



The Concept of Substitute Heirs: A Comparative Analysis between the Compilation of Islamic Law (KHI) and Customary Law amongst Muslim Communities in Pemalang Regency

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Concept of Substitute Heirs; Compilation of Islamic Law (KHI); Customary Law; Muslim Community in Pemalang Regency

Kata Kunci:

Konsep Ahli Waris Pengganti; Kompilasi Hukum Islam (KHI); Hukum Adat; Masyarakat Muslim di Kabupaten Pemalang.

Abstract:

This study was prompted by conceptual differences regarding substitute heirs between the Compilation of Islamic Law (KHI) and customary law practised by Muslim communities in Pemalang Regency. These differences reflect the dynamics of the application of Islamic inheritance law at the local level, which does not always align with formal legal norms. This study aims to examine the dynamics of the concept of substitute heirs and to analyse them comparatively between the provisions in the KHI and the practices of customary law within the local community. This is a field study employing a socio-legal approach and utilising comparative law theory. Data were collected through observation, interviews with eleven key informants, and a literature review, which were subsequently analysed qualitatively. The findings indicate that the KHI normatively restricts the substitution of heirs to specific conditions as stipulated in Article 185. Conversely, customary law practices amongst the Muslim community in Pemalang Regency permit a grandchild to replace the primary heir (a child) even whilst that heir is still alive; an adopted child may replace their adoptive parent; and a grandchild acting as a substitute heir may restrict (*hijab*) the share of the inheritance due to the biological siblings of the heir they are replacing. These differences are influenced by deeply rooted social constructs that have developed as a legal culture within the community. The implications of this research indicate that the Compilation of Islamic Law (KHI) remains an ideal normative reference, whilst customary law functions as a 'living law' that is adaptive and responsive to the social needs of the community. Therefore, the relationship between the two cannot be viewed dichotomously, but rather as a dialectic between formal law and ever-evolving social practices.

Abstrak:

Penelitian ini dilatarbelakangi oleh adanya perbedaan konseptual mengenai ahli waris pengganti antara Kompilasi Hukum Islam (KHI) dan hukum adat yang berlaku pada masyarakat Muslim di Kabupaten Pemalang. Perbedaan tersebut merefleksikan dinamika penerapan hukum kewarisan Islam di tingkat lokal yang tidak selalu sejalan dengan norma hukum formal. Penelitian ini

bertujuan untuk mengkaji dinamika konsep ahli waris pengganti serta menganalisisnya secara komparatif antara ketentuan dalam KHI dan praktik hukum adat pada masyarakat setempat. Penelitian ini merupakan penelitian lapangan dengan pendekatan sosio-legal serta menggunakan teori perbandingan hukum. Data dikumpulkan melalui observasi, wawancara terhadap sebelas informan kunci, dan studi literatur, yang kemudian dianalisis secara kualitatif. Hasil penelitian menunjukkan bahwa KHI secara normatif membatasi penggantian ahli waris hanya pada kondisi tertentu sebagaimana diatur dalam Pasal 185. Sebaliknya, praktik hukum adat pada masyarakat Muslim di Kabupaten Pemalang, memperbolehkan cucu menggantikan kedudukan ahli waris utama (anak) meskipun ahli waris tersebut masih hidup, anak angkat dapat menggantikan kedudukan orangtua angkatnya dan cucu sebagai ahli waris pengganti dapat membatasi (*hijab*) bagian harta warisan saudara kandung dari ahli waris yang digantikan. Perbedaan tersebut dipengaruhi oleh konstruksi sosial yang telah mengakar dan berkembang sebagai budaya hukum dalam masyarakat. Implikasi penelitian ini menunjukkan bahwa KHI tetap menjadi rujukan normatif yang bersifat ideal, sedangkan hukum adat berfungsi sebagai living law yang adaptif dan responsif terhadap kebutuhan sosial masyarakat. Oleh karena itu, hubungan antara keduanya tidak dapat diposisikan secara dikotomis, melainkan sebagai bentuk dialektika antara hukum formal dan praktik sosial yang terus berkembang.

A. Introduction

Muslim family law is the most widely applied element of Islamic law in Muslim countries.¹ One of the key components of this family law is Islamic inheritance law,² which governs the provisions and mechanisms for the distribution of inherited assets.³ Islamic inheritance law essentially applies to Muslims everywhere in the world. The character of a country and the way of life of the people in that country or region influence the inheritance law in that area.⁴ By definition, inheritance law is the law that governs the transfer of ownership rights to the deceased's estate (*tirkah*), determining who is entitled to be an heir and the respective shares of each.⁵ The rules of inheritance in Islam are set out in the Qur'an,

¹Euis Nurlaelawati, "The Debate on Muslim Family Law Reforms in Indonesia: The Case of Representation of Heirs and Obligatory Request," *Al-Jami'ah* 41, no. 2 (2003): 1–33.

²Rajab, Elizamiharti, and Muslim, "Islamic Inheritance Law in Saruaso and Sawah Tengah Villages Based on Islamic Principles," *Jurnal Ilmiah Islam Futura* 22, no. 2 (2022): 225–43, <https://doi.org/10.22373/jiif.v22i2.12130>; Muhammad Nur et al., "From Text to Context: The Role of Kyai in Shaping Modern Islamic Inheritance Law," *Al-Manabij: Jurnal Kajian Hukum Islam* 19, no. 1 (May 23, 2025): 31–50, <https://doi.org/10.24090/mnh.v19i1.9762>.

³Muhammad Lutfi Hakim, "Ismail Mundu on Islamic Law of Inheritance: A Content Analysis of Majmū' Al-Mirāth Fī Ḥukm Al-Farā'Id," *Al-Jami'ah* 61, no. 1 (2023): 59–79, <https://doi.org/10.14421/ajis.2023.611.59-79>.

⁴Rahmad Setyawan, "Hak Non Muslim Dalam Hukum Kewarisan Islam Perspektif Maqasid Syariah (Telaah Putusan Pengadilan Agama Kabanjahe Nomor: 2/Pdt. G/2011/PA-Kbj)," *Abwaluna: Jurnal Hukum Keluarga Islam* 6, no. 1 (2025): 89–108.

⁵Rahmad Setyawan and Muhamman Taufik Kustiawan, "Najmuddīn Al-Tūfī's Thoughts on the Dynamics of Inheritance Law 2:1 Perspective of Maṣlaḥah," *Al-Hukama* 11, no. 2 (2021): 85–114, <https://doi.org/10.15642/alhukama.2021.11.2.85-114>.

specifically in Surah an-Nisa' in verses 11, 12, 33 and 176.⁶ Based on these verses, various rules of inheritance in the Qur'an that still required clarification—whether to reaffirm or elaborate upon them—were conveyed by the Prophet Muhammad (peace be upon him) through his hadith.⁷

Before these verses were revealed, the distribution of inheritance applied only to men, whilst women received no share. Furthermore, inheritance was granted only to adults, meaning that children did not receive a share of the inheritance.⁸ This means that the revelation of these verses signifies that the Qur'an treats everyone fairly without discriminating against any particular group.⁹ From this explanation, it is clear and explicit that Islamic inheritance law is regulated in the Qur'an and the hadith.¹⁰ Nevertheless, in this modern era, it is not impossible for the distribution, the size of the shares, and who is entitled to receive them to be determined in accordance with traditional views and local wisdom.¹¹

Inheritance law remains an issue in Indonesia, particularly in cases *requiring ijtihad*.¹² In the Indonesian context, the prevailing inheritance law system is still grappling with legal pluralism, as alongside the applicable Islamic inheritance law system, customary law and civil law systems also remain in force.¹³ All three legal systems have a legal basis for their application.¹⁴ The co-existence of these three inheritance legal systems in Indonesia consequently continues to influence the resolution of inheritance disputes, as disputing family

⁶Asrizal Saiin, "Menelaah Hukum Waris Pra-Islam Dan Awal Islam Serta Peletakan Dasar-Dasar Hukum Kewarisan Islam," *Al-Ahwal: Jurnal Hukum Keluarga Islam* 9, no. 1 (2017): 125–38, <https://doi.org/10.14421/ahwal.2016.09108>.

