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## Perspectives on Inheritance and Bequest for Heirs' Descendants: A Comparative Analysis of Muhammad Shahrur and Hazairin

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### Abstract:

*Far'u al-warith* ( direct descendants of an heir) represents a form of kinship that is one of the strongest factors in establishing inheritance rights in Islam. This study aims to describe the inheritance rights of *far'u al-warith* from the perspectives of Muhammad Shahrur and Hazairin. Additionally, it examines the bequest provisions for *far'u al-warith* according to both scholars. This research employs a normative legal approach with a comparative methodology. The data used are secondary data collected through documentation and then analyzed descriptively. The results show that Muhammad Shahrur's concept of inheritance for *far'u al-warith* is based on three inheritance boundaries, known as the theory of hudud, where grandchildren inherit based on the concept of *tardhiyah*. In Hazairin's concept, inheritance for *far'u al-warith* is determined using a 2:1 asset ratio, and grandchildren inherit through the concept of *mawali*. In Shahrur's concept of bequests for *far'u al-warith*, the testator has full rights to decide the amount of wealth and designate the beneficiaries, without specific limitations other than adherence to spiritual piety. In contrast, Hazairin's concept imposes a limit on the size of the bequest, restricting

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it to no more than one-third of the estate. In Hazairin's view, both heirs and non-heirs may be recipients of the bequest.

**Keyword:** *Far'u al-warith*, inheritance, bequest, Muhammad Shahrur, Hazairin.

### **Abstrak:**

Far'u al-warith (keturunan langsung dari ahli waris) merupakan bentuk kekerabatan yang menjadi salah satu faktor terkuat dalam menegakkan hak waris dalam Islam. Penelitian ini bertujuan untuk mendeskripsikan hak waris far'u al-warith dari sudut pandang Muhammad Shahrur dan Hazairin. Selain itu juga mengkaji tentang ketentuan wasiat far'u al-warith menurut kedua ulama tersebut. Penelitian ini menggunakan pendekatan hukum normatif dengan metodologi komparatif. Data yang digunakan adalah data sekunder yang dikumpulkan melalui dokumentasi dan kemudian dianalisis secara deskriptif. Hasil penelitian menunjukkan bahwa konsep pewarisan far'u al-warith menurut Muhammad Shahrur didasarkan pada tiga batasan warisan yang dikenal dengan teori hudud, dimana cucu mewarisi berdasarkan konsep tardhiyah. Dalam konsep Hazairin, warisan bagi far'u al-warith ditentukan dengan perbandingan harta 2:1, dan cucu mewarisi melalui konsep mawali. Dalam konsep warisan far'u al-warith yang dikemukakan Syahrur, pewaris mempunyai hak penuh untuk menentukan besaran harta dan menentukan siapa penerimanya, tanpa batasan khusus selain ketaatan pada ketakwaan ruhani. Sebaliknya, konsep Hazairin memberikan batasan pada besaran warisan, yaitu membatasi jumlah warisan tidak lebih dari sepertiga harta warisan. Dalam pandangan Hazairin, baik ahli waris maupun bukan ahli waris bisa menjadi penerima warisan.

**Kata Kunci:** Far'u al-warith, warisan, warisan, Muhammad Shahrur, Hazairin.

## Introduction

*Far'u al-warith* (direct descendants of an heir) is a form of kinship that serves as the strongest factor in establishing inheritance rights in Islam. It refers to the direct blood relationship downwards, consisting of the descendants of heirs, including sons and daughters, as well as grandsons and granddaughters through the male line, despite differing opinions among scholars regarding it. This kinship is essential as it represents the causal link between individuals and cannot be easily disregarded<sup>1</sup>. When a child is born to a married couple, the father and mother, the child automatically acquires the inheritance from the deceased parent. Conversely, the parents are entitled to inherit from the child if the child passes away. The transfer of assets from the deceased to the living is governed by Islamic inheritance law<sup>2</sup>.

Various terms are used in Islamic inheritance literature, including *hukmu al-warith*, *mawarith*, and *faraidh*. The differences in these terms stem from the distinct focal points of discussion. The primary focus of *hukmu al-warith* is the heirs or those who receive the inheritance, as the term *warith* means "heir." The central topic of *mawarith* pertains to the object of this law, which is the inherited wealth or property transferred from the deceased to the living, as *mawarith* is the plural form of *mirath*, meaning "inherited property." Meanwhile, *faraidh* focuses on the shares received by the heirs; it is the plural form of *faridhah*, which signifies something that has predetermined provisions. From these various terms, it can be concluded that Islamic inheritance law regulates the transfer of wealth from the deceased to the living by determining who is entitled to inherit and the proportion of the inheritance each heir will receive.

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<sup>1</sup> Nofiardi Nofiardi, *Hukum Kewarisan Islam Antara Teori dan Praktek*, vol. 1 (Bandarlampung: Pusaka Media, 2023), 33–37, <http://repo.uinbukittinggi.ac.id/985/>.

<sup>2</sup> Amir Syarifuddin, *Hukum Kewarisan Islam* (Jakarta: Prenada Media, 2015), 5.

Islamic inheritance law has fundamental principles that illustrate its characteristics, including; 1) the principle of obligation, 2) the bilateral principle, 3) the individual principle, 4) the principle of balanced justice, and 5) the principle of consequences of death<sup>3</sup>. These principles highlight that one characteristic of Islamic inheritance law is that it is automatic; the transfer of wealth from the deceased to the living occurs according to Allah's provisions without relying on the desires of the testator or the heirs.

