

## The Dynamics of Inheritance in Various Modern Muslim Countries

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### ABSTRACT

Islamic inheritance law is an important expression of Islamic family law which is a half of the knowledge possessed by humans as emphasized by the Prophet Muhammad Saw. Islamic inheritance laws basically apply to Muslims anywhere in the world. Islamic inheritance law stipulates that children can be replace their father's position, both sons and daughters. The purpose of this research is to find out how Islamic inheritance law is implemented in several Muslim countries in the world. This research uses a library research types with a normative juridical approach. The research was conducted by collecting data as the main source such as books, journal articles and other data which were analyzed by Islamic law. The research is described normatively clearly according to the existing data. The results of this study indicate that the law of inheritance in Islam states that a child who can replace his father's position is a son and daughter from the male lineage whose father has died before the heir. Meanwhile, sons and daughters from the female lineage have no right at all to replace their mother's position to obtain property from their grandfather (heir). Besides that, the culture of a Muslim country and the social life of the people in that country have an influence on the inheritance law in that country.

**Keywords:** Inheritance, Islamic law, Muslim Countries

### ABSTRAK

Hukum waris Islam merupakan ekspresi penting hukum keluarga Islam yang merupakan separuh sepengetahuan yang dimiliki manusia sebagaimana yang ditegaskan Nabi Muhammad Saw. Hukum kewarisan Islam pada dasarnya berlaku untuk Islam di mana saja di dunia. Hukum kewarisan Islam menentukan bahwa anak dapat menggantikan kedudukan ayahnya baik anak laki-laki maupun anak perempuan. Tujuan dari penelitian ini untuk mengetahui bagaimana pelaksanaan hukum kewarisan Islam yang ada di beberapa negara Muslim di Dunia. Penelitian ini menggunakan jenis penelitian kepustakaan dengan pendekatan yuridis normatif. Penelitian dilakukan dengan mengumpulkan data-data sebagai sumber utama seperti buku, artikel jurnal dan data lain yang dianalisis dengan hukum Islam. Penelitian dideskripsikan secara normatif dengan jelas sesuai dengan data yang ada. Hasil dari penelitian ini menunjukkan bahwa hukum kewarisan dalam Islam bahwa seorang anak yang dapat menggantikan kedudukan ayahnya adalah anak laki-laki dan anak perempuan dari garis keturunan laki-laki yang ayahnya sudah meninggal terlebih dahulu dari pewaris. Sedangkan anak laki-laki dan perempuan dari garis keturunan perempuan tidak berhak sama sekali menggantikan kedudukan ibunya untuk memperoleh harta dari kakeknya (pewaris).

Selain itu budaya suatu negara muslim dan kehidupan sosial masyarakat di negeri tersebut memberi pengaruh terhadap hukum kewarisan di negara itu.

**Kata Kunci:** Kewarisan, Hukum Islam, Negara-negara Muslim

## INTRODUCTION

In fact, in social life that marriage is important to bind two people who want to live together (Putra, 2022a). Islamic inheritance law is an important expression of Islamic family law, it is half the knowledge possessed by humans as confirmed by the Prophet Muhammad SAW. Before Islam came, the inheritance system was already in effect in the Age of Jahiliyah (Putra & Fathony, 2023). However, after Islam came, Islam fundamentally overhauled the law of inheritance in the Age of Jahiliyah which prohibited women and children from inheriting property (Rofiq, 2015). Studying Islamic inheritance law means examining half the knowledge possessed by humans who have lived and continue to live in the midst of Muslim society since the early days of Islam to the middle ages, modern and contemporary times and in the future.

