

The Position Of Decedent's Sibling In Inheritance Based On Compilation Of Islamic Law

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Abstract

The position of decedent's brother in Compilation of Islamic law regulates in article 181 and article 182, which are arranged the proportion of the maternal brother and sibling brother together inherit with paternal sibling.

Compilation of Islamic law which formed in President Instruction still need many interpretation in its existence and substance, in which regulation should have given complete and sufficient regulation, and it will avoid the existence of verdict disparity by religion court judge.

The type of this research is normative research; there are five approaches to use, which are: philosophical approach, conceptual approach, statute approach, case approach and historical approach.

Based on this fact, the substance of Compilation of Islamic law is not as complete as in Fiqh, so that this condition will lead to related problems to analyze:

1. The existence of legal vacuum that regulates the position of decedent sibling who inherit together with decedent's sibling, paternal and maternal sibling in Compilation of Islamic law
2. Difference of existence in decedent sibling that inherit together with decedent's sibling brother, paternal and maternal sibling in Compilation of Islamic law
3. The existence of vague condition of related regulation related with decedent sibling that inherit together with decedent's sibling brother, paternal and maternal sibling in Compilation of Islamic law

Keywords: decedent's sibling their position in inheritance

1. Introduction

One's effort to evaluate and to learn Islamic inheritance law, which called *faraid*,⁸⁴ also means an effort to evaluate half of the knowledge earned by human being that continuously alive in the middle of Muslim community, by the time of the Islam beginning, until the medieval era, modern era and contemporary era and in the future.⁸⁵

For Indonesian Muslim community, Allah rules related with inheritance has been used as positive law in Religion Court to deciding splitting case and dispute related with inheritance. Therefore, Islamic people who solved the problem through religion court has fulfill Allah law in handling inheritance, apart from fulfill observance in conducting Allah rule, and in the same time they also fulfill their obligation to the State.⁸⁶ This condition is different with the Arabic Law before Islam came, in which law show that decedent their position goes to the one's brother who goes to war,⁸⁷ in the condition where heirs did not leave a grown up boy.

However, there are problems faced by religion court is the issue of material law and its appliance, which is positive law that must applied by religion court to solve cases of decedent that submit to them

Materially, it is allowed for religion court judges to use 13 Syafi'i scholar books, that are : Al-Bajuri, Fat-hul Mu'in, Syarqawi ala' al-tahrir, al- Mahalli, Fath al-Wahab, Tuh-fah, Targhib al-Musytaq, Qowawin al-Syar'iyah Utsman ibn Yahya, Qawawin al-Syar'iyah Shadaqah Dhi'an, Syamsuri fi al-Faraidh, Bughat al-Murtasyidi, al-Fiqh ala al- Madzabin al-Arba'ah, dan Mughni al-Muhtaj.⁸⁸

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⁸⁴ Amir Syarifuddin, *Hukum Kewarisan Islam*, (Jakarta, Prenada Media Group, 2008), hlm. 5.

⁸⁵ J.N.D. Anderson, *Hukum Islam di Dunia Modern, terj. Machmun Husein* (Surabaya, Amarpress, 1991), hlm. 66.

⁸⁶ Amir Syarifuddin, *Op. Cit.*, hlm. 4.

⁸⁷ Ismuha, *Penggantian Tempat Dalam Hukum Waris, Menurut KUH Perdata, Hukum Adat, Dan Hukum Islam*, (Jakarta, Pustaka Bulan Bintang, 2004), hlm. 28.

⁸⁸ Jaenal Aripin, *Peradilan Agama dalam Bingkai Reformasi Hukum di Indonesia*, cet. 1, (Jakarta, Kencana, 2008), hlm. 274.

Though there is hope that law unification shall not vanish and shall struggle in its establishment, yet it is a problem to solve pluralism of inheritance law in this country. One of the results from this condition is the range of complicated inheritance case that comes from the personal relation from people that comes from different background of legal culture.⁸⁹

Islamic inheritance legal system, that consist of teaching pluralism, such as inheritance teaching of ahlul sunnah waljamaah, sy'iah teaching, Hazairin teaching, while the most dominant teaching follows in Indonesia is ahlul sunnah waljamaah teaching (Syafii, Hanafi, Hambali and Maliki scholars), however the most dominant between those 4 scholars is Syafii apart from Hazairin teaching that has its influence since 1950, and Indonesia also use *ijtihad* to solve inheritance law in Qur'an bilaterally.⁹⁰

By referring to these holy books, intended to gain legal certainty in Islamic Law. Yet in its fact, the resulting decision comes to various results, because there are no certain references to become guidelines.⁹¹ Yet, based on Fiqh holy books or yellow holy books, it show that judges in religion court can take their decision based on their will and consideration that consider to be in coherence with their opinion.

