

ANALYZING THE LEGAL FRAMEWORK OF SUBSTITUTE HEIRS IN ISLAMIC INHERITANCE CASES: DKI JAKARTA HIGH RELIGIOUS COURTS PERSPECTIVE

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Abstrak: Tujuan dari penelitian ini adalah untuk menganalisis secara komprehensif konstruksi dan kepastian hukum ahli waris pengganti dalam kompilasi hukum Islam dan penerapannya di pengadilan tinggi agama wilayah DKI Jakarta. Penelitian ini menggunakan metode kualitatif dengan pendekatan hukum normatif, peraturan perundang-undangan, analisis putusan, dan kepastiaan hukum Islam. Sumber primer diperoleh dari putusan pengadilan agama wilayah pengadilan tinggi agama DKI Jakarta bernomor: 131/pdt.p/2022/pa.jp, 339/pdt.p/2021/pa.jp, 166/pdt.p/2021/pa-jb, 3950/pdt.g/2020/pa-js, Kompilasi Hukum Islam, dan bahan-bahan hukum lainnya yang berkaitan dengan kewarisan. Sedangkan sumber sekunder diperoleh dari penelusuran kepastiaan seperti buku-buku, dokumen-dokumen, dan jurnal-jurnal yang memiliki relevansi yang sama dengan penelitian ini. Setelah data diperoleh dan dikumpulkan, data akan disaring dan dikelompokkan sesuai dengan jenisnya, kemudian data dianalisis dengan menggunakan analisis deskriptif untuk dapat memberikan gambaran mengenai permasalahan yang ada. Hasil penelitian menunjukkan bahwa, konstruksi hukum konsep ahli waris pengganti dalam Kompilasi Hukum Islam pada pengadilan tinggi agama di wilayah DKI Jakarta terhadap menempatkan kedudukan ahli waris pengganti dengan menerapkan keadilan pada harta peninggalan orang tuanya yang telah meninggal dunia lebih dahulu dari pewaris. Penelitian ini menegaskan konstruksi hukum dan dasar pemikiran di balik ahli waris pengganti dalam hukum waris Islam, dengan menyoroti signifikansinya dalam sengketa waris. Diakui dalam KHI Pasal 185, ahli waris pengganti memainkan peran penting dalam memastikan keadilan dan kesetaraan dalam distribusi warisan. Namun, hambatan seperti kesadaran masyarakat, tantangan pembuktian, dan konflik dengan adat istiadat setempat menghalangi implementasi yang efektif dari aturan ahli waris pengganti.

Kata kunci: Konstruksi Hukum, Kepastian Hukum, Ahli Waris Pengganti.

Abstract: The purpose of this study is to comprehensively analyze the construction and legal certainty of replacement heirs in the compilation of Islamic law and its application in the religious courts of the DKI Jakarta region. This research uses a qualitative method with a normative legal approach, legislation, decision analysis, and Islamic law literature. Primary sources are obtained from the decisions of the religious courts of the DKI Jakarta high religious court region numbered: 131/pdt.p/2022/pa.jp, 339/pdt.p/2021/pa.jp, 166/pdt.p/2021/pa-jb, 3950/pdt.g/2020/pa-js, the compilation of Islamic law, and other legal materials related to inheritance. Meanwhile, secondary sources are obtained from literature searches such as books, documents, and journals that have the same relevance as this research. After the data is obtained and collected, data will be filtered and grouped according to its type, then the data is analyzed using descriptive analysis to be able to provide an overview of the existing problems. The results showed that, the legal construction of the concept of substitute heirs in the Compilation of Islamic Law in the Religious Courts in the DKI Jakarta PTA region by placing the position of substitute heirs by applying justice to the inheritance of his parents who had died before the heir. The research confirms the legal construction and rationale behind substitute heirs in Islamic inheritance law, highlighting their significance in inheritance disputes. Recognized under KHI Article 185, substitute heirs play a crucial role in ensuring fairness and equity in inheritance distribution. However, obstacles such as



public awareness, evidentiary challenges, and conflicts with local customs impede the effective implementation of the substitute heir rule.