Islamic inheritance law basically applies to Muslims anywhere in the world. Nevertheless, the complexion of an Islamic state and the life of the people of that country or area exert an influence on the law of inheritance in that area. One of the concepts of renewal of Islamic inheritance law in Indonesia was marked by the birth of the Compilation of Islamic Law through the Presidential Instruction of the Republic of Indonesia Number 1 of 1991 concerning the Compilation of Islamic Law. One of the concepts of renewal of Islamic inheritance law in the Islamic Law Commission (KHI) is the granting of the rights of a deceased heir to his living descendants. This rule is contained in Article 185 of the Compilation of Islamic Law which explains that: Heirs who die earlier than the heir then their position can be replaced by their children, except those in Article 173. The share for successor heirs shall not exceed that of the share of equal heirs. Islamic inheritance law specifies, that the child can take the place of the father is a son and daughter of the male lineage whose father has died first from the heir, while the sons and daughters of the female lineage are not entitled at all to replace the position of the mother to acquire property from his grandfather (heir). The grandson of a new son can take the place of his parents if the heir does not leave another surviving son. And the rights obtained by the successor heirs are not necessarily the same as those of the superseded person, nor should they exceed the share of the heirs equal to those reimbursed, but may be reduced.

## RESEARCH METHODS

This study used library research by examining several sources obtained from existing literature such as books and articles (Putra, 2022b). The research was conducted by collecting data as the main source such as books, journal articles and other data which were analyzed by Islamic law. The research is described normatively clearly according to the existing data.

## RESULTS AND DISCUSSION

### A. Heir Justice of Orphan Grandchildren: The Concept of Compulsory Wills

The settlement of the division of inheritance of orphaned grandchildren in Muslim countries uses the concept of Mandatory wills.

### Jordan and Tunisia

The enactment of the Jordanian state family legislation began with the establishment of Law No. 26 of 1947. In keeping with J.N.D. Anderson's earlier records he had also treated the Ottoman Law of Family Right 1917. Until 4 years later, family law was promulgated which was contained in Law No. 92 of 1951 replacing Law No. 26 of 1947. In 1976 Jordan improved the law it made in 1951 with the advent of Law No. 61 of 1976. This written Islamic family law which more specifically addresses the marriage law is better known as Jordan: The Code of Personal Status and Supplementary Laws 1976. This rule of wâjibah will applies only to the descendants of sons and so on down from the male line only, while the grandchildren or grandchildren of the descendants of the daughters (even in the first degree) who according to the Egyptian will law become the recipients of the wâjibah will, is not entitled to receive it.

### Malaysia

Negeri Selangor was the first to realize the 'Syara' Law in Malaysia. Among the embodied laws is the Enakmen Will of Muslims. It has been formulated and enacted by the government of the land. The draft was formulated by the government through the Selangor State Sharia Judiciary Office (JAKESS), and was subsequently submitted in a parliamentary meeting for discussion with the people's representatives. After it was ratified and approved by DiRaja, it was promulgated and enacted. Enakmen Will of Muslims of Selangor State No. 4 of 1999 which was promulgated on September 30, 1999, and came into force since July 1, 2004. Until now, only Selangor, Negeri Sembilan, and Malacca have made special laws regarding the will of Muslims.

Not all countries in Malaysia have a specific law on compulsory wills, but in the event of a dispute regarding a compulsory will, people can still sue if there is a country that issues a fatwa certifying a compulsory will. For example, the fatwa decisions that have been issued by the Muzakarah Jawatankuasa Fatwa Majlis Kebangsaan Islam (MUFK), Negeri Sembilan, Johor, Perak, Pulau Pinang, Persekutuan Region, Selangor, Terengganu, and Kelantan regarding compulsory wills. And there are also countries that reject the concept of compulsory wills through their fatwas as decided by the Perlis State Fatwa Office.

The states that regulate the issue of compulsory wills are contained in the law under the name Enakmen Wasiat Orang Islam, namely the Land of Selangor regulated in Enakmen Wasiat Orang Islam (Selangor) Number 4 of 1999, Negeri Melaka is regulated in Enakmen Wasiat Orang Islam (Melaka) Number 4 of 2004 and Negeri Sembilan is regulated in Enakmen Williat Orang Islam (Sembilan) Number 5 of 2005. However, the Amendment does not provide a general definition of a compulsory will.

