

## **THE PRACTICE OF SUBSTITUTE HEIRS IN INDONESIAN RELIGIOUS COURT Restricted Interpretation**

Fathul Mu'in\*

Universitas Islam Negeri (UIN) Raden Intan Lampung, Indonesia

Email: [fathulmuin@radenintan.ac.id](mailto:fathulmuin@radenintan.ac.id), \*Corresponding author

Faisal

Universitas Islam Negeri (UIN) Raden Intan Lampung, Indonesia

Email: [faisal@radenintan.ac.id](mailto:faisal@radenintan.ac.id)

Arif Fikri

Universitas Islam Negeri (UIN) Raden Intan Lampung, Indonesia

Email: [ariffikri@radenintan.ac.id](mailto:ariffikri@radenintan.ac.id)

Habib Shulton Asnawi

Institut Agama Islam Maarif NU (IAIMNU) Metro Lampung, Indonesia

Email: [habibshulton1708@gmail.com](mailto:habibshulton1708@gmail.com)

M Anwar Nawawi

Sekolah Tinggi Agama Islam (STAI) Tulang Bawang, Lampung, Indonesia

Email: [anwarnawawi1961@gmail.com](mailto:anwarnawawi1961@gmail.com)

---

### **Abstract**

As part of reformation outcomes, the substitute heir in Islamic inheritance law has been long heeded by Indonesian jurists. However, amidst the facet of the traditional scheme, Indonesian Religious Court judges (*judex facti*) have not shared the same implementation of this succession. This article endeavors to examine the practice of substitute heir in the field. Relies on the Religious Court decisions as the primary source, this article argues that the norm of substitute heir (Article 185 of The Compilation of Islamic Law) has been

---

implemented restrictedly according to The Compilation and the Supreme Court consensus. Restricted interpretation means the descendants of the pre-deceased side-relative was not accounted as substitute heir. It implies that the state reformation attempt in Islamic inheritance law has not come into play in the way the state desires.

[Sebagai bagian dari hasil reformasi, substitute heir dalam hukum waris Islam telah lama diperhatikan oleh para ahli hukum Indonesia. Namun, di tengah sisi skema tradisional, hakim Pengadilan Agama Indonesia (*judex factie*) belum memiliki kesamaan pelaksanaan suksesi ini. Artikel ini mencoba mengkaji praktek penerapan substitute heir di lapangan. Berpijak pada putusan Pengadilan Agama sebagai sumber data utama, artikel ini berargumen bahwa norma ahli waris pengganti (Pasal 185 Kompilasi Hukum Islam) telah dilaksanakan secara terbatas menurut Kompilasi dan konsensus Mahkamah Agung. Penafsiran terbatas berarti keturunan dari kerabat menyamping yang telah meninggal dunia terlebih dahulu tidak diperhitungkan sebagai ahli waris pengganti. Ini menyiratkan bahwa upaya reformasi negara dalam hukum waris Islam belum diterapkan sesuai yang diinginkan negara.]

### Keywords

Substitute heirs, Religious Court, Islamic inheritance law, restricted interpretation

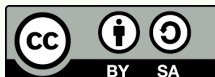
### Article History

Received 26 June 2022

Approved for Publication 30 June 2023

### To Cite this Article

Fathul Mu'in, Faisal Faisal, Arif Fikri, Habib Shulton Asnawi, and M Anwar Nawawi, "THE PRACTICE OF SUBSTITUTE HeIRS IN INDONESIAN RELIGIOUS COURT: Restricted Interpretation," *Al-Ahwal: Jurnal Hukum Keluarga Islam* 16, no. 1 (2023): 141-157, <https://doi.org/10.14421/ahwal.2023.16107>.



Copyright © 2023 by Author(s)  
This work is licensed under a Creative Commons Attribution-ShareAlike 4.0 International License.

## Introduction

Islam has regulated the division of inheritance, which occurs after a person's death and the leaving of assets, as well as the presence of heirs. The distribution of inheritance is carried out, whether it is given to male heirs or female heirs. Hazairin argues that this system is known as the bilateral individual system.<sup>1</sup> The Islamic inheritance system, in some accounts, is a legal reform of customary inheritance laws that existed before Islam, which draws heavily on a patrilineal system. This becomes evident in the case of *asabah* (male agnate), which is the male lineage inheritance from the father.<sup>2</sup> This inheritance law originated within the Arab culture, which positioned men higher than women or had a patriarchal nature. Formally, the application of inheritance law has long been implemented in Religious Courts, based on the laws agreed upon by the Muslim community in Indonesia.<sup>3</sup>

One of the emerging issues regarding inheritance in Indonesia is the matter of inheritance rights for grandchildren. The inheritance laws that apply in Islamic law in Indonesia often give rise to significant differences and even friction among various groups. This is because the issue is not clearly and specifically regulated in either the Quran or the Prophet's hadith, leading to various opinions among Muslims in the archipelago. An urgent issue and discourse in the development of reforms in the field of Islamic inheritance law is the status of orphaned grandchildren as heirs to the deceased. Indeed, this issue can be seen as a tradition in the Sunni Islamic inheritance law. When the deceased has two male children, and one of them dies before the father, the grandchildren from that deceased son cannot inherit any portion of the grandfather's estate.<sup>4</sup> The argument is that the grandchildren are blocked (*mahjub*) by their parents from inheriting from their grandfather.

