

## LEGAL CONCEPTS OF JUSTICE IN THE ACQUISITION QUR'AN INHERITANCE RIGHTS AND ARRANGEMENTS COMPILATION OF ISLAMIC LAW

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### Abstract

Inheritance law of the Al-Qur'an, has been set up as well as possible, fair and perfect acquisition of the right of inheritance to the sister (kalalah). However, its application in the construction of the existing inheritance law is not yet the case. In fact, in certain cases, rule seem irrational, potentially lead to conflict, and contrary to the principles of fairness and decency. This article attempts to uncover the meaning of the text universal inheritance verses of the Al-Qur'an that regulates kalalah, in the hope that justice and perfection of God's law governing the acquisition of the right of inheritance, it looks and are applied properly and proportionately.

**Keywords:** Legal Justice Qur'an, Acquisition Inheritance

### Introduction

Al-Qur'an as a major source of Islamic law has been set up as well as possible, objectively, rationally according to the principles of fairness and decency, the acquisition of rights of inheritance to you in the letter an-Nisa verse 12 and 176. However, the settings in inheritance law Ahlussunnah wal Jamaat especially inheritance law schools Syafi'i, which is applied to society Islam Indonesia under Edarat Head of the Religious Bureau of Religious Affairs of the Republic of Indonesia Number 8/I/735, dated February 18, 1958 and inheritance law of Islamic Law Compilation of Presidential Instruction No. 1 of 1991, dated June 10, 1991 Decree of the Minister of Religious Affairs of the Republic of Indonesia number 154 dated July 22, 1991, in contrast to what has been established by God in the Qur'an. In fact, in certain cases, the setting seemed irrational, potential conflict, contrary to principle fairness and propriety. In the case, the Islamic inheritance law is an integral part of the Islamic religion, its existence bring universal mission, namely rahmatan lil 'Alamin, driving directions pioneer happiness, and uswatun hasanah. With this universal mission, the Islamic inheritance law should not formulate norms that in it the potential to cause conflict. Do not ignore the objectivity and rationality of law and, do not contain discriminatory nature.

Through this article, the author tries to describe the problem with questions as follows: (1) how concept law of the Al-Qur'an about justice in the acquisition of rights of inheritance for you; (2) whether the acquisition of legal arrangements for the civil rights of inheritance in inheritance law wal Jamaat Ahl particularly Madzhab Syafi'i and Compilation of Islamic Law in accordance with the concept of legal justice of the Al-Qur'an? If not appropriate, why did they and what is the solution so that the resulting legal problems can be resolved? The purpose of the research are: (1) to describe the concept of the law of Al-Qur'an about justice in the acquisition of rights of inheritance for you; (2) to analyze the suitability of the legal arrangements for the acquisition of rights of inheritance in inheritance law Ahlussunnah brother Wal Jamaat, particularly inheritance Law Medzhab Syafi'i and Compilation of Islamic Law with the legal concept of acquisition of the right of inheritance to you in the Koran, as well as overcoming problems solution that arise if the rule not in accordance with the Al-Qur'an. This study was included in the real of normative legal research, or so-called also research literature, namely research on secondary data, which consists of: (1) the primary legal materials, in this case is the Qur'an and Islamic Law Compilation Instruction Presidential Decree No. 1 1991; (2) secondary law, which consists of; (1) the interpretation of the Al-Qur'an, (2) the books containing the opinion of Imam schools about kalalah books and other Islamic inheritance law which contains opinions about kalalah; (3) tertiary legal materials such as dictionaries (law) and encyclopedia.

Acquisition of inheritance law setting for Brother (Kalalah) according to Al-Qur'an Brother inheritance rights in the inheritance law of the Al-Qur'an stipulated in the letter an-Nisa verse 12 and 176. An-Nisa verse 12 Arabic text reads: "... wa in kaana rajuluy yuuratsuu kalalatan awimra`atuw lahu Akhun wa fa au ukhtum likulli waahidim minhumas sudus (u), fa in kaanu aktsara min zaalika fahum syuraka`u solution would fis ..".

According Hazairin, Sajuti Talib, and Mahmud Yunus, an-Nisa verse 12 of this translation is:

"If a man or a woman inherited as kalalah, and there his/her brother (male or female), then for each one of the brothers that got 1/6. If they (the brothers) it was more than one, then they are together (association) on 1/3 treasures. . ."