In contrast to this characteristic, Muhammad Shahrur argues that bequests take precedence. He contends that the inheritance provisions in the Qur'an apply automatically if there is no bequest made by the deceased. In such cases, Allah takes over the distribution of the inheritance through the provisions of inheritance verses<sup>4</sup>. However, if there is a bequest for the distribution of inheritance made by the testator, then the distribution occurs according to that bequest. In Shahrur's concept of inheritance, the determination of the amount of wealth and who is entitled to be the recipient of the bequest is entirely the testator's right, without any specific limitations or requirements, except for adherence to piety before Allah SWT. Considering that the standard of piety varies among individuals, it is possible for the testator to bequeath their entire estate to someone outside their family, in this context, to *far'u al-warith*, such as an educational institution or an individual chosen by the testator, with the intention that the bequest serves as a charitable act (*amal jariyah*) for the testator. However, this could conflict with Allah's command in Surah Al-Nisa, verse 9, which states:

"وَالَّذِينَ لَوْ تَرَكَوْا مِنْ خَلْفِهِمْ ذُرِّيَّةً ضِعْفًا خَافُوا عَلَيْهِمْ فَلْيَتَّقُوا اللَّهَ وَلْيَقُولُوا قَوْلًا سَدِيدًا"

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<sup>3</sup> Akhmad Haries, *Hukum Kewarisan Islam: Edisi Revisi*, Cetakan I (Depok, Sleman, Yogyakarta: Ar-Ruzz Media, 2019), 13.

<sup>4</sup> Muhammad shahrur, *Metodologi Fiqih Islam Kontemporer*, trans. Sahiron Syamsuddin and Burhanudin, vol. 1 (Kalimedia, 2015), 321.

"And let those [executors and guardians] fear [injustice] as if they [themselves] had left weak offspring behind and feared for them. So let them fear Allah and speak words of appropriate justice."<sup>5</sup>

Muhammad Shahrur, in addition to believing that bequests take precedence over inheritance, also reconstructs Islamic inheritance law as established by classical fiqh scholars. Among his arguments is the non-application of the 2:1 concept in the distribution of inheritance when two genders are grouped together among heirs. He also discusses the application of *tardhiyah* or substitution when an heir dies before the testator. In this context, if a child of the testator passes away, the grandchild from the deceased child's line replaces their position as an heir and holds the same status as the other living children of the testator. A similar principle is applied in Hazairin's bilateral inheritance concept, but with a different system. In Hazairin's bilateral inheritance concept, the substitution of deceased heirs by living heirs is referred to as *mawali*. If a child of the testator dies, then the grandchild from the deceased child's lineage will take their place as an heir, with the amount of inheritance received corresponding to the share that the deceased child would have received if they were alive.

This study is designed to describe the concepts of inheritance and bequest by Muhammad Shahrur and Hazairin in distributing the inheritance shares of *far'u al-warith* and to analyze the similarities and differences between the two. In relation to this study, several previous research works were found on similar subjects with differing discussions. Some of these studies focused solely on grandchildren as their research subjects and approached the topic using the inheritance concepts from the perspectives of al-Nawawi and Hazairin, without comparing the

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<sup>5</sup> Tim Penyempurnaan Terjemahan Al-Qur'an (2016-2019), *Al-Qur'an Dan Terjemahannya Edisi Penyempurnaan 2019, Juz 1--10*, cetakan pertama (Jakarta: Lajnah Pentashihan Mushaf Al-Qur'an, 2019), 106.

bequest provisions between the two<sup>6</sup>. Another study involved field research focusing only on sons and daughters as research subjects, analyzed using Muhammad Shahrur's limitation theory<sup>7</sup>. The third study also focused on grandchildren as the research subject and conducted a comparative approach using Islamic law principles from Sunni jurisprudence and the Compilation of Islamic Law; this study also did not include a comparison of the bequest provisions from both scholars<sup>8</sup>.

As a distinction from previous research, this study will examine *far'u al-warith*, or the downward lineage of the testator, specifically children, and grandchildren, using a comparative approach between the inheritance concepts of Muhammad Shahrur and Hazairin, while also comparing their bequest provisions. This research is expected to contribute to the body of knowledge in Islamic inheritance studies and serve as a reference for scholars and practitioners in the field of inheritance law. Additionally, this study aims to sustain interest in inheritance knowledge, which has been waning in popularity.

## Method

This research falls under the category of normative legal research since all the data obtained in this study is sourced solely from literature or secondary data<sup>9</sup>. The approach applied in this research is the comparative approach. Generally, the comparative approach identifies the differences

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<sup>6</sup> Adlan Maghfuryan, "Studi komparatif ketentuan bagian waris cucu perspektif Al-Nawawi dan Hazairin" (undergraduate, Universitas Islam Negeri Maulana Malik Ibrahim, 2022), <http://etheses.uin-malang.ac.id/37742/>.

<sup>7</sup> Saiq Somadi, "Kesetaraan pembagian waris anak laki-laki dan anak perempuan perspektif teori limitasi Muhammad Syahrur: Studi kasus di Desa Wonorejo Kecamatan Banyuputih Kabupaten Situbondo" (masters, Universitas Islam Negeri Maulana Malik Ibrahim, 2021), <http://etheses.uin-malang.ac.id/31141/>.

<sup>8</sup> Hazar Kusmayanti and Lisa Krisnayanti, "HAK DAN KEDUDUKAN CUCU SEBAGAI AHLI WARIS PENGGANTI DALAM SISTEM PEMBAGIAN WARIS DITINJAU DARI HUKUM WARIS ISLAM DAN KOMPILASI HUKUM ISLAM," *Jurnal Ilmiah Islam Futura* 19, no. 1 (October 12, 2019): 68–85, <https://doi.org/10.22373/jiif.v19i1.3506>.

<sup>9</sup> Dyah Ochtorina Susanti and A'an Efendi, *Penelitian Hukum (Legal Research)*, Cetakan keempat (Jakarta: Sinar Grafika, 2022), 19.

and similarities in the comparison of laws between countries regarding the same issues, or it can also be applied to compare current laws with laws from the past. In this study, a comparison is made between Muhammad Shahrur's inheritance concept and Hazairin's bilateral inheritance concept concerning the distribution of inheritance and bequest provisions for far'u al-warith.