In the Enakmen Will of Muslims both in Selangor Country (Enakmen 4 of 1999), Melaka (Enakmen 4 of 2005), and in Sembilan (Enakmen 5 of 2004) in Part VIII of the compulsory will, it is explained that the one who is entitled to receive the compulsory will is the grandson of both male and female of the lineage of the son of the first generation whose father died first or allegedly died at the same time than his grandfather, then the grandson shall be entitled to a statutory will, For the degree of the compulsory will be given to the grandson shall not be more than one-third part of the estate at least adjusted to the share which the father would have received if their father had been alive, as long as it did not exceed one-third part of the estate.

The grandson of the son's descendants is deemed not entitled to a compulsory will if he is the heir or he is the one entitled to inherit the estate, nor is he entitled to a

mandatory will if his grandmother or grandfather when living has made a will or given property to them with a compulsory will, if the will be given by the grandfather or grandmother exceeds one-third of the share then the execution of the excess must be with the consent of the heirs (Putra, 2022b).

### **Turkish**

Regarding this inheritance is contained in book III of the Turkish Civil Code (Turkish Civil Code). This book does not mention the issue of wills at all, that this law was adopted from the Swiss Civil Code (nonislam) which in fact does not recognize the term will. Before using this Swiss Civil Law, Turkey used Islamic inheritance law based on the Hanafi school, because the majority of Turkish society did adhere to the Hanafi school. However, since it turned into a secular state, Turkey has ceased to use the Islamic inheritance system in the slightest, and uses the 1912 Swiss Civil Law inheritance system (Thohir, 2019).

The inheritance law in the Turkish Civil Code continued to be used until finally Turkey made amendments approved by the Turkish National Assembly on November 27, 2001 and socialized through the Turkish Daily Newspaper on December 8, 2001. This amendment contains 1030 articles. The contents of this amendment related to inheritance law in Turkey include:

1. Husband and Wife have equal standing in the family, and either of them can represent the family before the law or the courts.
2. For members who have mental disorders, drunks, or other mental disorders that threaten the family, or those around them, then by the provisions of the Court he can be placed in a recovery (rehabilitation) center for treatment and protection; and he is also entitled to a share of the heirs as the heirs are healthy.
3. If there is a predetermined part, the provision can be rescinded in order to expand the rights of other heirs
4. Taking into consideration the family structure tradition in Turkey, under any circumstances, the aunt or uncle who takes care of the heir's child can then take away part of the land of his legacy.
5. If the Wife or husband dies, in order to preserve the survival of the deceased heir, then the surviving husband or wife may claim the inheritance left behind. If the reason is only to maintain the continuity and well-being of the abandoned spouse or other legal heirs to be able to have a place to live, then it can be fulfilled as ownership.
6. If the heirs are in the form of agriculture, they are handed over to competent heirs in order to make a profit, based on the request of the party who wants to manage; and if it is possible to divide, it is divided into those who are able to take care of it in order to make a profit.
7. Regarding joint ownership between heirs should they make a mutually agreed provision to avoid dissatisfaction of one of the parties and request the division of property.

### **Morocco**

According to the Moroccan Code of Personal Status Act of 1957 Articles 266 to 269, compulsory wills are imposed on children however low, but only from the son who dies first than the dead (heir). In this case in Morocco, the persons entitled to receive the compulsory will are only the grandchildren and so on from the descendants of the sons only, while the descendants of the daughters who by Egyptian Law receive the compulsory will are not entitled to receive them (Zuair & Lebba, 2008).

## Egypt

The judicial system in Egypt is divided into 2 phases. First, the qadha renewal phase. This period has resulted in legal institutions working on several legal cases, namely (1) the Mukhalitah Court (mixed), for foreigners who have privileges, (2) the Court of Experts, Egyptians and foreigners who do not have privileges (3) the Shari'a Court, relating to ahwal shakhsiyah which applies to Egyptians who are Muslims. Second, the phase of the abolition of privileges (Podungge et al, 2022).

