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# An Analysis Of Islamic Law Toward Affection Reward In Malay Coastal Society In Deli Serdang: The Practice of giving Inheritance to the Grandchild who hampered because the Parents died previously from

*by* Muhammad Jamil

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## **An Analysis Of Islamic Law Toward Affection Reward In Malay Coastal Society In Deli Serdang: The Practice of giving Inheritance to the Grandchild who hampered because the Parents died previously from the Heir**

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**Abstract:** *This research provides the latest information about the analysis of Islamic law to the affection reward in Malay coastal society in Deli Serdang area (the practice of giving inheritance to the grandchild who hampered because the parents died previously from the heir). This research uses the mashlahah theory: applicative theory is used in analyzing the research data and in the end of this research indicates that the spirit of implementation law in Muslim Malay coastal community in Deli Serdang district to Islamic Law especially in the field of inheritance is the spirit of mashlahah. From this research, the interesting thing is the Malay coastal community of Deli Serdang regency keeps trying to be in sect (Shafi'i) and although in this case the grandchild whose parents died firstly from the heirs in fiqh of Shafi'i the law is veiled so it is not entitled to get the heirs. Nevertheless, the Malay people continue to give grandchildren whose parents died firstly from the heirs by giving a lot from their uncle's so-called unclear divisions.*

**Keywords:** *unclear divisions, Malay, inheritance, Islamic law*

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### **I. INTRODUCTION**

Malay society who exists in the coastal area of Deli Serdang regency is a religious community. Islam adhered as religious teachings that have been held steadily for generations since many centuries ago, it since the entry of Islam to Indonesia, from the historical fact the entry of Islam to Indonesia is estimated in the first century of hijriyah or around the 7th / 8th miladiyah. This is based on the conclusion of the seminar on the entry of Islam to Indonesia which was held in Medan in 1964. Thus before the Dutch people came to Indonesia, Islam has been embraced by most of the people in the Indonesia archipelago, including the Malay coastal on Pantai Labu sub district in Deli Serdang District.

Malay ethnic group is a tribe that identical with Islam so it's often heard the statements claimed enter to Malay same as entering into the Islam religion. In life (the Malay society), Islamic teachings also coloring the behavior and laws that apply in society, and the day to day it growths suitable with the development of society's in it is culture.

For the Malay coastal society in deli Serdang district, such as the Malay tribe in other area basically they adhere the principle of parental kinship, therefore every individual in appeal his line always connect him to the father or the mother. In other words, the kinship relationship between a child and his father's relatives remains the same as his relationship with his mother's relatives. Because of it known the proverbial "Son on the lap the niece is carried", which means every individual of all the relatives of the mother and all the relatives of the fathers enter in their kinship, so there is no limit at all.

The majority of Malays are Muslim. They have the principle " customary decline, ascending *syarak*, custom jointed *syarak*, *syarak* principle kitabullah ", means" all provisions governing life in society derived from ancestral culture and derived from religious teachings, namely al-Qur'an and Hadith". So it can be realized that the law applicable to the Malay coastal community in Deli Serdang area is a customary law that cannot be separated from the Islamic field because the majority of the Malays are Muslims, as well as in practice, equally in the field of inheritance used Islamic inheritance law, so inheritance law Customs for the Malay community is Islamic inheritance law and all arrangements set out in Islamic inheritance law become the foundation for solving the problem of inheritance in Malay society.

In practice Malay coastal communities of Deli Serdang district gives a portion of the estate to the grandchild, but it is not determined the amount, but usually does not exceed the parent's part. Giving inheritance of grandparents to grandchildren whose parents died firstly is known in the community with the term "affection reward". This term has the notion that the grandchildren whose parents have passed before their grandparents,

given love in the form of wealth, or consideration of the efforts of the parents of the grandchild who has helped build and nurture business in the family of their grandparents during his lifetime. The affection reward general the part received by the grandchild is not as big as the part of his parents. The giving of affection reward to grandchildren is generally greater than the granddaughters. The practice of affection reward does not find a case of denial in the community for the giving of inheritance to grandchildren (rewards), but the community determines the existence of sanctions in case of denial in the grant of the inheritance to the grandchild. The form of sanction given by the community to those who do the denial is to excommunicate it from all social activities, such as not invited in the wedding and vice versa the community does not meet the invitation call which made by the person who did the denial of the affection reward.

This paper is intended to get how the completion on inheritance separation, specifically concerning the issue of inheritance for grandchildren as a substitute inheritance in the Malay community where the grandchild whose parents died earlier than the heir, on Pantai Labu sub-district it known as "Patah Jenjang" , and to examine how the Islamic law analysis of affection rewards in the Malay coastal community in Deli Serdang area (The Practice of giving Inheritance to the Grandchild who hampered because the Parents died previously from the Heir).