After the necessary legal materials have been gathered by the researcher through the documentation method, the data processing is carried out, which includes simplifying and organizing the raw data into a format that is easy to read and understand<sup>10</sup>. This is followed by descriptive analysis, starting with grouping similar data based on sub-aspects and then interpreting the sub-aspects and their interrelations, in this context, concerning the inheritance and bequest concepts of Muhammad Shahrur and Hazairin regarding far'u al-warith. Subsequently, the researcher performs analysis or interpretation of all aspects to understand the meaning of the relationships among aspects and conducts comparisons to illustrate the differences and similarities between the two concepts<sup>11</sup>.

## Discussion

### Inheritance Concept for Children According to Muhammad Shahrur

The distribution of inheritance for children in Muhammad Shahrur's inheritance concept is carried out by positioning females as the determining variable in the distribution of inheritance, while males serve as the dependent variable. This means that the amount of inheritance received by males depends on the number of heirs on the female side<sup>12</sup>. If

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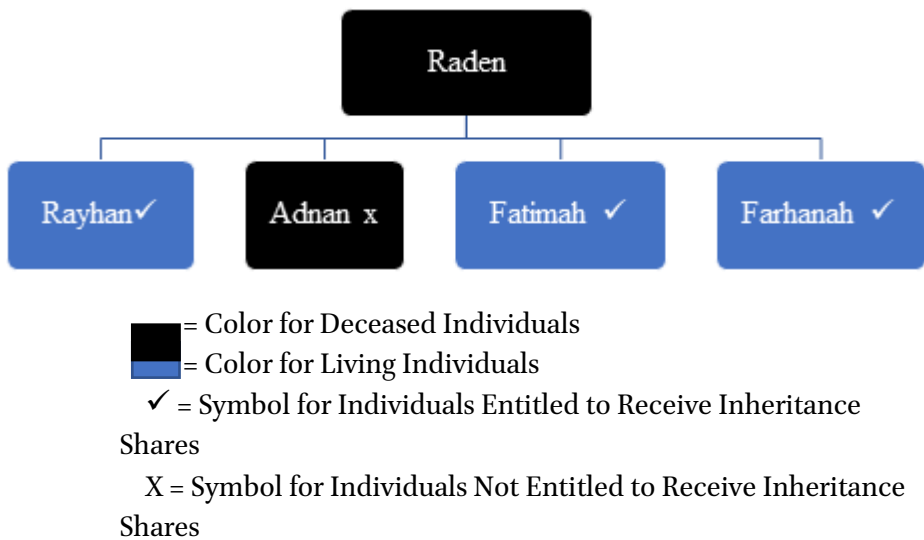
<sup>10</sup> Nur Solikin, *Pengantar Metodologi Penelitian Hukum*, pertama (Pasuruan: Penerbit Qiara Media, 2021), 122.

<sup>11</sup> Nur Solikin, 134.

<sup>12</sup> Rahmat Agung Sedayu et al., "Tafsir Pemikiran Muhammad Syahrur Tentang Waris Dan Kontribusinya Bagi Perkembangan Hukum Kewarisan Di Indonesia (Studi Analisis Kompilasi Hukum Islam)," *Mahakim: Journal of Islamic Family Law* 7, no. 1 (January 1, 2023): 13, <https://doi.org/10.30762/mahakim.v7i1.172>.

the number of heirs on the female side is double that of the male heirs, then the distribution of inheritance in this scenario adheres to the first legal inheritance limit, which states: *لِلذَّكَرِ مِثْلُ حَظِّ الْأُنثِيَيْنِ* (the male receives the equivalent of the share of two females). To better understand the application of this concept, refer to the illustration in the following chart:

**Chart 1.** Illustration of the Family Tree for the First Legal Inheritance Limit of Shahrur



1. Raden passed away, leaving behind two daughters, Fatimah and Farhanah, and one son, Rayhan. Adnan is not counted as an heir due to his death. Since the number of males is equal to the number of females, the distribution of inheritance in this scenario adheres to the first legal inheritance limit, which states: *لِلذَّكَرِ مِثْلُ حَظِّ الْأُنثِيَيْنِ* (the male receives the equivalent of the share of two females). Before the distribution of inheritance takes place, three obligations must be fulfilled first: bequests, debts, and funeral expenses. If there is a will made by the deceased during their lifetime, it must be fulfilled first, even if it consumes half or even all of the inheritance. For example, if the remaining inheritance after fulfilling these three obligations is 240

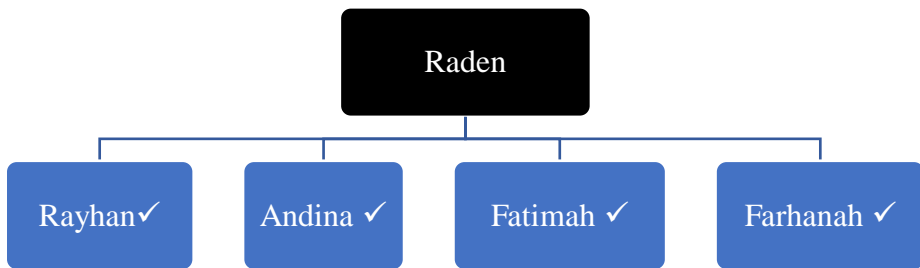
million, then the distribution of inheritance according to Muhammad Shahrur's inheritance concept is as follows:

**Table 1.** Distribution of Inheritance According to the First Legal Inheritance Limit

No.	Heirs	Share	Result
1	Female Group Fatimah Farhanah	1/2	$1/2 \times 240 \text{ juta} = \text{Rp. } 120.000.000,00$ $\text{Rp. } 120.000.000,00 : 2 = \text{Rp. } 60.000.000,00$ Rp. 60.000.000,00 for each
2	Male Group Rayhan	1/2	$1/2 \times 240 \text{ juta} = \text{Rp. } 120.000.000,00$ Rp. 120.000.000,00 For Rayhan