Inheritance law is one of the important things where the discussion demands justice and equality in practice, because it concerns the survival of a person or many people. For this reason, regarding the position of orphaned grandchildren who are hindered by the father's brother, it is necessary to reconstruct so that justice and benefit in the distribution of inheritance can be created. Egyptian scholars have long felt there is an injustice regarding the inheritance of grandchildren through sons who get inheritance, while grandchildren through daughters who have died ahead of the heir do not get the inheritance from their grandfathers. Likewise, the grandson of a forbidden boy acquires property left by his grandparents because there are surviving sons. This was welcomed by the Egyptian government, with the emergence of Law No. 71 of 1946 on the will of the Regulation set forth in Law No. 71 of 1946, which stipulated that;

"The heir may give permission to the person who receives the heirloom by not relying on the permission of the heir or not, just as it allows the will to the person who does not receive the estate of the dzawil arham."

"Establish the amount of the obligatory will to a family that does not acquire the estate of what size the father or mother acquired with a maximum limit of one-third of the estate."

Pasal 76: "If an heir (al-mayyit) does not have a duty to the offspring of a child who has died before him (the heir), or dies together with him as much as the share that the child should have obtained from the inheritance, then the descendant will receive the share by will (compulsory) within the limit of 1/3 of the property, provided that (a) the descendant does not inherit, (b) the deceased person (the heir) has never given the property in other ways the amount of his share that. If it has been given or has ever been given but less than the share it should have received, then the deficiency is considered a mandatory will. This will become the right of descent of the first degree of sons and daughters and subsequent descendants according to the male line. Each degree of hijab its own offspring, but it cannot hijab the offspring of the other. Each degree divides the will as if it were an inheritance from his parents."

Pasal 77: "If a person gives a will more than the share that should be received, then the excess is considered a will of endeavor. If it is lacking, then the deficiency is perfected by means of a mandatory will. If it is a matter of majority and leaves some of the others, then a will shall be imposed on all descendants and the existing will shall be deemed to be valid to the extent of the provisions of section 76."

Pasal 78: "A will shall take precedence over any other will. If the testator is not vested in the person to whom he is obliged to be, and he is obliged to the other, then the person who is obliged to him the will shall be entitled to receive the share he should have received from the remaining 1/3 of the estate if sufficient. If not, then for him and for those given other wills within that 1/3 limit." (Podungge et al, 2022)



## **B. Substitute Heir Indonesian**

The majority of the population who are Muslims adhere to the Shafi'i school. Regarding inheritance law, Indonesia itself applies inheritance law in three inheritance law systems. The three systems are customary inheritance law, Islamic inheritance law, inheritance law in the Civil Code. Inheritance is one of the legal consequences caused by marital, kinship, and blood ties (Arif, 2017).

Unlike most other Muslim countries that give mandatory wills to grandchildren who do not get an inheritance. Mandatory wills in Indonesia are given to adopted children or adoptive parents. Mandatory wills in Indonesia itself are regulated in the Compilation of Islamic Law (KHI) Article 209.

The concept of compulsory will in Article 209 is a combination of Islamic law, BW law and customary law, namely adoptive parents and adopted children who do not receive a will are given a mandatory will (from BW law and customary law) as much as 1/3 of the inheritance of the adoptive parent or adopted child (from Islamic law).

The provisions of the Will shall be expressly stated in the Compilation of Islamic Law (KHI) Article 209 paragraphs 1 and 2:

1. The estate of the adopted child is divided under articles 176 to 193 mentioned above, while those of the adopted parents who do not receive the will must be given a mandatory will as much as 1/3 of the inheritance of the adopted child.
2. Adopted children who do not receive an inheritance are given a mandatory will of as much as 1/3 of the parents' estate.

Under this article, the estate of an adopted child or adoptive parent must be divided according to the usual inheritance rules, which are distributed to people who have blood ties who are his heirs. Under this rule the adoptive parent or adopted child will not acquire the estate because he is not the heir. According to this article the adoptive parent is deemed to have abandoned the will and since it is named a compulsory will, a maximum of one-third of the property for the adopted child or vice versa the adopted child for the adoptive parents. Thus, before the division of the inheritance to the entitled parties, this will must first be concluded (Sholeh, 2022).