Two years after an-Nisa verse 12 was revealed, Allah revealed the verse again that regulates brother (kalalah), which is now written in the letter an-Nisa verse 176. The Arabic text reads:

Yastaftuunak (a), qulillaahu yuftiikum fil kalalah (ti), in-imru`un Halaka laisa lahuu waladuw wa maa lahuu ukhtun falahaa Nisfu incontinence (a), wa huwa il lam YAKUL yaritsuhaa lahaa walad (un), fa inkaanatsataini falahum suluts tsulutsaani mimma incontinence (a), in kaanuu ikhtar rijaalaw wa wa Nisa fa liz Zakari mislu hazzil untsaayain (i), ...Its translation is: Say, God concey you about kalalah (the extinct). If a man has died, no one there for her children and her sister, then her half of relics, brother also inherited sisters if there are no children for her brother. If the two sisters, then her 2/3 of the relics. If there are some brothers and women, the same for men with part two women.

In verse 12, there is the word "kalalah", but, God does not give the sense or meaning. Only in an-Nisa verse 176, Allah included the word "kalalah", namely "the dead with nothing for her children and for her there are brothers". Appropriate methodology of interpretation, then meaning kalalah on an-Nisa verse 176 also includes an-Nisa verse 12. Thus, the meaning kalalah on an-Nisa verse 12 the same premises kalalah meaning in an-Nisa verse 176. An-Nisa verse 12 and an-Nisa verse 176 is basically the same, they both regulate the acquisition of rights of inheritance for you. However, between these two verses there is little difference, namely an-Nisa verse 12 does not distinguish between the brother with sister section. They would obtain if only one-sixth, and share in the third if their number is more than one. While on an-Nisa verse 176 no difference between the brother with sister section. Part sister if she is a half, if there are two or more people they share the top two-thirds. If the brothers, made up of brothers and sisters, then the brother of two sisters parts.

From the second paragraph kalalah (an-Nisa verse 12 and 176), the line can be drawn as follow:

- 1) All relatives (sibling, same father and same mother), is set at the same time as the unity of the two paragraphs. Namely an-Nisa verse 12 to all the brothers, and an-Nisa verse 176 also to all the brothers. They inherit the order virtues of each, so it is not known any discrimination between brothers.
- 2) The father and brother are not mutually closed and put away. Thus, at the same time, they are able to inherit together in one case inheritance.
- 3) The difference between the portion of section inheritance brothers and sisters, the legal arrangement is casuistry, contextual, according the principle of impartial justice.

Referring to the third line of the law, then the legal concept of the Al-Qur`an on the acquisition of rights of inheritance brother, the norm is:

- 1.1. When one dies without leaving sons, a brother or sister if only one, gets a third part. When the brothers and sisters that there are two or more people, then they jointly received two-thirds.
- 2.1. When one dies without leaving a son, then sister a share as part dzawil furudl half if just one person. When the sisters that there are two or more people, then them together gets two thirds.
- 2.2. When the brother was composed of brothers and sisters, then the brother of two sisters parts.
- 2.3. Part sister can be greater than the parts brother in sister serves as loadbearing for family life, while brother living alone without a load, or as large as part of brother in brother and sister equally serves as a load bearer for the life of their families.
- 3.1. If among the brothers, there is a sibling, his half-brother, and sister the same mother, then that is entitled to inheritance among the brothers and sisters are siblings. His half-brother, and the brother of the same mother veiled by siblings.
- 3.2. His half-brother and the brother of the same mother shall receive a portion siblings, if there are no siblings.
- 3.3. His half-brother and the brother of the same mother were veiled by siblings, received a maximum one-third was borrowed from the portion received by the siblings.
- 3.4. Male and sisters, along with other heirs who accompanies them in the division of inheritance, may agree to peace in the division of the estate, after each know and realize its parts.
- 5.1. Siblings, inheritance rights are not covered by any expert, expert by children, both male and female, or who replaces the child.
- 5.2. His half-brother and the brother of the same mother, inheritance rights are not covered by any except by children, both male and female, or replacement which replaces the child, or sibling of both men and women, or the heir of a substitute who replaced brother sibling, both men and women.