#### **Giving Affection Reward to the Grandchild who's Parent Died earlier than the Heir**

Giving inheritance to a grandchild whose parents died firstly from the heir (grandfather/ grandmother). According to Hazairin's formulation and this in line with the compilation of Islamic law can be illustrated in the following example cases:

Example in scheme 1

Information

P = heir  
AP1 = daughter 1  
AP2 = daughter 2 who have died earlier than the heir  
CP = granddaughter whose parents have died.

First, a grandfather or grandmother dies leaving a daughter and a grandson of a daughter who dies firstly from the heir. The completion of her inheritance is: for the daughter of 1/3 and for the grandson of the daughter of 1/3 because he replaced his mother with getting 1/3.

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Example in scheme 2

Information

P = heir  
AP = daughter.  
AL = Son who has died earlier than heir  
CP = granddaughter whose parents have died

Second, a grandfather or grandmother dies leaving the heir of a daughter and a granddaughter from the offspring of the son who died firstly from the heir. The settlement of his inheritance is for 1 daughter 1/3 of a portion for the granddaughter from the son earns 2/3 because he replaces his father's position as a son; which son gets 2 portions of a daughter.

In second case the Compilation of Islamic Law shares the same portion of the daughters with the granddaughters from the offspring of the sons because in compilation of Islamic law a surrogate heir may not exceed of equal heirs with the replaced.

Example in scheme 3

Information

P = heir  
AL1 = son 1  
AL2 = son 2 who has died earlier than the heir  
CL = the grandson of the man whose parents have died

Third, a grandfather or grandmother dies or leaves the heirs of a son and a grandson from the offspring of the son who dies first from the heir. The Settlement of the inheritance is for 1 son 1/2 (a half) and the grandson of son offspring gets 1/2 (a half).

Example in scheme 4

Information

P = heir  
AL1 = son 1  
AL2 = son 2 who have died earlier than the heir

CL = the grandson of the man whose parents have died

Fourth, a grandfather or grandmother dies leaving a heir of a son and a granddaughter of a descendant of a son whose parents have died earlier than heirs. The settlement of the inheritance is for 1 son gets 1/2 (half), the granddaughter of a descendant of a son gets a 1/2 (half).

The provision of inheritance above, because Hazairin recognizes the formation of a surrogate heir which known as "mawali". The concept of giving inheritance to grandchildren whose parents died earlier than the inheritors the practice in the Malay society is not determined how much inheritance is given to the grandchildren. But almost every case of a grandchild whose parents died firstly from the heir which tied will be given the inheritance in the form of "Affection reward" generally the portion received by the grandchild is not as big as his parents. Giving inheritance to grandson generally greater than Granddaughters, but unfollow of two-to-one, two for man, one for women, closer degrees preferred than the degrees behind them in a straight line down indefinitely.

The description above is in line with the reality in the field that in general the Malay community in Deli Serdang District stated that the grandchildren who trespassed were given the heritage treasures. Concerning the portion of inheritance to the grandchildren, the Malay coastal community of Deli Serdang Regency responded it with three forms of answers. First, give a simple heritage only. The second group, give a half inheritance from the part which received by their parents. The third, the grandchild was given the inheritance as big as received by his parents.

According with the reality in the field that the Malay Coastal community of Deli Serdang district does not recognize the successor heirs or by replacement terms in place of inheritance, because there is no provision how much inheritance must be given to the grandchildren, while accepting the inheritance of grandparents as substitute of parents who have died earlier.

When observed four cases in the separation of grandchildren inheritance that Hazairin mentioned above, so in the Malay coastal community in Deli Serdang District the separation of it as follows:

The first case is daughter earn 1/2 (a half) (return of the rest of the property to daughter), while the grandson of the female lineage gets the affection reward which is not determined the amount of the portion that given to the heirs.

In the second case, daughter earn 1/2 (a half) grandchildren from the male lineage earns 1/6 (one sixth) to enhance the courtant the 2/3 portion for two or more daughters.

The third case, a son get all the inheritance (ashrabah's) the grandson from a son lineage the status is mahjub , but in practice they are giving inheritance granted "affection reward" it is not determined the portion given by the heirs (brothers of his parents) .

The fourth case, a son get all the inheritance (ashabah) grandchildren from the son lineage the status of the heirs are mahjub, but the practice in the society is given inheritance "affection reward" it is not determined the amount of portion. But the tradition of the community gives portion to granddaughter less than the grandson's the portion of it is up to the heirs.

According to Khairil Asri (Ain) explained as the religious figure on Pantai Labu sub-district in Deli Serdang District, that the practice of affection reward ever applies on H. Hamdan family occurred during the 1990s when the son of H. Hamdan passed away firstly named Agus Salim, and left the child. The child (the son of Alm Agus Salim), who was faraidh hindered to get the inheritance, by his uncles named Adnan, Udin and the other brothers gave the treasure which left to the Agus Salim family although the large portion is not entirely as portion of the Parents who have died firstly. Furthermore Khairil Asri (Ien), explains that the affection reward also happened to the Umar Family where his son Bakhri died firstly, and his uncles gave affection reward for his children. It is dividing 50% from the parent's portion if it is still alive and the separation of this affection reward occurs in 2003.