⁷Riyanta, *Relations between Muslims and Non-Muslims in Inheritance: The Dynamics of Classical Fiqh Thought Towards Modern Indonesian Fiqh* (Yogyakarta: Kurnia Kalam Semesta, 2018).

⁸Muhammad Asyrofudin et al., "Contextualization of the 2:1 Distribution of Inheritance from the Perspective of Mubadalah," *Syariah: Journal of Fiqh Studies* 3, no. 2 (2025): 45–62, <https://doi.org/10.61570/syariah.v3i2>.

⁹Rahmad Setyawan and Muhammad Asyrofudin, "Hak Asasi Manusia Dan Relasi Keluarga Dalam Islam: Tafsir Kontekstual Terhadap Teks-Teks Hukum Keluarga," *Human Rights et Justicia* 1, no. 1 (2025): 27–53, <https://doi.org/10.70742/hrj.v1i1.533>.

¹⁰Ifah Lathifah and Devika Rosa Gspita, "Fiqh Mawarits: Memahami Ilmu Faraidh Dan Kedudukan Hukum Allah Dalam Pembagian Harta Warisan," *Abdurrauf Science and Society* 1, no. 1 (2024): 22–27, <https://doi.org/10.70742/asoc.v1i1.97>.

¹¹Maimun Nawawi, *An Introduction to Islamic Inheritance Law* (Surabaya: Pustaka Radja, 2016).

¹²Rahmad Setyawan et al., "Contemporary Ijtihad Deconstruction in the Supreme Court: Wasiat Wajibah as an Alternative for Non-Muslim Heirs in Indonesia," *Jurnal Ilmiah Al-Syir'ah* 22, no. 1 (2024): 25–40, <https://doi.org/10.30984/jis.v22i1.2968>.

¹³Asyrofudin et al., "Contextualization of the 2:1 Distribution of Inheritance from the Perspective of Mubadalah."

¹⁴M. Idris Ramulyo, *A Comparison of the Implementation of Islamic Inheritance Law with Inheritance under the Civil Code (BW)* (Jakarta: Sinar Grafika, 2000).

members may choose one of these three legal systems.¹⁵ An example of this is the customary law chosen by the Muslim community in Comal Sub-district, Pemalang Regency, Central Java Province, to resolve the distribution of inherited assets.¹⁶

Customary inheritance law consists of rules passed down from ancestors to their descendants to be upheld and applied from generation to generation.¹⁷ In practice, the Muslim community in Comal Sub-district, Pemalang Regency, Central Java Province, has a time-honoured custom regarding the distribution of inherited assets, namely substituting the primary heir (the child) with a grandchild, even though the primary heir is still alive. This is because the process of distributing the estate cannot be resolved under the Islamic inheritance law system, and is ultimately settled in accordance with the customary inheritance law applicable in that region.¹⁸ The share of the estate received by the substitute heir is calculated to be the same as that which should have been received by the primary heir they are replacing, without distinction between men and women.¹⁹

Furthermore, an adopted child may take the place of their adoptive parents, even though under Islamic inheritance law, an adopted child has no blood relationship with their adoptive parents. Even more uniquely, a substitute heir who takes the place of a deceased parent may, by mutual agreement, '*hijab*' (cover) the share of the inheritance due to the full siblings of the heir they are replacing.²⁰ This custom can reinforce a contextual approach to Islamic law and reflect the values of the *maqashid al-sharia* in achieving the public interest, as it has long been practised.²¹

Upon closer examination, the distribution of the estate as described above highlights a difference between the concept of a substitute heir as regulated in the Compilation of Islamic Law (KHI) and the customary law applicable to the Muslim community in Pemalang. Furthermore, in practice within religious courts, there is a tendency for some judges not to

¹⁵Rahmad Setyawan, "Pengembangan Konsep Wajib Wasiat Di Mahkamah Agung Dan Implikasinya Terhadap Pembaharuan Hukum Di Indonesia," *Journal of Indonesian Law* 4, no. 1 (2023): 92–114, <https://doi.org/10.18326/jil.v4i1.1004>.

¹⁶Jaya Prayitno, Chair of the Nahdlatul Ulama Branch Council, Comal Sub-district, *Interview*, 25 March 2020.

¹⁷Hilman Hadikusuma, *Customary Inheritance Law* (Bandung: Citra Aditya Bakti, 2003).

¹⁸Jaya Prayitno, Chair of the Nahdlatul Ulama Branch Council, Comal Sub-district, *Interview*, 25 March 2020.

¹⁹Jaya Prayitno, Chair of the Nahdlatul Ulama Branch Council, Comal Sub-district, *Interview*, 25 March 2020.

²⁰Jaya Prayitno, Chair of the Nahdlatul Ulama Branch Council, Comal Sub-district, *Interview*, 25 March 2020.

²¹Khairuddin Khairuddin, "Framing Grief, Weaving Law: An 'Urf-Based Perspective on the Tukam Khekhaya Tradition among the Gunung Meriah Community," *Ablika: Jurnal Hukum Keluarga Dan Hukum Islam* 2, no. 1 (2025): 67–90, <https://doi.org/10.70742/ablika.v2i1.192>.

fully adhere to the provisions set out in the KHI. This is based on the view that, under certain conditions, some rules in the KHI are considered to have deviated significantly from classical *fiqh* teachings. For example, in inheritance cases, judges often set aside provisions of the KHI that remain a subject of debate, both amongst scholars and amongst judges themselves.²²

This research is significant because the practice of substituting heirs in Comal Sub-district is not merely a case-by-case occurrence, but has become a collective custom passed down through generations within the local Muslim community. This phenomenon highlights a tension between normative Islamic inheritance law and customary law, which, as a 'living law', is more widely accepted socially. Furthermore, the character of Comal society, which highly values family harmony and the resolution of disputes through deliberation, means that customary law is more dominant than formal law. To date, studies specifically examining customary inheritance practices in the Comal region remain limited; consequently, this research is of both theoretical and practical urgency in understanding the dynamics of the application of inheritance law within Muslim communities in Indonesia.

The legal status of substitute heirs in the Compilation of Islamic Law is explained in Article 185, paragraph 1, which states that if an heir predeceases the testator, their position may be taken by their child, except for those mentioned in Article 173. Paragraph 2 states that the share of a substitute heir must not exceed that of an heir of the same rank as the one being replaced.²³ In its embryonic form, the concept of a substitute heir in Islamic inheritance law in Indonesia was first introduced by Hazairin through his interpretation of Surah an-Nisa' verse 33.²⁴ Hazairin was an Indonesian scholar of Islamic law.²⁵ He referred to substitute heirs by the term '*mawali*,'²⁶ meaning a person who takes the place of the primary heir who has predeceased the testator.²⁷ This concept aims to ensure that inheritance rights continue to pass

²²Euis Nurlaelawati, "Change and Continuity: The Kompilasi and Indonesian Islamic Courts'," *Studia Islamika* 14, no. 1 (2007): 85–112, <https://doi.org/10.15408/sdi.v14i1.559>.

²³ M. Anshary MK, *Islamic Inheritance Law in Theory and Practice* (Yogyakarta: Pustaka Pelajar, 2017).

²⁴ Hazairin, *Bilateral Inheritance Law According to the Qur'an and Hadith* (Jakarta: Tintamas, 1981).

²⁵ Abdul Ghofur Anshori, *The Philosophy of Islamic Inheritance Law* (Yogyakarta: UII Press Yogyakarta, 2010).

²⁶Suqiyah Musafaah, Hammis Syafaq, and Nur Lailatul Musyafa'ah, "Hazairin'S Interpretation of Inheritance Verses in the Qur'an and Its Influence on the Compilation of Islamic Law," *Journal of Indonesian Islam* 17, no. 1 (2023): 147–68, <https://doi.org/10.15642/JIIS.2023.17.1.147-168>.

