

Political Transformation Of Islamic Inheritance Law Into National Law

Ade Kusumadewi

Master of Notarial Sultan Agung Islamic University

adekusumadewi95@gmail.com

Abstract

Development of the Indonesian legal system that was born by the state, it must be in line with the substance of universal Islamic values and Islamic legal values in order to achieve the great goals and ideals of this nation. There is a need to develop thoughts about the rule of law and the politics of Islamic law and its implications. This study uses a normative juridical approach, the results obtained are the political policy transformation of Islamic law into national law has nothing to do with the struggle for an Islamic or Islamic state as the basis of the state. On the other hand, Islamic law legislation into state legislation has a positive contribution in strengthening the adherence of Muslims to the commitment of the nation state because sharia can go hand in hand and be compatible with Pancasila and the 1945 Constitution. The influence of the Islamic legal system on national legal politics is play a role in creating a value system that regulates the majority of the Indonesian Muslim community as the majority community, becoming a material source for the formation of national law to fill the legal void.

Keywords: *Islamic Inheritance Law; National Law; Political Transformation;*

1. Introduction

Islamic inheritance law is one of the most important Islamic laws. The law of inheritance is a law that regulates who can inherit and cannot inherit and cannot inherit the portions received by each heir and the methods of distribution. In Islamic inheritance law, the recipient of an inheritance is based on the Ijbari principle, which means that the inheritance is transferred according to the provisions of Allah SWT without depending on the will of the heir or heir.¹

Hukum kewarisan Islam mengatur peralihan harta dari seseorang yang telah meninggal kepada yang masih hidup. Aturan tentang peralihan harta ini disebut dengan berbagai nama. Dalam literatur hukum Islam ditemukan beberapa istilah untuk menamakan hukum kewarisan seperti seperti: *Fara'id*, *Fiqih Mawaris*, dan *hukmal-Waris*.² This difference in naming occurs because of the difference in direction which is the main point in the discussion. However, the word

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1. A. Rofiq, *hukum Islam di Indonesia*, PT. Raja grafindo persada Jakarta, 2009, page.356
 2. Amir Syarifuddin, *Hukum Kewarisan Islam*, Kencana, Jakarta, 2004, page.5.

that is commonly used is faraid as used by an-Nawawi in the book *Mihaj al-Thalibin*.

Basically inheritance in Islam is an inseparable thing, therefore, to actualize in Islam, its existence must be described in factual form. In this case, the implementation of inheritance law must be visible in the family system that applies in society.³ Of all the laws that apply in society, it is the law of marriage and inheritance that determines and reflects the kinship system⁴ which is also a part of civil law.

At the beginning of the development and growth of Islam, the Prophet Muhammad was the ideal idol to solve problems of inheritance law because he was in the most privileged position, he functioned to interpret and explain the law based on the revelations that came down to him. Then he was also authorized to make inheritance laws outside of revelation. So that the hadith was born as words, matters, experiences, and taqirir of the Prophet Muhammad SAW after he died.⁵

The historical facts of Muslims in the development of their thinking about the implementation of inheritance are varied. Islam as a value system also influences Muslims to practice the inheritance teachings contained in the Qur'an. Islam not only regulates human beings with God, but Islam also regulates the relationship between humans and others. In fact, Islam commands Muslims to follow Islamic rules as a whole and prohibits following the will of Satan.

Abu Bakr, as the first caliph as well as a scholar, once decided that all inheritance was inherited by the mother's grandmother even though she was with her father's grandmother. Likewise, Umar bin Khattab, the second caliph, initially only gave shares to the heirs: husband, mother, and two thousand brothers without giving inheritance to siblings. Umar's consideration was that the three types of heirs inherited from the remaining assets determined in the Al-Qur'an, while one heir only inherited the remaining assets because his inheritance was not determined in the Al-Qur'an. However, some time later the siblings objected that at least all heirs had the same mother as the heir. Thus, even though they have the same family relationship with siblings. Even in terms of closeness to the heir, siblings have more rights than siblings. This logic was accepted by Umar so that siblings could evenly share with siblings. This compromise attitude is known in the history of inheritance law as the *himariyah* case. In another case, Ali ibn Abi Talib, the fourth caliph, who initially reduced the value of the inheritance of the heirs proportionately because the inheritances that had been stipulated in the al-Qur'an actually exceeded the provisions. In this case, Ali gave the wife an inheritance less than the prescribed inheritance value. Thus, the heirs: two daughters, father and mother are automatically reduced in value proportionately.⁶