<sup>1</sup> Sugiri Permana, "Implications of Hazairin and Munawir Sjadzali Thoughts In Establishment of Islamic Inheritance In Indonesia," *AHKAM: Jurnal Ilmu Syariah* 18, no. 2 (2018): 375–94, <https://doi.org/10.15408/ajis.v18i2.9866>; Mark Cammack, "Islamic Inheritance Law in Indonesia: The Influence of Hazairin's Theory of Bilateral Inheritance.," *Australian Journal of Asian Law* 4, no. 3 (2002): 295–315, <https://doi.org/10.3316/agispt.20030867>.

<sup>2</sup> Mursyid Djawas et al., "The Construction of Islamic Inheritance Law: A Comparative Study of the Islamic Jurisprudence and the Compilation of Islamic Law," *JURIS (Jurnal Ilmiah Syariah)* 21, no. 2 (2022): 207–19, <https://doi.org/10.31958/juris.v21i2.7495>.

<sup>3</sup> Ahmad Rofiq, *Hukum Perdata Islam Di Indonesia Edisi Revisi, Cet. 2*, Jakarta: PT. Raja Grafindo Persada, 2015.

<sup>4</sup> Lucy Carroll, "The Ithna Ashari Law of Intestate Succession: An Introduction to Shia Law Applicable in South Asia," *Modern Asian Studies* 19, no. 1 (1985): 85–124, <https://doi.org/10.1017/S0026749X00014566>.

The Islamic inheritance law in the archipelago recognizes the concept of replacement (*penggantian*) after the enactment of the Compilation of Islamic Laws (KHI) in 1991.<sup>5</sup>

The regulation regarding replacement heirs is found in the Compilation of Islamic Law (KHI) in Indonesia, but in fact, there is another interpretation among the community, especially among Muslims. The issue stems from the tentative nature of the replacement heirs, their position, and the scope of their applicability. As a result, the differing perspectives have an impact on the absence of legal certainty, especially for those seeking justice. Additionally, it can lead to injustice due to the use of options that favor certain heirs.<sup>6</sup>

Article 185, paragraph (1) uses the phrase 'can be replaced', which can cause uncertainty regarding the appearance of replacement heirs. Therefore, the word 'can' can openly be interpreted as some heirs who may or can be replaced and some heirs who may not be replaceable. The flexibility in the application of the law regarding replacement heirs is due to the wording of Article 185, making the application of the provisions regarding replacement heirs casuistic in nature. As a result, the role of the judge becomes crucial in determining whether an heir can or cannot be replaced.

The position of replacement heirs in Indonesia is a subject of debate among judges and academics.<sup>7</sup> Within the judiciary, there are differences in the decisions made by judges at various levels, including first-instance courts, appellate courts, supreme courts, or review of court decisions (PK). Judges present different legal arguments when deciding cases involving replacement heirs. The divergence in argumentation in resolving cases in both judicial practice and theory is due to the incomplete regulation regarding who should be prioritized as an heir when coexisting with other heirs, or in Hazairin's terminology, referred to as "the priority group of heirs."<sup>8</sup> The Compilation of Islamic Law, on one hand, seeks to prioritize close family members through the concept of replacement heirs, while on the other hand, it acknowledges the institution of *asabah*, even if they are distant relatives, as recognized in the inheritance practices agreed upon by the jurists (*fuqaha*).

<sup>5</sup> Euis Nurlaelawati, *Modernization, Tradition, and Identity: The Kompilasi Hukum Islam and Legal Practice in Indonesian Religious Courts*, 1st ed. (Amsterdam: Amsterdam University Press, 2010).

<sup>6</sup> Ahmad Rofiq, *Pembaharuan Hukum Islam Di Indonesia* (Gama Media, 2001).

<sup>7</sup> See Sofyan Mei Utama, "Islamic Law Review on The Determination of Surrogate Heirs," *International Journal of Nusantara Islam* 6, no. 2 (2018): 133–43, <https://doi.org/10.15575/ijni.v6i2.3954>.

<sup>8</sup> Permana, "Implications of Hazairin and Munawir Sjadzali Thoughts In Establishment of Islamic Inheritance In Indonesia."

Several research studies have been conducted on the study of replacement heirs. One of them is a study by Zailani that highlights the existence of replacement heirs as an eclectic meeting of Islamic law and local wisdom. Therefore, in resolving inheritance issues, the Compilation of Islamic Law (KHI), local wisdom, and judicial decisions can all be considered.<sup>9</sup> Furthermore, Karani explains that the system of replacement heirs in Islamic inheritance law and civil law occurs when the person connecting them to the deceased has already passed away before the deceased, and they must have a legitimate blood relation (*nasab*) with the deceased.<sup>10</sup> In another study, Ideham found that Banjarmasin Religious Court somehow considers gender equality in solving the inheritance case, without exception in the case of substitute heir.<sup>11</sup> In a broader sense, inheritance reformation law has been a subject of criticism. Reskiani studies the construction of inheritance jurisprudence in the Indonesian Supreme Court which demonstrates a transformative universalism concept utilizing *ijtihad intiqai* and extra-doctrinal.<sup>12</sup> Departing from those studies, this article ut attention to the way some judges interpret and practice the norm of representation or more known as substitute heir (Art 185 of The Compilation).

The difference in this article from the previous research is the consideration of legal judges regarding replacement heirs based on the Compilation of Islamic Law, particularly in analyzing and discussing the judgments from first-instance courts to the review process (Peninjauan Kembali or PK). This includes judgments such as Decision Number 271/Pdt.G/2013/PA Plp, Decision Number 430 K/Ag/2019, and others. This research becomes interesting because it offers a difference and novelty compared to previous studies on replacement heirs. The novelty lies in the author's analysis of court decisions at all levels.