Therefore, it is un-avoidable that their references must come to the Fiqh holy books of the scholar's favorite, and it is clear that there are differences in various religion court decision for the same issues (disparity).⁹²

It is still considerable, that differences of judges may resulted in their decision while decide on the same problem, as it is in coherence with the proverbs different judge different sentence.⁹³ Yet to solve this problem, there comes an idea to arrange Compilation of Islamic law that compiles all applicative law that applies in religion law environment in conducting its task.⁹⁴

Compilation of Islamic law finished by Project Team, then handled to President of Republic Indonesia through Religion Minister of Republic Indonesia with letter dated per March 14 1988 number MA/123/1988, followed with Instruction President number 1 year 1991 on Compilation of Islamic law. Therefore, the Compilation of Islamic Law hopes to become unification guidelines for judges in religion court and become the positive law that must follow by all Islamic Indonesia citizens.⁹⁵

As it is also stated by Abdul Rachmad Budiono, that "the main purpose on the establishment of the compilation of Islamic Law is to bring positive form of Islamic Law in Indonesia. With regard to this issue, Islamic Law must be considering as Islamic Civil Law".⁹⁶

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The existence of the compilation of Islamic law on the other hand bring easiness for religion court judges to solves the problem, meanwhile on the other hand the existence of Inpres number 1 year 1991 on Compilation of Islamic Law that hope to eliminates uncertainty on legal consequences for uncertainty action above decision made by religion court judge, yet supported with the limited articles, that makes judges has various way in apply the material of the compilation of Islamic code, includes also certain ways to finish inheritance issue that relates with decedent position. We can observe this issue from the existence of article 181 and article 182 of Compilation of Islamic Law that only regulates maternal brother and sibling brother that inherit together with paternal brother.

Based on this fact, it is understandable that brother's position in Islamic inheritance, especially the substance of Compilation of Islamic Law still brings such legal issue.

Based on the background above, what become the problems in this research are:

1. How is the position of decedent's sibling brother position that inherit together with decedent's paternal

⁸⁹ Ratno Lukito, *Hukum Sacral dan Hukum Sekuler*, (Jakarta, Pustaka Alvabet, 2008), hlm.347.

⁹⁰ Idris Ramulyo, M., *Perbandingan Hukum Kewarisan Islam, Di Pengadilan Agama dan Kewarisan menurut Undang-Undang Hukum Perdata (BW)* di Pengadilan Negeri (Suatu Studi Kasus) (Jakarta, Pedoman Ilmu Jaya, 1992) hlm 2.

⁹¹ Amrullah Ahmad, *Dimensi hukum Islam Dalam Sistem Hukum Nasional* (Jakarta, Gema Insani Press, 1996) hlm.1

⁹² Rachmad Budiono, A. *Pembaruan Hukum Kewarisan Islam Di Indonesia*, (Bandung, Citra Aditya Bakti, 1999), hlm2-6.

⁹³ Mohammad Daud Ali (et.al), *Hukum Islam dan Peradilan Agama (Kumpulan Tulisan)*, cet. 2 (Jakarta, PT Raja Grafindo Persada, 2002), hlm210.

⁹⁴ Jaenal Aripin, Op. Cit. hlm. 274

⁹⁵ Rofiq, Ahmad, *Hukum Islam di Indonesia*, (Jakarta, PT Raja Grafindo Persada, 2000), hlm. 43-44.

⁹⁶ Abdul Rachmad Budiono, *Peradilan Agama dan Hukum Islam di Indonesia*, (Malang, Bayumedia Publishing, 2003), hlm. 55.

- brother according to the Compilation of Islamic Law
2. How is the position of decedent's sibling brother position that inherit together with decedent's maternal brother according to the Compilation of Islamic Law
 3. How is the position of decedent's maternal brother position that inherit together with decedent's paternal brother according to the Compilation of Islamic Law
 4. How is the position sibling decedent and paternal brother?