Of all the laws that exist and apply today in addition to the law of marriage, inheritance law

3. Ali Parman, *Kewarisan dalam Al-Qur'an: Suatu Kajian Hukum dengan Pendekatan Tafsir Tematik*, PT Raja Grafindo Persada, Jakarta, 1995, page.1

4. Hazairin, *Hukum Kewarisan Bilateral menurut Al-Qur'an dan Hadis*, Tinta Mas, Jakarta, 1982, page.11.

5. M. Shuhudi Ismail, *Kaidah Keshahihan Sanad Hadis*, Bulan Bintang, Jakarta, 1988, page.3.

6. Ali Akbar, *Konsep Kepemilikan Dalam Islam*, *Jurnal Ushuluddin*, Vol XVIII No. 2, Juli 2012, page.131.

is part of family law which plays a very important role, even determines and reflects the system and form of law prevailing in society.⁷ This is because the law of inheritance is closely related to the scope of human life that every human being will experience events, which are common legal events called death.

The form of inheritance or inheritance according to Islamic law is very different from the form of inheritance according to western law as regulated in BW and customary inheritance law. Inheritance or inheritance according to Islamic law, namely "a number of assets and all rights of the deceased in a clean condition". This means that the inheritance inherited by the heirs is a number of assets and all rights, "after deducting the payment of debts of the heirs. and other payments resulting from the death of an heir."

2. Research Method

The approach used is research that connects normative legal research and sociological legal research. Normative legal research is also known as library research or document study. Normative legal research is called doctrinal legal research, because research is carried out or aimed only at written regulations.⁸ The type of research used in this research is descriptive analytical, which describes the state of the object under study and a number of factors that influence the data obtained to be collected, compiled, explained, and analyzed according to the Laws and Regulations that regulate and relate to the theory. legal theory and practice of implementation in positive law concerning the problem. Descriptive research is research that aims to describe something in a certain area and at a certain time.⁹ It is said to be descriptive because from this research it is expected to obtain a clear, detailed, and systematic picture, while it is said to be analysis because the data obtained from library research and case data will be analyzed to solve problems in accordance with applicable legal provisions.

3. Result and Discussion.

1. Implementation of Penal Mediation as the Embodiment of Pancasila Values in the Criminal Justice System.

The application of Islamic law, including inheritance law, can occur not in accordance with the text, especially if it is related to the development of the text in the verses of Al-Qura'an. The Qur'an generally only regulates the basics. In the law of inheritance regarding the heirs of the Al-Qur'an only regulates father, mother, husband. Wife and children, beyond that is not regulated. So that it was developed by Islamic jurists such as the heirs of grandparents, grandchildren and so on. In the context of the development of Islamic inheritance law in every

7. M. IdrisRamulyo, *Hukum Kewarisan Islam*, IND-HILL, CO, Jakarta, 1984, page.1

8. Ronny Hanitijo Soemitro, *Metodologi Penelitian Hukum dan Jurimetri*, Ghalia Indonesia, Jakarta, 1990, page. 30.

9. Mukti Fajar ND dan Yulianto Achmad, *Dualisme Penelitian Hukum Normatif dan Empiris*, Pustaka Pelajar, Yogyakarta, 2010, page. 183

country or region, it is influenced by the cultural features of the customs of the community of a country or area where the inheritance law is enforced.

Development of Islamic inheritance law and culture of patrilineal kinship customs will be different from parental or bilateral kinship customs and traditions. This is like the application of Islamic inheritance law in Indonesia, which mostly adheres to a parental or bilateral cultural system, which gives rights to each relative within a certain distance, both male and female. It is different with cultures that adhere to the customs of the patrilineal system, of course, those who are entitled to inheritance are limited to male relatives, while women are not the heirs. Since the heirs in Islamic inheritance law are not explained in the Al-Qur'an, these heirs will be developed with *ijtihad* based on an analysis of the culture and customs of each country or region. For the State of Indonesia, whose majority adheres to a parental or bilateral kinship system, Indonesian Islamic inheritance law experts are of course its development on the basis of a parental or bilateral kinship system, while Arab or Middle Eastern countries in general are certainly developed on the basis of the patrilineal kinship system.