This research is enriched by examining several judges' decisions within the scope of Religious Courts in Indonesia, including first-instance courts, appellate courts, and

<sup>9</sup> Abdul Qodir Zaelani, "Kedudukan Ahli Waris Pengganti (Plaatsvervulling) Dalam Kompilasi Hukum Islam Dan Pemecahannya," *ADHKI: Journal of Islamic Family Law* 2, no. 1 (2020): 91–105, <https://doi.org/10.37876/adhki.v2i1.32>.

<sup>10</sup> Pasnelyza Karani, "Tinjauan Ahli Waris Pengganti Dalam Hukum Kewarisan Islam Dan Hukum Kewarisan KUH Perdata" (Universitas Diponegoro, 2010).

<sup>11</sup> Wahidah Ideham, "Substitute Heirs in the Compilation of Islamic Law: An Overview from Gender Equality Perspective Case Study of the Religious Courts in Banjarmasin," *Samarab: Jurnal Hukum Keluarga Dan Hukum Islam* 6, no. 2 (2022): 1046–64, <https://doi.org/10.22373/sjhk.v6i2.12466>.

<sup>12</sup> Anugrah Reskiani et al., "Reform Methods of Islamic Inheritance Law in Indonesia in Jurisprudence," *JURIS (Jurnal Ilmiah Syariah)* 21, no. 1 (2022): 39–51, <https://doi.org/10.31958/juris.v21i1.5564>.

cassation at the Supreme Court. This article is a qualitative field research study, aimed at providing in-depth insights into the concept of replacement heirs in Islamic law and analyzing the legal judgments regarding replacement heirs. The approach used is a normative legal approach, which involves examining the norms or rules that apply within society and serve as a reference for behavior for individuals. The data sources obtained are from literature and interviews. The researcher analyzes documents such as judges' decisions in first-instance religious courts in Indonesia, High Religious Courts, cassation, and judicial review (PK) at the Supreme Court. The problem addressed in this article is how the construction of replacement heirs is understood in Islamic law (*fiqh* and the Compilation of Islamic Law), as well as the legal analysis of judges' decisions concerning cases involving replacement heirs.

### **Substitute Heir in Indonesia: Legal Rules**

The inheritance law serves as a regulation for the transfer of property from a deceased person to a living individual. The rules regarding inheritance in Islam are derived from the textual sources found in the Quran and the Hadith (Prophetic traditions). Among these sources is Surah An-Nisa verse 11. If understood, the above verse regulates the acquisition of inheritance with three legal provisions and explains wills and debts. The acquisition of inheritance with the three legal provisions is as follows: first, the share of a male child is equal to two shares of a female child; second, if the heirs consist only of female children, and their number is two or more, they will collectively receive two-thirds of the inheritance; and third, if the heirs consist only of female children, they will collectively receive half of the inheritance.

Furthermore, in the Quran, Surah Al-Anfal, verse 75 states, "And those who believed afterward and emigrated and fought with you, they are of you. But those of [blood] relationship are more entitled [to inheritance] in the decree of Allah. Indeed, Allah is Knowing of all things" (Quran, Al-Anfal: 75). This hadith has a correlation with Surah An-Nisa, verses 11 and 12, as this hadith is the reason for the revelation of those verses. Moreover, it is from this hadith that the initial implementation of Islamic inheritance law was carried out by the Prophet and subsequently followed by the Muslim community.

The concept of replacement heirs in Indonesia is regulated in Article 185 of the Compilation of Islamic Law (KHI). It states that replacement heirs are the descendants of

the heirs mentioned in Article 174. When examining the various articles in the KHI, it can be concluded that the KHI does not provide a literal definition of what exactly is meant by replacement heirs. Essentially, replacement heirs are heirs by substitution, meaning that they become heirs because their parent, who is entitled to inherit, passed away before the deceased. As a result, their position is replaced without distinction based on whether the deceased person is male or female.<sup>13</sup> The concept of replacement heir is indeed present in the Compilation of Islamic Law (KHI) in Article 185, Paragraph (1), which states that if an heir passes away before the deceased, their position can be replaced by their children, except for those mentioned in Article 173. Furthermore, in Paragraph (2), it is stated that the portion of the replacement heirs should not exceed the portion of the equivalent heirs being replaced.<sup>14</sup>

The existing construction in the regulation continues to generate lengthy debates, both at the academic and practical levels, especially within the religious courts, leading to disparities in judgments and creating legal uncertainty for seekers of justice. Based on the formulation of Article 185, it can be understood that the first paragraph explicitly acknowledges the existence of replacement heirs, which is a novel aspect of Islamic inheritance law.<sup>15</sup> In the first paragraph, the use of the word "can" implies that it does not carry an imperative meaning. This means that in certain circumstances when it is deemed beneficial or desirable to have replacement heirs, their existence can be recognized. However, in other circumstances, when the conditions do not warrant it, the replacement of heirs cannot be applied. Therefore, in the implicit sense, the first paragraph acknowledges the existence or inheritance rights of grandchildren through female descendants, as indicated by the phrase "heir who passed away first" which can be replaced by their children, whether they are male or female.<sup>16</sup>

In the second paragraph, the elimination of any discrepancy is achieved by adhering to the principle of gender equality. Without this verse, it would be challenging to

<sup>13</sup> Muchlis Samfrudin Habib, "Sistem Kewarisan Bilateral Ditinjau Dari Maqashid Al-Syari'ah," *De Jure: Jurnal Hukum Dan Syar'iah* 9, no. 1 (2017): 367655, <https://doi.org/10.18860/j-fsh.v9i1.4241>.