The same thing said by Misran, the practice of separation the affection reward is also done by Abdul Wahab family, whose son Saprah died firstly; the uncles also give the affection reward to the children Alm Saprah although it is not amount of his parents and this incident occurred in 1990s.

Furthermore M. Nasir explained that the Arbain family also implements the affection rewards while separate the inheritance of their parents property where the brothers of Almh. Siti Aminah who is the daughter of Arbain gives the affection rewards for the child of Almh Siti Aminah and this happened in 1970s.

H. Muhammad Ramli, as the Head of MUI on Pantai Labu Sub-district also explained that the affection reward is a gift from the lifeless to the grandchildren whose parents died firstly. This is happened to the H. Jalaluddin Family left a child named Ilyas with the son of Abdur Rahman, Ishaq and others, as well as Zainuddin and his children Faridah, Sulaiman and others, on this case Ilyas and Zainuddin died earlier than his parents H Jalaluddin who in the Malay community is called by the back of heirloom. While dividing the inheritance of H. Jalaluddin, his children give affection reward to his brother Abdur Rahman and Faridah's children from Ilyas and Zainuddin's family, this gift is called affection reward, with the gift in accordance with the parent's portion which died firstly and the surrounding events in 1990s. Similarly H. Muhammad Ramli

explained the same thing that the Zakariyah family also made affection reward for divided the inheritance. Where Zakariyah has a child named Hafsah with a grandchild Indah, and give affection reward to Indah as grandchildren, with the amount as many as the parent's portion and this incident occurred in 2012.

Furthermore, Irwansyah explained that the practice of affection reward happened in Hamparan Perak sub-district, Deli Serdang Regency. The practice of affection reward applies to the Mahmud family while divided the inheritance. Mahmud has 7 (seven) siblings, Mahmud's family whose son died earlier named Ali Umri, distributed to the grandchild of alm's Ali Umri with amount half of his parent's part, the practice of affection reward was done after the inheritance give to the brother of Alm Ali Umri and then his brothers gave the affection reward to the child of Alm Ali Umri this incident occurred in 2000s.

Furthermore, Hasan Basri as Head of KUA on Hamparan Perak sub-district explained that sometime a small part of Malay society refused it because the position of nephew was veiled but after it was explained because of affection and to help the relatives and family from his brother who died firstly, finally the uncles from The nephew's family gives affection reward to his nephew with the same amount. This incident occurred at Kelambir village on Hamparan Perak sub-district. Furthermore Hasan Basri explained that nowadays some of Malay community still doing affection rewards even though the societies do not know the term is the affection reward and it is in the form of hereditary custom in Malay custom.

Furthermore Zainal Arifin as a people at Hamparan Perak explained that the affection reward ever happening to the family of Alm Khaidir Alin who died without leaving children, and having nephew whose parents earlier died from his brother named Alm Nur Lisa, Naufan Azmi and other brothers, whose original position was covered, but his brothers continued give affection reward to Alm Nur Lisa's family with amount of portion is the most of his first heirs and this affection reward practice happened in 2007.

Syahdan also explained that the affection reward also practiced by Mr. Baharuddin Family who a son has named Husein with his son (grandson) Firman, when dividing the treasures of his uncle, Yusuf gives affection reward to Firman which is the son (niece) of Husein who died Firstly, this incident occurred in 1990s.

The same thing is explained by Ahmad Supri. The affection rewards were made by the Amanuddin Family, whose son Hamzah died firstly. While the divided of Amanuddin heritage, the younger brother of Alm. Supri who died earlier than his parents, still give affection reward to his granddaughter Sarifah Aini and although the amount is not fully as her parents if still alive. The incident occurred in 2014. In 2017 the practice of affection reward also occurs and it is delivered by H. Jama'uddin. The Simansurostiko family also gave affection rewards by his uncle to the son of his brother who died firstly named Poniran with a son named Munir with the same amount.

Similarly with Malay community at Labuhan Deli Subdistrict, they perform the practice of affection reward. This was conveyed by Mahfuz. The Abd. Samad family has 5 (five) siblings. On this his brother was died firstly than his parents. His first brother, Abdul Hamid, had children Burhanuddin, Basri, Saprin, Ramadan and Ani. However, when divided of inheritance with amount 16 rante, the brothers of Abd samad agreed to give affection reward to the child of his brother (Abd Hamid) who died firstly and share 3 rante from his uncle. This incident occurred on March in 2017.

The provision of inheritance in the community that mentioned above can be understood because the inheritance given to the grandchild is not a successor heir, which can replace his parent's as an heir, but his status is still covered, so the community declares a grandchild whose parents died earlier than Heirs covered by son or with other brothers.