Key words: Legal Construction, Legal Certainty, Surrogate Heirs.

INTRODUCTION

The principle of justice in inheritance law is something that is very interesting and is the subject of discussion that continues to be discussed by legal scholars. Especially, according to Ahmed E. Souaiaia, when inheritance law is associated with its legal arguments and implementation practices.¹ Some of them even question the existence and manifestation of the principle of justice in inheritance law.

Tamar Ezer, for example, argues that justice in inheritance law cannot be clearly seen in every provision of inheritance law imposed on Muslims. This, according to her, can be seen in the discriminatory provisions to some heirs regarding the size of their share, because according to her, the inheritance law often makes female heirs a second class. In fact, when viewed from the principles used in Islamic inheritance law, gender classification is not included at all. In addition, the principle of justice is apparent in every provision contained in the law of inheritance, for example in the concept of *'Awl* and *Radd*. Then, the concept of *'Awl*, according to Ahmed E. Souaiaia is a manifestation of the desired principle of justice, because it avoids conflicts that can occur between heirs.²

In terms of its linguistic meaning, justice which has the basic word fair, and comes from the word *'adala* whose *masdar* word is *'adl* or *'is*. *Adil* has several meanings, namely: a) fair means "equal", namely the same treatment or not discriminating one party from another. b) fair in the sense of 'balanced' which is almost equal to conformity (proportional), that is, that balance here does not require equality of degree (size) to all core parts, according to their function and use. c) Fair which is defined by concern for individual rights and giving those rights to those who have them', in short fair is putting something in its place. d) Justice attributed to the (*divine*) Creator, i.e. the maintenance of fairness for the continuation of existence and no prevention of that existence. In other words, divine justice is His mercy and goodness.³

Actually, it is not only the laws that are directly stated in *Al-Nusus* that are based on justice, but also the laws that come from the results of human thought, because justice is something that is naturally owned by humans. This can be seen in their behavior in life, because justice is seen as a good situation.⁴ In everyday life, to determine a law and determine a decision must be based on the value of justice. For example, a judge (*qadi*) to

¹ Jenal Wahidin Et Al., "The Inheritance Rights Of Children From Marriage Are Not Recorded According To The Marriage Law And The Compilation Of Islamic Law," *Mawaddah: Jurnal Hukum Keluarga Islam* 2, No. 1 (April 1, 2024): 65–85, <https://doi.org/10.52496/Mjhki.V1i2.15>.

² As Assaad Et Al., "Gender Equity In Inheritance System: The Collaboration Of Islamic And Bugis Luwu Customary Law," *Al-Ihkam: Jurnal ...*, No. Query Date: 2024-04-12 15:50:16 (2022), <https://ejournal.iainmadura.ac.id/index.php/alihkam/article/view/6761>.

³ U Al-Haddad, "Tjihad Dan Beberapa Ide Pembaruan Dalam Fikih Islam.," *Abkam: Jurnal Ilmu Syariah*, No. Query Date: 2024-04-12 15:44:59 (2016), <http://journal.uinjkt.ac.id/index.php/ahkam/article/view/2896>.