²⁷Mega Puspita and Ahmad Rezy Meidina, "Historicity of Islamic Inheritance Law in Indonesia and Turkey," *El-Aqwal: Journal of Sharia and Comparative Law* 2, no. 1 (2023): 27–36, <https://doi.org/10.24090/el-aqwal.v2i1.7648>.

to the descendants even if the primary heir has already passed away at the time of the distribution of the estate.²⁸

Based on this explanation, the practice of distributing inherited assets within the Muslim community in Comal Sub-district, Pemalang Regency, Central Java Province—particularly regarding the concept of substitute heirs—warrants further study. This is due to a fundamental discrepancy between the customary legal practices that have developed within the community and the provisions of Islamic inheritance law, as set out in the KHI. In customary practice in Comal, a grandchild may take the place of the primary heir (a child) even if that heir is still alive; an adopted child may take the place of their adoptive parents; and a grandchild, as a substitute heir, may *pre-empt* the share of the inheritance due to the full siblings of the heir they are replacing. Meanwhile, in the KHI, the concept of a substitute heir has certain limitations that are not entirely consistent with these practices.

It can be seen in various academic literature that research into the concept of substitute heirs has been extensively conducted by previous researchers; for example, Desma Royana, Sofia and Mohd. Yunus examined the existence of substitute heirs in the customary law of Kampar, Bangkinang Sub-district, from the perspective of the Compilation of Islamic Law.²⁹ Hazar Kusmayanti and Lisa Krinayanti carried out a comparative study on the rights and status of grandchildren as substitute heirs in the inheritance distribution system, examined from the perspective of Islamic inheritance law and the Compilation of Islamic Law.³⁰ A comparative study was also carried out by Agnes Listya Adeline and Mentor Mella Ismelina Farma Rahayu, in which they examined the distribution of inherited assets to substitute heirs according to Islamic inheritance law and civil inheritance law.³¹ Furthermore, Lia Murlisa also examined the concept of substitute heirs in Islamic inheritance law and its implementation in customary law

²⁸S. Khosy'ah et al., "Analysis of Rules for Islamic Inheritance Law in Indonesia Using Hybrid Rule Based Learning," *IOP Conference Series: Materials Science and Engineering* 288 (January 2018): 012133, <https://doi.org/10.1088/1757-899X/288/1/012133>.

²⁹Desma Royana, Sofia Hardani, and Mohd. Yunus, "Eksistensi Ahli Waris Pengganti Dalam Hukum Adat Kampar Kecamatan Bangkinang Perspektif Kompilasi Hukum Islam," *Al-Ahwal Al-Syakhsyiyah Jurnal Hukum Keluarga Dan Peradilan Islam* 3, no. 2 (2022): 139–60, <https://doi.org/10.15575/as.v3i2.19869>.

³⁰ Hazar Kusmayanti and Lisa Krinayanti, "The Rights and Status of Grandchildren as Substitute Heirs in the Inheritance Distribution System as Viewed from Islamic Inheritance Law and the Compilation of Islamic Law," *Futura Islamic Scientific Journal* 19, no. 1 (2019): 68–85.

³¹Agnes Listya Adeline and Mentor Mella Ismelina Farma Rahayu, "Juridical Review of the Distribution of Inheritance for Replacement Heirs in Terms of Islamic Inheritance Law and Civil Inheritance Law," *International Journal of Social, Policy and Law (IJOSPL)* 4, no. 3 (2023): 67–81, <https://doi.org/10.8888/ijospl.v4i3.146>.

and the Compilation of Islamic Law.³² Meanwhile, Nawir Yuslem, Mhd. Yadi Harahap and Suarni examined substitute heirs in the practice of inheritance law in Indonesia using a comparative method between Islamic inheritance law and the inheritance provisions of the Civil Code.³³ Sulastri Daulay, Juni Arnisa Napitupulu, Jamilah Rizka, and Akmaluddin Syahputra examined the status of substitute heirs from the perspective of contemporary Islamic jurisprudence (*fiqh*).³⁴

In addition, Diana Zuhroh has conducted a study compiling several religious court rulings concerning the status of substitute heirs in Islamic inheritance law.³⁵ Ida Ayu Adi Iin Yuliandari, I Ketut Sukadana and Diah Gayatri Sudibya examined Judgment No. 0013/PDT.P/2015/PA.DPS, concerning the status of grandchildren as substitute heirs in Islamic inheritance law.³⁶ Furthermore, Muhammad Haula Fiqri and Sabilul Muhtadin also conducted a study of Supreme Court Judgment No. 26/Pst.G/2014/PA.JS, concerning substitute heirs as a legal innovation that contradicts the principle of *hijab* and Islamic law.³⁷ Meanwhile, Muhammad Fajri, Oyo Sunaryo and Atang Abdul Hakim examined the institutionalisation of substitute heirs in Islamic inheritance law in Indonesia from the perspective of the values of justice prevalent in society.³⁸ There is also a study of heirs from the perspective of *usul al-fiqh*; Habibah Fiteriana conducted a comparative study on substitute heirs in Indonesia and the Islamic world from the perspective of *maslahah* as outlined by Jasser Auda.³⁹

³²Lia Murlisa, "Konsep Ahli Waris Pengganti Dalam Hukum Kewarisan Islam Dan Implementasinya Dalam Hukum Adat Dan Kompilasi Hukum Islam," *At-Tasyri: Jurnal Ilmiah Prodi Muamalah* 9, no. 2 (2017): 149–62, <https://doi.org/10.47498/tasyri.v9i2.83>.

³³Nawir Yuslem, Mhd. Yadi Harahap, and Suarni Suarni, "Discourse of Substitute Heirs in The Indonesian Heritage Legal Practice (Comparative Perspective)," *Justicia Islamica* 18, no. 2 (November 11, 2021): 211–26, <https://doi.org/10.21154/justicia.v18i2.2522>.

³⁴Sulastri Daulay et al., "Kedudukan Ahli Waris Pengganti Perspektif KHI Dan Fiqih Kontemporer: Studi Kasus Di Kec. Barumun Tengah," *Fatih: Journal of Contemporary Research* 2, no. 1 (2025): 498–506, <https://doi.org/10.61253/py24rs69>.

³⁵Diana Zuhroh, "Konsep Ahli Waris Dan Ahli Waris Pengganti: Studi Putusan Hakim Pengadilan Agama," *Al-Ahkam* 27, no. 1 (2017): 43–58, <https://doi.org/10.21580/ahkam.2017.27.1.1051>.

³⁶Ida Ayu Adi Iin Yuliandari, I Ketut Sukadana, and Diah Gayatri Sudibya, "Kedudukan Cucu Sebagai Ahli Waris Pengganti Dalam Hukum Waris Islam (Studi Kasus Nomor: 0013/PDT.P/2015/PA.DPS)," *Jurnal Analogi Hukum* 2, no. 3 (2020): 346–50, <https://doi.org/10.22225/ah.2.3.2520.346-350>.

³⁷Muhammad Haula Fiqri and Sabilul Muhtadin, "Ahli Waris Pengganti Dalam KHI Pasal 185: Inovasi Hukum Yang Bertentangan Dengan Prinsip Hijab Dan Hukum Islam (Studi Analisis Putusan Mahkamah Agung Nomor 26/Pst.G/2014/PA.JS)," *Usrah: Jurnal Hukum Keluarga Islam* 6, no. 4 (2025): 111–27, <https://doi.org/10.46773/usrah.v6i4.2366>.

³⁸Muhammad Fajri, Oyo Sunaryo Mukhlas, and Atang Abdul Hakim, "Tracing the Equity on Islamic Heirs: The Reach of Inheritance of Substitute Heirs on the Compilation of Islamic Law," *Al-Hukama* 13, no. 1 (June 17, 2023): 93–114, <https://doi.org/10.15642/alhukama.2023.13.1.93-114>.

³⁹Habibah Fiteriana, "Konsep Ahli Waris Pengganti Dalam Perspektif Maslahah Jasser Auda," *Islamic Law: Jurnal Siyasah* 8, no. 1 (2023): 1–10, <https://doi.org/10.53429/iljs.v8i01.623>.

From various previous studies, it is evident that research on substitute heirs in Islamic inheritance law has been extensively conducted. However, this study has a different focus, namely examining the dynamics of the concept of substitute heirs in the practice of customary law amongst the Muslim community in Comal Sub-district, Pemalang Regency, Central Java Province. Furthermore, this study identifies the factors leading to differences in the concept of substitute heirs between the KHI and customary law, and analyses them comparatively to identify the similarities and differences between the two concepts.

