

عن أبى هريرة عن النبي صلى الله عليه وسلم قال: القاتل لا يرث¹⁸

Meaning: From Abu Hurairah, the Prophet Muhammad SAW said: murderers cannot inherit.

g. Hadits Riwayat Imam Bukhari.

عن أسامة بن زيد رضى الله عنهما أن النبي صلى الله عليه وسلم قال: لا يرث المسلم الكافر ولا الكافر المسلم¹⁹

¹⁷ Abu Dawud, *Sunan Abi Dawud*, h. 100; Al-Tirmiziy, *al-Jami'u al-Sahih*, h. 320.

¹⁸ Abu Dawud, *Sunan Abi Dawud*, h.112, Ibnu Majah, *Sunan Ibnu Majah*, Jilid II, (Kairo: Musthafa al-Babiy, tt) h. 110.

¹⁹ Al-Bukhari, *Sahih al-Bukhari*, h 94; Abu Dawud, *Sunan Abi Daud*, h 112; Ibnu Majah, *Sunan Ibnu Majah*, h 110.

Meaning: From Usamah bin Zaid (may Allah be pleased with him) that the Prophet Muhammad SAW said: a Muslim does not inherit a non-Muslim and a non-Muslim does not inherit a Muslim.

h. Hadits Riwayat Imam Bukhari

عن سعد بن أبي وقاص فقال: مرضت بمكة مرضا فأسعيت منه على الموت فأتاني النبي صلى الله عليه وسلم يعودني فقالت يا رسول الله ان لي مالا كثيرا وليس لي الا ابنتي أفأصدق بثلاثي مالي، فقال: لا، قلت: فالشطر، فقال لا وقلت، الثلث، قال، الثلث كبير انك أن تركت ولدك أغنياء خير من أن تتر كهم عالة يتكففون الناس.²⁰

Meaning: From Sa'ad bin Abi Waqqas said: I was sick in Mecca, a sickness that brought death. I was visited by the Prophet SAW. I said to the Prophet: O Messenger of Allah, I have a lot of wealth, no one will inherit the property except a daughter, may I give two thirds of it in charity. The Prophet answered: "no." I said again: what if half of it, O Messenger of Allah, the Prophet answered: "no." I said again, a third? The Prophet said: one third is already a lot. In fact, if you leave your family well off, it is better than leaving it needy, to the point of asking people.

i. Hadits riwayat Bukhari dari Zaid Ibn Tsabit bahwa

وقال زيد: ولد الأبناء بمنزلة الولد اذالم يكن دونهم ولد ذكرذكرهم كذكرهم وأنثاهم كأنثاهم يرثون كما يرثون ويحبون كما يحبون ولا يرث ولد الأبن معالأبن²¹

Meaning: The sons and daughters of sons (through sons) are equal to children, if not sons who are still alive. Grandsons are like sons, granddaughters are like daughters, they inherit and wear the hijab like sons, and do not inherit grandchildren together with sons.

c. Substitute heirs according to the Koran and the views of Tafsir scholars

In Islamic legal literature, inheritance in Islam is known by several terms such as faraidh, jurisprudence of waris and al-waris law. This difference in naming occurs because of differences in the direction that is used as the main point in the discussion.

²⁰ Al-Bukhari, *Sahih al-Bukhari*, hal 178.

²¹ Muhammad Bin Isma'il al-Bukhari, *Sahih al- Bukhari*, (Beirut: Dar al-Fikr, 2006) h 188.

In this case the word commonly used is faraidh.²² The term faraidh in the implementation of inheritance law is known as the implementation of the division of inheritance. As mentioned above, the arguments for implementing inheritance law are in Surah An-Nisa' starting from verses 7, 8, 9, 10, 11, 12, 13, 14, 33, 176, and Surah al-Anfal verse 75. These verses are interrelated, interrelated or complement each other, so that from the interrelationship of these verses, a law can be created that can be used as a guide in people's lives, such as the law of successor heirs in Islamic inheritance.