If the number of heirs from the female side exceeds double the number of heirs from the male side, then the distribution of inheritance in this scenario adheres to the second legal inheritance limit, which states: *فَإِنْ كُنَّ نِسَاءً فَوْقَ ائْتِنَيْنِ فَلَهُنَّ ثُلُثَا مَا تَرَكَ* (If there are women more than two, they shall have two-thirds of what is left). To better understand the application of this concept, refer to the illustration in the following chart:

**Chart 2.** Illustration of the Family Tree for the Second Legal Inheritance Limit of Shahrur



- = Color for Deceased Individuals
- = Color for Living Individuals
- ✓ = Symbol for Individuals Entitled to Receive Inheritance Shares

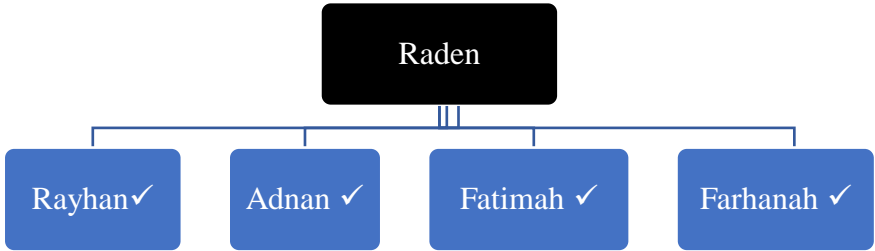
2. Raden passed away, leaving behind three daughters, Andina, Fatimah, and Farhanah, and one son, Rayhan. Since the number of heirs from the female side is more than double the number of heirs from the male side, the distribution of inheritance in this scenario adheres to the second legal inheritance limit, which states: *فَإِنْ كُنَّ نِسَاءً فَوْقَ اثْنَتَيْنِ فَلَهُنَّ ثُلُثَا مَا تَرَكَ* (If there are women more than two, they shall have two-thirds of what is left). Before the distribution of inheritance takes place, three obligations must be fulfilled first: bequests, debts, and funeral expenses. If there is a will made by the deceased during their lifetime, it must be fulfilled first, even if it consumes half or even all of the inheritance. For example, if the remaining inheritance after fulfilling these three obligations is 240 million, then the distribution of inheritance according to Muhammad Shahrur's inheritance concept is as follows:

No.	Heirs	Share	Result
1	Female Group (Andina, Fatimah, and Farhanah)	2/3	$2/3 \times 240 \text{ juta} = \text{Rp. } 160.000.000,00$ $\text{Rp. } 160.000.000,00 : 3 = \text{Rp. } 53.333.300,00$ Rp. 53.333.300,00 for each
2	Male Group (Rayhan)	1/3	$1/3 \times 240 \text{ juta} = \text{Rp. } 80.000.000,00$ Rp. 80.000.000,00 for Rayhan

**Table 2.** Distribution of Inheritance According to the Second Legal Inheritance Limit

However, if the number of heirs from the female side is equal to the number of heirs from the male side, then the distribution of inheritance in this scenario adheres to the third legal inheritance limit, which states: *وَإِنْ كَانَتْ وَاحِدَةً فَلَهَا النِّصْفُ* (And if there is only one (female heir), she shall have half). To better understand the application of this concept, refer to the illustration in the following chart:

**Chart 3.** Illustration of the Family Tree for the Second Legal Inheritance Limit of Shahrur



■ = Color for Deceased Individuals

■ = Color for Living Individuals

✓ = Symbol for Individuals Entitled to Receive Inheritance

Shares

3. Raden passed away, leaving behind two sons, Rayhan and Adnan, and two daughters, Fatimah and Farhanah. Since the number of males is equal to the number of females, the distribution of inheritance in this scenario adheres to the third legal inheritance limit, which states: *وَإِنْ كَانَتْ وَاحِدَةً فَلَهَا النِّصْفُ* (And if there is only one [female heir], she shall have half). Before the distribution of inheritance takes place, three obligations must be fulfilled first: bequests, debts, and funeral expenses. If there is a will made by the deceased during their lifetime, it must be fulfilled first, even if it consumes half or even all of the inheritance. For example, if the remaining inheritance after fulfilling these three obligations is 240 million, then the distribution of inheritance according to Muhammad Shahrur's inheritance concept is as follows:

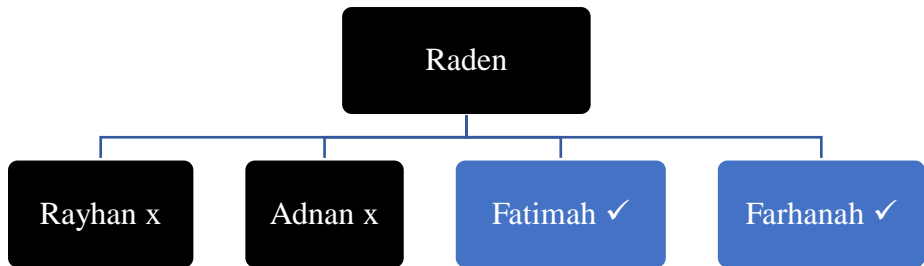
**Table 3.** Distribution of Inheritance According to the Third Legal Inheritance Limit

No.	Heirs	Share	Result
1	Female Group (Fatimah and Farhanah)	1/2	$1/2 \times 240 \text{ juta} = \text{Rp. } 120.000.000,00$ $\text{Rp. } 120.000.000,00 : 2 = \text{Rp. } 60.000.000,00$