Theoretically, this study contributes to enriching the study of Islamic inheritance law by demonstrating that the concept of substitute heirs is dynamic and contextual, and reflects the interaction between Islamic law and customary law in community practice to achieve peace oriented towards the values of justice that are alive within the community. Justice is a fundamental principle in the fulfilment of human rights, serving not only as a moral value but also as a normative foundation within the legal system.⁴⁰

B. Method

This study is a field study employing a socio-legal approach that examines the relationship between legal norms and social practices within society. The research was conducted in Comal Sub-district, Pemalang Regency, Central Java Province, with a focus on examining the dynamics of the concept of substitute heirs and conducting a comparative analysis of this concept between the Indonesian Compilation of Islamic Law (KHI) and the customary law in force in the region. A comparative law approach was employed to analyse the similarities and differences between the two legal systems. Primary data was obtained through interviews and observations of 11 key informants, comprising community leaders and individuals directly involved as substitute heirs. Informants were selected using a purposive sampling method based on the following criteria: 1) possessing knowledge or experience in the practice of inheritance distribution; 2) playing a role in the family deliberation process; and 3) being socially recognised as a point of reference in resolving inheritance issues within the community. Meanwhile, secondary data was obtained from a review of the Compilation of Islamic Law (KHI) and various relevant literature. Data collection techniques included in-depth interviews, observation and documentary analysis. Data analysis utilised the Miles and

⁴⁰Khairuddin Khairuddin, "Justice as the Fundamental Principle in the Fulfillment of Human Rights," *Human Rights et Justicia* 1, no. 1 (2025): 70–82, <https://doi.org/10.70742/hrj.v1i1.526>.

Huberman interactive model, which encompasses data reduction, data presentation and drawing conclusions. Systematically, this study began by examining the concept of substitute heirs in the Compilation of Islamic Law (KHI), then discussed the dynamics of the application of substitute heirs among the Muslim community in Comal Sub-district, Pemalang Regency, Central Java Province, and the factors causing differences in the concept of substitute heirs between the Compilation of Islamic Law (KHI) and customary law in that region. The final section conducts a comparative analysis to identify the similarities and differences between the two concepts.

C. Result(s)

The practice of distributing inherited assets amongst the Muslim community in Comal Sub-district, Pemalang Regency, Central Java Province, reveals differences in the concept of substitute heirs between the Compilation of Islamic Law (KHI) and customary law in the region. Differences in the practice of substitute heirs include the following: grandchildren may take the place of the primary heir (a child) even if that heir is still alive; adopted children may take the place of their adoptive parents; and grandchildren, as substitute heirs, may pre-empt the share of the inheritance due to the full siblings of the heir they are replacing.

Comparatively, these findings reveal fundamental differences between the KHI and customary law regarding the concept and mechanisms of substitute heirs, although both are oriented towards achieving justice. The novelty of this research lies in the revelation that the concept of substitute heirs among Muslim communities in Pemalang Regency is dynamic and influenced by social constructs deeply rooted in the legal culture of the Muslim community in that region. Meanwhile, the KHI normatively restricts the substitution of heirs to specific conditions, as stipulated in Article 185. The implications of this research emphasise the importance of a contextual and comparative approach in understanding the application of Islamic inheritance law and customary law, as well as the need for dialogue between Islamic inheritance law and customary law in responding to evolving social practices within the community.

Table 1.

Summary of Substitute Heir Practices in Comal Sub-district, Pemalang Regency, Central Java
Province

No.	Cases of Substitute Heirs	Practices Occurring under Customary Law	Provisions of the KHI that were Violated	Reason/Motivation
1.	The family of the late Mr Ma	The child (Mrs Sgy) was replaced by the grandchild (DJ) even though she was still alive	Article 185 of the KHI (replacement only occurs if the primary heir has died)	Family agreement, a sense of justice and family harmony
2.	The family of the late Mrs Swi	The child (Mrs AM) is replaced by the grandchild (Mrs NW)	Article 185 of the KHI	Family agreement, a sense of justice and family harmony
3.	The family of the late Mr MD	The son (Mr M) was succeeded by his grandson (Muhammad MA)	Article 185 of the KHI	Family agreement, a sense of justice and family harmony
4.	The family of the late Mrs Ky	The son (Mr St) is replaced by the grandson (Mr Cs)	Article 185 of the KHI	Family agreement, a sense of justice and family harmony
5.	The family of the late Mrs Jmn	The son (Mr Smt) is replaced by two grandchildren (Mrs Ism and Mr Mst)	Article 185 of the KHI	Family agreement, a sense of justice and family harmony
6.	The family of the late Mr Skr	The adopted son (Mr AAK) replaces his adoptive father (Mr Rhd) as the heir	This is not in accordance with the principle of lineage in the KHI	Gratitude and emotional ties
7.	The family of the late Mrs Sh	Three granddaughters (Mrs Ttk, Mrs Dr and Mrs Tnt) take the place of their mother and <i>exclude</i> their uncle (Wst)	The principle of <i>hijab</i> in faraidh/KHI	Family consensus and the primacy of deliberation

D. Analysis and Discussion

1. The Concept of Substitute Heirs in the Compilation of Islamic Law (KHI)

In Indonesia, the concept of substitute heirs gained formal legitimacy through the Compilation of Islamic Law (KHI), which was enacted by Presidential Instruction No. 1 of

1991.⁴¹ This Compilation of Islamic Law consists of three parts: Book I on Marriage Law, Book II on Inheritance Law, and Book III on Waqf.⁴² Provisions regarding substitute heirs are set out in Article 185 of the KHI, which allows the descendants of a heir who has predeceased the testator to take their place in receiving the inheritance. Normatively, this provision stipulates that the share of a substitute heir must not exceed that of a heir of the same rank as the person they are replacing.⁴³

The existence of Article 185 of the KHI is regarded as a distinctive form of legal *ijtihad* in the Indonesian context, as it is not explicitly found in classical *fiqh*. In the *faraidh* system, the mechanism of inheritance is based on the principle of blood ties and the order of priority of heirs; consequently, the concept of substitution as set out in the KHI is not directly recognised.⁴⁴ Therefore, the emergence of the concept of a substitute heir in the KHI has sparked debate, both from the perspective of normative legitimacy and its compatibility with the fundamental principles of Islamic inheritance law.⁴⁵

On the one hand, this concept is viewed as a form of reconstruction of Islamic law aimed at realising justice, particularly in protecting grandchildren who have lost their parents before the testator's death.⁴⁶ From the perspective of *maqashid al-sharia*, this provision can be understood as an effort to safeguard the public interest.⁴⁷ However, there are also criticisms that this provision has the potential to conflict with the principle of *faraidh*, particularly regarding the concept of *hijab*.⁴⁸

⁴¹ Kusmayanti and Krinayanti, 'The Rights and Status of Grandchildren as Substitute Heirs in the Inheritance Distribution System as Viewed from Islamic Inheritance Law and the Compilation of Islamic Law', 68–85.

⁴² Syamsarina et al., 'Dynamics of Different Religious Inheritance Decisions: The Case Study of the Religious Court Judges Ijtihad,' *Syariah: Jurnal Hukum Dan Pemikiran* 25, no. 1 (2025): 1–21, <https://doi.org/10.18592/sjhp.v25i1.15717>.

⁴³ Safryan Dilapanga, Mohamad Mirzalino Safryan, Desti Astaty, and Eva Nurjannah, 'Kedudukan Ahli Waris Pengganti (Plaatsvervulling) Dalam Memperoleh Harta Waris Menurut Hukum Islam,' *Jurnal Komunikasi Hukum* 7, no. 1 (2021): 97–106, <https://doi.org/10.23887/jkh.v7i1.31460>.

⁴⁴ Devi Kasumawati, 'Pengaruh Hukum Adat Terhadap Ketentuan Waris Pasal 183, 185, Dan 209 Kompilasi Hukum Islam Perspektif Teori Receptio a Contrario,' *Qonun: Jurnal Hukum Islam Dan Perundang-Undangan* 5, no. 2 (2021): 63–80, <https://doi.org/10.21093/qj.v5i2.3955>.