## **Pakistan**

The Personal Moslem Act of 1961 provides that the death of a son or daughter of the testator before the division is made, then the children of the boys or girls receive an equal share if the word son or the Personal Moslem Act of 1961 provides that the death of the son or daughter of the testator before the division is made, then the children of the boys or girls receive an equal share if the child male or. As for Pakistan with regard to the issue of the right of orphaned grandchildren to inheritance, it provides a unique solution whose rules are very different from the doctrine of compulsory wills introduced in Egypt, Shia, Tunisia, and Morocco for the same purpose. Article 4 of the ordinance (The Muslim Family Law Ordinance 1961) provides that in the event of the death of any son or daughter of the testator prior to the division of the inheritance, the children (grandchildren) of the son of the daughter shall receive an equivalent share of the shares which the son or daughter of the testator would receive if they lived (Podungge et al, 2022; Hidayati, 2012).

This radical provision has been met with continued strong opposition from Pakistani traditionalists who consider article 4 to be contrary to the Koran and Hadith. But the small number of modernists retained the provision by giving the following reasons: First, there is no authoritative Quranic verse or Hadith that excludes orphaned

grandchildren from inheriting their grandfather's property. Second, the exception is based on pre-Islamic practices. Third, if the father dies first than the grandfather, then the grandfather gets a share of the property left by his grandson. This means that the right of substitution of the father by grandfather is recognized by classical law. It is illogical for an upward substitution to be recognized, while a downward substitution is not recognized. Fourth, the Koran has a great concern for the protection and welfare of orphans and their property, the law depriving their grandfather of inheritance will continue to be completely contrary to the spirit of the Koran (Hidayati 2011).

The case of the grandson who was hijabed by his father's brother is a problem for all Muslims, because his idolatry is found in all schools, for this reason in some countries muslim, such as Egypt, Tunisia, Jordan, and Morocco, Malaysia, Turkey provides a solution to the problem of the orphan grandson by giving a wājibah will. Whereas in Indonesia and Pakistan do not use compulsory wills but these two countries use successor heirs.

### C. Inheritance Share for Men and Women In Muslim Countries

The division of inheritance in Muslim countries has two categories of division: first the division by Faraid (2:1), the second generalizing the division of inheritance between men and women (1:1).

#### Pakistan

Menganut hanafi school. In the Hanafi school the share of inheritance between boys and girls is 2:1. Given that the Turkish government made an announcement in 1956 that in the future no law would be enacted contrary to sharia and the regulation of family law including inheritance i.e. the Muslim Family Laws Ordinance (MFLO) enacted in 1961 in which the matter of inheritance there is only a renewal regarding the granting of heirs to the grandchildren of the daughters and so on down the grandchildren of the sons and so on downwards. So it can be concluded that the large share between men and women in the Muslim Family Laws Ordinance regulation does not suffer from the sect adopted by the majority of Pakistan's population, namely Hanafi.

#### Malaysia

The distribution of Muslim heritage in Malaysia is actually made based on Islamic hukum, namely the Law of faraid. The use of civil law is only administrative or procedural in relation to inheritance law such as procedures for requesting division and processing applications. In terms of determining the rate of acquisition of each heir and the case relating to the division, all of them follow the law of sharak. As contained in the Small Heritage Deed 1955 (Deed 98) section 12 (7): "The competent authority should determine, in the most appropriate manner, the law applicable in the custody of the heir's heirloom property, and should decide who becomes the heir in accordance with the applicable law against it and the amount of the acquisition of each other's interests", Looking at the case on the ground, the division of inheritance by Faraid in Malaysia is an alternative or the last step when the heir During his lifetime, he had not had time to divide the inheritance during his lifetime. Divided into two. First, the division when the testator is still alive through grants, wills, endowments, almsgiving. Secondly, the division after the heir dies and previously did not have time to divide the inheritance during his lifetime then the method of settlement is faraid. In the case of a grandson's heir being hindered by the heir, the practice in Malaysia is generally to give the inheritance to the grandson through the path of hinah. This provision also applies to heirs of different religions and adopted children.