In a Civil Rights Inheritance Inheritance Law Ahlussunnah Wal Jama'a and KHI Ahlussunnah inheritance law Wal Jemaah sharply distinguish between siblings and his half-brother on the one hand, and the brother of the same mother on the other side. Brother of the same mother were given status as dzawil furudl, a share that is for sure, that is 1/6 if only one, and got 1/3 if there are two or more people. Siblings and his half-brother, if their women were given status as dzawil furudl. If they were men or men with a woman, then they were given status as asabah. As dzawil furudl if he himself gets 1/2, if there are two or more people get 2/3. As asabah they will get

all the treasure, or all the rest of the property if it is shared with relatives or heirs of the same mother dzawil furudl others.

If observed and analyzed carefully, will obtain the fact that the inheritance law Ahlussunnah Wal Jama'ah do not use the text of the Koran, but the text commentary. It is known: (1) restrict enactment of an-Nisa verse 12, that is only for relatives with the same mother add word "(same mother)" in paragraph proficiency level, while siblings and his half-brother subordinated to an-Nisa verse 176, and (2) graft father in interpreting the letter an-Nisa verse 12. Consequently, the father closed the inheritance rights of relatives. The details can be read in the interpretation of the letter an-Nisa verse 12, namely:

... If someone dies, both men and women who did not leave the "father and left no children", but has a brother ("Just the same mother") or a sister ("Just the same mother"), then the each of the two types brothers-sixth treasure. But if brothers "same mother" was more than one, then they allied in the third part, will be met after he made or paid after the debt by not giving harm (to the beneficiary). (God establishes it as such) Shari'ah is really from Allah, and Allah is knower of trustees.

Such translation is by Hazairin, derived from the familiar Ali, then according to Al-Qurthuby and Rashid Rida agreed (ijma`) by scholars and friends. Now, it can be read in the interpretations of the Al-Qur'an that exist and circulate in Indonesia, ranging from official interpretation of Religious affairs, as well as in personal interpretations of commentators, among others Tafsir Ibn Kathir, edited by DR Abdullah bin Mohammed bin Abdurrahman bin Ishaq Shaikh Alu, Tafsir Fi Zhilalil Qur'an, vol 4 and 5 by Sayyid Qutb translator As'ad Yasin, et al, Tafsir woman works Zaki Sheikh Imad Al-Barudi, Jalalain by Imam Jalaluddin al Mahalli and Imam Jalaluddin As-Suyuti, Tafsir of Imam Shafi'i works of Sheikh Ahmed bin Mustafa al-Farran, translator Fedrian Hasmand, et al, Tafsir Al-Mishbah, by M. Quraish Shihab, Tafsir Al-Burhan Al-Ahkam Edition, Nandang work Burhanuddin, 2010, and others.

Translation of the letter an-Nisa verse 176 is relatively the same as the text translation of the Al-Qur'an letter an-Nisa verse 176, namely: Say, God instructions you about kalalah (the extinct). If a man has died, no one there for her children and her sister, then her half of relics, brother also inherited sisters if there are no children for her brother. If the two sisters, then her 2/3 of the relics. If there are some brothers and women, the same for men with part two women.

However, its practice is different, namely, first only for siblings and his half-brother, both include the word father on the phrase "leave no child and father", as noted above.

Consequently, in the case of inheritance the heirs consists of a widower, mother, two brothers sibling, two brothers had the same father, and two brothers the same mother. This case, if calculated based on inheritance law Ahl, will obtain the fact that the brother of the same mother, the appropriate interpretation letter an-Nisa verse 12 gets 2/6 section, while siblings and his half-brother, appropriate interpretation of the Al-Qur'an letter an-Nisa verse 176 does not get any parts. His half-brother did not get a part because veiled by siblings, and siblings do not inherit the entire property has been divided since exhausted by widower 3/6, 1/6 mother, and brother of the same mother 2/6. Among Ahlussunnah Wal Jamaat, well aware of this problem. Therefore, they try to solve it by doing steps irregularities known as "al-Musharaka", which combines the two siblings with two brothers who share the same mother in 2/6 sections. The calculation is: A (widower)  $\frac{1}{2} = \frac{3}{6}$ , B (Mother)  $\frac{1}{6}$ , C + D + E + F (siblings and brother of the same mother)  $\frac{1}{3} = \frac{2}{6}$ , or each got  $\frac{2}{24}$  section.

This aberrant division is the way in which Zaid Ibn Thabit, Umar and Uthman, who later embraced by Anas bin Malik, Shafi'i, Sofyan Ats Thauri and other legal experts. Instead, AII bin Abi Talib, Ubay ibn Ka'b and Abu Musa al-Ash'ari, still not giving any part to brother sibling. This opinion is shared by Imam Ahmad, Imam Abu Hanifa, Imam Abu Daud and other jurists.

