

## **DECONSTRUCTION TOWARDS ISLAMIC INHERITANCE LAW IN INDONESIA (A Brief Study On Hazairin's Bilateral Inheritance Idea)**

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**Abstraction** : *Islamic law, especially its socio-cultural realm, has been changing accorded to the local necessities since the very beginning. Umar ibn Khattab, the second successor of Prophet Muhammad peace be upon him, even had ever decided a different jurisprudence to the taken for granted regulations of Hudud at stealing case which was done by his settler. This case has tried to show us that Islamic law deeply prioritized to the justice delivery to the human being. Similar to that case, the Islamic inheritance law has undergone the same situation, even, since the Dutch colonial government. Later on, based on justice delivery consideration which is the inner side of Islamic teaching, some outstanding experts on law such as Hazairin and Munawir Syadzali began to question that matter. This short writing elaborates Hazairin's deconstructive and controversial idea of Islamic bilateral inheritance and at the same time points out his reliable arguments and methods related to his controversial idea.*

**Key words** : *Deconstruction, Bilateral Inheritance.*

### **A. Foreword**

As a system of law, Islamic Law is the most comprehensive compilation ever made; which regulates almost every single aspect of human's life. The *Par Excellence* compilation of regulations covered both the smallest aspect of human's life such as purification –well known as *Thaharah* in Islamic term- and the biggest complicated one such as politic (*Siyasah*). Such complete holistic regulations are the real indicators that Islam truly has a great aim to create a settled society. The settled society in turn is expected to contribute positive influences towards its surrounding environment. In Islamic term, this circumstance is well known as *rahmatan li al-'alamin* (Holistic bless for the universe). Islamic inheritance law, well known as *Faraidl*, is one of the most interesting topic to discuss; in Islamic law discourses. The significance of the Islamic inheritance law lies on its role to distribute justices to the heirs.

Related to this reality, this article attempts to portray Hazairin's bilateral inheritance idea which was explicitly different to the common *patrilineal* inheritance law in Indonesia. Furthermore, this article also elaborates his

paradigm and method of *Ijtihad*<sup>1</sup> which were alleged as a deconstruction idea by the number of Islamic law discourses.

## **B. Brief Biography**

The outstanding figure that later on widely known as Hazairin, -in fact- has a wonderful true name, that of Hazairin Gelar Pangeran Alamsyah Harahap. He was born in Bukit Tinggi on 28 of November 1906; and died in Jakarta on 12 of December 1975.<sup>2</sup> His formal education was begun at HIS (*Hollands Inlandsche School*) in Bengkulu; and Finished in 1920.<sup>3</sup> After finishing his primary education at HIS Bengkulu, He continued his education into MULO (*Meer Uitgebreid Lagere Onderwijs*) in Padang and finished in 1924. As He graduated from MULO (An education level which is now similar to a Junior High School level), Hazairin continued his education into AMS (*Algemene Middlebare School*) in Bandung. Finally, He continued his education into RHS in Batavia, and successfully held *Meester in the Recten* (Mr.) degree in 1935. One year later, He got his Ph.D through his monumental Ph.D dissertation entitled to *De Redjang*.<sup>4</sup>

As an expert on customary law<sup>5</sup>, Hazairin also intensified his religious knowledge and comprehension, specifically the Arabic language. He realized those large portions of Islamic law sources are available in Arabic. He learned them all through his grandfather's guidance. In fact, His grandfather was a

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<sup>1</sup>The term *Ijtihad* was simply defined as a wholehearted and hardworked efforts to extract the jurisprudence through the main sources of Islamic law that of Al-Qur'an and Hadits. This term was repopularized by Imam Ibnu al-Taimiyah at the late of thirteenth century. Ibnu Taimiyah was well known as the figure who stimulated the moslems all over the world to reopen the gate of *ijtihad*.