2. Methods

This research is a normative legal research in which this research analyzes legal regulation in a coherence rule of law.⁹⁷ In this matter, law use as a positive norm that applied in some specific time and established as a product of certain political authority that legitimate. There is also appear opinion that respond, whenever problems and the objective of the legal study reflect ideal scope of law itself (philosophy, legal norms, legal principles, systematic logic and basic definition of law itself), so based on this reason this research qualified as normative or doctrinal research.⁹⁸

Approach method as a legal research that has normative-prescriptive nature, related with decedent position in inherit based on Compilation of Islamic Law, with the objective to provide good understanding on legal issue in a holistic way, and based on this analysis comes to approaches as follows:⁹⁹

First, philosophical approach, that use to analyze inheritance issue based on Islamic inheritance and inheritance based on Compilation of Islamic Law, that consist of nature, value, knowledge and purpose of Islamic inheritance law and Compilation of Islamic Law.

Second, conceptual approach, that use to analyze legal principles that related with Islamic inheritance and inheritance based on Compilation of Islamic Law, that consist of Ijbari principles, individual principles, bilateral principles and inheritance principles due to death.

Third, statute approach that use to analyze current law regulation that applies based on Islamic inheritance and Compilation of Islamic Law, to obtain information and coherence between one law regulation to another that regulates on inheritances based on Islamic inheritance and Compilation of Islamic Law.

Fourth, case approach, that use to bring up ratio decidendi, where legal reason use by judges to decide their decision,¹⁰⁰ which is by analyze religion court decision that give it decision in inheritance issue related with decedent sibling position who become inherent together with other inherent, consist of sibling brother, paternal brother and maternal brother or any other inherent.

Fifth, historical approach, that use to obtain historical tracking framework of legal institution from times to times,¹⁰¹ by analyze the historical background in the establishment of Compilation of Islamic Law until it becomes material law that consider as a positive law in religion court, specially related with the issue of Islamic inheritance law

Legal materials may classify as primary legal materials, secondary legal materials and tertiary legal materials.¹⁰² Primary legal resources consist of legal materials that bind from the regulation obtained with related issue. Secondary legal materials obtained from legal materials that give explanation on primary legal resource such books, research report, scientific journal and any other articles. Meanwhile tertiary legal resource obtained from legal materials that may give explanation on primary and secondary legal sources, such as law dictionary, encyclopedia and so forth

⁹⁷ Soetandyo Wignjosoebroto, *Sebuah Pengantar Ke Arah Perbincangan Tentang Pembinaan Penelitian Hukum Dalam PJP II* : Jakarta : BPHN Departemen Kehakiman, 1995, hlm. 5.

⁹⁸ Paulus Hadisuprpto, "Metode Penelitian Hukum Normatif, Pendekatan, Bahan-Bahan Hukum, Teknik Pengumpulan Bahan Hukum dan Analisis Bahan Hukum", Makalah, Seminar Metode Penelitian Hukum, Forum Komunikasi Mahasiswa Pascasarjana Ilmu Hukum, Fakultas Hukum, (Universitas Brawijaya, Malang, Mei:2008), hlm.5.

⁹⁹ The use of more than one approach because of legal science has undergone a process of differentiation and integration in the thinking of research methods, so that the legal research requires a multidisciplinary approach that uses logic more than one branch of science of law, even an interdisciplinary approach that requires verification and assistance from other disciplines.. Lihat Sunaryati Hartono, *Penelitian Hukum di Indonesia pada Akhir Abad ke-20*, (Alumni Bandung, 1994), hlm. 123-124.

¹⁰⁰ Peter Mahmud Marzuki, *Penelitian hukum*, cet. ke 7, (Jakarta, Kencana Prenada Media Group,2011), hlm 119.

¹⁰¹ *ibid*, hlm.126.

¹⁰² Soerjono Sekanto, *Pengantar Penelitian*, Op, cit, hlm. 52.

The analytical method use in this research is legal interpretation, which is grammatical interpretation, by explaining the meaning of certain regulations, by using daily language or law language, while teleological interpretation use to explain legal regulation in coherence with its purpose. Furthermore, analysis is conduct by using juridical analysis by discovering, explaining in-depth and holistically and connected one toward another, and the method also evaluate the legal materials as an explanation of Islamic inheritance concept in a holistic way for the future of Compilation of Islamic law.