⁴⁵ Defel Fakhyadi, 'Substitute Heirs Undermine the Islamic Inheritance Legal System: A Critical Study of the Compilation of Islamic Law,' *El-Ahli: Journal of Islamic Family Law* 4, no. 1 (2023): 84–101, <https://doi.org/10.56874/el-ahli.v4i1.1197>.

⁴⁶ Maylissabet Maylissabet, 'Hukum Waris Dalam Kompilasi Hukum Islam Perspektif Filsafat Hukum (Studi Analisis Terhadap Bagian Warisan Ahli Waris),' *Teraju: Jurnal Syariah Dan Hukum* 1, no. 1 (2019): 9–19, <https://doi.org/10.35961/teraju.v1i01.51>.

⁴⁷ Doli Witro, 'Maqashid Syari'ah as a Filter of Hoax Through Al-Quran Perspective,' *Jurnal Ilmiah Al-Syir'ah* 18, no. 2 (2020): 187–200, <https://doi.org/10.30984/jis.v18i2.1133>.

⁴⁸ Fiqri and Muhtadin, 'Ahli Waris Pengganti Dalam KHI Pasal 185: Inovasi Hukum Yang Bertentangan Dengan Prinsip Hijab Dan Hukum Islam (Studi Analisis Putusan Mahkamah Agung Nomor 26/Pst.G/2014/PA.JS)."

In the practice of religious courts, the concept of substitute heirs has even been expanded through judicial interpretation, thereby demonstrating its dynamic and contextual nature. This underscores that the discourse on substitute heirs within the KHI is not merely normative, but also evolves in practice and within social reality.⁴⁹

2. The Dynamics of the Concept of Substitute Heirs in the Muslim Community of Pemalang Regency

The following is a clear and detailed explanation of the differences between the concept of substitute heirs in the Compilation of Islamic Law and customary law as observed amongst the Muslim community in Comal Sub-district, Pemalang Regency, Central Java Province:

- a) The practice of substitute heirs in the family of the late Mr Ma (the primary heir is still alive)⁵⁰

When Mr Ma passed away, he had three biological children, one of whom was Mrs Sgy. Under Islamic inheritance law, Mrs Sgy is one of the heirs entitled to receive the estate of Mr Ma. However, in practice, the share of the estate that should have been received by Mrs Sgy was instead taken by the deceased's granddaughter, DJ (Mrs Sgy's daughter), even though Mrs Sgy, as the legitimate primary heir, is still alive.

- b) The practice of replacing an heir in the family of the late Mrs Swi (the primary heir is still alive)⁵¹

When Mrs Swi passed away, she had six (6) biological children, one of whom was Mrs AM. Under Islamic inheritance law, Mrs AM is one of the heirs entitled to receive an inheritance from Mrs Swi. However, in practice, the share of the estate that should have been received by Mrs AM was instead taken by the deceased's granddaughter, Mrs NW (the daughter of Mrs AM), even though Mrs AM, as the legitimate primary heir, was still alive.

⁴⁹ Purwosusilo and Sugiri Permana, *Inheritance Law in Indonesia* (Surabaya: Pustaka Saga, 2021).

⁵⁰ DJ, a resident of Sikayu Hamlet, RT 02/RW 03, Sikayu Village, Comal Sub-district, Pemalang Regency, *Interview*, 20 January 2021.

⁵¹ Mrs NW, a resident of Sikayu Hamlet, RT 04/RW 01, Sikayu Village, Comal Sub-district, Pemalang Regency, *Interview*, 25 January 2021.

- c) The practice of replacing an heir in the family of the late Mr MD (the primary heir is still alive)⁵²

When Mr Ma passed away, he had six (6) biological children, and the distribution of Mr MD's estate was carried out fairly amongst his six (6) biological children. Nevertheless, one of Mr MD's children, Mr M, who should have received a share of Mr MD's estate, was in practice replaced as the principal heir by the deceased's grandson, Mr Muhammad MA (Mr M's son), even though Mr M, as the legitimate principal heir, was still alive.

- d) The practice of replacing an heir in the family of the late Mrs Ky (where the primary heir is still alive)⁵³

When Mrs Ky passed away, she had four (4) biological children, and the distribution of Mrs Ky's estate was carried out fairly amongst her four (4) biological children. Nevertheless, one of Mrs Ky's children, Mr St, who should have received a share of her estate, was in practice replaced as the principal heir by the deceased's grandson, Mr Cs (Mr St's son), even though Mr St, as the legitimate principal heir, was still alive.

- e) The practice of replacing an heir in the family of the late Mrs Jmn (the primary heir is still alive)⁵⁴

When Mrs Jmn passed away, she had three biological children, and the distribution of her estate was carried out fairly amongst them. Nevertheless, one of Mrs Jmn's children, Mr Smt, who should have received a share of her estate, was in practice replaced as the principal heir by two of the deceased's grandchildren, Mrs Ism and Mr Mst (children of Mr Smt), even though Mr Smt, as the legitimate primary heir, is still alive.

⁵² Muhammad MA, a resident of Bayatan Hamlet, Purwosari Village, Comal Sub-district, Pemalang Regency, *Interview*, 21 January 2021.

⁵³ Cs, a resident of Setikung Hamlet, RT 01/RW 02, Sikayu Village, Comal Sub-district, Pemalang Regency, *Interview*, 22 January 2021.

⁵⁴ Ism and Mst, residents of Kendalduwur Hamlet, RT 02/RW 02, Sidorejo Village, Comal Sub-district, Pemalang Regency, *Interview*, 27 January 2021.

- f) The practice of replacing an heir in the family of the late Mr Skr (an adopted son replacing his adoptive father's position)⁵⁵

During their married life, Mr Rhd and Mrs Smt were unable to have children of their own, so they adopted a son named Mr AAK. As time went on, Mr Rhd passed away before his father, Mr Skr. In this case, Mr AAK took the place of Mr Rhd as his adoptive parent in order to receive the inheritance from Mr Skr upon his death. This substitution of an heir is not in accordance with the provisions of the Compilation of Islamic Law, nor with the Qur'an and the hadith, as the adopted son (Mr AAK) has no blood relationship with the testator (Mr Skr).

- g) The practice of replacing an heir in the family of the late Mrs Sh (where the substitute heir '*hijab*' (excludes) the biological siblings of the heir being replaced, based on a mutual agreement)⁵⁶

In this case, Mrs Sh had two biological children named Mrs Csn and Mr Wst. As time went on, Mrs Csn passed away before Mrs Sh, leaving behind three biological children named Mrs Ttk, Mrs Dr and Mrs Tnt. Under Islamic inheritance law, whether in the Compilation of Islamic Law or in the Qur'an and Hadith, when Mrs Sh passes away, the heirs entitled to receive her estate are her two biological children, Mrs Csn and Mr Wst. However, in practice, the three biological children of Mrs Csn took the place of Mrs Csn, who had died before Mrs Sh (the testator), and Mr Wst, as a biological child, did not receive any inheritance from Mrs Sh.

Based on these various practices, it can be concluded that the concept of substitute heirs within the Muslim community in Comal Sub-district, Pemalang Regency, differs significantly from the provisions in the Compilation of Islamic Law (KHI). Under the KHI, the substitution of heirs is only permitted if the primary heir has died and is limited to specific blood relationships. Conversely, in customary law practice in Comal, substitution may still take place even whilst the primary heir is still alive; it even includes substitute heirs such as adopted children who have no blood relationship, as well as substitute heirs who may '*hijab*' the share of the inheritance of the biological siblings of the heir being substituted.

⁵⁵ AAK, a resident of Tunggul Hamlet, RT 01/RW 04, Sikayu Village, Comal Sub-district, Pemalang Regency, *Interview*, 24 January 2021.

⁵⁶ Ttk, Dr and Tnt, residents of Setikung Hamlet, RT 01/RW 02, Sikayu Village, Comal Sub-district, Pemalang Regency, *Interview*, 23 January 2021.

Furthermore, the mechanism for excluding claims under the KHI is normative and strict, whereas in customary practice in Comal it is determined by family agreement. Comparatively, this demonstrates that customary law places greater emphasis on the principles of equality, justice and family harmony, whilst the Compilation of Islamic Law (KHI) is based on the normative rules of Islamic inheritance. These differences reflect a creative adaptation of the concept of substitute heirs within the social context of the local community.