<sup>2</sup>For further information on Hazairin's birth, please read Bismar Siregar, *Bunga Rampai Karangan Terbesar Bismar Siregar*, Jakarta: Rajawali Press, 1989, p. 157. For a deep comprehension on Hazairin's biography, read also Damrah Khair, *Hukum Kewarisan Islam Dalam Pemahaman Hazairin*, Jakarta: An unpublished MA thesis at UIN Syarif Hidayatullah Jakarta, 1988, p.12.

<sup>3</sup>Iskandar Ritonga, *Pemikiran Hazairin Tentang Pembaharuan Hukum di Indonesia*, Jakarta: An unpublished MA thesis at UIN Syarif Hidayatullah Jakarta, 1995, p. 16.

<sup>4</sup>This dissertation generally discussed on customary law which was living in Bengkulu at that time. Later on, this dissertation inspired him to deconstruct Islamic inheritance law which was considerably unfair, according to his point of view and his method of *Ijtihad*.

<sup>5</sup>The Dutch experts on customary law, such as L.W.C. Van den Berg, Christiaan Snouck Hurgronje and Christiaan van Vollenhoven, preferred to use *Adat Recht* for Indonesian customary law terms. Some extremist customary law experts, even perceived the customary law similar to the Islamic law. This perception came into their minds, because Islam is the largest religion embraced by the origins of Indonesian people. Unfortunately, this perception brought some beginners on Islamic law to think that such kind of law was a marginal and second class one.

famous preacher at that time. Later on, when his grandfather passed away, Hazairin enriched his deeper comprehension on Islam at the higher level by himself.

As the time goes by, Hazairin grew to be a productive writer. He has written at least seventeen different books. His monumental works on laws were *De Redjang*, *De Govolgen van de Huweilijontbinding in Zuid Tapanuli* (The Impact of Divorce in South Tapanuli), and *Reorganisatie van het Rechtswesen in Zuid Tapanuli* (Law Reorganization in South Tapanuli).<sup>6</sup> He also wrote on relationship between customary law and Islamic law, such as *Pergolakan Penyesuaian Adat Kepada Hukum Islam* (1952). His analysis related to national marriage law could be traced on his work *Hukum Kekeluargaan Nasional* (1962). And his specific writing on inheritance could be traced through his monumental work such as *Hukum Kewarisan Bilateral Menurut Al-Qur'an dan Hadits* (1958), *Hendak Kemana Hukum Islam?* (1960) and *Perdebatan Dalam Seminar Hukum Nasional Tentang Faraidl*. Beside the previous mentioned writings above, Hazairin also wrote many intellectual books. However, at this opportunity we won't deal with them, because we will specify our discussion on Hazairin's thought on bilateral inheritance in Indonesia.

## C. Findings and Discussion

### 1. Hazairin's thought on Bilateral Inheritance System

The idea of bilateral<sup>7</sup> inheritance system initiated by Hazairin, according to Damrah Khair's research for his MA thesis- principally doesn't contradict to the general Islamic inheritance law. However, this idea –as officially admitted by Hazairin- was an intellectual response to the patrilineal oriented *Sunni* inheritance system. According to Hazairin, the patrilineal inheritance system

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<sup>6</sup>The last two writings mentioned above were inspired by his interaction to the Southern Tapanuli society during his duty as a Justice there. For further information, please read Tempo Magazine Redaction Team, *Apa dan Siapa Sejumlah Orang Indonesia 1981-1982*, Jakarta: Pen Graffiti Press, 1981, p. 219.

<sup>7</sup>Hazairin is alleged as the first figure who initiated the bilateral inheritance system, in Islamic inheritance discourse. The idea of bilateral inheritance system was pointed out –for the first time- in his stadium general at University of Indonesia Hall on November 17, 1957. For further reading, please read Ditbinpera Departemen Agama RI, *Mimbar Hukum: Aktualisasi Hukum Islam*, Edisi No. 9/ Tahun 1994, Jakarta: Ditbinpera Departemen Agama RI, 1994, pp. 10-14. Read also Abdullah Syah, "Asas-Asas Kewarisan Dalam Kompilasi Hukum Islam", dalam Kopertais Wilayah IX SU, *Tanzimat: Jurnal Ilmu Pengetahuan dan Kemasyarakatan*, Volume 2, Tahun ke-10, Edisi Juli-Desember 2006, Medan: Kopertais Wilayah IX SU, 2006, pp. 5-14.

dealt with horrible difficulties on its application. This opinion was based on cultural and Indonesian customary law consideration; which generally followed the parental kinship system, or by all accounts well known as a bilateral kinship system.