<sup>14</sup> Moh Muhibbin and Abdul Wahid, *Hukum Kewarisan Islam: Sebagai Pembaruan Hukum Positif Di Indonesia (Edisi Revisi)* (Jakarta: Sinar Grafika, 2022).

<sup>15</sup> Diana Zuhroh, "Criticizing the Compilation of Islamic Law (KHI) to Resolve the Case of Grandchildren's Inheritance Right in Religious Courts," in *1st International Seminar on Sharia, Law and Muslim Society (ISSLAMMS 2022)* (Atlantis Press, 2022), 23–36, [https://doi.org/10.2991/978-2-494069-81-7\\_4](https://doi.org/10.2991/978-2-494069-81-7_4).

<sup>16</sup> Habib, "Sistem Kewarisan Bilateral Ditinjau Dari Maqashid Al-Syari'ah."



implement the concept of replacement heirs, as the replacement of heirs would be based solely on a system that places equal importance on both male and female children, similar to the Western system. With these two verses, individuals who were previously considered ineligible to inherit are given a new position, now being recognized as rightful heirs after their position is elevated to replace the deceased parent. However, the rule itself does not specify the specific portion to be received by a replacement heir, nor does it determine whether all attributes held by the replaced heir are also inherited by the replacement heir, such as in the case of the requirement to wear hijab (*hijab mahjub*). Additionally, the article itself does not explicitly state whether these provisions apply only to direct descendants, or if they also apply to ascendants or collateral heirs.

The issuance of the Compilation of Islamic Law is motivated by the reality of certain cases where there is a sense of compassion towards grandchildren who are still young and are left orphaned by the passing of their parents shortly before the death of the deceased. In these cases, it is often the grandmother or grandfather who passes away. This argument is highly logical, especially if their economic conditions are concerning. Therefore, granting the right to replacement heirs is a very appropriate decision and in line with Islamic values.<sup>17</sup>

Granting the right to replacement heirs is a reflection of the phenomenon of injustice in society, and it is fitting for grandchildren to receive a portion of their grandparents' inheritance. It may not be accurate to base the granting of inheritance rights to replacement heirs solely on a sense of compassion due to economic factors. If inheritance rights were determined based on economic factors, the Quran would limit inheritance rights only to heirs with weak economic status, while heirs with strong economic standing would not be entitled to inheritance. However, in reality, the Quran does not establish such a distinction.

The Quran, in determining inheritance rights, is not limited only to the poor heirs but also extends to the wealthy ones. Even if the deceased parents are wealthy while the heirs are in a state of poverty, the Quran has established the rights of the parents as heirs.<sup>18</sup>

<sup>17</sup> Mursyid Djawas et al., "The Legal Position of Children of Incest (A Study of Madhhab Scholars and Compilation of Islamic Law)," *Samarah: Jurnal Hukum Keluarga Dan Hukum Islam* 6, no. 1 (2022): 139–55, <https://doi.org/10.22373/sjhk.v6i1.11904>.

<sup>18</sup> Oemar Moechthar, Agus Sekarmadji, and Ave Maria Frisa Katherina, "A Juridical Study of Granting Wills to Heirs in the Perspective of Islamic Inheritance Law," *Yuridika* 37, no. 3 (2022): 739, <https://doi.org/10.20473/ydk.v37i3.41161>.



Likewise, if the heirs are wealthy while their parents are impoverished, the Quran still grants rights to the heirs. This demonstrates that the Quran's determination of inheritance rights is not based on economic conditions but rather on the individual's status as a family member.<sup>19</sup> However, the economic factor serves as a reinforcement for the necessity of granting rights to replacement heirs.

Another issue arising from the tentative nature of the rules regarding replacement heirs is the potential inconsistency in the position of replacement heirs when they hold dual positions. For instance, the male grandchild of a deceased son may simultaneously hold two positions: first, as an heir in the category of *ashabab*<sup>20</sup> and second, as a replacement heir. If the grandchild is given the freedom to choose, they would naturally opt for the position that is more advantageous.

### **Practice in the Religious Court: Restricted to Orphan Grandchild of Deceased Child**

The implementation of the law regarding replacement heirs in Indonesia often varies, whether it is handled by the Religious Court, the High Religious Court, or the Supreme Court. Therefore, upon analysis, the application of the law has several types, including the use of the Compilation of Islamic Law and the utilization of the results of the Supreme Court's national coordination meeting in Balikpapan. This can be observed from several court decisions and the judges' analysis in deciding cases related to replacement heirs as follows:

The types of application of the law regarding replacement heirs can be seen in the decision of Case Number 271/Pdt.G/2013/PA Plp. In this case, the panel of judges determined the respective shares of the heirs of Hatijah as follows: 1. Bandu bin Passisi (husband) received  $\frac{1}{2}$  of Hatijah's estate, equivalent to  $\frac{3}{7}$  share. 2. Nurmina binti Tomaida and Aca binti Tomaida (siblings from the same father) each received  $\frac{2}{7}$  share of Hatijah's estate, totaling  $\frac{4}{7}$  share. The decision also determined that Bandu bin Passisi

<sup>19</sup> Dian Berkah and Tjiptohadi Sawarjuwono, "Inheritance Wealth Distribution Model and Its Implication to Economy," *Humanities & Social Sciences Reviews* 7, no. 3 (2019): 1–10, <https://doi.org/10.18510/hssr.2019.731>.

<sup>20</sup> See James N D Anderson, "Recent Reforms in the Islamic Law of Inheritance," *International & Comparative Law Quarterly* 14, no. 2 (1965): 349–65, <https://doi.org/10.1093/iclqaj/14.2.349>.

inherited the entire estate of the deceased Bandu bin Passisi, which is half of the shared estate plus 3/7 share of Hatijah's estate.