3. Results and Discussion

The significance of President Instruction Number year 1991 about Compilation of Islam Law shows a sign forward legal certainty. The significance of President Instruction can support the realization of legal certainty because it strengthen then religion norm which was still in Philosophy non statutory form to written religion norm, as in the written form people know Islam law ordered in it. Legal certainty is signed by the existence of a written law, judge decision and real facts that a norm is obliged by people whether voluntarily or forced by state institution. Legal formation in civil law tradition done by judge in finishing a judicial process. Those principals are done to create fairness, orderliness and tranquility in society. This is not different with the position and the existence of Compilation of Islam law in legal system in Indonesia.

President Instruction Number 1 Year 1991 about Compilation of Islam Law as legal source in Indonesia Legal System, the authority and policy to make President Instruction is supported by paver or authority in taking the decision especially in legal field. The President Policy in making President Instruction Number 1 Year 1991 about Compilation of Islam Law can be traced through authority theory especially attribution theory which is rooted in Indonesia Constitution 1945, article 4 paragraph1. Sovereignty or power of Government of Indonesia is governed in Constitution 1945. Political system of power in it makes it possible for President to have a very dominant power as prerogative right. The founder of Indonesia chose Republic as its state form; it means that they left the idea of kingdom. Related to sovereign system, there are three theories and concept which are still held by state founder. They are sovereign of God Sovereign of Law are sovereign of people. People sovereign concept is implemented in legal instrument and state institution system and government system as a legal institution orderly. The authority to make a decision can be found from two ways, attribution and delegation. President policy in making President instruction Number 1 year 1991 in order to fulfill Islam law need as there was a vacancy of applied law for religion court which was demanded article 23 paragraph 1 Act Number 14 year 1970 which has been changed with Act Number 35 year 1999 on the changes of Act Number 14 year 1970 on the stipulation of main Authority of judges. It was changed to Act Number 4 year 2004 which has been changed with Act Number 48 year 2009 Article 50 paragraph 1 which requires every decision of judge include enough of consideration. It will find out the fact that the background of President Instruction Number 1 year 1991 was a vacancy in Islam law occurred at that time.

Religion norm (legal pluralism) should exist in hierarchy order in state legal order as a nation legal system of Indonesia which Pancasila based philosophy as religion law is the implementation and the explanation of legal idea as in Pancasila and Constitution 1945. Reorder (reconstruction and reposition) state law governed in Indonesia must be based on Pancasila (as Grundnorm) and Constitution 1945. It will help people become easier in understanding stated governed law, and easy to understand state law, legislation, policy regulation or quasy of regulation. Reconstruction and reposition of state law in needed to create fairness, orderliness, welfare, law certainty.

Reconstruction and reposition of state law done by political body, legislative and executive, started from perfecting legal fundamental which are in act form governed in Indonesia, state law is not only legislation mode by legislative body, there are other norms which have to have position in hierarchy as a nation legal system. This a further research on state legal systematic based Pancasila is needed legal fundamental of legislation hierarchy in Indonesia has been changed for four times by the time this research was in progress and still contains frailty t present this is need to be reconstructed on legal hierarchy and legislation based on legal pluralism theory, as Indonesian has a multi-cultural, multi ethnic, multi races, multi classes and multi religions which affect state order system and legal system it governed.

The position of decedent's brother in inheritance has been regulated in Al-Qur'an letter An-Nisa on articles 7, 11, 12 and 176.¹⁰³ Yet in Indonesia, there are further regulation which is stipulated in Compilation of Islamic law

¹⁰³ Departemen Agama R I, Alhidayah Al-Qur'an Tafsir Per Kata Tajwid Kode Angka. (Tangerang Selatan: PT Kalim, 2010), hlm.79,80,106.

that consider as material law of Religion Court, while the position of decedent in inheritance only regulates in article 181 and article 182 Compilation of Islamic law, which are arranged the proportion of the maternal brother and sibling brother together inherit with paternal sibling, meanwhile for the proportion of decedent's sibling brother who inherit with maternal decedent sibling, paternal decedent sibling inherit with maternal decedent sibling, decedent's sibling brother inherit with paternal decedent and maternal decedent sibling, while decedent's did not leave father and child has not have any regulation in it. It will find out the fact that President Instruction Number 1 year 1991 was a vacancy in Islam law occurred at that time.