There are three views in the development of the grouping of heirs in Islamic inheritance law, namely the first view of "expert al-sunnah wal al-jama'ah" or usually called "expert sunni" or "expert sunna". This understanding is based on the thinking of the analysis of Arab culture which adheres to a patrilineal society.¹⁰ Second, according to the Shia Imammiyah understanding, this understanding is not based on cultural customs, but based on humility, giving appreciation to Fatimah bint Muhammad and Ali bin Abu Talib as children and sons-in-law who will give birth to the offspring of the Prophet Muhammad, so that the inheritance law of this understanding has parental or bilateral characteristics. .

Then the view of Islamic inheritance law in Indonesia emerged from Hazairin's views with his *ijtihad* based on the background of the diversity of Indonesian kinship customs (patrilineal matrilineal and parental or bilateral), according to Hazairin, the inheritance law desired by the Al-Qur'an and Al-Sunah is a system, individual or parental individual bilateral inheritance law.¹¹

To see the extent to which the theory of inheritance law, the three opinions of inheritance law experts from the Sunnah, Syi'ah Imammiyah and Hazairin Experts, especially those related to the development of heirs that are not clearly regulated in the Al-Qur'an, will be explained further in this discussion.

1. The views of the Sunnah Expert heirs are grouped into three types, namely:

1. *Ashhabul furudh*;

The heirs of *Ashhabul furudh* are the heirs who receive a certain part, the part

10. Amir Syarifuddin, *PeLaksanaan Hukum Kewarisaan Islam dalam Adat Minangkabau*, Gunung Agung, Jakarta, 1982, page.58

11. Hazairin, *Hukum Kekewarisan Bilateral Menurut Qu'an dan Hadist*, Tintas Mas, Jakarta, 1982, page.1

clearly mentioned in the Al-qur'an surah An-Nisa `verses 7, 11, 12, 33 and 176. These parts are, $\frac{1}{2}$ (half), $\frac{1}{4}$ (one-quarter), $\frac{1}{8}$ (one-eighth), $\frac{1}{3}$ (one-third), $\frac{2}{3}$ (two-thirds) and $\frac{1}{6}$ (one-sixth). As for those who receive this portion are: (a) Daughter, (b) Father, (c) Mother, (d) Brothers and sisters, both brothers from Bandung, father and mother, (e) Duda, and (f) widows. Among these heirs on certain occasions remain as heirs of Ashabul Furudh, but on other occasions they are not heirs of Ashabul Furudh, heirs who remain in the status of Ashabul Furudh, including mothers, widowers and widows. Whereas the heirs on other occasions can have the position of not *ashabul furudh*, namely, daughters, fathers, brothers and sisters.

2. *Ashabah*;

Asabah, the heirs whose parts are not determined, the group of heirs in the understanding of the Sunnah, are grouped into three types, namely the first heirs of *asabah bin nafsi*, namely the heirs of the heirs who are not together with other heirs, the group of heir these are: (1). Boys, (2) Grandchildren, (3) Siblings, (4) Parents, and (5) Uncle. Second, heirs of *asabah bil-ghairi*, namely heirs who become heirs of *asabah* because they are drawn by other heirs of *asabah*, namely: Daughters are drawn by sons and granddaughters are drawn by siblings or siblings.

And the third is the heir of *ashabah ma'al gharii*, is the heir to become *asabah* because together with other heirs, such as siblings together with daughters.

3. *Dzawil arham*.

Dzawil Arham,¹² according to Sajuti Thalib, patrilineal inheritance is defined as a person who has a blood relationship with the heir through a female family member, this heir is:

1. Child of daughter;
2. Son of a sister;
3. Daughter of a brother;
4. Uncle's daughter;
5. Uncle seibu;
6. Mother's brother;
7. Mother's aunt or sister;
8. The father's sister who is a woman;
9. Father of mother;
10. Mother of father of mother; and;
11. Mother's child.

12. Zakiyah Daradjad dkk, Ilmu Fiqh II, (Jakarta : Direktorat Pembinaan Perguruan Tinggi Agama Islam, Departemen Agama , Jakarta, 1984, page.70.