The Palopo Religious Court stated that the concept of replacement heirs only applies to grandchildren whose parents passed away before the deceased, in accordance with the historical context behind the emergence of the provision on replacement heirs due to compassion for grandchildren who were left without an inheritance. Therefore, it does not apply to other relatives or collateral heirs. Upon careful examination of the wording of Article 185 of the Compilation of Islamic Law (KHI), particularly in that specific clause, it can be understood textually that there is no legal obligation to apply that article to all cases of replacement heirs. The article is merely facultative. This can be understood from the wording "...may be replaced...", indicating that the provision is not an imperative requirement.

This means that Article 185 of the Compilation of Islamic Law can only be applied in specific cases, such as when there is an heir who is considered unable to inherit or not yet entitled to inherit, while having a very close blood relationship with the deceased, for example, a grandchild of the deceased. The main cause of inheritance disputes is often attributed to the customary practice of delaying the division of the inheritance immediately after the death of the deceased, leading to various issues that prevent rightful heirs, such as replacement heirs, from obtaining their rightful share.<sup>21</sup>

According to the Civil Code, the replacement of heirs in collateral lines is permitted, whether they inherit together with their uncles or aunts.<sup>22</sup> Thus, the concept of *hijab* (barrier) is not recognized. In customary society, a grandchild is entitled to inherit from their deceased grandparents, even if their parents have passed away earlier. Granting inheritance rights to grandchildren is based on the consideration that their existence is a shared responsibility of the family. The philosophy of shared responsibility in maintaining family unity, upheld by customary society, motivates them to utilize the institution of

<sup>21</sup> Lego Karjoko et al., "Islamic Court's Approach to Land Dispute in Inheritance Cases," *AHKAM: Jurnal Ilmu Syariah* 21, no. 2 (2021): 213–38, <https://doi.org/10.15408/ajis.v21i2.21864>.

<sup>22</sup> Nurhidayah Nurhidayah and Mahsyar Mahsyar, "Comparison of Substitute Herities between Civil Law and Islamic Law in Indonesia," *Al-Ijtah: Journal of Islamic Studies and Society* 1, no. 2 (2020): 106–24; Ahmad Redi and Hartini Antasari, "Comparative Analysis on the Regulation of Substitute Heir's Position in the Civil and Islamic Inheritance Law Perspective," in *3rd Tarumanagara International Conference on the Applications of Social Sciences and Humanities (TICASH 2021)* (Atlantis Press, 2022), 850–56, <https://doi.org/10.2991/assehr.k.220404.135>.

replacement heirs in inheritance matters. The Compilation of Islamic Law has offered a new legal breakthrough by integrating the principles of Islamic inheritance law and customary inheritance practices, giving rise to several articles regarding the replacement of heirs.

According to Islamic inheritance law, a grandson from a son is only eligible to replace the position of their parent if the deceased does not leave behind any other surviving sons. If this condition is not fulfilled, the grandson is excluded by the existence of the paternal siblings and will not receive a share of their grandfather's inheritance. However, there is a mandatory bequest (*wasiat wajibah*) that provides an opportunity for the excluded grandson to receive an inheritance from their grandfather. The Islamic Inheritance Law Compilation does not differentiate between males and females in terms of inheritance rights and does not recognize the concept of "kerabat zawil arham" (relatives through the paternal line) in the distribution of inheritance.

The Islamic Inheritance Law Compilation (KHI) does not differentiate between paternal and maternal grandparents or uncles. According to Hafsa, a judge at the Religious Court of Palopo, one of the challenges faced by legal practitioners, particularly judges, in applying Islamic inheritance law is the incompleteness of the legal regulations. Judges rely on the Compilation of Islamic Law and jurisprudence outside of the Quran and Hadith as their guidance in issuing rulings on Islamic inheritance cases. Until now, there has been no new legal product that explicitly regulates Islamic inheritance law. Furthermore, Hafsa points out that the legal regulations regarding inheritance, especially regarding the concept of substitute heir (substituted heirs), have not been widely known among the public due to a lack of socialization and legal education on Islamic inheritance law. This is possibly due to inadequate facilities, including materials for legal education, even though inheritance is a religious teaching that not all Muslims are well-versed in.<sup>23</sup>

The purpose of representation is to safeguard the rights of the rightful heirs who should receive a portion of the inheritance from the deceased, which is transferred to their substitute, namely their children, in order to ensure the continuity of the family's well-being and to strengthen the bond between the deceased and the substituted heirs. Jurisprudence in the Supreme Court Decision Number 676 K/AG/2012 dated May 15, 2012 states that

<sup>23</sup> Utama, "Islamic Law Review on The Determination of Surrogate Heirs."

the position of substitute heir based on the Compilation of Islamic Law is not contrary to Islamic law and Indonesian positive law. In fact, it aligns with the principles of justice established by Islamic law. This practice has been implemented since the enactment of the Compilation of Islamic Law and has not posed any significant issues for the Indonesian Muslim community. Moreover, the Indonesian Muslim community is receptive to the position of substitute heirs as heirs under the Indonesian inheritance law.<sup>24</sup>

The Court should not disregard the Compilation of Islamic Law in deciding cases by disagreeing with the existence of a substitute heir, thereby depriving the grandchildren of their inheritance from their deceased grandfather in order to substitute their deceased parents. Based on the aforementioned jurisprudence, the author argues that it is limited to the descendants as heirs, in this case, the grandchildren substituting their deceased parents. It does not extend to the collateral heirs, such as nieces and nephews, substituting their deceased siblings. Based on the information above, according to the researcher, judges in the Palopo Religious Court have different interpretations of Article 185 of the Compilation of Islamic Law.<sup>25</sup>

