



The Opportunities and Challenges of Reforming the Surrogate Heir Provisions in the Islamic Law Compilation

Zuhrah Zuhrah

Faculty of Law, Universitas Sebelas Maret, Surakarta, Indonesia
Jl. Ir Sutami No.36, Kec. Jebres, Kota Surakarta, Jawa Tengah, Indonesia 57126
zuhrah@student.uns.ac.id

I Gusti Ayu Ketut Rahmi Handayani

Faculty of Law, Universitas Sebelas Maret, Surakarta, Indonesia
Jl. Ir Sutami No.36, Kec. Jebres, Kota Surakarta, Jawa Tengah, Indonesia 57126
ayu_igk@staff.uns.ac.id

Burhanuddin Harahap

Faculty of Law, Universitas Sebelas Maret, Surakarta, Indonesia
Jl. Ir Sutami No.36, Kec. Jebres, Kota Surakarta, Jawa Tengah, Indonesia 57126
burhanudin.harahap@staff.uns.ac.id

Abstract— This study thoroughly analyzes the Inheritance law in the Islamic Law Compilation, specifically concentrating on the rule concerning succession heirs. The author conducts a comprehensive legal study to examine the potential opportunities and challenges in changing the provisions for future generations within the Compendium of Islamic Law (KHI). The findings indicate that it is possible to modify the KHI's standards regarding future generations who attain achievement despite resistance from conservative factions and varying interpretations of Islamic doctrine. The report underscores the necessity for alterations, emphasizing advantages such as enhanced gender equality and women empowerment. Furthermore, it tackles the intricacies of crafting provisions by Islamic principles while staying pertinent. This research illuminates the challenges and opportunities in modifying regulations related to the inheritance of future generations within Muslim communities. By deepening our understanding of the evolution of Islamic law, it offers insights for policymakers and stakeholders to develop strategies that promote more inclusive and fair inheritance legislation.

Keywords— *opportunities, challenges, reform, surrogate heirs*

I. INTRODUCTION

The fundamental tenets of Islamic inheritance law are drawn from the Qur'an and al-Hadith, two legal texts that explicitly mention the laws about inheritance. Fiqh al-Mawarits, which applies to Muslims in both the Islamic and Arab worlds, is the product of past Muslim scholars' methodical processing, compilation, and construction of these sources through *ijtihad* with a particular *manhaj*. The enactment of Surrogate Heirs in Inheritance Law, which is based on Presidential Instruction Number 1 of 1991 concerning the Compilation of Islamic Law, resulted from the re-establishment of inheritance law in Indonesia as the embodiment of the virtues of justice, where justice can be viewed as kindness.[1]

In Muslim societies, social and cultural transformations have had an impact on inheritance dynamics. Many families today have intricate organizational systems, and the laws that are in place might not adequately represent the requirements and standards of Muslim communities. The perception of women's inheritance rights has likewise changed dramatically. The need to grant women equitable and equal inheritance rights by Islamic gender equality principles is becoming more widely acknowledged by society. As a result, changes to successor heirs' provisions must take gender equality into account. [2]

Islamic law is interpreted differently by various countries and socioeconomic groups. Changes to the successor heir arrangement and solutions tailored to each group's unique social and cultural circumstances must take this variation into account. Globalization and social mobility provide challenges for today's inheritance division, particularly in cases when there is no principal heir. Thus, while updating, the provision for successor heirs should be taken into account[2].

Islamic law evolved with the times to become a dynamic body of law that was subsequently composed of a collection of madhhabs for the exchange of ideas among scholars. To address newly emerging issues, the scholars of fiqh keep trying to investigate and ascertain the meaning of the shar'i through the ijthihad process. Legal dicta (ijthihad products) that are genuinely actual and contingent on community life are the result of the diligent work of fiqh academics."[3]

II. LITERATURE REVIEW

Two issues generally arise when Islamic law is institutionalized. First, issues about Islamic law's status in Indonesia as a recognized system alongside Western law and customary law. The second is the inherent issues with Islamic law as a rule that governs people's lives. Indonesian national law is tinted by Islamic law as part of the legal system. The majority of the populace supports Islamic law, which is an alternative to national law formulation for various historical and legal grounds. That does not, however, mean that Islamic law is automatically applied and accepted. For Islamic law to transform effectively, a plan or method must be implemented to institutionalize it. Through structural and cultural avenues, the transformation can be conducted with the fundamental capital of a legally recognized constitutional position."[7]