## Jordan

Jordan in the field of inheritance in Law No. 61 of 1976 is contained in article 182 regarding compulsory wills intended for orphaned grandchildren of sons, who get a share of not more than  $\frac{1}{3}$ . Personal Status Law No. 61 of 1976 is considered patriarchal law, this is because the law gives more freedom to male citizens than to female citizens. This can be seen from the index of family law gender discrimination rate of 87%. Jordan: the code of personal status and supplementary laws 1976 or Jordan: the law on personal status and the additional laws of 1976 contain 187 articles (there were originally 131 articles in the 1951 law) set out in 19 chapters, out of 131 articles there are 8 articles that talk about principles and only 3 articles actually talk about inheritance law. Thus reads the three pasal: (Sallom & Permata, nd)

Pasal 180: for brothers and sisters get a share of  $\frac{1}{6}$  if alone and  $\frac{1}{3}$  if two or more and there is a man among them; whereas the brother takes a  $\frac{1}{3}$  share if it is with them, and then if the estate has been exhausted then it is distributed to the heirs mentioned in the Qur'an

Pasal 181: a) where if the heirs (which have been mentioned in the quran) do not spend the inherited property then the heirs then return to the terms of their respective divisions

b) the remainder of the estate may be given to spouses or distant relatives if there are no mandatory heirs.

Pasal 182: if a person dies and his son dies before or simultaneously, and leaves a biological child, here there will be an obligation for the grandson to be excluded  $\frac{1}{3}$  of his property. This is a gift with the following specifications:

1. The obligation of the grant (will) for the grandson versus the same takes part of his father's share if he is left out, but the grandson does not get a  $\frac{1}{3}$  share of the designated property.
2. Neither will grandchildren be entitled to grants if they are the heirs of their fathers' ancestors, grandparents or grandparents; or where he was granted or given to him in their lifetime whether they had been entitled to it to be given a grant where he was given a grant, is an imbalance, and if he was given more grants than that is an offence. And that's the wrong gift.
3. Grants may be given to sons and grandsons, however lowly, one or many, citizens on the government of "two parts for men" and solely on their respective ancestors on their ancestors but not for the other; and the ancestors of each got a share only of his leluur. The priority for grantmaking is more on the choice of  $\frac{1}{3}$  part (Ma'rifah, 2012).

In terms of inheritance, Egypt regulates it in Law no. 77 of 1943 which is largely taken from the Hanafi school.

## Tunisia

Tunisian Family Law, the rules on inheritance are contained in 67 articles, namely articles 85 to 152. That is, almost one-third of the content of this Family Law contains rules on inheritance. All rules of inheritance are based on the Quran. Sheikh Ju'aith said, "All the laws contained in the Book of Inheritance are based on the opinions of Maliki's jurisprudence. This is in line with the custom that has been running in Tunisian society, that inheritance is only decided on the basis of the fiqh of this madzhab". Included in the division of inheritance of girls who acquire half of the share of boys, which is based on the verse of the Quran, "men get two parts of girls".



### **Morocco and Egypt**

In spite of inheritance, the provisions in Morocco are the same as those in force in Egypt (in terms of inheritance, Egypt regulates it in Law no. 77 of 1943 which is largely taken from the Hanafi school), the provisions of this country give benefits to the children of the deceased son (ibn al-ibn) or the son of the son of the son to the bottom. As for the girl line, it only applies to the children of the first generation of daughters only, it does not continue until the next generation and the granting of this will must not exceed 1/3 of the property left by the dead. In Morocco the issue of inheritance, particularly the question of the comparison of parts between men and women, the question of compulsory wills for orphaned grandchildren and the question of the share of adopted children, under the law made on 3-4-1958 is, the problem of comparing the share of men and women in inheritance 2:1, while the compulsory will only applies to the grandson of the son, while the grandson of the daughter does not apply to the compulsory will.