The unification of inheritance law is over and over struggle in its establishment, yet there are lot difficulties to solve pluralism of inheritance law in Indonesia, so it goes with the Islamic people by the establishment of Compilation of Islamic Law. One of the result is sort of event in a complicated way, resulted from the interpersonal relation between people comes from different legal problem background.¹⁰⁴

Religion court need the most existence of Compilation of Islamic Law, since it is related with its absolute jurisdiction in handle inheritance cases for those who is Moslem, as it is regulated in article 49 Law number 7 year 1989 and amended by Law number 3 year 2006 and Law number 50 year 2009 on Court religion that has authorities such as:

1. Religious courts has the duty and authority to examine, decide and resolve first level matters between Muslims people in the field of :
 - a. marriage
 - b. Inheritance, wills and grants which made based on Islamic Law
 - c. Endowments and Sadaqah
2. Field of marriage as it is regulated in par 1 letter a, in which it regulates based on the current marriage law
3. Field of inheritance, as it is regulates in par 1 letter b to decide whoever has the rights to become inherent, determination regarding inheritance, determining share of each heir, and implementing the splitting of inheritance.¹⁰⁵

Since the establishment of Presidential Instruction No. 1 of 1990 on the Compilation of Islamic Law, and followed up by the Minister of Religious Affairs Decree No. 154 of 1991, the provisions concerning the definition of Islamic Inheritance Law that previously widespread in various holy book Fiqh, may refer to the compilation of Islamic law, which is expressed in article 171 point (a):

"Inheritance law is the law governing the ownership rights of decedent's legacy (tirkah) , by determining who has the rightful right to become heir , includes also each part for each heir."¹⁰⁶

In Islam there are four main classes heirs share. Four groups according to the primacy of Islamic law are as follows:

1. Offspring , parents and spouses ;
2. Brothers , descendants of siblings , parents and spouses ;
3. Parents and spouses ;
4. Husband or wife, parents of the parents or his successor, first to the bottom line (the second line) , then to the top of the line , then the line to the third side and so forth.¹⁰⁷

Discussion of the position of decedent brother in Indonesia can be seen from two aspects , first as their siblings , paternal decedent sibling, maternal heir brother that inherit together; Secondly when their brother inherit together with other heir. While the focus of this dissertation is the first issue. While the position of decedent sibling in conventional Fiqh we can find in the explanation of Abu Zahroh.¹⁰⁸

This condition may cause due to the lack regulation in regulates decedent position in article 181 and article 182. As it is regulates in article 181 only regulates the position of decedent's sibling brother. And article 182 regulates decedent's sibling that inherits together with decedent paternal brother

Article 181:

"If someone dies without leaving a son and father, the maternal brother and sister obtained one-sixth share .

¹⁰⁴ Ratno Lukito, *Hukum Sacral dan Hukum Sekuler*, (Jakarta, Pustaka Alvabet, 2008), hlm.347

¹⁰⁵ **Kumpulan Peraturan Perundang-undangan Dalam Lingkungan Peradilan Agama**, (Jakarta, Yayasan Al-Hikmah), hlm.254.

¹⁰⁶ Departemen Agama RI Direktorat Jendral Pembinaan Kelembagaan Agama Islam, *Instruksi Presiden R I Nomor 1 Tahun 1991 Kompilasi Hukum Islam* , (Jakarta, 1997/1998), hlm.77.

¹⁰⁷ Hazairin, *Hukum Kekeluargaan Nasional*, (Jakarta, Tintamas, 1968), hlm. 16-17

¹⁰⁸ Abu Zahroh, *Ahkamu Tirkah Al Mawaris*, (Mesir, Darul Fikr Arobi, 1963) hlm.122-128.

When they are two or more people together inherit they will obtain one third of the share”.