⁴ Mohammad Takdir Et Al., "The Takharrūj Method As An Islamic Legal Solution For Customary Inheritance Practices Among Muslim Communities In Pakamban Laok, Sumenep, Indonesia," *Jil: Journal Of Islamic Law* 4, No. 1 (2023): 104–22, <https://doi.org/10.24260/Jil.V4i1.1044>.

a clerk must uphold justice. A *mujtabid*, whose thoughts are certainly followed by many people, must also instill justice in every legal product he makes but must also have a fair nature in him.⁵

The meaning of the word fair which does not only have one meaning makes differences of opinion arise about justice contained in a law, namely the idea of justice contained in inheritance law in Islamic law for example.⁶ There is an opinion that explains that the justice referred to in inheritance law is to give equal rights to heirs. Such an idea was once put forward by Munawwir Sadzali who explained that when heirs consist of sons and daughters, then they should be given equal shares without distinction of gender. Because in his opinion, such a division is a division that shows a sense of justice.⁷

The development of Islamic law in Indonesia is inseparable from the role of cleric and leader (government). This has been the case since the beginning of the development of Islamic law, present and future. The role of the cleric is to explain and study Islamic law, while the leader (Government) with its authority can make policies on the enactment of a legal product.⁸

Inheritance law in Indonesia is developing very rapidly, marked by the emergence of regulations and opinions from several experts. *Kompilasi Hukum Islam* (KHI),⁹ is the first codification and unification of inheritance law in Indonesia.¹⁰ Its existence as a formulation of Islamic law reform in Indonesia has reflected the dynamics of the development of Islamic inheritance law thinking, especially with the definition of articles 185 KHI about successor heirs, who differ greatly and deviate from conventional jurisprudence. The article in question reads:

- (1) Heirs who die before the testator may be succeeded by their children, except those mentioned in article 173.
- (2) The share of the successor heirs shall not exceed the share of the heirs equal to the one being replaced.

⁵ Wahidin Et Al., "The Inheritance Rights Of Children From Marriage Are Not Recorded According To The Marriage Law And The Compilation Of Islamic Law."

⁶ Azni Et Al., "The Timing Analysis Of Inheritance Distribution In The Compilation Of Islamic Law," *Al-Risalah: Forum Kajian Hukum Dan Sosial Kemasyarakatan* 23, No. 2 (2023): 258–73, <https://doi.org/10.30631/Alrisalah.V23i2.1431>.

⁷ Wahidin Et Al., "The Inheritance Rights Of Children From Marriage Are Not Recorded According To The Marriage Law And The Compilation Of Islamic Law." Rabiatul Adawiah, Inawati Mohammad Jainie, And Halimatus Sakdiah, "Changes In Banjar Local And Islamic Culture In South Kalimantan's Typical Gems Draining Activities," *Al-Banjari: Jurnal Ilmiah Ilmu-Ilmu Keislaman* 22, No. 2 (2023): 241–65, <https://doi.org/10.18592/Albanjari.V22i2.12401>.

⁸ Wahidin Et Al., "The Inheritance Rights Of Children From Marriage Are Not Recorded According To The Marriage Law And The Compilation Of Islamic Law." Also, M. Zuhdi, Marjan Miharja, And Dyah Rahmawati, "Ijtihad Of The Companions In Determining Grandfather's Inheritance Rights With Brothers And Sisters," *Nurani: Jurnal Kajian Syari'ah Dan Masyarakat* 23, No. 1 (2023): 25–36.

⁹ Wahidin Et Al., "The Inheritance Rights Of Children From Marriage Are Not Recorded According To The Marriage Law And The Compilation Of Islamic Law."

¹⁰ Wahidin Et Al. 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.

Successor heirs in inheritance law to complement existing laws aimed at seeking a sense of justice for heirs.¹¹ Successor heirs are basically heirs by succession i.e. people who become heirs because their parents who are entitled to inheritance die before the testator so that he appears in his place;

The provision of successor heirs in the KHI breaks through the understanding of the Indonesian Islamic community which predominantly adheres to Sunni jurisprudence,¹² because the form of succession of heirs in Sunni jurisprudence is different from the formulation of article 185 of the KHI, where the grandson of a new son can replace his parents, if the heir does not leave another surviving son; while the grandchildren of daughters cannot replace their parents. Meanwhile, the framers of the KHI dared to establish a legal provision that factually violated the beliefs of the majority of the Indonesian Islamic community. This reality if examined from the theory *of the ideal of law*,¹³ which states that the effectiveness of a rule of law will be more guaranteed if the provisions imposed come from *the living law (the living of law)* and are believed by the public in general.