			Rp. 60.000.000,00 for each
2	Male Group (Rayhan and Adnan)	1/2	$1/2 \times 240 \text{ juta} = \text{Rp. } 120.000.000,00 :$ $2 =$ $\text{Rp. } 120.000.000,00 : 2 = \text{Rp.}$ $60.000.000,00$ Rp. 60.000.000,00 for each

The application of the female party as a determining variable in Muhammad Shahrur's hudud theory applies when the heirs from the children consist of two genders. However, if the deceased leaves heirs consisting of only one gender, either male or female, then the distribution of inheritance is done equally among them. For example:

**Chart 4.** Illustration of a Family Tree of Heirs Consisting of One Gender



- = Color for Deceased Individuals
- = Color for Living Individuals
- ✓ = Symbol for Individuals Entitled to Receive Inheritance Shares
- x = Symbol for Individuals Not Entitled to Receive Inheritance Shares

4. Raden ■ passed away, leaving his daughters Fatimah and Farhanah as the heirs. Rayhan and Adnan are not considered heirs due to their

deaths. Before the distribution of the inheritance takes place, there are three obligations that must be fulfilled first: the will, debts, and funeral expenses. If there is a will made by the deceased during their lifetime, it must be executed first, even if it consumes half or even all of the inheritance. For instance, if the remaining inheritance after these three obligations is 240 million, the distribution of the inheritance according to Muhammad Shahrur's concept is as follows:

**Table 4.** Illustration of Inheritance Distribution When Heirs Consist of a Single Gender

No.	Heirs	Share	Result
1	2 daughters (Fatimah and Farhanah)	All property	Rp. 240.000.000,00 or Rp. 120.000.000,00 for each

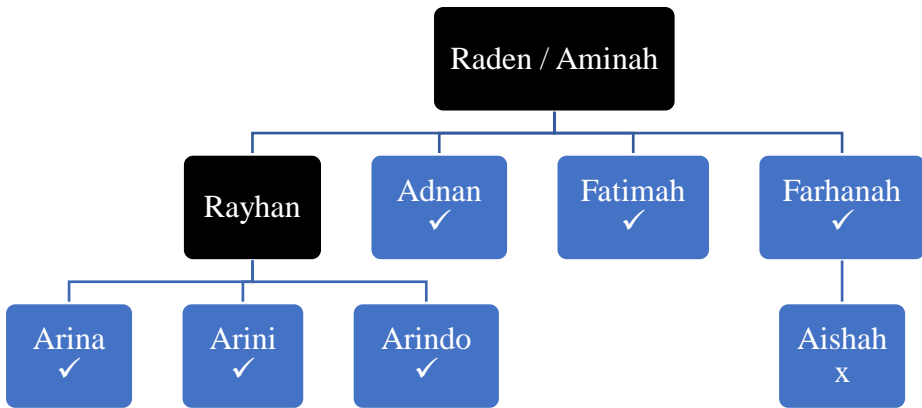
The two daughters receive the entire inheritance of 240 million. It is then divided equally between them:  $240 \text{ million} \div 2 = \text{Rp. } 120,000,000.00$ . Thus, each daughter receives an inheritance share of Rp. 120,000,000.00.

### **The Concept of Grandchild Inheritance According to Muhammad Shahrur**

In Muhammad Shahrur's inheritance concept, the distribution of inheritance for grandchildren is based on *tardliyah* or substitution. In *tardliyah*, a grandchild is entitled to an inheritance share if the parent who connects them to the deceased has passed away beforehand. The guiding principle here is *al-aqrab fa al-ab'ad*, prioritizing the closest family members, then those more distant. If someone passes away leaving both children and grandchildren, the presence of the child excludes the grandchild from inheriting. However, if someone passes away and their child has also passed away but the grandchild is still alive, then no one

prevents the grandchild from receiving an inheritance share<sup>13</sup>. To better understand this concept, refer to the following family tree illustration:

**Chart 5.** Illustration of a Family Tree for Grandchild Inheritance  
According to Muhammad Shahrur



■ = Color for Deceased Individuals

■ = Color for Living Individuals

✓ = Symbol for Individuals Entitled to Receive Inheritance

Shares

X = Symbol for Individuals Not Entitled to Receive Inheritance

Shares

As shown in the chart above, Raden and Aminah have four children and three grandchildren. The two sons are Rayhan and Adnan, and the two daughters are Fatimah and Farhanah. Their grandchildren—Arina, Arini, and Arindo—are all from Rayhan's lineage. If Raden or Aminah were to pass away while Rayhan and his other siblings are still alive, only Rayhan and his siblings would be entitled to inherit. However, if Raden or Aminah were to pass away after Rayhan has also passed, Rayhan's children would be counted as direct heirs of Raden and Aminah, placing them on equal footing with Adnan, Fatimah, and Farhanah,

<sup>13</sup> Muhammad Syahrur, *Nahw Ushul Jadidah Li Fiqh Al-Islami*, cetakan pertama (Damaskus: Percetakan al-Ahali, 2000), 265.

effectively making it as if there were six children among whom the inheritance would be divided. However, Aishah is not entitled to inherit alongside Rayhan's children due to the presence of Farhanah, who blocks Aishah's eligibility for inheritance as a direct descendant. In this distribution, the first limit within Muhammad Shahrur's hudud inheritance theory applies, as indicated by the verse, "الذَّكَرُ مِثْلُ حَظِّ الْأُنثَيَيْنِ" (for the male, a portion equal to that of two females) (see Table 1, 2). This is because the number of female heirs is twice that of the male heirs. The researcher demonstrates this as follows:

In a case example, Raden has passed away, leaving his wife (Aminah), two sons (Rayhan and Adnan, with Rayhan deceased), two daughters (Fatimah and Farhanah), and three grandchildren from Rayhan's lineage (Arina, Arini, and Arindo). Before the inheritance distribution, three obligations must be fulfilled: debt settlement, funeral expenses, and execution of any will. If a will made by the deceased during their lifetime exists, it must be fulfilled first, even if it exhausts half or the entire estate. Assuming the remaining inheritance after these three obligations is 240 million, the distribution according to Muhammad Shahrur's inheritance principles is as follows:

No.	Heirs	Share	Result
1	Wife	1/8	1/8 x 240 Millions = Rp.30.000.000,00
2	Female Group (Fatimah, Farhanah, Arina, and Arini)	1/2 of the remaining	1/2 x 210 Millions = Rp.105.000.000,00. Rp.105.000.000,00 : 4 = Rp. 26.250.000,00 for each

3	Male group (Adnan and Arindo)	1/2 of the remaining	$1/2 \times 210 \text{ juta} = \text{Rp. } 105.000.000,00$ $\text{Rp. } 105.000.000,00 : 2 =$  $\text{Rp. } 52.500.000,00 \text{ for each}$
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**Table 5.** The Inheritance Distribution for Grandchildren in Muhammad Shahrur’s Concept

- 1) The wife (Aminah) receives 1/8 of the total inheritance, which is 1/8 of Rp. 240,000,000 = Rp. 30,000,000. Therefore, Aminah’s share of the inheritance is Rp. 30,000,000, leaving a remaining estate of Rp. 210,000,000.
- 2) The female group receives 1/2 of the remaining estate, which is 1/2 of Rp. 210,000,000 = Rp. 105,000,000, divided by 4, resulting in Rp. 26,250,000 each. Thus, the female heirs’ total share is Rp. 105,000,000, with each receiving: Fatimah - Rp. 26,250,000, Farhanah - Rp. 26,250,000, Arina - Rp. 26,250,000, and Arini - Rp. 26,250,000.
- 3) The male group receives 1/2 of the remaining estate, which is 1/2 of Rp. 210,000,000 = Rp. 105,000,000, divided by 2, resulting in Rp. 52,500,000 each. Thus, the male heirs’ total share is Rp. 105,000,000, with each receiving: Adnan - Rp. 52,500,000 and Arindo - Rp. 52,500,000.

**The Concept of Hazairin’s Inheritance for Children**

In Hazairin's bilateral inheritance concept, if the group of heirs from the children’s side consists of only one gender—either male or female—then the inheritance is divided equally among them. This rule aligns with the principles found in Muhammad Shahrur’s inheritance concept (see Table 4). However, if the group of heirs from the children’s side includes both genders, the inheritance is divided according to a 2:1 ratio. In this case, a male child’s share is double that of a female child in

No	Heirs	Share	6	Result
a)	2 sons	2:1	4/6	$4/6 \times 240 \text{ Millions} = \text{Rp. } 60.000.000,00$
b)	2 daughters		2/6	$2/6 \times 240 \text{ Millions} = \text{Rp. } 80.000.000,00$

all scenarios, regardless of whether the male heirs outnumber the female heirs or vice versa. The following cases illustrates the concept of hazairin's inheritance for children:

1. Raden passed away, leaving two sons (Rayhan and Adnan) and two daughters (Fatimah and Farhanah). Before the inheritance can be distributed, three obligations must first be fulfilled: settling debts, covering funeral expenses, and executing any will. If a will was made by the deceased during their lifetime, it must be honored, provided it does not exceed one-third of the estate. Assuming the remaining estate, after these three obligations have been settled, amounts to 240 million, the distribution based on Hazairin's bilateral inheritance concept would be as follows:

**Table 6.** Distribution of Inheritance for Children with a 2:1 Ratio  
Between Sons and Daughters

Since the group of heirs from the children consists of two genders, a 2:1 inheritance distribution ratio applies in the scenario above, allocating Rp.160,000,000 for the two sons (Rayhan and Adnan) and Rp.80,000,000 for the two daughters (Fatimah and Farhanah). This means each son receives Rp. 80,000,000, while each daughter receives Rp. 40,000,000. The 2:1 inheritance distribution ratio also remains in effect when the heirs consist of two genders, even if the number of male heirs exceeds that of female heirs.

3. Raden passed away, leaving three sons (Rayhan, Adnan, and Joko) and one daughter (Farhanah). Before the inheritance distribution, three obligations must be fulfilled: debt repayment, funeral expenses,

and any bequests. If a bequest was made by the deceased during their lifetime, it must be honored, provided it does not exceed one-third of the estate. Assuming the remaining estate after these obligations is Rp. 240,000,000, the distribution based on Hazairin's bilateral inheritance concept is as follows:

**Table 7.** Distribution of Inheritance Among Children with a 2:1 Ratio

No	Heirs	Share	7	Result
a)	3 sons	2:1	6/7	$6/7 \times 240 \text{ M} = \text{Rp. } 205.714.300,00$
b)	1 daughter		1/7	$1/7 \times 240 \text{ M} = \text{Rp. } 34.285.700,00$

In the inheritance distribution above, where the heirs from the children consist of both genders, the 2:1 ratio is applied. This results in Rp. 205,714,300 allocated for the three sons (Rayhan, Adnan, and Joko) and Rp. 34,285,700 for the sole daughter (Farhanah). The inheritance is then equally divided among them, giving each son an amount of Rp. 68,571,400. The 2:1 inheritance ratio is consistently applied in cases where the children heirs include both genders, even if there are more female heirs than male.