2. The view of Shi'ah Imammiyah grouping

According to this view, the heirs are only grouped into two main groups, namely the dzul farai'dh group is the main group, if this group does not exist then a second group appears, namely "dzul qarabat". Groups of dzul qarabat are broken down into 3 groups, by sharing together, so they are not eliminated. The small group is:

- a. The first group consists of: father, mother of child continues downward;
- b. The second group consists of: the grandfather and grandmother of the siblings downward;
- c. The third group, consisting of uncles, aunts from the father and mother major continues down.

The Shi'ah Imammiyah group also only classifies two groups and does not use the term heir asabah, as for the group of heirs of the Syi'ah group is:

1. Dzul fara'idh

The heirs of *Dzul fara'idh* according to the group from the Shi'a group are not much different from the Ahlu Sunnah, but only based on the provisions of the Qur'an, so the difference is that according to this group, the number of heirs of *dzul fara'idh* is limited to 9 experts. inheritance as stipulated in the Qur'an, uncle-grandmother and granddaughter, are not considered as dzul fara'idh, but as representing the sons and mothers of their respective fathers.

2. *Dzul qarabat* or relative heirs

Dzul qarabat heirs or relative heirs, are heirs who are entitled to an open or residual share of inheritance, not only male heirs, but include female relatives. The group of heir relatives according to the Shi'ah group is:

1. Natural children, boys and girls or boys with girls;
2. Grand sons and daughters, both sons and daughters;
 - a. Father and mother;
 - b. Relatives of the father or relatives of the mother;
 - c. Grandparents' relatives and grandmothers, and;
 - d. Uncle's son or aunt's child.

3. Hazairin's view

According to this view, heirs are divided into 3 (three) groups, but the third group of heirs is different from Ahlu Sunnah's view, while the Hazairin grouping is as follows:

a. *Dzawu-l Fara'idh*,

According to Hazairin and his students, the first group of heirs, including Sajuti Thalib, used the term "dzawu-l fara'idh" heirs, which did not differ from the term ashbul furudh with the Sunni scholars. Dzuwul means "to have", while al-fara'idh means "part", so dzawu-

lfara'idh means parts of a predetermined heir. Among the three understandings of Islamic inheritance law, both the Sunnah Shi'ah and Hazairin experts recognize and acknowledge this group of heirs.

b. Dzawu-l-Qarabat

As for the second group, Hazairin uses the term dzawu-l qarabat, while the Sunni experts use the term asabah. The meaning of dzul qarabath is the heir who gets an indefinite share of the inheritance or the remaining portion, if one looks at who is the heir, and how much the acquisition of each of these heirs that has been mentioned in the Qur'an is the same as asabah according to Sunni Scholars. However, if it is developed for the heirs that are not described in the Al-Qur'an, it will be different. This is because when viewed from the meaning of asabah in Arabic, it means "a group of men". Meanwhile, the definition of asabah according to Sajuti Thalib starts from the word "usbah", which is a definition in the blood relation system, then it is drawn into the meaning of inheritance acquisition, so that the inheritance system of Sunni experts is also called the Islamic patrilineal inheritance law system.

In the al-Qur'an it is explained that the heirs who receive an unspecified or open part called dzuwa-l qarabat, are :

- a. Boys;
- b. Girls are accompanied by boys;
- c. Brother in terms of kalalah;
- d. Brothers and sisters who are accompanied by brothers in terms of times

c. Mawali

Then the third group is the heir called "mawali", which means "successor heir". What is meant here is the heir who replaces the position of the heir because the heir he replaced has passed away, either after the heir dies or before or simultaneously. And the person who becomes the heir of the mawali is the descendant of the heir who has passed away. Like a child whose term mawali in individual bilateral Islamic inheritance law is Hazairin's interpretation of the letter An-Nisa `verse 33 which reads:

For every inheritance (of the property) left by the mother and father and the close relatives, (successors) we make the heirs. and (if any) those whom you have sworn allegiance to, Give them their share. Truly Allah witnesses all things.

The word "mawali" in verse 33, surah An-Nisa `mentioned above by the Islamic inheritance law expert Ahi Sunni means "property", as a result in the Islamic inheritance law system there is no substitute heir, although there is replacement but their position does not occupy an heir. who is replaced, but occupies himself as the heir. Whereas Hazairin "mawali" means

“substitute”, so according to Hazairin’s view in the Al-Qur’an there is a substitute heir.