The practice of it, there is no case of denial in society to give inheritance to grandchildren (affection rewards), but the community demands the existence of sanctions in case of denial in giving property to the grandchild the form of sanction given by the community to those who denial it is excommunicate from all Social activities, such as not invited in any wedding party and vice versa not attended if the invite concerned in every activity that he did.

The giving of inheritance to grandchildren (affection rewards) applies to descendants of straight and the same, while straight line upwards and deviates in practice on the field are generally not enforced. Furthermore the practice of giving inheritance to the grandchildren that connected with the heir prioritizes the first degree than degrees lies behind him. This means as long as the grandchild is still there, the child of the grandchild is not entitled to get it.

According to the fact that found giving inheritance to grandchildren (affection rewards) in the implementation does not apply to the grandson's twice as much as the granddaughter, as usually applied in the faraid law. However, in practice which found in the field the grandson's portion is generally larger than the granddaughter, it completed by the concord. There is no provision that regulates the amount of grandparent's inheritance must be given to grandchildren, but the facts on the field the portion given to the grandchild does not exceed the parent's portion is only modest, according to the meaning which contained in the term of "affection rewards" to the Malay Coastal community at Pantai Labu sub-district. In the fact it is found that the inheritance is not given to the grandchild if he belongs to the heirs have received grants or wills from his grandparents. And



the giving of inheritance (affection reward) is not done when the grandchild does the murder of the parents, or the heir (grandfather / grandmother), rebellion or makes a big sin to God, such as apostasy, gambler, drunkard and persecuting both his parents and the heirs.

The provisions or rules relating to the giving of inheritance to the grandchildren who were covered in the Melayu coastal societies on Pantai Labu Sub-district almost seem with the provisions that usually set in the mandatory bequests which occurred in Egypt and the Middle Eastern that Muslim majority countries, it only different in technically.

#### **The Reason of Giving affection rewards to Grandchildren whose Parents Die firstly from the Heir**

The background here is the reasons of doing something that the community is giving inheritance to the grandchild whose parents died earlier than the heir (grandparents). Generally, Malay coastal communities in Deli Serdang district responded with three forms: first said the gift of inheritance to the grandchildren because of a deep family relationship, due to customs or a sense of justice, so the background of Malay coastal at Pantai Labu gives the inheritance to the grandchildren as follows:

1. There are brotherhood relationship deeply between the heirs and grandchildren whose left by the parents precedes the grandparents so that there is a deep sense of affection and a high sense of concern for the survival of the grandchildren, and there is a sense of apprehension that obstacles the grandchildren in undergo or in desires of his life.
2. Furthermore, giving the inheritance to the grandchildren is due to the prevailing customs inherent in the community life so the implementation is no longer recommendation in the community life, but more than it is a routine which done when there is a case of grandchildren who covered, because the parents died earlier than heirs (grandparents). The grandchildren were given inheritance known as the affection reward.
3. The other reason being the background of giving the inheritance to the grandchild is the implementation of justice sense that must be upheld to the grandchildren because generally people feel unjust if the grandchild whose parents died firstly from the heiress is not given any inheritance, because of the parents died earlier than the heir (grandfather/grandmother). It can be understood when remembering in the family life of his grandparents, the parents of the grandchildren during the life helped build the family life with difficulty so it is appropriate if the work of the grandchild parents appreciated in form of giving inheritance to his offspring (grandchildren).

In line with the explanation above, the background of giving inheritance to grandchildren whose parents died first from the heirs in reality in community, according to the answers given by the Malays societies can be described as follows: First, generally Malay societies in Deli Serdang district states that it is due to deep family relationships and the descendants of descending customs in the life of the people and this is due to a sense of justice based on righteous morality and perceived with the heart.

From the answers of Malay community in Deli Serdang Regency above, it can be concluded that the reason of community gave the inheritance to the grandchild whose parents died firstly from the heir, the most is due to the sense of justice because people do not feel justice enforced if the grandchild is not given inheritance who can help them in fulfilling their life's needs, for a better future. While other factors that is, a close familial relationship or customs that is a valid in community life supporting factors and the encouragement of the community to give property to the grandchildren.

#### **The Society's Opinion about Justice on giving affection rewards to the Grandchildren whose Parents Died Earlier from the Heir**

Before the author explains about the meaning of justice on giving inheritance to the grandchild according to Malay society, it need to explain some theory of justice or definition of justice itself, among others is Plato's justice theory. He claims that justice arises because of the arrangement or settlement that gives the harmony place to the part that makes up a society. Plato stated justice and law are the common spiritual substance of a society that saves and keeps its unity. A fair society is everyone runs a job that it's suited and best to do. Plato's opinion is a conception of moral justice that essentially is harmony (spiritual). In addition to moral justice according to Plato there is procedural justice; procedural justice or legal justice is a means to exercise moral justice which is higher than the law. Plato defined justice as the highest virtue of a good state. The just man is the man controlling himself from the feelings of his heart that controlled by reason.