Tracing the verses of the Qur'an mentioned above, there are 25 people who can become heirs, consisting of 10 women and 15 men. All of these heirs are a result of the existence of nasabiyah and sababiyah relationships.²³ The class of heirs from nasabiyah relations are heirs who are blood related to the testator. This relationship can be differentiated into three types, namely a straight line downwards (*furu' al-manyit*) such as children, grandchildren, while a straight line upwards (*ushul al-manyit*) such as fathers, grandfathers, and a straight line sideways (*al-hawasyi*) such as brothers, uncle, and his descendants.²⁴ A sababiyah relationship is an inheritance that occurs because of a marriage relationship. This relationship means that husband and wife can inherit property from both of them. Apart from that, there is also a service relationship (freeing slaves). However, in the current context, this relationship no longer exists, it only existed during the time of the Prophet SAW, so this right is no longer enforced.

Related to the straight line nasabiyah relationship, namely children and grandchildren. Children in the Qur'an are called *al-walad* (الولد) which means children are general, that is, they apply to both men and women. Meanwhile, the special

²² Lafaz faraidh is the jama' (plural form) of lafaz faridhah which means *mafrudhah*, which has the same meaning as *muqaddarah*, namely something whose parts are clearly defined. In the provisions of Islamic inheritance contained in the Al-Qur'an, there are more specified parts than unspecified parts. Therefore, this law is called faraidh. Amir Syarifuddin, *Hukum Kewarisan Islam*, Edisi ke 2, (Jakarta: Prenadamedia, 2004) h 5

²³ Ahmad Rofiq, *Hukum Perdata Islam di Indonesia*, Edisi Revisi, (Jakarta: Rajawali Pers, 2015), 303.

²⁴ Amin Husein Nasution, *Hukum Kewarisan Suatu Analisis Komparatif Pemikiran Mujtahid dan Kompilasi Hukum Islam*, (Jakarta: Rajawali Pers, 2014), 72

meaning for men is called ibn and women are called bint. The word al-walad (الولد) is found in the Qur'an 33 times and 23 times in the plural form, namely awlad. In the inheritance verses the word al-walad (الولد) is mentioned eight times and once with awlad.²⁵

In Surah al-Nisa' verses 11 and 12 the mention of the word al-walad (الولد) the scholars agree on the meaning of child which applies to boys and girls.²⁶ However, the word al-walad (الولد) contained in Surah Al-Nisa' verse 176, the scholars do not agree on the meaning of boys and girls. According to him, the word al-walad (الولد) in this verse relates to the requirements for an heir to become a kalalah.

Meanwhile, grandchildren are not specifically mentioned in the Koran. The term grandson emerged through understanding the expansion of the word al-walad (الولد) which in Nasabiyah relations is second in line after children in furu' al-manyit relations. Thus, it is not surprising that the distribution of inheritance among grandchildren is often ignored, especially towards grandchildren whose parents have died before their grandfather is the heir. This is because in Islamic inheritance law the conditions for being able to receive inheritance from an heir are being alive when the testator dies, not being veiled by the closest heir, and legally there are no obstacles²⁷

²⁵ Amir Syarifuddin, hukum kewarisan Islam, Edisi kedua, (Jakarta: Kencana, 2004), 58.

²⁶ The children who are entitled to receive inheritance from simanyit consist of boys and girls with the provision that boys get two shares and girls get one share. The basis for this provision is explained in Surah Al-Nisa' verse 7 dan juga 11. Muhammad Thaha Abu Ella Khalifah, Hukum Waris pembagian warisan Berdasarkan Syari'at Islam, (Solo: Tiga Serangkai, 2017), 57-94

²⁷ The children who are entitled to receive inheritance from simanyit consist of boys and girls with the provision that boys get two shares and girls get one share. The basis for this provision is explained. The reasons for the obstruction in receiving an inheritance are in terms of its nature, which is referred to as mammu', which consists of three characteristics, namely murderer, different religion and servant (slave). Killing is a despicable behavior whose actions are not justified in religion. Carrying out actions prohibited by religion means violating God's commands. In Islamic inheritance law, committing murder results in the heir being prevented from inheriting. This is based on the hadith narrated by Abu Daud. in Surah Al-Nisa' verse 7. هريرة عن النبي صلى الله عليه وسلم قال: القاتل لا يرث عن أبي (From Abu Hurairah from the Prophet Muhammad SAW said: murderers cannot inherit. Differences in Religion. One of the conditions for mutual inheritance is being Muslim. A person cannot inherit if he is not of the same religion (different religion). In a hadith it is explained that عن أسامة بن زيد رضي الله عنهما أن النبي صلى الله عليه وسلم قال: لا يرث المسلم الكافر ولا الكافر المسلم (From Usamah bin Zaid (may Allah be pleased with him) that the Prophet Muhammad SAW said: a Muslim does not inherit a non-Muslim and a non-Muslim does not

between heir and heir. Referring to these provisions, children and grandchildren have no obstacles in receiving inheritance, but rather whether they are close to the heir or not.