The structural path under discussion is the course of the political structure, including its infrastructure and superstructure. The current Indonesian government uses the channels for implementing transformation through the political superstructure. The state institutions that deal with the administration of law are the legislative, the executive branch, and the judiciary. The stances held by the politically active and well-established Islamic institutions, including the Indonesian Ulema Council (MUI), and by the politically active Islamic political parties are most suited for enacting change through the political infrastructure route. Islamic principles, when translated into the legal language from which rational Islamic law is derived, must be applied in a way that adheres to the established pattern."[8]

The application of culture is the development of Islamic principles as a framework for living. This culture aims to impart tenacious and obligatory values. Islamic organizations including Islamic Unity, Muhammadiyah, and Nahdatul Ulama.

The third form is social action, which tries to apply Islamic law to people's lives and reflects legal awareness. Numerous facets of life are covered by these activities, particularly those that have to do with applying Islamic law. It is imperative to maximize the impact of social action so that it serves as more than just a roadblock to the oppressive Islamic identity that it only forbids and opposes. [9]Thus, it must be pursued to aid in the creation of national law.[10]

III. METHOD

This normative or doctrinal legal research methodology is normative juridical legal research or normative legal research which is basically an activity that will examine the internal aspects of positive law. Normative legal research focuses more on the scope of legal conceptions, legal principles and legal rules. It can be concluded based on existing doctrine, that normative legal research is a type of legal research methodology that bases its analysis on applicable laws and regulations that are relevant to the legal issues that are the focus of the research.

Research on the potential and difficulties of changing the Compilation of Islamic Law's substitute heirs provisions is pertinent and significant in this regard. This study can contribute to the creation of a more contemporary and inclusive legal framework that upholds the core tenets of Islamic law while also being responsive to contemporary demands and advancements.[4]

As a result, the Muslim community stands to gain much from this reform in terms of upholding justice, gender parity, and harmony in inheritance disputes. However, because Indonesian legislative procedures are so complicated to implement, some possibilities and problems must be evaluated to be overcome when revising these rules. The writing method used in this writing is doctrinal legal research or normative legal research, which is research that sees the law as a written statutory rule. The approach is the law approach[5] and the concept approach.[6]

IV. RESULT AND DISCUSSION

Reformulating Indonesia's Islamic inheritance law is a difficult task fraught with political obstacles and conservatism. This subject is related to a wide range of interests and points of view. Reform may be opposed by some groups for religious reasons or out of concern that changes will erode established values. As a result, it

could take more work to create consensus and come to a decision that all sides can agree upon during the reform process." [11]

Islamic theological precepts serve as the foundation for Islamic inheritance law. However different schools of Islamic law have diverse interpretations of inheritance. The creation of a novel and generally embraced inheritance law may be hampered by this dispute. To get to a sufficient consensus on this matter, it is crucial to involve ulama, scholars, and religious leaders.

It's interesting to critique the divergent perspectives held by Islamic jurists as well as the advancement of the *ijtihad* technique and epistemology in modern Islamic studies. After 20 years of judges in religious courts or Shari'iyah courts using the Compilation of Islamic Law as their source of material law, the desire to recreate Islamic inheritance law came up [12].

The Islamic legal system, customary law, and the Western legal system are the three primary legal subsystems that have influenced or shaped Indonesian national law to date. The legal system of Indonesia incorporates each of these three components separately. The Western Legal System takes into account the Dutch 350-year colonialism of Indonesia. The judicial system in our nation was significantly impacted by this colonization. The customary legal system in Indonesia is based on the way Indonesian culture thinks, hence a deep comprehension of Indonesian society's fundamental ideas is necessary to fully comprehend the system. The Islamic legal system, which draws its foundation from the Quran and hadith, comes next." [13]