Aristotle's theory about justice, he argues justice is feasibility in human action (firmes in human action) feasibility is the midpoint between the two extremes which too much and too little both tops concern two people or two objects If both have similarities in size that has been Set, each must obtain the same object. If it is not same then each person will receive unequal parts. So justice for Aristotle is based on the principle of equality, justice is done when the same things are treated equally. The things that are not the same treated differently.

According to Fredman, the Aristotle's justice formation distinguishes between justice according to law and nature, and distinguishes abstract and propriety justice. Abstract justice is equally meaningful according to

basic law that has been established by law. Laws should be generalized in their application to individuals. Fear reduces and examines the violence, taking into account the individual.

Justice aims to encourage society and general welfare. For Aristotle justice is the ties principle and order in society. The theories of justice from Plato and Aristotle are based on realist philosophy which holds that the universe is made up of the real things, independent, structured and related to hierarchy and form of totality which sense and order can be attained by human. So the things can be known by the human awareness. Intelligent is a tool to know knowledge and it is good and bad norms that trusted by humans and society. The point of both justice theories is Plato emphasizes harmony or concord whereas Aristotle focuses on proportion or weighing. From the description of the theories above, it can be provide an illustration that the justice problem is not easy to formulate.

Justice in al-Quran comes from the word 'is' with the basic meaning is the straight state. It is called straight because specifically, it connotes the right application of something. Hereafter, it called true because in the middle and equate. The basis of the equation is the human characteristic that has everyone; therefore human has the same right because they are human.

According to "al-Maraghi", justice is entitling the right to the rightful. This definition according to Abdul Muim Salim is not valued in terms of equality of rights but the emphasis on the fulfillment of rights as assets of a person. Based on the description above, it can be emphasized that the boundaries of justice not only limited to property, but also the rights are included in it. Therefore, the essence of justice is the consideration of responsibilities both in terms of rights and obligations. Based on this point, justice inheritance lies on the balance between rights and obligations. It is same as the balance between usage and usability.

In line with this, the society's opinion about justice is the granting of a right to a person who is worthy and deserves a right and do not harm others. The public opinion about justice provides a very broad sense of the deeds that are considered fair; especially the act of granting rights and receives rights that include the issues related to the inheritance given to the grandchildren who are exposed.

Thus, the giving of inheritance to a grandchild whose parents die earlier than the heir (grandfather/grandmother) is the granting right to the rightful person and deserving of rights. Because the grandchild who gets the right is not merely based on disappointment because he is an orphan, but further than it the feasibility and appropriateness of the grandchildren to receive the inheritance due to the relationship of grandchildren with the deceased (his grandparents) are very close, only limited His parents who died earlier than the heirs, so that the grandchild was veiled by his parents' brothers.

Another consideration of the grandchild was deemed worthy to receive the inheritance of his grandparents because of the devotion of his parents during the life in the family of the grandparents that is participating in building and collecting property in the family, so it is appropriate and worthy if the grandchild is given inheritance of his grandparents. For the next when looking at the future life of the grandchild is very appropriate and worthy given the inheritance of grandparents. Because when the grandchild's parents death automatically the responsibility to maintenance and survival, including the cost of education and other turned to the grandparents. But after the grandparents died all of it will be disconnected. Remembering about it with the heart and moral considerations it is proper and proper that the grandchild received some of the property left by his grandparents. In order for the grandchild had been able to keep his life well.

This is in line with the facts on the ground that almost all the Malay coastal community in Deli Serdang district said that the practice of giving inheritance to grandchildren whose parents died firstly from the heir (grandparents) which known as "affection reward" is an act of Fair, because the acts are worthy and suitable do to the grandson to anticipate the life the misery.

Thus, it can be concluded that the Malay Coastal community in Deli Serdang Regency generally said that it is appropriate and reasonable if the grandchild is given the inheritance of his grandparents. Because with the gift of inheritance to the grandchild can help his life. And alleviate the misery that he will suffer. Thus it can be stated that it is not considered fair that the grandchildren are left to live in misery and poverty. Though, the parents joined the sacrifice on giving wealth in the family of his grandparents.

#### **Maslahah Mursalah Theory Relation to Giving Inheritance to Grandchild whose Parent Died Firstly from the Heir.**

Maslahah Mursalah theory is the theory of Islamic law that is synchronization with the objectives of Islamic law that focuses on three things: first, the priority of *mashlahah* than kemadhorotan, second, the objective principles of Islamic law is to develop Din, soul, intellect, descent, wealth, and ummat. Then the third, the purpose of Islamic law related to existence of the highest lawmakers and the existence of human as the executor of the law. In Al-Maslahah Al-Mursalah according to ushul scholars give takrif al-maslahah al-mursalah with "giving syara law to a case that it is not contained in *nash* or *ijma* on the basis of maintaining the benefit.