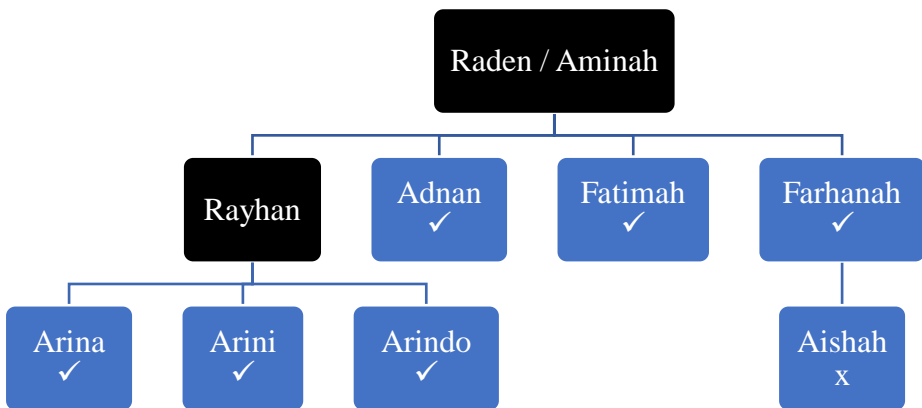
### The Concept of Grandchildren's Inheritance According to Hazairin

In the Bilateral Inheritance Concept of Hazairin, grandchildren are entitled to inheritance shares only when there is no direct link alive between them and the deceased. In this context, "no direct link" means that the deceased's child, who serves as the connecting lineage to the grandchild, is no longer living. Thus, if the deceased's child, who connects the deceased to the grandchild, is still alive, then the grandchild does not receive an inheritance share. This also applies to the great-grandchildren of the deceased; if a grandchild (the mawali or proxy heir) from the

deceased child is still alive, then the great-grandchild is not entitled to an inheritance share<sup>14</sup>.

As Hazairin explained, grandchildren are part of the primary priority group with the position of a mawali from a deceased child of the inheritor. Hazairin emphasized that the role of mawali for grandchildren here serves only as a means to identify eligible heirs; thus, the concept of mawali in Hazairin's inheritance theory is unrelated to substitution or replacement. To better understand the mawali concept within Hazairin's Bilateral Inheritance system, consider the following illustration:

**Chart 6.** Illustration of Hazairin's Family Tree for Grandchildren's Inheritance



■ = Color for Deceased Individuals

■ = Color for Living Individuals

✓ = Symbol for Individuals Entitled to Receive Inheritance

Shares

X = Symbol for Individuals Not Entitled to Receive Inheritance

Shares

The chart indicates that Rayhan, as a child of the heir, passed away before his parents. Therefore, the children of the late Rayhan will

<sup>14</sup> Hazairin, *Hukum Kewarisan Bilateral Menurut Al-Qur'an Dan Hadith*, cetakan ketiga (Jakarta: Tintamas Indonesia, 1964), 22.

become mawali for Rayhan and are entitled to inherit from Raden or Aminah if they pass away. In contrast, Aishah is not entitled to inherit from the late Raden or Aminah because there is still a connecting line between the heir and Aishah through Farhanah, Aishah's mother. Thus, according to the Mawali Hazairin concept, the grandchildren who are eligible to inherit are solely the children of the late Rayhan: Arini, Arina, and Arindo. Aishah, however, does not have inheritance rights. To clarify further, here is the explanation in a case example: Raden passed away, leaving behind his wife, Aminah, and two sons, Rayhan and Adnan, with Rayhan having died earlier. He also had two daughters, Fatimah and Farhanah, and four grandchildren consisting of three from the lineage of the late Rayhan (Arina, Arini, and Arindo) and one from Farhanah (Aishah). Before the distribution of the inheritance takes place, there are three obligations that need to be settled first: debts, funeral expenses, and the will. If there is a will created by the deceased during their lifetime, it must be fulfilled first, with the condition that it does not exceed one-third of the total assets. For example, if the remaining assets after settling these two obligations amount to 240 million, the distribution based on Hazairin's bilateral inheritance concept would be as follows:

**Table 8.** Inheritance Distribution According to the Mawali

No	Heirs	Share	24	result
a)	Wife (Aminah)	1/8	3/24	$\frac{3}{24} \times 240 \text{ M} = \text{Rp. } 30.000.000,00$
b)	2 sons	2:1	14/24	$\frac{14}{24} \times 240 \text{ M} = \text{Rp. } 140.000.000,00$
c)	2 daughters		7/24	$\frac{7}{24} \times 240 \text{ M} = \text{Rp. } 70.000.000,00$

Concept of Hazairin

In the case of the inheritance distribution above, the wife (Aminah) receives  $\frac{1}{8}$  of the total estate, amounting to Rp. 30,000,000.00. Since the heirs from the children consist of two genders, a ratio of 2:1 is applied in the inheritance distribution scenario. This means that Rp. 140,000,000.00 is allocated for the two male children (Rayhan and Adnan), while Rp. 70,000,000.00 is designated for the two female children (Fatimah and Farhanah). The assets are then divided equally among them, resulting in each male child receiving Rp. 70,000,000.00 and each female child receiving Rp. 35,000,000.00.

Rayhan, who has passed away, is still included in this distribution because his descendants will take his place to receive his share, a concept referred to as mawali in inheritance law. The distribution of the inheritance among the mawali is as follows:

No	Heirs	Share	4	Result
1	Arindo (male)	2:1	2	$\frac{2}{4} \times 70 \text{ M} = \text{Rp. } 35.000.000,00$
2	Arina (female)		1	$\frac{1}{4} \times 70 \text{ M} = \text{Rp. } 17.500.000,00$
3	Arini (female)		1	$\frac{1}{4} \times 70 \text{ M} = \text{Rp. } 17.500.000,00$

**Table 9.** Distribution of Inheritance for Rayhan's Mawali

Since Rayhan's group of heirs consists of two genders, a ratio of 2:1 is applied in the distribution of Rayhan's mawali inheritance. As a result, Arindo receives  $\frac{2}{4}$  of Rp. 70,000,000.00, which amounts to Rp. 35,000,000.00. Meanwhile, Arina and Arini each receive Rp. 17,500,000.00.