The existence of such dissent shows that, the solution they take in addressing the problem of the juridical in civil cases (Musharaka), yet provide complete and comprehensive settlement of the problem. For adherents of schools Syafi'i and Malik, indeed there is a solution, but for followers of the Hanafi and Hanbali no solution at all. Moreover, if in the case of inheritance, there are also his half-brother, the solution has been open or create new discrimination, namely discrimination between brothers the same mother with his half-brother, as can be seen in Figure 1 above. Thus, irregularities committed by combining brothers with the same mother siblings, known as the case of (Al-Musharaka), have not been able to provide meaningful settlement of the juridical problems arising from the use of the meaning or meanings of words kalalah on an-Nisa verse 12 results ijtihad exegetes, and ignore the meaning kalalah by God their Creator.

Inheritance case settlement both on gamar 1 and 2 above, it is difficult to be accepted, as opposed to the logic of the public, contrary to the principles of fairness and decency, as well as the potential to cause conflict. Thus, the legal arrangements for the acquisition of rights of inheritance in inheritance law ahlussunnah brother wal jamaat, can be said to have been in accordance with the interpretation, but it does not fit or is contrary to the concept of inheritance law of the Al-Qur'an is logical, rational, consistent with the principles of justice propriety, and not potentially contain the conflict, both the norm and its application in practice. Legal arrangements for the acquisition of the right of inheritance among siblings by ahlussunnah wal jamaat, which refers to the

interpretation of the Al-Qur`an majazi letter an-Nisa verse 12 and 176, in addition to not be in line with the law of the Al-Qur`an conception of justice, also contrary to the principle of justice in article 6 letter of Law Number 12 Year 2011 on the establishment of legislation. No information may provide clues to why an-Nisa verse 12 interpretation/translation like that, where the commentators add the word "same mother" and the word "father" in the letter an-Nisa verse 12? Or, why an-Nisa verse 12 specifically designated for you the same mother, and an-Nisa verse 176 dedicated for siblings and his half-brother? And, why did the an-Nisa verse 12 is added to the word "dad"?

Firdaus Muhammad Arwan, found "Therefore the position of the brothers in verse 12 is not as asabah, it gives you the sense that what is meant is the brother of the same mother, because, if they were siblings or same father as the residuary domiciled surely as described in the paragraph's end -Nisa paragraph 176 ". The author does not agree with this opinion, because the brothers called in an-Nisa verse 176 is also not all be asabah, but can also be dzawil furudl, for example, if the brothers, all women, then they are dzawil furudl, with a share by half if only one course, and they will share in two-thirds, if there are two or more people. So, the same status with the brothers in the letter an-Nisa verse 12. The author tends to argue, that the brother of the letter an-Nisa verse 12, were not given status as asabah, or not different portion brother with sister, in a letter an-Nisa verse 12, that is, if you are male or female is only a sixth of the parts, and if a brother or sister that there are two or more people, then they are together on the third part, not intended to enforce the letter an-Nisa verse 12 specifically for siblings the same mother, but in fact is to show that the portion of the difference between the inheritance part male heir and heiress is not absolute, but rather flexible, can be changed or shifted to one in one and so on, according to the case of existing inheritance and coherent with empirical situation. In this way, there will be stagnation in the effort justice is the purpose of the enactment of a difference portion.

Viewed from the angle of jurisprudence and legislation, in the sense kalalah an-Nisa verse 12 results ijthad (although it has been diijma) should not be used again after Allah Almighty give his fatwa about understanding the kalalah. However, the fact that the notion kalalah results of ijthad is still used to this day. The result is related to the notion kalalah dualism, namely kalalah according to the results of ijthad which has diijma interpretation as written in the letter an-Nisa verse 12 with kalalah that difatwakan by Allah role in al-Qur'an letter an-Nisa verse 176, which then lead to problems in the juridical mentioned above. Closing of the inheritance rights of relatives by the father, in fact has no basis in the al-Qur'an, both the letter an-Nisa verse 12 as well as the letter an-Nisa verse 176. Graft the word "father" in the letter an-Nisa 12 is in addition (results ijthad) only, so that the word kalalah on an-Nisa verse 12 be "dead man with no children and her father".