On the other hand, grandchildren are the heirs who are veiled by their children (uncles). However, in the current context, in upholding the values of justice, grandchildren are given the right to inherit as a replacement for heirs who have died before the testator. This breakthrough was carried out by Hazairin based on the letter Al-Nisa' verse 33.

وَلِكُلِّ جَعَلْنَا مَوَالِي مِمَّا تَرَكَ الْوَالِدِ وَالْأَقْرَبُونَ وَلِلَّذِينَ عَقَدْتُمْ أَيْمَانَكُمْ فَآتُوهُمْ نَصِيبَهُمْ
إِنَّ اللَّهَ كَانَ عَلَى كُلِّ شَيْءٍ شَهِيدًا

According to Hazairin, the lafazh al-walidani wa al-aqrabun is the fi'il of the lafaz taraka. Meanwhile, lafaz mawaliya is maf'ul for ja'alna.²⁸ Thus, Hazairin interprets the verse that "for each person Allah has made a mawali for the inheritance of his parents and close family, and if there are people who you have sworn allegiance to them, then give them their share, verily Allah witnesses everything".

inherit a Muslim). Slavery. Slavery people are destitute people. According to Islamic law experts, slaves cannot inherit and cannot be inherited because they are considered destitute and everything owned by the slave is owned by the master. Therefore, if a slave inherits, the one who inherits it will be his master because the one who has the right to it is his master. Thus, slaves did not have the right to inherit even their own family. Apart from that, there are also family influences, namely patrilineal, bilateral and matrilineal. However, what is often found in Islamic inheritance is the hirman hijab and the nuqsan hijab. Syamsulbahri, *Perkembangan Pemikiran Pembagian Warisan...*, h.76. Lihat juga. Muhammad Ali Ash-Shabuni, *Hukum Waris Islam*, (Depok: Fathan Prima Media, 2013) h 81. Lihat juga. Wahbah Az-Zuhaili, *Fiqh Imam Syafi'i : Mengupas masalah Fiqhiyah berdasarkan Al-Qur'an dan Hadits*, Jilid 3, Cet. 3, Terj. Muhammad Afifi, Abdul hafiz, (Jakarta: Al-Mahira, 2017), h. 109-110. Abu Bakar Jabir Al-Jaza'iri, *Minhajul Muslim Pedoman Hidup Ideal Seorang Muslim*, h. 796-799.

²⁸ Hazairin, *Hukum Kewarisan Bilateral Menurut Qur'an dan Hadits*,..., h. 49. ,

Based on this verse, according to Hazairin, there are three important elements that must be explained, namely mawali, aqrabun and walidani. The words walidan and aqrabun are interpreted as heirs, but these words are family terms, so the words are interpreted as relationships, and relationships always have reciprocity, so the words walidan and aqrabun can become heirs. The word walidan is used for his children and the word aqrabun is used for his relatives.²⁹ From the explanation above it is clear that Hazairin interprets the word mawali³⁰ in this paragraph is with a replacement heir. Apart from that, the word substitute mewaris is also found in the interpretation of Ibn Abbas who interprets the word mawali as substitute mewaris or the person who replaces the heir.³¹ Meanwhile, several other scholars such as Ibnu Katsir,³² Quraish Shihab,³³ al-Maraghi,³⁴ Sayyid Quttub,³⁵ interpret the word mawali as heir or person who inherits.

According to Hazairin³⁶ In fact, the use of the term substitute heir for the word mawali is actually not very appropriate. However, this term is also found in customary law. Therefore, Hazairin also interpreted the word mawali as a substitute heir. The meaning of the word mawali as substitute heir is Hazairin's own ijtiḥad. Nevertheless,

²⁹ Hazairin, *Hukum Kewarisan Bilateral Menurut Qur'an dan Hadits*, h. 27.