With the results of Hazairin’s reinterpretation of the letter A-Nisa `verse 33, the system of replacement in Islamic inheritance law applies like other inheritance laws in general. The result of this reinterpretation according to Sajuti Thalib, which creates a replacement heir, is not like the opinion of the patrilineal inheritance law expert. According to the authors, both are correct, because the two jurists have different approaches in interpreting the verses of the Al-Qur’an regarding inheritance law. For the Sunni expert, the interpretation approach uses the interpretation of the patrilineal kinship system. Meanwhile, Hazairin uses a bilateral or parental kinship system interpretation approach.

2. The Influence of Islamic Inheritance Law on National Law Politics

According to the Islamic view, property rights can be divided into three groups, namely: private property rights, public property rights, and state property rights.

Of all the laws that exist and apply today in addition to the law of marriage, inheritance law is part of family law which plays a very important role, even determines and reflects the system and form of law prevailing in society. This is because the law of inheritance is closely related to the scope of human life that every human being will experience events, which are common legal events called death.

The form of inheritance or inheritance according to Islamic law is very different from the form of inheritance according to western law as regulated in BW and customary inheritance law. Inheritance or inheritance according to Islamic law is “a number of assets and all rights of the deceased who are clean”. This means that the inheritance inherited by the heirs is a number of assets and all rights, after deducting the payment of debts of the heirs and other payments resulting from the death of the heirs.”¹³

Basically, the law of inheritance in Islam applies to all Muslims around the world. However, the nature of an Islamic state and life in that country or region has a different influence on inheritance law, this is due to several factors, among them:

1. Although basically Islam has regulated the legal basis for inheritance in detail in the Qur’an, if there is any diocese the meaning has been explained by the Prophet. However, in terms of practical implementation there were problems that were contained in the Qur’an and which the Prophet had not yet explained, so that the law was opened.
2. Whereas the science of law including Islamic law, in which inheritance law is included, is classified as a social science and not an exact science. Therefore, the law of inheritance is a place for differences of opinion among the jurists themselves, especially regarding verses that allow for more interpreters than that.

13. Eman Suparman, *Hukum Waris Indonesia: Dalam Perspektif Islam, Adat, dan BW*, PT.Refika Aditama, Bandung, 2007, page.13.

The following are terms used in civil inheritance:

1. Heir: Is a person who passed away and left his wealth.
2. Inheritance: Is a family member of a deceased person who replaces the heir's position in the field of property law because of the death of the heir.
3. Inheritance Law: It is a law that regulates what should happen to the assets of a person who dies, regulates the transfer of assets left by someone who dies, and the consequences for the heirs.
4. Inheritance Assets: Is the wealth in the form of all assets and liabilities left by the heir and transferred to the heirs. The entire wealth in the form of assets and liabilities which belong together to the heirs is called *Boedel*.

Matters related to the principles of Islamic inheritance law can be extracted from the verses of inheritance law and the traditions of the prophet Muhammad SAW. The principles can be classified as follows:

1. Ijbari Principle (Coercion)

In Islamic law, the transfer of assets of a person who has died to his heirs who is still alive applies automatically according to Allah's decree, without depending on the efforts and will of the heir or his heirs. This method of transition is called the principle of ijbari. On this basis, the heir does not need to plan the use and distribution of his inheritance after he dies, because with his death the assets he owns will automatically transfer to his heirs with a predetermined transfer. The word ijbari in context means compulsory, which is doing something other than one's own will. This element of coercion (ijbari) can be seen in terms of the heirs who are entitled to receive the inheritance as well as the amount of revenue regulated in the verses of the Koran, namely Surah an-Nisa verses 11, 12, and 176. The form of ijbari in terms of the amount received, reflected by the word *mafrudan*, the part that has been determined. The term ijbari is reflected as compulsory law.