In the case, the notion kalalah an-Nisa verse 12 should be the same as that stated by a number kalalah understanding of God on an-Nisa verse 176 according to what has been say Allah in the Qur'an letter an-Nisa verse 176, which is "dead with no walad him (the child) ". An-Nisa verse 176 itself, viewed from the side or editorial texts are written in the commentary mayoritis commentators who have diijma, it can be said not to contain any problems, because the text/the same as the text editor/editor of the original Al-Qur`an- letter Nisa verse 176. Unfortunately, in practice, an-Nisa verse 176: (1) special allocated for siblings and seyah; and (2) follow the interpretation of an-Nisa verse 12 which include the word "father" in translating the word 'walad'. Consequently, inheritance rights of relatives had become covered by the father. Thus the determination of the law which is not based on syntax (grammatical interpretation method), but based on the hadith of the background for the revelation of an-Nisa verse 176 (historical interpretation method), the hadith narrated a best friend named Muhammad bin Abdullah bin Amr, who happened do not have children and do not have a father, but have brothers. When he asked the Prophet Muhammad about his desire to bequeath property to his sisters. Coinciding with the events of Muhammad bin Abdullah bin Amr, then Allah also revealed the verse of inheritance, which is now written in the letter an-Nisa verse 176. If only the commentators that using the method of interpretation gramitikal in building construction laws inheritance rights acquisition for you, then will not reveal any such irregularities. Compilation of Islamic law following the concept of inheritance law Ahlusunnah Wal Jamaat. It appears from the provisions of articles 181 and 182 KHI, which is basically a referral of interpretations translations majority of commentators mentioned above, article 181, its formulation is: "if someone dies without leaving a son and father, the brother and sister of the same mother gets one-sixth each section. When they were two or more persons together, they got a third part". Article 182, its formulation is: when one dies without leaving father and son, while he has one younger sister or his half, then he got a half portion. When the sisters together with his half-sister bladder or two people or more, then they jointly received two-thirds. When the sisters are together with the younger brother or his half, then the brother of two to one with a sister.

Because it refers to the interpretation of the majority of commentators, the juridical prolema faced by Islamic Law Compilation inheritance law relating to the acquisition of rights of inheritance brothers, together with the problems faced by wal Jamaat Ahl inheritance law. Noting the legal prolema along with the factors is the cause, then the solution can be reached only one, namely the return to the concept of the law of the Al-Qur`an. Use metogologi interpretation that fits, and note the legal rationality. How, do reinterpretation of an-Nisa

verse 12 and 176, formulate legal norms as mentioned above. This method is very rational, relevant and realistic, both seen from the perspective of the charge/content/substance, exegetic methodology, as well as from the perspective of legal theory or law.

### Conclusion

- 1) The inheritance law of the Al-Qur`an give inheritance rights to all the brothers, whose provisions are set out in two paragraphs, namely an-Nisa verse 12 and 176 as a complementary unity. All relatives (sibling, same father and same mother) is subject under the same rules, namely an-Nisa verse 12 or an-Nisa verse 176 which applied casuistry. Brother, both men and women not only inherit along with the mother, but can also be heir with my father heir, so that there is no right or authority for fathers or brothers or displacing close to each other. The second paragraph kalalah also did not specify which of the brothers, who preferred beneficiary rights. This emptiness can be a space that can be used to perform legal discovery, both by heirs or by the judge at the request of the heirs concerned, using the method of interpretation, reconstruction, and legal hermeneutics.
- 2) The legislation of the acquisition of rights of inheritance to you in the inheritance law Ahlussunnah Wal Jama'a and Compilation of Islamic Law can be said to be not in accordance with the concept of justice legal perspective Al-Qur`an. Because, in addition to still contain discriminatory nature, in certain cases of inheritance and settlement arrangements seem irrational case, potential conflict, as well as contrary to the principles of fairness and decency. A contributing factor, inheritance law compilation of islamic law in regulating the acquisition of right of inheritance refers to inheritance law wal jamaat ahl that uses text interpretation, not text passages of the Al-Qur`an as the basis of reference. Relevant and realistic solutions to overcome problems such laws is, back to the concept of the law of the Al-Qur`an, how to perform a reinterpretation of the commentary verses of the Al-Qur`an that govern the acquisition of the right of inheritance to you, namely an-Nisa verse 12 and 176, of the meaning that is majazi the intrinsic meaning, using methods that are relevant interpretation, or in other words, put the grammatical interpretation of the historical interpretation, by not ignoring the legal rationality. Thus, justice and perfection of inheritance law of the Al-Qur`an would appear and are applied properly and proportionately.

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