Differences in the application of the law regarding substitute heirs can also be seen in the verdict with Case Number 236/Pdt.G/2011/PA.Mtp. The parties involved in this case are Abdul Hadi bin H. Ramli, Yusrifansyah bin H. Ramli, Abdullah bin H. Ramli, Abdurrahman bin H. Ramli, Lamsiah binti H. Ramli, and Fitriani binti H. Ramli (Plaintiffs I to VI). They were against H. Anang Asera bin H. Sahrin (deceased), H. Amin bin H. Sahrin (deceased), Hj. Salamah binti H. Sahrin (deceased), and Hj. Aisyah binti H. Sahrin (deceased) (Defendants I to IV). The panel of judges, in their consideration, relied on Article 185 paragraph (1) of the Compilation of Islamic Law or KHI. However, later on, H. Muhammad Amin bin H. Sahrin, Hj. Aisyah binti H. Sahrin, Hj. Salamah binti H. Sahrin (Defendants II to IV) did not agree with the verdict of the Martapura Religious Court and filed an appeal against the Martapura Religious Court's verdict with Case Number

<sup>24</sup> Putri Larasati, M Darudin, and Sirman Dahwal, "Dispute Resolution of Inheritance Distribution for The Substitute Heir in Terms of Islamic Law," *Bengkoelen Justice: Jurnal Ilmu Hukum* 11, no. 1 (2021): 97–109, [https://doi.org/10.33369/j\\_bengkoelenjust.v11i1.15794](https://doi.org/10.33369/j_bengkoelenjust.v11i1.15794).

<sup>25</sup> Hasballah Khairuddin et al., "Patah Titi and Substitute Heirs: A Study of Legal Pluralism on the Inheritance System in Aceh Community," *Abkam: Jurnal Ilmu Syariah* 21, no. 1 (2021): 229–324, <https://doi.org/10.15408/ajis.v21i2.22792>.

236/Pdt.G/2011/PA.Mtp dated October 19, 2011, to the Banjarmasin High Religious Court, registered with Case Number 04/Pdt.G/2012/PTA.Bjm on October 31, 2011.

They felt that the verdict did not meet the criteria of justice. Furthermore, based on verdict number 0033/Pdt.G/2018/PTA.Mks, the appellate court, the panel of judges at the Makassar High Religious Court, did not rely on the Compilation of Islamic Law (KHI). Although Article 185 paragraph 1 of the KHI has not been repealed or revised by the government, the decision was based on the National Work Meeting (*Rakernas*) of the Supreme Court in Balikpapan, which concluded that there is no substitute heir for relatives in the sideways line, but only for grandchildren. As a result, Plaintiff II, III, IV, and the co-defendants were not entitled to inheritance.

The panel of judges at the Makassar Religious High Court also ruled that Natje Dg. Rannu's sister, Mammi bin Rawo, who had also predeceased her, passed away at the age of one year and therefore was not considered an heir. The appellate court considered this to be a factor taken into account according to local customs or regional practices. Based on this consideration, those who had legal standing as heirs of the deceased Natje Dg. Rannu binti Rawo were her surviving siblings, namely Lawing Dg. Sikki bin Rawo (Plaintiff I), Parela Dg. Siajang bin Rawo (Defendant I), and Sarimana Dg. Mana binti Rawo (Defendant II), in accordance with the provisions of Article 174 paragraph (1) letter a of the Compilation of Islamic Law.

The difference in the application of the law on the replacement heirs can also be seen in Decision Number 04/Pdt.G/2012/PTA.Bjm, which states that the provision in Article 185 paragraph (1) of the Compilation of Islamic Law (KHI) is not conceptually a provision of Islamic law, even though it is included in a formal product called the Compilation of Islamic Law. This opinion is further supported by the views of Dr. H. Habiburrahman, a Supreme Court Judge who believes that the inheritance law in the Compilation of Islamic Law contradicts the textual sources (*nash*).

The Religious Court resolves disputes based on Islamic law, not customary law. Customary law will only be accepted if it does not contradict the textual sources (*nash*) and does not involve replacement heirs, because the recognition of the existence of replacement heirs has implications for their eligibility as heirs and their participation as parties in court proceedings. The appellate panel concluded that the provision in Article 185 paragraph (1) of the Compilation of Islamic Law (KHI) cannot be applied universally

and does not have binding force on the Religious Court, both formally and substantively, in carrying out their duties to uphold the law and justice based on Pancasila as stipulated in Article 2 paragraph (2) of Law No. 48/2009 on the Judiciary.

The appellate panel of the Banjarmasin High Religious Court is of the opinion that the Plaintiffs, in this case, are seated in their capacity as litigants based on their legal standing as heirs, as provided for in Article 185 paragraph (1) of the Compilation of Islamic Law (KHI). However, as previously considered, the aforementioned provision does not constitute a legal rule that can serve as a guideline for judges in Indonesia to adjudicate. Therefore, the legal standing of the Plaintiffs to be parties to the proceedings in the Religious Court does not have a legal basis according to the applicable regulations (*legitima persona standi in judicio*). In other words, in this case, there has been a disqualification in persona. Consequently, the panel of judges declares that the Plaintiffs' lawsuit in this case is not admissible (*niet onvanklijke verklaard*).