Article 182:

“If someone dies without leaving a father and son, where he has one sibling sister or paternal sister, she will get half of the share, while this sister who inherit together with sibling sister or paternal two person or more, they will obtain two third of the share, while the sister inherit together with sibling brother or paternal sibling, the share obtained by the brother is two per one within sister.”¹⁰⁹

Although Article 181 indicates clarity but it should systematically interpreted as:

1. If there is one brother maternal, therefore for brother and sister will obtained one per sixth share.
2. If there is two or more maternal brother, even they consist of a) all maternal brother b) all maternal sister and c) all maternal brothers and sisters.

Considering the position of maternal sister compare to *ijtihad* Ahlussunnah, in principally it is the same. While the position of sibling brother and paternal brother regulates in article 182. Meanwhile, this article consist some uncertainty, such as:

1. What if the sibling sister inherit together with paternal sister:
2. What if the sibling brother inherit together with paternal brother;
3. What if the sibling sister inherit together with paternal brothers : or sibling brother inherit together with paternal sister:
4. Is there *hijab hirman* among siblings and paternal relatives

The issues above (1-4) as stressed completely by Ahlussunnah, The uncertainty that occurs in article 182 is not coherence with the objective in the establishment of Compilation of Islamic Law, in which to avoid judge disparity. Therefore it is need to clarify for its meaning, what means by this statement is by clarifying the legal meaning, related with the interpretation scope. Based on my opinion, article 182 must interpret as

1. If there is one sister, she will obtain half share
2. If there is one brother, he will obtain half share
3. If there are sisters or paternal sister, as they are consist of a) all are sister b) all is paternal sister or c) sister and paternal sister, they will obtain two third of the share
4. Brother will make sister as *asabah* with some requirements that brother gain twice share of his sister
5. Paternal brother will make maternal sister as *asabah*, with some requirements that paternal brother will receive twice share of paternal sister
6. There is no *hijab hirman* between brother and paternal brother

Article 182 only consists of three sentences. With these three sentences a few issues (vagueness) arise. Interpretation as set out in (1) through number (6) above is an attempt to clarify the meaning as regulates in the article. For the purposes of subsequent analysis, each of the three sentences in Article 182 is repeated below.

The first sentence:

“If someone dies without leaving a father and son, where he has one sibling sister or paternal sister, she will get half of the share

The second sentence:

While this sister who inherit together with sibling sister or paternal two person or more, they will obtain two third of the share,

The third sentence:

While the sister inherit together with sibling brother or paternal, the share obtained by the brother is two per one within sister

The first sentence of the article refers to obvious issue, where, female sibling or paternal sister inherit alone, she will obtain half of the share, meanwhile based on this sentence it has not shown clarity on each share obtain by female sibling or paternal sister if they inherit together. These things clarify with such interpretation in number 3. The absence of *hijab hirman* between sibling and paternal sibling in Compilation of Islamic Law has shown the sibling differences between paternal and maternal line has left behind. Yet, in the condition of female sibling inherit together with paternal sister; they will obtain two third share of the inheritance.

¹⁰⁹ Departemen Agama RI Direktorat Jendral Pembinaan Kelembagaan Agama Islam, *Instruksi Presiden R I Nomor 1 Tahun 1991*, Op. Cit, hlm.81.

Meanwhile in the issue of male sibling inherit together with female sibling will lead to absence of problem, and the same issues goes to paternal brother who inherit together with paternal sister. The issue to know with is to regard their status as asabah. The other issue if the paternal sister does not regard as hijab hirman by sibling as asabah, how much is the share of the paternal sibling? These two issues did not have sufficient explanation in article 182. Therefore, based on my analysis as it will coherence with the principals in Islamic Inheritance law, paternal brother cannot make sibling sister as asabah. In the cases, they inherit together then sibling sister will be dzul faraid, while paternal brother as asabah. Though, they together have share in inheritance, it will not make paternal brother make sibling sister as asabah. The principal that regulates women become asabah by men, when they line in some current position such as, children, grandchildren and sibling. Compilation of Islamic Law does not accept the concept that sibling and paternal act as hijab hirman instead it accept the concept of equality between one to another's.