Concerning on the benefit according to A. Djazuli, 36 there are three kinds:

1. Welfare affirmed on Al-qur'an or Al-sunnah, this is agreed by scholars, such as *hifdzu nafsi*, *hifdzu mall* and others.
2. Welfare that contrary to *shara nash* that *qoth'i* but *jumhur ulama* refuse this benefit except Najmudin Athifi from Maliki school.
3. Welfare which is not expressed by *syara*, but there is no argument that rejects it, it meant as Al-Mursalah. But this form is not accepted by all scholars.

The use of Al-Maslahah Al-Mursalah is necessary for caution because if it will not lead tend to follow the lust, therefore required certain conditions of *maslahah mursalah* such as: According to Abd. Al-Wahab's *khalaf*, and Abu Zahrah, these requirements are:

1. Al-Masalahah Al-mursalah is not contradicting with *Mmuqashid al-Shari'ah*, the *kulli* arguments on spirit of Islamic teachings and *juz'i* arguments which *qath'i wurud* and its' *dalalah*.
2. Welfare must be convincing, it means the discussing and researching which rational and deep, so it will provide benefits or refuse *kemharatan*.
3. The benefit has general character.
4. Its implementation does not make difficulties that reasonable.

From these requirements, it occurred in the inheritance, it looks from divided of inheritance with use beneficiaries' *maslahat* or even *madharat*, depending on the heirs in respond it. The development of Islamic Inheritance Law in Indonesia is one of the legal systems from three systems; two other systems are customary law and Western law. The development of Islamic law and Islamic Inheritance law cannot be separated from the presence of the Muslim community, a Muslim must be obligated or obedient to the Islam laws, which is obedient to Allah and His Messenger. Hence, when he embraced Islam automatically Islamic law applies to him. In Indonesia the existence and enforcement of Islamic law guaranteed by the legislation as contained in the Jakarta Charter on June 22, 1945 which it was bring to life. On Constitutional article 29 (1) and (2) Act 1945 is

recognition of the existence of Islamic law in Indonesia mentions as follow:

1. The state is based on the One Supreme god.
2. The State ensures the independence of every citizen to embrace his or her own religion and to worship according to his religion and belief.

Belief in the One Supreme god being the basis of the State is the first principle and the Pancasila. Belief in one Supreme god also brings to life and the other precepts. From the hierarchy formation and ramidal Belief in the one Supreme god Became the basis of other precepts of Pancasila. Hazairin interprets Article 29 Paragraph (1) of the 1945 Constitution with several possibilities:

1. In the state of the Republic of Indonesia shall not occur or apply the rules of Islam for Muslims or contrary to the Christian religion for Christians or those opposed to Hindu Bali for those who are Hindu Balinese or contrary to the martial law of Buddhism for the diverse Buddhists.
2. The Indonesian republic is obliged to enforce the Islamic Shari'a for the Islamic religion, as well as the Shari'a for the other religions according to their religious beliefs.
3. And the Shari'a which does not require help of the State to run it and therefore can stand independently run by every adherent of religion concerned becomes a personal obligation to Allah SWT and according to their respective religion.

Islamic law applicable to the Indonesian Muslim community is normative and some have become positive law, among which has become a positive law is the inheritance law which has gained recognition from the state with the guarantee is the instruction from the President of the Republic of Indonesia. The Inheritance is a behavior of devotion to Allah SWT and it is a container in society life that can be an alternative to the development of family welfare, Al-qur'an Surat an-Nahl (16): 71 explain "and Allah exaggerates some of you from some other in sustenance".

Regarding the provisions of the inheritance in Islamic law the inheritance part of the daughter gets half of the boys, in the An-Nisa: 11 note if it is only a daughter, then she gets a half. If there are two or more daughters, then they get two-thirds. If the daughter is inherit as *asabah* (*asabah bilghairi*). The provisions of the daughter's inheritance are a half of a son part. The position of a daughter as the heir is basically belong to *dzawul faraidh*, whose the inheritance has been determined in certain numbers according to Al-qur'an. But if a daughter with a son, so it become *biroghairi ashabah* that is participate in spend the inheritance so she get 1/3 part. If the heir is a daughter without a son, so she gets a half. But if the heirs are some of daughter and no son, so daughter gets 2/3 part that is divided to them equally. If there are daughter and sons while others heirs do not exist. So every daughter gets a half part from the son. So every son gets 2 (two) parts whereas every daughter gets one part. If in addition to the heirs is daughter, there are sons and other heirs, so the other heirs are given the part firstly, and then the rest is given to the sons and daughter. Summarized of it as follows: 1) If the heir is a daughter, she gets half of part; 2) If the heirs are several daughters without heirs, then the daughter get 2/3 of the part;

3) If the heirs consist of some daughters and sons without the other heirs, then every daughter gets 1 part and sons gets 2 parts.