### The Will of the Heir According to Muhammad Shahrur

According to Muhammad Shahrur, a will is considered more significant than inheritance because it has a greater potential to achieve specific justice related to the personal interests of the testator. Additionally, it enhances the effectiveness of asset utilization by the beneficiaries of the will<sup>15</sup>. This reflects the testator's concern for others, particularly those who may benefit from the assets, such as children or grandchildren who are in greater need due to financial limitations. The testator may also consider who among them can maximize the benefits of the assets if given. One important aspect of a will is its characteristic of not ensuring equal shares of the assets received by the beneficiaries. This contrasts with inheritance, where the portions received by the heirs are generally similar. As Laili (2023) points out, inheritance distribution is determined by the recipient's position, such as male child, female child, male grandchild, and female grandchild. However, children and grandchildren across the world live under varying circumstances, including family conditions, social relationships, and life needs, which may affect their potential and other factors<sup>16</sup>.

Shahrur emphasizes that the determination of the amount of assets to be given and who is eligible to receive the will is entirely at the discretion of the testator, with no specific limitations or requirements other than the standard of piety towards Allah SWT. This context allows the testator to allocate a larger share to a disabled child compared to a healthy one or to grant a larger portion to a young grandchild who has not completed their education rather than to an adult grandchild. This concept, however, contradicts the view of the majority of scholars, who believe that the distribution of assets through a will is limited to no more than one-third of the estate left behind. This is in accordance with the hadith that states: "Indeed, Allah has permitted you to give one-third of

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<sup>15</sup> Syahrur, *Nahw Ushul Jadidah Li Fiqh Al-Islami*, 225.

<sup>16</sup> Afrohatul Laili, "Hukum Waris Islam (Telaah Pemikiran Muhammad Syahrur)," *SINDA: Comprehensive Journal of Islamic Social Studies* 3, no. 3 (December 2, 2023): 6.

your wealth when nearing death for the benefit of your goodness," as narrated by ad-Daruqutni from Mu'az bin Jabbal<sup>17</sup>.

### The Will of the Heir from Hazairin's Perspective

According to Hazairin, the provisions of a will also apply to heirs. This understanding stems from his belief that there is no barrier to adhering to the verses of the Qur'an as long as there are no other verses that abrogate them. The verses in this context are Q.S. al-Baqarah verses 180 and 240, which explain the provisions regarding wills in the Qur'an. The explanations in these verses do not conflict with the rules of inheritance outlined in subsequent verses, such as Q.S. an-Nisa' verses 11 and 12, which clarify that the distribution of inheritance should only occur after settling debts and fulfilling the will<sup>18</sup>. This understanding indicates that Hazairin only accepts the concept of abrogation (*naskh* and *mansukh*) of the Qur'an by the Qur'an itself, and not by hadith. In Q.S. al-Baqarah verse 240, the obligation of a will for wives is stated, specifying an amount sufficient to cover their living expenses for one year. This demonstrates that the Qur'an not only provides conditions for polygamy but also offers protection for the wives affected by it, ensuring their welfare. Thus, it is clear that the aim of the Qur'an in Q.S. al-Baqarah verse 240 is to prevent widows from being left in neglect, at least for one year following their husband's death.

Q.S. al-Baqarah verse 180 discusses the provisions for wills intended for the benefit of parents and close family members when additional assets are needed after the distribution of the inheritance according to Q.S. an-Nisa' verses 11, 12, and 176. For instance, if there are close family members, such as children or grandchildren, who suffer from chronic illnesses requiring significant medical expenses, or if one child is

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<sup>17</sup> Ahmad Faqihudin, "Wasiat Presfektif Al-Qur'an Dan Hadits," *Ulumul Qur'an: Jurnal Kajian Ilmu Al-Qur'an Dan Tafsir* 1, no. 2 (October 1, 2021): 89, <https://doi.org/10.58404/uq.v1i2.77>.

<sup>18</sup> Hazairin, *Hukum Kewarisan Bilateral Menurut Al-Qur'an Dan Hadith*, 57.

struggling financially due to having many dependents, or if a grandchild has talent in a certain field but is hindered by financial constraints, among other scenarios, then a will can be designated for these children or grandchildren. This must adhere to the conditions specified in Q.S. al-Baqarah verse 180: "in taraka khairan" (if he leaves behind substantial wealth) and "bil ma'ruf" (which Hazairin interprets in accordance with Allah's stipulations), with the limitation that it should not exceed one-third of the estate, following the guidance of the Prophet in the hadith that states: "Indeed, Allah has permitted you to give one-third of your wealth when nearing death for the benefit of your goodness," as narrated by ad-Daruqutni from Mu'az bin Jabbal<sup>19</sup>.

## Conclusion

The inheritance of the far'u al-warith in Muhammad Shahrur's concept is established with three legal boundaries of inheritance, known as the theory of hudud. In this concept, the distribution of inheritance occurs hierarchically, and grandchildren receive their share of the inheritance through the concept of tardhiyah, which means that the position of the deceased heir's child is replaced by their descendants. As a result, the status of grandchildren is equivalent to that of the other heirs. In contrast, the inheritance of the far'u al-warith in Hazairin's concept applies a ratio of 2:1 when the group of heirs consists of two genders. In this scenario, the share of the inheritance for male heirs is twice that of female heirs, regardless of whether there are more males than females or vice versa. In Hazairin's concept, grandchildren receive their inheritance through the concept of mawali. Hazairin asserts that the mawali concept is unrelated to the substitution of the deceased child's position by their grandchildren in the lineage. Regarding the provisions of the will for far'u al-warith in Muhammad Shahrur's concept, it is the full right of the testator to determine the amount of assets and to whom the will will be given, with no specific restrictions other than the standard of piety

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<sup>19</sup> Faqihudin, "Wasiat Presfektif Al-Qur'an Dan Hadits," 89.

towards God. Conversely, in Hazairin's concept of far'u al-warith, there are limitations on the amount of the will that the testator can allocate, which cannot exceed one-third of the total assets. Additionally, the recipients of the will can include both heirs and non-heirs.

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