³⁰ Hazairin, *Hukum Kewarisan Bilateral menurut Al-Qur'an dan Hadits*, h. 33. In Arabic the term mawali is the mufrad form of al-mawla (الموالي) which means al-maliku wa as –sayyidu (الملك والسيدا) meaning king or lord, neighbor's friend, son-in-law). men and so on. *Kamus Louis Ma'luf, Al-Munjid fi al-Luqati wa al'alam al-Maktabah al-Syarkiyah*, h. 916.

³¹ Ibnu Abbas, *Tafsir Tanwirul Miqbas*, (Beirut: Dar al-Fikr, T.th) h. 69.

³² The word mawali in Ibn Katsir's interpretation is interpreted as heir or heirs, or as stated by Ibnu Jarir, the word mawali is the son of an uncle (cousin) with the title mawla as said by al-Fual Ibn Abbas in one of his poems, namely مهلا بني عمنا مهلا موالينا لا يظهرن بيننا ما كان مدفونا (Wait, O children of our uncle, our mawali, don't let things appear between us that have been hidden for a long time). Ibnu Katsir, *Tafsir Al-'Adhim*, Juz 5, Terj. Bahrin Abu Bakar, (Bandung: Sinar Baru Algensindo, 2006), h. 89-90.

³³ Quraish shihab, *Tafsir Al-Misbah*, Vol 2, Cet. VIII, (Jakarta: Lentera Hati, 2002), h. 421.

³⁴ Ahmad Mustafa al-Maraghi, *Tafsir al-Maraghi*, Terj, Jilid V, (Semarang: Toha Putra, 1986), h. 39.

³⁵ Sayyid Quthub, *Tafsir Fi Zhilalil Qu'an*, Jilid 2, (Beirut: Dar al-Syuruq, 1988 M), h. 647.

³⁶ Abdul Ghafur, *Filsafat Hukum Kewarisan Islam Konsep Kewarisan Bilateral Hazairin*, (Yogyakarta: UII Press Yogyakarta) h. 79.

Habiburrahman and also Hajar M, are of the view that the concept of Substitute heir is an adoption of customary law originating from BW Civil law.

The understanding above is very different from the understanding of the majority of faraid scholars who are of the opinion that the term mawali contained in Surah An-Nisa' verse 33 means heir. According to the majority of scholars, the heirs are the people who are still alive when the testator dies.³⁷ If when the heir dies there are no particular heirs or it can be said that he has died first, then his right to inherit is terminated.

This condition becomes a problem for the descendants of heirs who have died beforehand regarding their welfare. This is because apart from the offspring (grandchildren) having lost their parents, they have also been cut off from having the right to inherit the property left by their grandfather/grandmother. Therefore, in line with Hazairin's thoughts above and the development of thinking among Indonesian Muslims, a replacement heir is a necessity in inheritance law. The presence of substitute heirs in Islamic inheritance law is a solution to the transfer of inheritance which is carried out in a just and beneficial manner, whether related to the existence of grandchildren or others who are classified as *zawil arham* in Islamic inheritance.

CONCLUSION

Based on the description above, it can be concluded that the Al-Qur'an as a source of Islamic law has regulated all aspects of human life and without forgetting anything in it. Among the laws contained therein is the law of inheritance. In inheritance law, heirs are one of the elements in receiving inherited assets. On the one hand, grandchildren are the heirs who are in second place after the children and are veiled by the heirs. In the Qur'an, there are no grandchildren heirs who receive inheritance from the heir. However, the term grandson is an extension of the generally

³⁷ Abu Bakar Jabir Al-Jaza'iri, *Minhajul Muslim Pedoman Hidup Ideal Seorang Muslim*,..., h. 788

understood word al-walad. However, in order to uphold the values of justice in the distribution of inheritance, Hazairin understands the letter Al-Nisa' verse 33 in the words mawali as a substitute heir addressed to grandchildren. This means the child of a child whose parents have died before the heir (grandfather). Therefore, grandchildren can inherit like other heirs with certain conditions.

In the Al-Qur'an the term successor heir is not found specifically, but the term is found from the connection between verses (munasabah verses) of the Al-Qur'an.

Pustaka

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