The emergence of several laws, including Law No. 1 of 1974—which was later amended to Law No. 16 of 2019 concerning marriage—Law No. 7 of 1989 concerning Religious Courts, Law No. 17 of 1999 concerning the implementation of the Hajj, Law No. 17 of 1999 concerning the implementation of the Hajj, Law No. 38 of 1999 on Zakat Management, Law No. 44 of 1999 on the Implementation of the Specialty of the Special Region of Aceh, Law No. 18 of 2001 on Special Autonomy for the Special Province of Aceh, Law No. 41 of 2004 on Waqf, Law No. 11 of 2006 on the Government of Aceh, and Law No. 10 of 1998 on Amendments to Law No. 7 of 1992 on Banking and the Compilation of Islamic Law are some examples of how Islamic values have been incorporated into Indonesian positive law.

The above-mentioned law's issuance is encouraging for Indonesia's application of Islamic law. Law No. 3 of 2006 mandates that the Religious Courts' components follow up on the authority and trust granted to them to manage shari'ah economic disputes, including shari'ah banking. The aforementioned legislation has all contributed to and reinforced Indonesian Islamic law. Simply put, the faith placed in these Islamic establishments needs to be appropriately exercised to avoid disappointing anyone, least of all Muslims." [14]

The equality of men and women is a constant topic of discussion when discussing Islamic inheritance law; in fact, one common stereotype about Islam is that of inequity in inheritance rights, with boys receiving twice as much as girls. The assessment of uneven rights between men and women appears unfair if we contrast the social realities of the Arabs and neighboring areas at the outset of the creation of Islamic law with the current Islamic inheritance law. But when injustice is there, there's always going to be an undercurrent of something different, especially when it comes to the idea of gender equality. Conversely, in the world's largest regions—the Arabian Peninsula and Southeast Asia—the development of Islamic inheritance law has always been overshadowed by the shadow of gender inequity in the allocation of inherited rights between men and women." [15]

The social and cultural shifts occurring in Indonesia are also reflected in the reformulation of Islamic inheritance law. Individual rights, gender equality, and women's rights have all changed perceptions and values. An attempt has been made to align inheritance law with more commonly accepted social norms through legislative revisions. modern Indonesian society. Islamic inheritance law has always taken cultural and customary practices into account. [16].

It is not a desire for an equal or equal share of gender equality that is at issue. It is more about access to rights acquired by substitute heirs, who continue to abide by the fundamentals of Islamic inheritance law. All male and female heirs have the same legal rights under Islamic inheritance law since gender equality is treated equally in this legislation. But the analogy is not the same. Islamic inheritance law places more emphasis on fairness than equality. Since this concept is sometimes the focus of polemics and discussions, disputes amongst heirs may occasionally result from it." [17]

What is at issue is not a desire for an equal or equal share of gender equality. [18] The main concern is access to rights obtained by surrogate heirs who uphold the core principles of Islamic inheritance law. Because Islamic inheritance law treats gender equality equally, all male and female heirs have the same legal rights. The comparison is not the same, though. Islamic inheritance law prioritizes equity above equality. There may occasionally be disagreements among heirs as a result of this idea since it is periodically the subject of debates and discussions."

Social changes about inheritance have taken place in places where the overwhelming population is Muslim. Because of the inequity in the divide, everyone is unhappy with the community's more hereditary inheritance distribution practices. If they follow the experts of the *fiqh* madhab's partition of inheritance, they believe that

discrimination against women has occurred. [19]. The connection between legal and social transformation is one of the basic questions that frequently encounter discrepancies between reality and the law. The word "change" has been supplanted in modern Islamic legal literature by the terms reform, modernization, actualization, deconstruction, actualization, reconstruction, *Islah*, and *tajwid*. The terms that are used most frequently are reform, *tajwid*, and *islah*. *Tajdid* means to reconstruct, revive, reconstitute, or improve something so that it can be used as intended. *Islah* means to mend or rectify. Reforming means to shape or reconstitute."