If the heirs female and male together with other heirs, then every heiress gets 1 part and heirs got 2 parts. Therefore, if there is heiress, then the one who hindered is the brother from the same mother with the heir who has no part. Likewise, if there are two or more heiress, then the one who prevented is the granddaughter from the daughter, except beside the granddaughter there is a grandson, then the grandchildren become ashabah. Different from the heirs from the sons, the heir's daughters do not preclude other heirs, it's just because there is a part for the daughter then the parts for the father and mother are reduced. The provisions which organized the distribution of inheritance to daughter according to Islamic law that is contained in the An-Nisa letter: 11 mentioned: If there is only a girl, then she gets one half. If there are two daughters or more, then they get two-thirds. If the daughter is inherits as ashabah (ashabah bighairi). But the separation of daughter with sons can:

1) Hadith of the Prophet Saw.

Bukhari's history: about a daughter portion, a granddaughter of a son, and a sister, the Messenger of Allah decreed: for daughters are a half, a granddaughter is two-thirds, and the rest for sisters. Bukhari-Muslim's history stated about a grandmother who asks inheritance because the heir is her grandson and Abu Bakr friends gives one sixth to the grandmother. The history of Bukhori and the other faith, regarding the command from Rasulullah Saw, that did not leave descendants in a poor state.

2) Presidential of the Republic of Indonesia 4 instruction

The Further Instruction is from the President of the Republic of Indonesia No. 1 of 1991 about the *Compilation of Islamic Law* Book II about the Law of Inheritance. For example: The position of daughter in Article 176 KHI is: "The daughter if only one person gets half from the parts, if two or more of them get two-thirds, and if the daughter is with the son, so the son portion is two equal one with a daughter ". As contained in Article 183 of KHI is: "The heirs agree to do peace in the distribution of inheritance, after each is aware of its part".

The article is a form of Islamic legal policy with calculates it *maslahat*, giving the inheritance right in a balanced manner without distinguishing between small and big, male or female, as well as substitute heirs, which is clearly the right. This is appropriate with the theory of *Al-maslahah Al-Mursalah*, which is a theory that gives *syara* law to something that is not contained in the *Nash* or *ijma* with the basis to maintaining the benefit. Nevertheless *al-mursalah* requires requirements to avoid from the lust and remain in the *shari'ah* principles. Imam As-Syatibi that affirmed by Abd. Wahab Khallaf and Abu Zahrah, provides the requirements of *al-maslahah al-mursalah* namely: *Al-masalahah al-mursalah* should not contradict with *maqshodid al shari'ah*, *kulli* arguments, the spirit of Islamic teachings and *juzi'i* arguments that *Qoth'I* and it *dalalah*. The benefit must be convincing, it means should be rational and in-depth discussion and research so it ensure provides benefits or rejects conscience.

*Maslahah* has a general characteristic which does not built up unnatural difficulties. *Al-Maslahah al-mursalah* is an *ijtihad* way that has strength and emphasizes comfort to all parties. This theory can be used to understandable that the principle of law is two equal one in the inheritance division of daughter and sons, the existence of a hidden command about the usefulness of family negotiations; it trains the obedience degree to the law coupled with awareness and legal patience.

The theory of *al-maslahah al-mursalah*, in its application suitable with the perception of Islamic law which Ictyanto stated: *tasyrik* and *taklif* wisdom. *Tasyrik* wisdom is concerning with the enactment law rule from Allah Swt and Prophet Saw according to the situations and condition of society. If the society is not mature to accept Islam legal provision, then made a light law provisions. If the society has accepted Islamic law with awareness then improved the provisions of the law in accordance with the human nature. For example: about the law of prohibition to drink alcohol, the first revelation said that kers is having benefit, and there is sin (*madhorot*) but sin is greater (Qur'an 2: 219). It eases after the legal consciousness from the companions increased, the second revelation contained the provision if doing prayers do not drink alcohol (QS 4:43). The third revelation comes after the awareness legal from consciousness is high enough; it said that the drinking of alcohol is haram (QS 5: 90-91).

The *taklif* policy about an Islamic legal policy in the application of a legal provision to human as *mukallaf*, (legal subject) with looking at the situations and conditions of the human, such as seeing to the physical and spiritual ability (adult), has freedom and common sense, in addition having special condition that exists therein. Therefore, in *taklif* wisdom, the punishment for an act is different with one another. For example stealing, the legal provisions said that a thief man or woman is cut off the hand, (QS.5: 38). But in Umar Bin Khaththab period, the hand cut was not carried out, because of the situations and conditions that are doing the theft because of hungry or in poverty.

The two ideals in the inheritance law, developed for the purpose of the law, and this is accordance with the objectives of Islam which developed by Imam al-Syatibi, that the purpose of Islamic law is (*maqashid al-syari'ah*) known with the five things or *al-maqasid Al-khamsah* that is:

1. Maintaining the religion (Hifdz al-Din) religion in the narrow sense means worship makhdoh, a human relationship with Allah SWT, on it there is a rule of law about human relations with Allah SWT, and the ban that leave it.
2. Maintaining yourself (Hifdz al-Nafs), keep yourself from doing harm to yourself and others, the law is mandatory.
3. Maintaining and honor the offspring (Hifdz al-nas / irdl) such as the rules on marriage, adultery prohibition, and prioritize deliberation.
4. Maintain property (Hifdz al-mal) including the prohibition to steal and doing hasab to others property.
5. Maintaining intelligent (Hifdz al-Aql), including maintaining for did not drink alcoholic and the obligation to study.