Based on Ahlusunnah, sibling who inherit together as asabah conduct hijab hirman above all paternal sibling, though this concept did not follow by Compilation of Islamic Law as explained above. What also become the main issue, are how much is the share of each heir and on what status they act as a heir ? The manifestation of this issue (for example) when a person dies, and he/she left a/several sibling brother and a/several paternal sister, because the paternal sister has been hijab hirman by sibling brother who act asabah. If this issue analyze based on the system of Compilation of Islamic Law, it will be wise and logical to make paternal sister as asabah. Though this thing may deviate from the general practice as explained above, this issue still consider as the constructive type because the condition to make one's as asabah will make one's position stronger, while this condition may not conduct by paternal sibling above sibling, while on the other hand the logical share is sibling above paternal sibling. Relating with the share of the inheritance itself, it will surely make sibling brother obtained the share twice as much from the share of paternal sister.

4. Conclusion

Based on the result of research as explained in above analysis, there are several issues as a conclusion of this research, which are:

1. The position of together of inheritance decedent's sibling and decedent's paternal sibling in the Compilation of Islamic Law has been regulated in article 182 Compilation of Islamic Law, with a requires in the case there are only one sibling sister or paternal sister, they will obtain half of the share, and for the number more than two person for sibling or parental sibling, they will obtain two third of the share, and the share for brother is two compares to one to sister
2. The issue of decedent's sibling only relates with the position of decedent's sibling and decedent's maternal sibling in the case they inherit together. However the Compilation of the Islamic Law has not given sufficient regulation related with the position of decedent's maternal sibling. The Compilation of Islamic Law only regulates the position of sibling brother and maternal sister, as it is stipulated in article 181 Compilation of Islamic Law which is:
"If someone dies without leaving a son and father, the brother and sister of maternal obtained one-sixth share. When they are two or more people together inherit they will obtain one third of the share"
3. The position of together inheritance between decedent's paternal sibling and decedent's maternal mother; the position of together inheritance between decedent's sibling, decedent's paternal sibling, decedent's maternal sibling, the Compilation of Islamic Law regulates them as a material law in Religion Court since it did not have any regulation on it. The substance of Compilation of Islamic Law in regulates Islamic inheritance law specially related with the position of together inheritance of decedent's sibling is very limited, therefore the existence of Compilation of Islamic Law aims to provide material law for Religion Court to fulfill certainty, justice for the justice society seeker, though in fact it will bring problem since the Religion Court judge will not have reference to decide the matters submitted to them
4. In the matter of Islamic Inheritance Law on sibling decedent's position , decedent's paternal sibling, decedent's maternal sibling, as it is regulates in many yellow holy book, since the Compilation of Islamic Law regulates on *kalalah* (a father died and left no children , and the children here means as descendant) , is limited because of this *kalalah* can only be understood in article 174,181, 182 and 185 Compilation of Islamic Law ,between those the four article, the one which regulates on the position of decedent's sibling who inherit together with sibling that has different parent is on article 182, of course this issue will make difficulties for judges in Religion Court to take certain referrals in deciding the case of inheritance of decedent's brother line. So, it will make judges have to find legal references in yellow holy book, which is consider as *faqaha ijihad*, or make a coherence way with the Jurisprudence of Indonesia Supreme Court.

Due to the limited proposition of the reference in both the Qur'an and the Hadith , the problems of their brother specially the one who inherit together with decedent's sibling, such as sibling inherit together with paternal sibling, sibling inherit together with maternal sibling, are still debatable by the jurist up till now. The ijthad in tasyri Islami on the position of decedent's sibling, especially in the case the inherit together with other sibling will lead to many differences of opinion, and related with the implementation/tathbiq fuqaha will submerge other factor to strengthen their opinion, such as justice value, and not limited to manhaj analogy (qiyas)

4. Recommendation

Based on above explanation on this research, several issues to recommend are:

1. In order to avoid legal vacuum and tawaqquf, as it is face with the condition of inheritance law on Compilation of Islamic Law and the widespread references in yellow holy book, it is an urgency for Compilation of Islamic Law to amend itself with articles related to inheritance of decedent's sibling, by inviting Islamic organizations and all related parties to provide opinions on the completeness of inheritance law in Compilation of Islamic Law, especially related with sibling heir
2. Urge to the Government of the Republic of Indonesia and the House of Representatives, that the new Compilation of Islamic Law as it is regard with status Presidential Instruction No. 1 of 1991, to be the guidelines on religion court judges across Indonesia in examining and deciding cases related to inheritance, particularly decedent's sibling sisters inheritance, and the executive (President) with the Legislature (Parliament) should strive to improve the status of soon to strive for Presidential Instruction into Act.

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