The differences in the application of the law can also be observed in the verdict of Case Number 430 K/Ag/2019, as the cassation verdict from the Supreme Court is in contrast to the previous decision. The panel of Supreme Court judges, in deciding this case, still adhered to Article 185 of the Compilation of Islamic Law. The National Working Meeting of the Supreme Court of the Republic of Indonesia in 2010 in Balikpapan resulted in the limitation of the scope of the substitute heir to the direct line of descendants, specifically grandchildren, if the deceased had children. However, in this case, the deceased (Natje Dg. Binti Rawo) was never to marry, therefore Article 185 of the Compilation of Islamic Law can still be applied. Moreover, considering the aspect of justice, the late Tumpu Bin Rawo is on equal footing with Plaintiff I, Defendant I, and Defendant II.

Based on the considerations mentioned above, the position of the deceased relative named Tumpu Bin Rawo, who passed away on March 27, 1994, is replaced by his children, namely H. Saharuddin Bin Tumpu (son), Najamuddin Bin Tumpu (son), Sitti Nurdea Binti Tumpu (daughter), Ridwan Bin Tumpu (son), and Sitti Aminah Binti Tumpu (daughter). However, in the verdict of Case Number 676 K/Ag/2012, the Supreme Court judges' decision contradicts the decision of the appellate court judges. The Banjarmasin High Court has disregarded the Compilation of Islamic Law (KHI) in its ruling on the case in question by not recognizing the replacement of the substitute heir. As a result, the grandchildren did not receive an inheritance from their grandfather as substitutes for their

deceased parents. The considerations made by the cassation court judges contradict the principles of justice constructed by Islamic law. The replacement of the substitute heir based on the Compilation of Islamic Law is not a deviation from Islamic law or Indonesian positive law. It has been practiced since the enactment of the Compilation of Islamic Law and has not caused any significant issues for the Indonesian Muslim community. In fact, the Indonesian Muslim community has accepted the existence of the replacement of an heir as a rightful heir.

Based on the analysis of the six aforementioned verdicts, it can be observed that the presence of the replacement of an heir in the Compilation of Islamic Law is not contradictory to Islamic law and Indonesian positive law, as it has been practiced since the enactment of the Compilation of Islamic Law. However, there is a difference in views among the judges handling inheritance claims, as explained above. This divergence can be attributed to the fact that each case is unique and the judges consider various factors when deciding on inheritance disputes involving the replacement of an heir. Consequently, this leads to disparity in court decisions.

The author believes that the judges who decide on inheritance disputes by granting the replacement of the heir the right to inherit from their grandparents are actually recognizing that the portion of the inheritance they receive represents their father's share (if alive) when their grandparents passed away. This interpretation is based on Article 171 (b) and (c), as well as Article 185 paragraph (1) of the Compilation of Islamic Law (KHI). The author considers this decision as a legal discretion and an expansion of the meaning of *maqasid syariah* (objectives of Islamic law) which prove the judges' attitude toward the Compilation of Islamic Law.

## Conclusion

This research concludes that the application of the law regarding substitute heirs (replacement heirs) in Indonesia varies among different levels of courts, including religious courts, high courts, and the Supreme Court. This can be observed from the rulings of cases such as No. 271/Pdt.G/2013/PA Plp, No. 236/Pdt.G/2011/PA.Mtp, No. 0033/Pdt.G/2018/PTA.Mks, No. 04/Pdt.G/2012/PTA.Bjm, No. 430 K/Ag/2019, and No. 676 K/Ag/2012. From these verdicts, it becomes evident that there are different



approaches taken by judges in the application of the law regarding substitute heirs. Some judges rely on the Compilation of Islamic Law, while others consider the decisions made during the National Work Meeting of the Supreme Court, which stated that there is no provision for substitute heir for collateral relatives and that it is only applicable to grandchildren. Many of the judges found in the verdict restricted the substitute heir is limited to the orphaned grandchild. It means the descendent of the predeceased sibling of the inheritor is mostly not counted.

## References

- Anderson, James N D. "Recent Reforms in the Islamic Law of Inheritance." *International & Comparative Law Quarterly* 14, no. 2 (1965): 349–65. <https://doi.org/10.1093/iclqaj/14.2.349>.
- Berkah, Dian, and Tjiptohadi Sawarjuwono. "Inheritance Wealth Distribution Model and Its Implication to Economy." *Humanities & Social Sciences Reviews* 7, no. 3 (2019): 1–10. <https://doi.org/10.18510/hssr.2019.731>.
- Cammack, Mark. "Islamic Inheritance Law in Indonesia: The Influence of Hazairin's Theory of Bilateral Inheritance." *Australian Journal of Asian Law* 4, no. 3 (2002): 295–315. <https://doi.org/10.3316/agispt.20030867>.
- Carroll, Lucy. "The Ithna Ashari Law of Intestate Succession: An Introduction to Shia Law Applicable in South Asia." *Modern Asian Studies* 19, no. 1 (1985): 85–124. <https://doi.org/10.1017/S0026749X00014566>.
- Djawas, Mursyid, Gamal Achyar, Nursyirwan Bustanul Arifin, Masri Reza, and Baharuiddin Umar Yakub. "The Legal Position of Children of Incest (A Study of Madhhab Scholars and Compilation of Islamic Law)." *Samarah: Jurnal Hukum Keluarga Dan Hukum Islam* 6, no. 1 (2022): 139–55. <https://doi.org/10.22373/sjkh.v6i1.11904>.
- Djawas, Mursyid, Khairuddin Hasballah, Soraya Devy, Muntasir A Kadir, and Yusufriadi Abda. "The Construction of Islamic Inheritance Law: A Comparative Study of the Islamic Jurisprudence and the Compilation of Islamic Law." *JURIS (Jurnal Ilmiah Syariah)* 21, no. 2 (2022): 207–19. <https://doi.org/10.31958/juris.v21i2.7495>.
- Habib, Muchlis Samfrudin. "Sistem Kewarisan Bilateral Ditinjau Dari Maqashid Al-Syari'ah." *De Jure: Jurnal Hukum Dan Syari'ah* 9, no. 1 (2017): 367655. <https://doi.org/10.18860/j-fsh.v9i1.4241>.
- Ideham, Wahidah. "Substitute Heirs in the Compilation of Islamic Law: An Overview from Gender Equality Perspective Case Study of the Religious Courts in Banjarmasin." *Samarah: Jurnal Hukum Keluarga Dan Hukum Islam* 6, no. 2 (2022): 1046–64. <https://doi.org/10.22373/sjkh.v6i2.12466>.
- Karani, Pasnelyza. "Tinjauan Ahli Waris Pengganti Dalam Hukum Kewarisan Islam Dan Hukum Kewarisan KUH Perdata." Universitas Diponegoro, 2010.
- Karjoko, Lego, Abdul Kadir Jaelani, Hilaire Tegnan, Henning Glaser, and Muhammad Jihadul Hayat. "Islamic Court's Approach to Land Dispute in Inheritance Cases." *AHKAM: Jurnal Ilmu Syariah* 21, no. 2 (2021): 213–38. <https://doi.org/10.15408/ajis.v21i2.21864>.