3. Factors Causing Differences in the Concept of Substitute Heirs between the Compilation of Islamic Law (KHI) and Customary Law in Pemalang Regency

The differences in the concept of substitute heirs in the practice of distributing inherited assets in Comal Sub-district, Pemalang Regency, Central Java Province, cannot be separated from the social characteristics of the local community. The Muslim community in this area, particularly in the villages of Sikayu, Purwosari and Sidorejo, Comal Sub-district, Pemalang Regency, Central Java Province, is known for its strong family ties, its commitment to social harmony, and its preservation of customary traditions passed down through generations. From a religious perspective, although the majority are Muslim, the level of understanding of Islamic inheritance law—particularly that derived from the Compilation of Islamic Law (KHI)—is not always implemented in accordance with the norms in everyday practice.⁵⁷

In the context of inheritance, communities in the region generally do not entirely abandon Islamic inheritance law, but are more selective in its application. Customary law remains the primary reference, particularly regarding the substitution of heirs, whilst other provisions concerning the distribution of inheritance may still refer to general Islamic principles. The concept of substitute heirs that has developed within the Muslim community in this region demonstrates a degree of flexibility, such as the permissibility of substitution even whilst the primary heir is still alive, the recognition of adopted children as substitute heirs, and the exclusion of certain heirs by mutual family agreement.⁵⁸

From a critical perspective, this phenomenon can be understood not merely as a form of legal rebellion against the KHI, but rather as a form of creative adaptation by the

⁵⁷ Jaya Prayitno, Chair of the Nahdlatul Ulama Branch Council, Comal Sub-district, *Interview*, 25 March 2020.

⁵⁸ Jaya Prayitno, Chair of the Nahdlatul Ulama Branch Council, Comal Sub-district, *Interview*, 25 March 2020.

community in response to legal provisions deemed incompatible with the local sense of justice. Factors such as economic considerations, family harmony, and deeply rooted customs are the main reasons why customary law is preferred.⁵⁹

To address these deviations from the concept of substitute heirs, the author will analyse them using the theory of social construction put forward by Peter L. Berger and Thomas Luckman. In their book entitled *The Social Construction of Reality: A Treatise in the Sociology of Knowledge*, they explain the —how to view humans as individuals capable of creating social reality.⁶⁰ Based on the thinking of Berger and Luckman, it can be substantively asserted that social reality is a human creation through their power or construction of the social environment around them, or as it is termed, ‘reality is socially constructed’.⁶¹

In more detail, Berger and Thomas identify three stages in the creation of social reality within a society. First, the stage of externalisation. This stage involves the act whereby individuals express their thoughts and ideas to the outside world. In everyday life, these individuals create habits, patterns of behaviour and interactions that are recognised as part of society. For example, social rules or customs that arise from repeated interactions between individuals.

Second, the stage of objectification. Once an action or habit has been repeated many times, it becomes objective or is regarded as real by society. This means that an action which was previously the result of interactions between individuals is now regarded as part of an independently existing reality. At this stage, social rules begin to be accepted as something beyond the individual’s control. Third, the stage of internalisation. At this stage, individuals re-absorb the norms and values that have been objectified by society. This means that each individual will accept and internalise social rules as something natural or normal, even though these social rules are essentially the result of social interaction.⁶²

Based on the social construction theory put forward by Peter L. Berger and Thomas Luckman, it can be understood that the practice of heir substitution in Comal Sub-district,

⁵⁹Mohd Winario, “Implementasi Hukum Waris Islam Dalam Masyarakat Pedesaan: Studi Kualitatif Di Desa Balung, Kabupaten Kampar,” *Journal of Legal Sustainability* 2, no. 1 (2025): 14–21, <https://doi.org/10.63477/jols.v2i1.199>.

⁶⁰Peter L. Berger and Thomas Luckmann, *The Social Construction of Reality: A Treatise in the Sociology of Knowledge* (England: Penguin Books, 1991).

⁶¹Lisda Romdani, “Teori Konstruksi Sosial: Sebuah Teori Bagaimana Warga Negara Memaknai Pelaksanaan Pemilihan Kepala Daerah Di Masa Pandemic,” *JISIP: Jurnal Ilmu Sosial Dan Ilmu Politik* 10, no. 2 (2021): 116–23, <https://doi.org/10.33366/jisip.v10i2.2265>.

⁶²Peter L. Berger and Thomas Luckman, *The Social Interpretation of Reality: A Treatise on the Sociology of Knowledge* (Jakarta: LP3S, 1990).

Pemalang Regency, Central Java Province, constitutes a social reality produced by social interaction between the Muslim community and its surrounding social environment, thereby making this succession a living and evolving social construction whose validity is widely accepted, even though the concept does not align with the concept of substitute heirs as set out in the Compilation of Islamic Law (KHI). Procedurally, the succession practised by the Muslim community in this region has gone through the following three stages:

a. Externalisation

This stage involves the adaptation of individuals (the community) to their environment. In the context of heir substitution, externalisation can be interpreted as how the community interacts with Islamic legal norms relating to the distribution of inherited assets.⁶³ The Muslim community in Comal Sub-district, Pemalang Regency, Central Java Province, holds the view that the practice of distributing inherited assets is based on customary inheritance law, which has been passed down for generations and has become a collective practice in the settlement of inheritance matters within the family. In essence, the substitution of heirs does not align with the concept of substitute heirs as set out in the Compilation of Islamic Law (KHI).⁶⁴ This practice demonstrates how the community is able to negotiate and modify formal rules in accordance with the local (cultural) values they hold dear.⁶⁵ In practice, the division of an estate is generally carried out through family deliberation, involving community leaders or respected elders, thereby resulting in a mutual agreement that reflects the values of justice and the best interests of the heirs.⁶⁶

On the other hand, local religious leaders tend to adopt a moderate stance, namely not explicitly rejecting the practice, provided that the distribution of inheritance is carried out through consultation and does not give rise to conflict. Thus, the practice of replacing heirs in Comal Sub-district, Pemalang Regency, Central Java Province, reflects a dialectic between Islamic inheritance law and customary law,

⁶³Imaro Sidqi, "Wife as the Breadwinner of the Family: A Sociological and Legal Study among the Muslim Community in Sikayu Village, Comal District, Pemalang Regency," *Al-'Adalah: Jurnal Syariah Dan Hukum Islam* 8, no. 1 (2023): 83–106, <https://doi.org/10.31538/adlh.v8i1.3334>.

⁶⁴ Jaya Prayitno, Chair of the Nahdlatul Ulama Branch Council, Comal Sub-district, *Interview*, 25 March 2020.

⁶⁵Fathul Gani et al., "Musyawarah Badunsanak: Conflict Resolution Efforts in Bungus Teluk Kabung Padang City," *Ahlika: Jurnal Hukum Keluarga Dan Hukum Islam* 2, no. 2 (2025): 125–45, <https://doi.org/10.70742/ahlika.v2i2.343>.

⁶⁶ Jaya Prayitno, Chair of the Nahdlatul Ulama Branch Council, Comal Sub-district, *Interview*, 25 March 2020.

whereby the community does not fully adhere to the formal norms of the Compilation of Islamic Law (KHI), nor does it entirely abandon them, but rather adapts them in accordance with the needs and social values prevalent within the community.⁶⁷

The factors underlying the differences between the concept of heirs in the Compilation of Islamic Law (KHI) and that in customary law include the following:

Firstly, the factor of education. The substitution of heirs that does not conform to the concept of substitute heirs in the Compilation of Islamic Law (KHI) is attributable to a person's level of education. The majority of the Muslim community in Comal Sub-district, Pemalang Regency, Central Java Province, still has a relatively low level of education; consequently, it is entirely understandable that the community lacks a high level of knowledge and understanding, particularly regarding the distribution of inherited assets, which is, by its very nature, highly complex.⁶⁸ Secondly, economic factors play a significant role in the practice of heir substitution in Comal Sub-district, Pemalang Regency, Central Java Province. The substitution of heirs by substitute heirs that does not conform to the concept of heirs in the Compilation of Islamic Law (KHI) is caused by the substitute heirs' limited economic circumstances and economic uncertainty, for example due to low income, unstable employment, or limited sources of income.⁶⁹

Thirdly, social factors also play a significant role in the practice of heir substitution in Comal Sub-district, Pemalang Regency, Central Java Province, where communal living practices such as gathering, discussing matters, and forming associations form part of daily life. This way of life shapes their attitudes and actions when making decisions, including regarding the substitution of heirs in the distribution of inherited assets. The value of mutual cooperation practised within families and the surrounding community encourages the Muslim community in this area to divide inherited assets based on mutual agreement, rather than unilaterally, which could lead to conflict.⁷⁰

⁶⁷ Jaya Prayitno, Chair of the Nahdlatul Ulama Branch Council, Comal Sub-district, *Interview*, 25 March 2020.