2. Bilateral Principle

What is meant by the bilateral principle in Islamic inheritance law is that a person receives inheritance rights from both relatives, namely from the female lineage and from the male lineage.²² The principle of maternity has 2 (two) dimensions of mutual inheritance in the Koran. surah An-Nisa / 4 verses 7, 11, 12, and 176, namely: (1) between children and their parents, and (2) between siblings if the heir does not have children and parents. This is described as follows:

- a. Dimensions are mutually inherited between children and their parents. In al-Qur'an surah An-Nisa verse 7 it is stated that men and women have the right to inherit property from their mother and father. Likewise, in the legal line of

surah An-Nisa verse 11, it is emphasized that girls have the right to receive an inheritance from their parents as is the case with boys with the proportion of a boy's share to a girl. Thus also in the legal line of surah An-Nisa / 4 verse 11, it is emphasized that the father and mother have the right to inherit from their children, both male and female, in the amount of one sixth, if the heir leaves the child.

- b. The dimension of mutual inheritance between siblings also occurs when the heir does not have children or parents. The position of brothers as heirs in the law of al-Qur'an surah An-Nisa verse 12, it is stipulated that if a man dies and has a brother, then his brother (brother or sister) has the right to inherit his inheritance. Likewise, the legal line of Surah An-Nisa / 4 verse 12, if the heir who died was a woman and had siblings, then her siblings (male or female) have the right to receive the inheritance. In addition, the legal line of al-Qur'an surah An-Nisa / 4 verse 176 emphasizes that a man who is childless, while he has a sister, it is his sister who is entitled to receive the inheritance. Likewise, if a man who has no children while he has a brother, it is the brother who is entitled to receive the inheritance.

3. Individual Principles

The individual principle is that each heir (individually) is entitled to the part he gets without being tied to other heirs (as is the case with collective heirs found in the provisions of customary law). As is the custom of the Minangkabau people in West Sumatra. Thus, the share obtained by the heir from the property of the heir is owned individually, and the other heirs have nothing to do with the part he receives, so that each individual heir is free to determine (full right) over the part he receives.

4. Principle of Balanced Justice

The principle of justice in question must be a balance between the rights a person gets from an inheritance with the obligations or living expenses that must be fulfilled. Men and women, for example, receive an equal share of the obligations they assume (later) in the life of their families and communities. A man is responsible for the life of the family, providing for his wife and children according to his ability (QS. 2: 233). Responsibility is an obligation that must be carried out, regardless of whether the wife is capable or not, the children need assistance. or not.

5. Inheritance by Death

The principle of death in Islamic inheritance law means that if someone dies, inheritance exists as a result of the death of a person. That the transfer of one's property to another is effective after the owner of the asset has passed away and as long as

the asset cannot be transferred to another person. In other words, a person's property cannot be transferred (by inheritance) if he is still alive. Although he has the right to manage his assets, this right is only limited to his needs while he is still alive, and not for the use of these assets after he dies.

6. Tandhidh principle

The principle of tandhidh seems appropriate to be considered in the distribution of inheritance, especially for *mauruts* / *tirkahs* which vary in form and value. For example, Mr. Muhammad died with his inheritance in the form of a shop building in Mangga Dua Jakarta, a shop building in Jambu Dua Bogor, 10 hectares of rice fields in Jonggol, three cars with the Jaguar, Alpard and Avanza brands, and 10 hectares of land in Pamengpeuk Garut. So Tun Muhammad's heir or the appointed appraiser must first estimate all the inheritance in the form of rupiah (*nuqud*), the distribution of the inheritance is carried out after the appraisal is carried out so that it is very possible that the area of land or building received by the heir is different but relatively the same as in terms of value / price after calculating the portion / content of each heir's portion according to the degree it has. This was done because the prices for shop houses in Manga Dua and in Jambu Dua are different, the price of land in Jonggol is different from the price of land in Pameungpeuk, and the price of the car that is inherited also varies due to different brands.

Inheritance law according to BW applies the principle: "if a person dies, immediately all rights and obligations are transferred to his heirs". The rights and obligations referred to, which are transferred to the heirs are included in the scope of assets or only rights and obligations that can be valued in money.

4. Conclusion.

The political policy transformation of Islamic law into national law has nothing to do with the struggle for an Islamic or Islamic state as the basis of the state. On the other hand, Islamic law legislation into state legislation has a positive contribution in strengthening the adherence of Muslims to the commitment of the nation state because sharia can go hand in hand and be compatible with Pancasila and the 1945 Constitution. The influence of the Islamic legal system on national legal politics is play a role in creating a value system that regulates the majority of the Indonesian Muslim community as the majority community, becoming a material source for the formation of national law to fill the legal void.

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