### **Indonesia**

Islamic inheritance law in Indonesia is not regulated in the Marriage Law in Indonesia but is regulated in the Compilation of Islamic Law contained in chapter II of Waris. The Compilation of Islamic Law was ratified through Presidential Instruction Number 1 of 1991 concerning the Dissemination of the Compilation of Islamic Law. KHI regulates inheritance in various aspects of the part of boys and girls, namely 2:1.

### **Turkey**

The Turkish state, the share of female and male heirs is provided for in Article 439 where Women and men get an equal share in terms of the division of inheritance, i.e. 1:1. If any part has been determined, the provision may be rescinded in order to expand the rights of other heirs. Taking into consideration the tradition of family structure in Turkey, under any circumstances, the aunt or uncle who takes care of the heir's child can then take a portion of the land left if the wife or husband dies, in order to preserve the survival of the deceased heir, then the surviving husband or wife can claim the abandoned inheritance. If the reason is only to maintain the continuity and well-being of the abandoned spouse or other legal heirs to be able to have a place to live, then it cannot be fulfilled as ownership.

Vertical analysis, in muslim countries such as indonesia, egypt, jordan, morocco, pakistan, tunisia, malaysia, in the division of inheritance between men and women imposes a 2:1 share of inheritance. Of course, this enactment is taken from the established principles of inheritance division, the division of inheritance whose validity from the Qur'an i.e. 2:1 is not followed by the Turkish state. The division of inheritance in the Turkish state is different from what is in Islamic law, Turkey in the division of inheritance between men and women adheres to the principle of equality which is 1:1.

Horizontal Analysis, when looking at the exposure to vertical analysis that does not experience any frustration in terms of the share of heirs between men and women, namely using the faraid system (based on the rules of the Qur'an and hadith), only the Turkish state applies the principle of equality in the division of inheritance.

### **CONCLUSION**

Islamic inheritance law specifies, that the child can take the place of the father is a son and daughter of the male lineage whose father has died first from the heir, while the sons and daughters of the female lineage are not entitled at all to replace the position of the mother to acquire property from his grandfather (heir). The grandson of a new son

can take the place of his parents if the heir does not leave another surviving son. And the rights obtained by those successor heirs are not necessarily the same as those of the person being replaced, nor should they exceed the share of the heirs equal to those of the decedent, but may be reduced.

Grandson orphan Grandson is the second lineage entitled to be heir if the first lineage does not exist, as well as the position of the grandson of the heir's daughter, the grandson in the Suni school includes relatives from outside families, known as "dzaw al-arhâm" i.e. male and female relatives through the female route. The reduction of inherited property acquired by grandchildren as recipients of compulsory wills is a form of the judge's prudence in deciding will cases. The obligatory will imposed through the Muslim Referee's Amendment is to guarantee the right of inheritance of grandchildren who cannot receive the right of inheritance, because their liaison has died first. Mahmud stated that: "This method comes from the view of Ibn Hazm to avoid tyranny towards the grandson who did not get the inheritance because the mayit did not leave a will". The Egyptian state has passed a mandatory will Act No. 71 of 1336 H/1946 A.D. in Egypt, inter alia. containing, If the testator does not supervise the descendants of his son who has died first, or died simultaneously, then the grandson of the son shall have a mandatory will from the heir's estate equal to the share of the heir's son's share, but it shall not exceed one-third of the estate on condition that the grandson is not an heir and there is no share for him by any other means (grant).

Through this obligatory will, if a person dies by leaving the children and grandchildren of the child who died first, if there is no previous will, then legally the deceased person is considered to have left a will to give a portion of his property (maximum one-third) to his grandson. Syrian law only provides for compulsory wills for orphaned grandchildren on the part of men, and does not give them to grandchildren on the part of daughters. Jordan's mandatory wills are given to the grandchildren of the sons only, while the grandchildren of the daughters are not granted.

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