Hazairin's idea on bilateral inheritance system, in turn, seems to be so contradictive to the established mainstream views on Indonesian inheritance law. His controversial idea on bilateral inheritance system represented his understanding that Islamic private law which consists of horizontal relationship among Moslem society –well known as *Mu'amalah*- was possible to be resurrected.<sup>8</sup> He argued that *Mu'amalah* was local biased and *Arabo-Centric*. In fact, still according to Hazairin, the general patterns of *Fiqh al-Mu'amalah* were colored by the Arabic tradition. Consequently, their *ijtihad* were influenced and in line with their local situation, or known as *Bi'ah* entity in Islamic Law term. We already know that the Arabs followed the patrilineal kinship system. Therefore, a new perspective of *Ijtihad* in Islamic inheritance law was absolutely needed, in line with the different time and places.

In line with this deconstructive atmosphere, Munawwir Syadzali – former minister of Religious Affairs- had ever introduced a shaking controversial idea of Islamic inheritance law; which was based on the real situation of Solonese woman. At the time Syadzali exposed his controversial opinion, the Solonese woman found worked harder than the man did. The woman woke up early in the morning to get to work and supported the financial resources for the whole family. In contrary, a large portion of husbands just wasting their times at the local stall for the all day long.

Syadzali had even offered a distributive inheritance proportion for the heirs, no matter what gender they were. In this context, the proportions of the heirs are determined through how beneficial they are to the family and how hard they worked for the family. Such weird and contradictive idea of inheritance law, of course, deconstructed the established and permanent one which introduced the 2:1 inheritance portion pattern. However, deep inside, some outstanding Moslem intellectuals admitted that Syadzali had tried to give a new meaning of justice by accommodating the local entities.<sup>9</sup>

After conducting a long and tiring research, tracing the two main sources of Islamic law that of Al-Qur'an and Hadits, Hazairin came into one determining

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<sup>8</sup>For his keen analysis on it, please read Hazairin, *Hukum Kewarisan Bilateral Menurut Al-Qur'an dan Hadits*, Jakarta: Pustaka Tinta Mas, 1982, p. 18.

<sup>9</sup>For further reading, please read Munawwir Syadzali, et.al., *Polemik Reaktualisasi Ajaran Islam*, Cetakan I, Jakarta: Pustaka Panjimas, 1988.

conclusion that Islamic inheritance law is truly following the bilateral inheritance system. This bilateral inheritance system enabled the heirs to inherit their definitive portion, no matter where descendant line they were belong. This conclusion was in line with the Surah An-Nissa': 7 which say:

لر جال نصيب مما ترك الوالدان والقرىون مما قل منه او كثر نصيبا مفروضا . وللنساء نصيب مما ترك الوالدان والقرىون مما قل منه او كثر نصيبا مفروضا .

**Interpretation:**

*To male heirs, there are portion of inheritance which are derived from parental and relatives' wealth. To female heirs (also) there are portion of inheritance which are derived from parental and relatives' wealth. No matter how much their portions are, according to the determined portion. (Q.S. Al-Nissa': 7).*<sup>10</sup>

Considering the verse mentioned above, we understand that this verse is trying to explain that someone –male or female- entitles to get their inheritance portion; derived from their parental descendant. This verse, according to Hazairin, is legally reliable argument for the existence of bilateral inheritance system as well. In a more details sense, the mechanism of bilateral inheritance system will be best comprehended through the following verses' explanation:

☞ **Surah Al-Nissa: 11**

Generally, this verse explains that a daughter entitles to get her portion of inheritance from her parents, as her brother does, following the 1:2 proportion of inheritance. On the other hand, a mother –and so does a father- entitles to get her/his one sixth (1/6) portion of inheritance from their children's wealth.<sup>11</sup>

☞ **Surah Al-Nissa: 12**

This verse is trying to introduce the *Kalalah* Term in Islamic inheritance delivery system. *Kalalah* is simply defined as an inheritance portion –male or female- who no longer has a father/mother or has children to inherit their wealth. However, at the same time He/She has a brother or sister from their mother's previous or up coming marriage. At this situation, they should wholeheartedly

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<sup>10</sup>The interpretation from its original version is mine. For further reading, see Department of Religious Affair of Republic Indonesia, *Al-Qur'an dan Terjemahnya*, Jakarta: Yayasan Penyelenggara Penterjemah/ Pentafsir Al-Qur'an, 1971, p. 116.

<sup>11</sup>This mechanism of inheritance delivery, refer to the principle standard of *Ilm al- Faraidl* which is widely worked for a biggest part of moslem society in Indonesia. According to the *Ilm al-Faraidl*, inheritance portions delivery should refer to the Ascendant inheritance line, well known as *Ubuwah* inheritance line, the Descendant inheritance line or well known as *Bunuwah* inheritance line, and Sided inheritance line or well known as *Al-Hawasyi*. For further reading, please read Fatchur Rahman, *Ilmu Waris*, Bandung: PT. Al-Ma'arif, 1971, pp. 299-336.

accept the fact that their brother or sister will replace their portion of inheritance. The situation of *Kalalah* also happened for the vanishing female (*Mafqud*<sup>12</sup>). If her vanishing time has fulfilled the heir replacement conditions, so that her brother or sister will replace her portion of inheritance as well.

☞ **Surah Al-Nissa: 176**

This verse gives an explanation on a man who doesn't have any descendant (son or daughter), however, He has a sister at the same time. At this situation, his sister will replace his portion of inheritance. In contrary, a woman who doesn't have any descendant (son or daughter) but has a brother, her brother will replace her portion of inheritance. Other inheritance portion of relatives whose portion of inheritance doesn't explicitly mentioned at the Qur'an, could be understood through the prophet's explanation and the extended meaning of the heirs whom mentioned explicitly at the Qur'an (well known as *Ashhabul Furudl*).

As an expert on combined customary-Islamic inheritance law, Hazairin judged the *Sunni* as supporter of the patrilineal inheritance system. The judgment was based on the reality that *Sunni* also introduced *Ashabah* and *Zawil Arham*; besides *Zawil Furudl*.<sup>13</sup> Related to his capacity as an expert on combined customary-Islamic inheritance law, Hazairin had divided kinship systems into three realms; that of Patrilineal, Matrilineal and Bilateral. These three dichotomizations of kinship system, later on, had inspired him to point out his bilateral inheritance system.

Related to Hazairin's ijtihad on bilateral inheritance system, He concluded that there are three main-prioritized heirs in Islamic inheritance system; that of *Zawil Furudl*, *Zawil Qarabat* and *Mawalli*.<sup>14</sup> The most principle differences between Hazairin and *Sunni* lied on status of the heirs whose inheritance portion didn't mentioned explicitly at the Qur'an. In this context, Hazairin recognized them as *Zawil Qarabat* and *Mawalli*; while the *Sunni* recognized them as *Ashabah* and *Zawil Arham*.<sup>15</sup> Hazairin adds that *Zawil Arham* represents members of family whose inheritance portion aren't mentioned explicitly at the Qur'an. While *Mawalli*, still according to him, is substitutional heirs recognized at the Qur'an. The innovative inheritance portion of *Mawalli* was based on justice delivery consideration; which is always encompassed by the mechanism

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<sup>12</sup>*Mafqud* term is also recognized in *Fiqh Munakahah* (Islamic law which deals with marriage affairs) discourse. At this context, a wife could propose for her forthcoming marriage, if her husband is vanished for more than 4 years.