- Khairuddin, Hasballah, Ridwan Nurdin, Zainuddin Muslim, and Fahmi Mutiara. "Patah Titi and Substitute Heirs: A Study of Legal Pluralism on the Inheritance System in Aceh Community." *Abkam: Jurnal Ilmu Syariah* 21, no. 1 (2021): 229–324. <https://doi.org/10.15408/ajis.v21i2.22792>.
- Larasati, Putri, M Darudin, and Sirman Dahwal. "Dispute Resolution of Inheritance Distribution for The Substitute Heir in Terms of Islamic Law." *Bengkoelen Justice: Jurnal Ilmu Hukum* 11, no. 1 (2021): 97–109. [https://doi.org/10.33369/j\\_bengkoelenjust.v11i1.15794](https://doi.org/10.33369/j_bengkoelenjust.v11i1.15794).
- Moechthar, Oemar, Agus Sekarmadji, and Ave Maria Frisa Katherina. "A Juridical Study of Granting Wills to Heirs in the Perspective of Islamic Inheritance Law." *Yuridika* 37, no. 3 (2022): 739. <https://doi.org/10.20473/ydk.v37i3.41161>.
- Muhibbin, Moh, and Abdul Wahid. *Hukum Kewarisan Islam: Sebagai Pembaruan Hukum Positif Di Indonesia (Edisi Revisi)*. Jakarta: Sinar Grafika, 2022.
- Nurhidayah, Nurhidayah, and Mahsyar Mahsyar. "Comparison of Substitute Herities between Civil Law and Islamic Law in Indonesia." *Al-Iftah: Journal of Islamic Studies and Society* 1, no. 2 (2020): 106–24.
- Nurlaelawati, Euis. *Modernization, Tradition, and Identity: The Kompilasi Hukum Islam and Legal Practice in Indonesian Religious Courts*. 1st ed. Amsterdam: Amsterdam University Press, 2010.
- Permana, Sugiri. "Implications of Hazairin and Munawir Sjadzali Thoughts In Establishment of Islamic Inheritance In Indonesia." *AHKAM: Jurnal Ilmu Syariah* 18, no. 2 (2018): 375–94. <https://doi.org/10.15408/ajis.v18i2.9866>.
- Redi, Ahmad, and Hartini Antasari. "Comparative Analysis on the Regulation of Substitute Heir's Position in the Civil and Islamic Inheritance Law Perspective." In *3rd Tarumanagara International Conference on the Applications of Social Sciences and Humanities (TICASH 2021)*, 850–56. Atlantis Press, 2022. <https://doi.org/10.2991/assehr.k.220404.135>.
- Reskiani, Anugrah, Dian Furqani Tenrilawa, Aminuddin Aminuddin, and Rahman Subha. "Reform Methods of Islamic Inheritance Law in Indonesia in Jurisprudence." *JURIS (Jurnal Ilmiah Syariah)* 21, no. 1 (2022): 39–51. <https://doi.org/10.31958/juris.v21i1.5564>.
- Rofiq, Ahmad. *Hukum Perdata Islam Di Indonesia Edisi Revisi, Cet. 2*. Jakarta: PT. Raja Grafindo Persada, 2015.
- . *Pembabaran Hukum Islam Di Indonesia*. Gama Media, 2001.
- Utama, Sofyan Mei. "Islamic Law Review on The Determination of Surrogate Heirs." *International Journal of Nusantara Islam* 6, no. 2 (2018): 133–43. <https://doi.org/10.15575/ijni.v6i2.3954>.
- Zaelani, Abdul Qodir. "Kedudukan Ahli Waris Pengganti (Plaatsvervulling) Dalam Kompilasi Hukum Islam Dan Pemecahannya." *ADHKI: Journal of Islamic Family Law* 2, no. 1 (2020): 91–105. <https://doi.org/10.37876/adhki.v2i1.32>.
- Zuhroh, Diana. "Criticizing the Compilation of Islamic Law (KHI) to Resolve the Case of Grandchildren's Inheritance Right in Religious Courts." In *1st International Seminar on Sharia, Law and Muslim Society (ISLAMIS 2022)*, 23–36. Atlantis Press, 2022. [https://doi.org/10.2991/978-2-494069-81-7\\_4](https://doi.org/10.2991/978-2-494069-81-7_4).