The advancement of society in Indonesia is a natural byproduct of the advancement of global civilization and frequently poses challenges to the enforcement and application of the law. A law cannot regulate all human life as a whole, so the state's situation can be viewed as not guaranteeing the legal certainty of its citizens. This is because of the rapid development of society rather than the development of laws and regulations, which has become a problem in matters that have not been or are not regulated in laws and regulations." [20]

Although a just and well-organized national law can serve as a definitive measure in society, the laws that currently exist are out of date and cannot keep up with the rapid advancements in society. Since there is uncertainty about the norms that should be implemented or employed to regulate situations or matters that arise, this confuses (chaos) in society. Laws that are both robust and adaptable enough to keep up with societal changes and still uphold the nation's universal values as outlined in its founding documents are therefore necessary."

Legal uncertainty (*rechtsonzekerheid*) or confusion about legislation in society is the outcome of a legal vacuum and can result in legal disorder (*rechtsverwarring*). In the sense that it is permissible if it is not regulated and is not forbidden if there is a defined and controlled process. This is what confuses society (anarchy) regarding the proper application and usage of norms. There is uncertainty in society regarding the laws that govern the events that take place." This is the remedy in the event of a legal void since, as was previously indicated, societal development always progresses before legal development. In actuality, laws and regulations determine what is and is not acceptable in society, acting as a code of conduct. Although they can be a useful social tool, stable laws will inevitably fall far short of societal advancement.

V. CONCLUSION

For nations that uphold positive laws, one of the standards of law enforcement is legal certainty. This also applies to the plan for replacement heirs, which is currently codified in the Islamic Law Compilation. Some people still believe that the Compilation of Islamic Law's substitute heir arrangement lacks significant justice value and needs to be changed. Legal reform is always beset with difficulties resulting from societal and cultural shifts. But lawmakers also need to be able to use opportunities as a foundation for laws while maintaining reference to fundamental human values.

VI. REFERENCES

- [1] M. Aini, "Problematika Penerapan Hukum Ahli Waris Pengganti Yang Belum Berkeadilan Dalam Kompilasi Hukum Islam Di Indonesia," *Jurnal Penegakan Hukum Indonesia*, vol. 4, no. 2, pp. 211–234, 2023.
- [2] C. C. Lauren, "Analisis Adaptasi Masyarakat Lokal terhadap Perubahan Sosial dan Tren Budaya di Indonesia Ditinjau dari Perspektif Hukum Adat," *Jurnal Hukum dan HAM Wara Sains*, vol. 2, no. 09, pp. 874–884, 2023.
- [3] L. H. Y. Astutik and M. N. Muttaqin, "Positifkasi Hukum Keluarga di Dunia Muslim melalui Pembaharuan Hukum Keluarga," *Islamika : Jurnal Ilmu-Ilmu Keislaman*, vol. 20, no. 01, pp. 55–65, Jul. 2020, doi: 10.32939/islamika.v20i01.562.
- [4] K. Benuf and M. Azhar, "Metodologi penelitian hukum sebagai instrumen mengurai permasalahan hukum kontemporer," *Gema Keadilan*, vol. 7, no. 1, pp. 20–33, 2020.
- [5] K. Benuf and M. Azhar, "Metodologi Penelitian Hukum sebagai Instrumen Mengurai Permasalahan Hukum Kontemporer," *Gema Keadilan*, vol. 7, no. 1, pp. 20–33, Apr. 2020, doi: 10.14710/gk.2020.7504.
- [6] A. Vassiliades, N. Bassiliades, and T. Patkos, "Argumentation and explainable artificial intelligence: a survey," *Knowl Eng Rev*, vol. 36, p. e5, Apr. 2021, doi: 10.1017/S0269888921000011.
- [7] S. M. Utama, "Islamic Law Review on The Determination of Surrogate Heirs," *International Journal of Nusantara Islam*, vol. 6, no. 2, pp. 133–143, Jan. 2019, doi: 10.15575/ijni.v6i2.3954.
- [8] M. S. Itmam, "Consultation Urgency And Counseling As Islamic Legal Strategy In Legal Positivation In Indonesia," *KONSELING RELIGI Jurnal Bimbingan Konseling Islam*, vol. 10, no. 2, p. 232, Dec. 2019, doi: 10.21043/kr.v10i2.6481.
- [9] S. Aminah and A. Sugitanata, "Genealogy and Reform of Islamic Family Law: Study of Islamic Marriage Law Products in Malaysia," *JIL: Journal of Islamic Law*, vol. 3, no. 1, pp. 94–110, Feb. 2022, doi: 10.24260/jil.v3i1.556.