<sup>13</sup>Sayuti Thalib, *Pembaharuan Hukum Islam di Indonesia*, Jakarta: UI Press, 1976, p. 45.

<sup>14</sup>*Ibid.*

<sup>15</sup>For further reading, please read M. Idris Ramulyo, *Hukum Kewarisan Islam*, Jakarta: Ind-Hill Co., 1984, p. 53.

of *Hijab* which was recognized by the conservative law books of Sunni.

## 2. Hazairin's Method of Ijtihad on Bilateral Inheritance System

As mentioned previously, Hazairin came into conclusion that bilateral inheritance system is relevant to the will of Allah SWT as written down at Al-Qur'an and Hadits. This encounter, of course, contradicted to the mainstream of common *Fiqh al-Mawarits* practices in Indonesia. Most of Indonesian Moslem inheritance practices had followed the patrilineal inheritance system for hundred of years. This typical established inheritance system, even, still worked out and existed till now. This "down to earth" inheritance system was the settled legacy of the Dutch Colonial government. This contribution was recommended by L.W.C. Van den Berg for the first time through his monumental *Receptio in Complexu* theory. Since the Dutch colonial government promulgated the theory, traditional *fiqh* –especially derived from Syafi'i school- had dominated the Moslem devotional guidance in Indonesia; including inheritance system.<sup>16</sup>

Generally, Hazairin used a little bit different interpretation method<sup>17</sup> to comprehend the inheritance verses in the Qur'an. The interpretation method consists of *Muqarrin*<sup>18</sup>, *Ijmali*<sup>19</sup>, *Tahlili* and *Maudhu'i*<sup>20</sup> Method. However, He preferred to use the *Muqarrin* Method, every time He dealt with complicated inheritance problems; compares to the rest three methods. The major principle mechanism of this method is to compare Qur'anic verses one another, comparing related hadits one another, or pointing out the opinion of the *Mufassirin* (Exegesis Experts). Later on, after comparing the whole related sources of Al-Qur'an and Hadits, He will choose the strongest opinion of the experts and apply that strongest opinion to answer the inheritance problems. The *Muqarrin* Method chosen by Hazairin was a logical consequence of his personal opinion. As widely known, Hazairin didn't accept

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<sup>16</sup>For further reading, please read K.N. Sofyan and Warkum Soemitro, *Dasar-Dasar Memahami Hukum Islam di Indonesia*, Surabaya: Usaha Nasional, 1994, p. 120.

<sup>17</sup>Most of Religion based intellectuals argued that Hazairin's opinion is too raw and biased interest. His occupation as a state justice, in addition to his non religious educational background, were alleged as the cause of that things. Eventhough He derived from a religious family, however He didn't take the formal religious education ever.

<sup>18</sup>Literally means to compare one thing to another. As time goes by, *Muqarrin* grew to be a specific discipline of Islamic Jurisprudence discourse which was widely known as *Fiqh al-Muqarrin*.

<sup>19</sup>Literally means global or general.

<sup>20</sup>Literally means thematic. Similar to *Muqarrin*, this method grew up so fast in Islamic Jurisprudence discourse this day. Even, the usage of *Maudhu'i* method is quite beneficial for the beginners, because all subject materials had been categorized into specific discussion realm.

mechanism of *Nasakh* and *Mansukh*<sup>21</sup> toward the Qur'anic verses.

#### **D. Conclusion**

The bilateral inheritance idea which was launched by Hazairin should be seen critically and proportionally. In academic context, we are permitted to point out differed kind of ideas, as long as we have a reasonable argument on it. Hazairin's bilateral inheritance idea had shown us available alternative of inheritance delivery according to the Islamic inheritance law. Whatever it takes, the innovation of law, including Islamic Law, should be done continuously. Such innovation, in turn, will offer a new version of justice which is relevant to the spirit of local entities.

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<sup>21</sup>*Nasakh* and *Mansukh* is a jurisprudence encounter mechanism which enable Qur'anic verses and hadits demolition, according to its transmitted time to Rasulullah or its relevance to answer the ever raising problem.



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