Five things were added by A. Djazuli that there must be a characteristic to protect the people (Hifdz al-ummah) that is to maintain the harmony of family life and society, because this is the spearhead of enforcement inheritance of Islam law in Indonesia.

Concerning with the position of the surrogate heirs is a valid thing ordinary or appropriate according to the scholars in law enforcement, because there are ijihad doors that provide solutions without violate the rules of the Qur'an. It is understood from the aspect of life will bring a benefit, either its influence on the mankind life, in the bonds of family and brotherhood or benefit from relationship terms with the public interests and individuals in society, or the universal benefits and collective interests (Kulliyah) and the benefit of the individual interest (farduyyah), it is based on a general principle of Islamic law, namely that all human different in a same provision, namely the determination of Tauhid that expressed with *Laa 'ila 'ha Illal lah* (There is no god except Allah). Based on the principle of tauhid, so the implementation of Islamic law is a worship, worship means human servitude and surrender himself to Allah SWT as a manifestation of recognition of His royalty and the manifestation of gratitude. This principle needs and requires human to establish the law according to what Allah Almighty derived that is the Qur'an, this is when observed from illat Islamic law means wisdom, or the real benefits or refuse violence, it relates to the rule of law: *Yagh Yiirul ahkami bitghoirul aj 'minati wal al am kinati wal ni yaati wal ghowaa i'di* "(The change of law happened due to change of space and time, intention and benefit)".

## II. CONCLUSION

From the data analysis and KHI provisions relating to the position of grandchild whose parents died firstly by heirs in the Malay coastal community in Deli Serdang district, it can be concluded as follows:

1. The Malay Community in Deli Serdang Regency stated that the grandchildren who covered are given the treasures. About the portion of the inheritance division to grandchildren whose parents died firstly from the heirs, the Malay coastal community in Deli Serdang district responded in three forms of answers. First, they said given a **simple** heritage only. The second, claimed to be given a half inheritance from the part that received by their parents. The third, declared the grandchild was given the inheritance of the portion received by his parents. The reality in the field that the Malay Coastal community in Deli Serdang district does not recognize the successor heirs or by replacement terms in place of inheritance, because there is no provision the amount of property must be given to the grandchildren, while accepting the inheritance from his grandparents in as a parents who have died earlier. The implementation of giving affection rewards to grandchildren whose parents died earlier from the heir who inherit property in the Malay coastal community in Deli Serdang district observe from Islamic law, so the affection reward is not contrary with Islamic law, and this gift in accordance with the considerations and rules of al-mashlahah .
2. The background to give the inheritance to a grandchild whose parents died earlier than the heirs in the Malay society is due to close and deep kinship, the benefit consideration and justice. Remembering merit and dedication of the grandchildren parents who was participated in building family life (grandparents) during the lifetime. So it is morally righteous that the grandchild is deemed worthy and reasonable to get the inheritance left by the grandparents.
3. The formulation to give inheritance to grandchildren whose parents died earlier than the heirs (grandparents) in the Malay Coastal community in Deli Serdang Regency known as "affection reward" can be said same with the formulation to give inheritance to the grandchildren who are covered in Muslim-majority countries such as obliged of dying exhortation in Egypt, Syria and replacements place in Pakistan and the Compilation of Islamic Law in Indonesia are aimed to realize the welfare that leads to the justice.
4. Commonly, the Malay coastal community in Deli Serdang district said that the practice of giving inheritance to grandchildren whose parents died firstly from the heir (grandfather/grandmother) known as "affection reward" is a fair deed, because the deeds are feasible and worthy to do to the grandchild to anticipate the grandchildren life from the misery. So it can be concluded that the Malay Coastal Community at Pantai Labu generally said that it is proper and normal that the grandchild is given the inheritance of the grandparents, because giving the inheritance to the grandchild It can help the life and

alleviate the suffering he will suffer, so it can be declared not to be fair if the grandchildren are allowed in misery and destitution, whereas his parents sacrificed to give wealth in the grandparents family.

So based on it, the spirit of law enforcement of the Muslim community Malay coastal areas Deli Serdang regency against Islamic law, especially in the field of inheritance is the spirit kemashlahatan. It's just from this research, the interesting thing is that the coastal Malay community of Deli Serdang regency keep trying to be in its school (Shafi'i) and although in this case the grandchild whose parents first died from the heirs in fiqh fiqh the law is veiled so it is not entitled Get the heirs. Nevertheless, the Malay people continue to give grandchildren whose parents first died from the heirs by way of giving from the uncle's part called the reward of love and of course this is different from the concept of successor heirs that automatically grandchild replaces the position of his parents who first died Of the heir.

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