- [10] B. Harahap, T. Risfandy, and I. N. Putri, "Islamic Law, Islamic Finance, and Sustainable Development Goals: A Systematic Literature Review," *Sustainability*, vol. 15, no. 8, p. 6626, Apr. 2023, doi: 10.3390/su15086626.
- [11] C. Lombaard, I. T. Benson, and E. Otto, "Faith, society and the post-secular: Private and public religion in law and theology," *HTS Teologiese Studies / Theological Studies*, vol. 75, no. 3, Oct. 2019, doi: 10.4102/hts.v75i3.4969.
- [12] Abu Yazid Adnan Quthny, "Implementasi Masalah Mursalah sebagai Alternatif Hukum Islam dan Solusi Problematika Umat," *Asy-Syari'ah : Jurnal Hukum Islam*, vol. 5, no. 1, pp. 1–19, Jun. 2019, doi: 10.36835/assyariah.v5i1.110.
- [13] N. Syarif, "Transformation Of Islamic Law Into National Law: Model, Problem And Alternative Solution Of Practicing Sharia In Indonesia," *Jurnal Dinamika Hukum*, vol. 19, no. 2, p. 407, Dec. 2019, doi: 10.20884/1.jdh.2019.19.2.2373.
- [14] Ainun Najib, "Legislasi Hukum Islam dalam Sistem Hukum Nasional," *Istidlal: Jurnal Ekonomi dan Hukum Islam*, vol. 4, no. 2, pp. 116–126, Oct. 2020, doi: 10.35316/istidlal.v4i2.267.
- [15] S. Permana, "KESETARAAN GENDER DALAM IJTIHAD HUKUM WARIS DI INDONESIA," *Asy-Syari'ah*, vol. 20, no. 2, pp. 117–132, Dec. 2018, doi: 10.15575/as.v20i2.3210.
- [16] T. Anggoro, "Konsep Kesetaraan Gender Dalam Islam," *Afkaruna*, vol. 15, no. 1, 2019, doi: 10.18196/AIIJIS.2019.0098.129-134.
- [17] S. De Vido, "Protecting Yazidi cultural heritage through women: An international feminist law analysis," *J Cult Herit*, vol. 33, pp. 264–270, Sep. 2018, doi: 10.1016/j.culher.2018.02.008.
- [18] M. N. Aspihan, "PENGARUH GENDER DALAM REFORMASI KEADILAN," *Mitsaqan Ghalizan*, vol. 1, no. 1, pp. 72–81, Jul. 2021, doi: 10.33084/jmg.v1i1.2873.
- [19] A. K. Rizani, "Musyawarah Sebagai Alternatif Penyelesaian Sengketa Waris Beda Agama: Avidence Based Solution From Indonesia," *El-Mashlahah*, vol. 10, no. 2, 2020, doi: 10.23971/maslahah.v10i2.2063.
- [20] M. Y. A. Kadir, A. Rivaldi, L. Farsia, and S. Bantasyam, "The Legal Vacuum on Access to Higher Education for Refugees in Indonesia: Islamic Claim for Aceh Responsibility," *Samarah*, vol. 7, no. 1, 2023, doi: 10.22373/sjhc.v7i1.15454

Open Access This chapter is licensed under the terms of the Creative Commons Attribution-NonCommercial 4.0 International License (<http://creativecommons.org/licenses/by-nc/4.0/>), which permits any noncommercial use, sharing, adaptation, distribution and reproduction in any medium or format, as long as you give appropriate credit to the original author(s) and the source, provide a link to the Creative Commons license and indicate if changes were made.

The images or other third party material in this chapter are included in the chapter's Creative Commons license, unless indicated otherwise in a credit line to the material. If material is not included in the chapter's Creative Commons license and your intended use is not permitted by statutory regulation or exceeds the permitted use, you will need to obtain permission directly from the copyright holder.