⁶⁸ Ttk, Dr, and Tnt, residents of Setikung Hamlet, RT 01/RW 02, Sikayu Village, Comal Sub-district, Pemalang Regency, *Interview*, 23 January 2021.

⁶⁹ Muhammad MA, a resident of Bayatan Hamlet, Purwosari Village, Comal Sub-district, Pemalang Regency, *Interview*, 21 January 2021.

⁷⁰ Muhammad MA, a resident of Bayatan Hamlet, Purwosari Village, Comal Sub-district, Pemalang Regency, *Interview*, 21 January 2021.

Fourthly, local cultural factors are a key reason why the Muslim community in Comal Sub-district, Pemalang Regency, Central Java Province, more frequently substitute heirs with alternative heirs; for example, the position of a biological child is replaced by the testator's grandchild (the child of the heir being substituted). In their culture, grandchildren are viewed as having higher priority because they are considered to have a longer future ahead of them and to be capable of leading others along the right and proper path. This view encourages the community to prioritise grandchildren in the distribution of inherited assets.⁷¹

Fifthly, the factor of opportunity (expectations) is one of the reasons why heirs are replaced by substitute heirs. Based on interviews conducted by the author, several respondents opined that substitute heirs are expected to manage the inherited assets wisely and utilise them to realise their future aspirations.⁷² Sixthly, religious factors play a significant role in the replacement of heirs. Based on interviews conducted by the author, several respondents stated that the replacement of the legitimate primary heir by a grandchild or adopted child was carried out with sincerity (to seek Allah's pleasure) and through mutual agreement. The author interprets this sincerity as a form of respect for Islamic teachings that encourage mutual assistance. This substitution of heirs demonstrates their desire to avoid *mudharat* (harm) that might arise from the distribution of the estate in a manner inconsistent with the mutual agreement.⁷³

b. Objectification

In the context of the distribution of inheritance among the Muslim community in Comal Sub-district, Pemalang Regency, Central Java Province, objectification reflects a social process in which Islamic norms are made the subject of collective thought to form an objective understanding regarding the distribution of inheritance. This stage of objectification is evident in the concept of substitute heirs as implemented by the local community. This objective understanding emerges through social interaction, discussion and the exchange of ideas amongst community members, thereby forming a understanding of how Islamic norms can be applied in everyday life. For example, the replacement of the primary heir (a child) by a grandchild, even though

⁷¹ Muhammad MA, a resident of Bayatan Hamlet, Purwosari Village, Comal Sub-district, Pemalang Regency, *Interview*, 21 January 2021.

⁷² AAK, resident of Tunggul Hamlet, RT 01/RW 04, Sikayu Village, Comal Sub-district, Pemalang Regency, *interview*, 24 January 2021.

⁷³ Mrs NW, a resident of Sikayu Hamlet, RT 04/RW 01, Sikayu Village, Comal Sub-district, Pemalang Regency, *Interview*, 25 January 2021.

the primary heir (the child) is still alive. An adopted child who may take the place of their adoptive parents in the distribution of the estate. Furthermore, they also have a custom whereby the substitute heir may *hijab* (exclude) the biological siblings of the heir being replaced, based on a mutual agreement.

c. Internalisation

The stages of internalisation in the distribution of inherited assets in Comal Sub-district, Pemalang Regency, Central Java Province, are reflected in how the local Muslim community internalises Islamic norms and local cultural practices relating to the substitution of heirs, as an integral part of their cultural identity. Based on several cases of heir substitution that have occurred amongst the Muslim community in Comal Sub-district, Pemalang Regency, Central Java Province, it is evident that the community views such practices as commonplace and capable of realising justice for the heirs.

Furthermore, the community in Comal Sub-district, Pemalang Regency, Central Java Province, has internalised the view that Islamic inheritance law—whether as set out in the Compilation of Islamic Law (KHI) or in the Qur'an and hadith—does not always reflect the values of justice that are alive within the community. They understand that local social and cultural identities play a vital role in determining the best way to distribute inherited assets, and this perspective has become deeply ingrained in their understanding, even though it does not always align with the rules of Islamic inheritance law, whether as set out in the Compilation of Islamic Law (KHI) or in the Qur'an and hadith.

Based on the above discussion, the difference in the concept of substitute heirs between the Compilation of Islamic Law (KHI) and customary inheritance law, as practised by the Muslim community in Comal Sub-district, Central Java Province, is formed on the basis of a social construction created by the community itself to express its identity. The formation of social constructs relating to the substitution of heirs is divided into three stages: externalisation, objectification and internalisation. The externalisation stage is influenced by several factors, such as education, economics, social and cultural factors, opportunities and religion. At the objectification stage, the community applies Islamic norms in practice within their daily lives. Meanwhile, the internalisation stage indicates that the concept of substitute heirs has become an integral part of their local cultural identity. The social construction formed by the Muslim community in Comal Sub-district, Pemalang Regency, Central Java Province,

creates a social reality involving adaptation, shared understanding and self-identification in the context of the distribution of inherited assets.

4. The Compilation of Islamic Law (KHI) versus Customary Law in Pemalang Regency: A Comparative Analysis of the Concept of Substitute Heirs

The concept of substitute heirs in the Islamic inheritance law system in Indonesia is normatively regulated in the Compilation of Islamic Law (KHI), specifically Article 185.⁷⁴ This provision stipulates that the substitution of an heir is only permissible if the primary heir has predeceased the testator, and such substitution is restricted to a specific line of descent whilst ensuring that the proportion of the share does not exceed that of heirs of equal rank.⁷⁵ This concept reflects the Islamic inheritance system, which is normative, systematic, and based on the principle of *nasab* (lineage) as well as a strict structure of *faraidh* (mandatory shares).⁷⁶

On the other hand, practices that have developed within the Muslim community in Comal Sub-district, Pemalang Regency, indicate the existence of a different legal framework through the application of customary law. Based on field data, various practices of substitute heirship were found that do not fully align with the provisions of the KHI, such as the replacement of the primary heir by a grandchild even though the primary heir is still alive, the recognition of an adopted child as a substitute heir, and the exclusion of other heirs by mutual family agreement. These practices indicate that the concept of substitute heirship in customary law is more flexible and contextual.⁷⁷

Comparatively, there are several similarities between the concept of substitute heirs in the KHI and customary law in Pemalang Regency. Firstly, both the KHI and customary law in Pemalang Regency recognise the existence of a mechanism for the substitution of heirs as a means of ensuring the continuity of inheritance rights within the line of descent. In this context, both the KHI and customary law provide scope for the next generation, particularly

⁷⁴Asep Fu'ad et al., "Politik Hukum Pengaturan Ahli Waris Pengganti Dalam Pasal 185 Kompilasi Hukum Islam: Analisis Normatif Dan Implikasinya Terhadap Sistem Kewarisan Di Indonesia," *Al-Battar: Jurnal Pamungkas Hukum* 1, no. 3 (2024): 127–38, <https://doi.org/10.63142/e3fj4d24>.

⁷⁵Laras Hilda Samura et al., "Hak Dan Kedudukan Sebagai Ahli Waris Pengganti Dalam Hukum Waris Islam," *Khazanah : Journal of Islamic Studies* 2, no. 3 (2023): 112–18, <https://doi.org/10.51178/khazanah.v2i4.1627>.

⁷⁶Yuslem, Harahap, and Suarni, "Discourse of Substitute Heirs in The Indonesian Heritage Legal Practice (Comparative Perspective)."

⁷⁷Jaya Prayitno, Chair of the Nahdlatul Ulama Branch Council, Comal Sub-district, *Interview*, 25 March 2020.

grandchildren, to continue to receive a share of the inheritance under certain conditions.⁷⁸ Secondly, the KHI and customary law in Pemalang Regency also share a relatively similar objective, namely to ensure fairness and the common good in the distribution of inheritance, albeit through different approaches.⁷⁹

However, the differences between the two systems are far more significant and fundamental. Firstly, regarding the conditions for substitution, the KHI explicitly stipulates that substitution can only occur if the primary heir has predeceased the other heirs.⁸⁰ Conversely, under customary law in Pemalang Regency, substitution may still take place even whilst the primary heir is still alive, as seen in various family cases that have been presented.⁸¹ This indicates a shift in the meaning of substitution from one based on death to one based on mutual agreement.⁸²

Secondly, from the perspective of kinship (*nasab*), the KHI only recognises succession within a biologically legitimate line of descent. Adopted children are not included in the category of heirs as they have no kinship relationship with the deceased. Conversely, in customary law practice in Pemalang Regency, adopted children may be recognised as substitute heirs, indicating that social and emotional ties are prioritised over biological ties. This reflects a shift from the concept of *nasab* towards that of social kinship.⁸³

Thirdly, regarding the aspect of ‘*pengijaban*’ (disinheritance), the KHI regulates this strictly in accordance with the *faraidh* structure, whereby the existence of certain heirs cannot be set aside without a clear basis.⁸⁴ However, in the practice of customary law in Pemalang Regency, exclusion may occur by family agreement, even to the extent of negating the rights of heirs who are normatively entitled, such as in cases where a grandchild replaces their parent

⁷⁸Lia Murlisa and Suwardi Suwardi, “Pandangan Ulama Dayah Terhadap Konsep Kekerabatan Dalam Penyelesaian Kasus Ahli Waris Pengganti Di Aceh,” *At-Tasyri’: Jurnal Ilmiah Prodi Muamalah* 16, no. 2 (2024): 235–45, <https://doi.org/10.47498/tasyri.v16i2.3582>.

⁷⁹Royana, Hardani, and Yunus, “Eksistensi Ahli Waris Pengganti Dalam Hukum Adat Kampar Kecamatan Bangkinang Perspektif Kompilasi Hukum Islam.”

⁸⁰Dilapanga, Mohamad Mirzalino Safryan, Astati, and Nurjannah, “Kedudukan Ahli Waris Pengganti (Plaatsvervulling) Dalam Memperoleh Harta Waris Menurut Hukum Islam.”

⁸¹Jaya Prayitno, Chair of the Nahdlatul Ulama Branch Council, Comal Sub-district, *Interview*, 25 March 2020.

⁸²Royana, Hardani, and Yunus, “Eksistensi Ahli Waris Pengganti Dalam Hukum Adat Kampar Kecamatan Bangkinang Perspektif Kompilasi Hukum Islam.”

⁸³AAK, a resident of Tunggul Hamlet, RT 01/RW 04, Sikayu Village, Comal Sub-district, Pemalang Regency, *Interview*, 24 January 2021.

⁸⁴Muhammad Ikbal, “Hijab Dalam Kewarisan Perspektif Al-Qur’an Dan Al-Hadits (Analisis Terhadap Perbedaan Fiqh as-Sunnah Dan KHI),” *Jurnal At-Tafkir* 11, no. 1 (2018): 132–53, <https://doi.org/10.32505/at.v11i1.533>.

and excludes the rights of an uncle. This demonstrates that the mechanism for the distribution of inheritance in customary law is more deliberative and consensus-based.⁸⁵

Fourthly, in terms of the basis of legitimacy, the KHI is grounded in the textual and juridical norms of Islamic law.⁸⁶ Meanwhile, customary law in Pemalang Regency is grounded in social legitimacy built through customs, traditions and collective agreements.⁸⁷ Thus, the measure of justice in the KHI is normative-formal in nature, whilst in customary law it is more substantive and contextual.

These differences indicate that the practice of substitute heirs in Pemalang Regency is not merely a deviation from the provisions of the KHI, but rather reflects a process of legal adaptation and transformation within the context of a pluralistic society. In this regard, customary law functions as a ‘living law’ that is more responsive to the social needs of the community, whilst the KHI remains the ideal normative reference. Therefore, the relationship between the two cannot be viewed dichotomously, but rather as a dialectic between formal law and ever-evolving social practices.

Table 2.

Similarities and Differences in the Concept of Substitute Heirs

Category	Aspect	KHI	Customary Law of Pemalang Regency
Similarities	Recognition of substitute heirs	Recognised (Article 185 of the KHI)	Recognised in customary practice
	Granting of rights to the next generation	Grandchildren may succeed under certain conditions	Grandchildren may also receive a share of the inheritance
	Purpose of the distribution of the estate	Justice and the common good	Justice and family harmony
Differences	Conditions for substitution	Only if the primary heir has passed away	May be carried out even if the primary heir is still alive
	Basis of kinship	Based on blood relationship (lineage)	May be based on a social relationship (adopted child)
	Status of an adopted child	Not recognised as an heir	May become a substitute heir

⁸⁵ Ttk, Dr, and Tnt, residents of Setikung hamlet, RT 01/RW 02, Sikayu village, Comal sub-district, Pemalang regency, *Interview*, 23 January 2021.

⁸⁶ Julhadi Julhadi et al., “Kompilasi Hukum Islam (KHI),” *Journal of Innovative and Creativity* 5, no. 2 (2025): 11405–15, <https://doi.org/10.31004/joecy.v5i2.1533>.

⁸⁷ Jaya Prayitno, Chair of the Nahdlatul Ulama Branch Council, Comal Sub-district, *Interview*, 25 March 2020.

Mechanism of exclusion	Strictly regulated under the <i>faraidh</i> system	Based on family agreement
System of distribution	Normative and standardised	Flexible through consultation
Basis of legitimacy	Normative, textual, legal	Social, cultural, customary
Orientation towards justice	Formal-normative	Substantive-contextual

Thus, this comparative analysis demonstrates that the concept of substitute heirs in customary law in Pemalang Regency is more flexible, inclusive and consensus-based, whereas in the KHI it is normative, limited and structured. This difference also underscores the importance of understanding inheritance law not merely as a normative text, but also as a social practice influenced by cultural values, economic factors, and kinship relations within society.

E. Conclusion

This study shows that the practice of substitute heirs among the Muslim community in Comal Sub-district, Pemalang Regency, is not entirely in line with the normative provisions of the Compilation of Islamic Law (KHI), particularly Article 185. The community tends to apply more flexible mechanisms for the substitution of heirs, such as substitution by a grandchild even whilst the primary heir is still alive, the recognition of an adopted child as an heir, and the exclusion of certain heirs by family agreement. These findings confirm that the inheritance law practised within the community is influenced not only by formal norms but also by social constructs formed through cultural interactions, family values, and the practical needs of the community.

Analytically, this phenomenon cannot be viewed solely as a form of deviation or 'legal rebellion' against the KHI; rather, it is more accurately understood as a form of creative adaptation by the community in response to legal provisions that are considered complex and fail to reflect a sense of substantive justice. In this context, customary law functions as a 'living law' that is more responsive to socio-economic conditions and kinship relations, whilst the KHI remains a normative reference of an ideal and systematic nature.

Based on these findings, the author makes several recommendations. Firstly, judges in the Religious Courts need to adopt a more contextual and progressive approach when adjudicating inheritance cases, taking into account the values of substantive justice that are alive within the community without disregarding the fundamental principles of Islamic law.

Secondly, for policymakers, an evaluation and possible revision of the provisions of the KHI are required, particularly regarding the concept of substitute heirs, so that they are more adaptable to the social dynamics of Indonesia's Muslim community. Thirdly, for future researchers, it is recommended to expand studies to other regions using an interdisciplinary approach to examine variations in practice and the possibility of formulating inheritance laws that are more integrative between Islamic law and customary law.

F. Conflict of Interest Statement

The authors declare no conflict of interest.

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