Even in the methodology of Islamic law (ushul fiqh) it is established that in order to corroborate one of several different opinions (*tarjih*), it must be considered the opinion that is believed by the majority.¹⁴ From both sides, it turns out that the KHI violated it by setting new rules on successor heirs as part of the positive law that must be applied in the Religious Court and become a guideline for the Indonesian Islamic community.¹⁵

More interesting than the concept of successor heirs in the KHI is the facultative rule of law¹⁶ so that the consequences and consistency of the application of the law (*tathbiq al-hukm*) are very dependent on the criteria of the judge. In fact, the concept of Sunni inheritance even includes the KHI recognizing and adhering to the principle of *ijbari (compulsory)*, which *qadha'i* emphasizes more legal certainty. This difference in formulation gives rise to various interpretations, both among practitioners and academics. Furthermore, the application of the concept of successor heirs in the KHI will also be closely related to the concepts of *hijab* and *mahjub*¹⁷ as well as the concept of *ashabab* which is definitively regulated in the KHI.

¹¹ Laras Shesa, Oloan Muda Hasim Harahap, And Elimartati, "Eksistensi Hukum Islam Dalam Sistem Waris Adat Yang Dipengaruhi Sistem Kekerabatan Melalui Penyelesaian Al-Takharujj," *Al-Istinbath: Jurnal Hukum Islam* 6, No. 1 (2021): 145–64, <https://doi.org/10.29240/jhi.v6i1.2643>.

¹² Wahidin Et Al., "The Inheritance Rights Of Children From Marriage Are Not Recorded According To The Marriage Law And The Compilation Of Islamic Law."

¹³ Wahidin Et Al. Also In, A Darna, "Perkembangan Hukum Islam Di Indonesia: Konsep Fiqh Sosial Dan Implementasinya Dalam Hukum Keluarga," *El-Ushab: Jurnal Hukum Keluarga*, No. Query Date: 2024-04-12 15:03:05 (2021), <https://jurnal.ar-raniry.ac.id/index.php/Usrah/article/view/8780>.

¹⁴ Wahidin Et Al., "The Inheritance Rights Of Children From Marriage Are Not Recorded According To The Marriage Law And The Compilation Of Islamic Law."

¹⁵ Ahmad Lonthor And La Jamaa, "Moluccas Local Wisdom In The Role Of Marriage Arbitrators For Preventing Domestic Violence," *Al-Ihkam: Jurnal Hukum Dan Pranata Sosial* 15, No. 2 (2020): 201–23, <https://doi.org/10.19105/Al-Ihkam.V15i2.3787>.

¹⁶ Wahidin Et Al., "The Inheritance Rights Of Children From Marriage Are Not Recorded According To The Marriage Law And The Compilation Of Islamic Law."

¹⁷ Wahidin Et Al. A Hafidzi, "The Ideal Education In Ibn Khaldun's Muqaddimah For Eradicating Unemployment Through Interest And Talent," *Risalah, Jurnal Pendidikan Dan Studi Islam*, No. Query Date: 2024-03-12 11:58:58 (2020), http://www.jurnal.faiunwir.ac.id/index.php/jurnal_risalah/article/view/157.

The case of determining heirs which then continues with the distribution of inheritance property is common throughout Indonesia, especially in the DKI Jakarta Religious Court. The settlement of inheritance disputes submitted to the DKI Jakarta Regional Religious Court from time to time is a dispute that cannot be resolved in a family manner at the village level or outside the DKI Jakarta Regional Religious Court, so that the heirs who feel their rights are harmed and want to get legal certainty, then choose to file an inheritance lawsuit to the DKI Jakarta Regional Religious Court as the authorized institution for that.

Based on several cases of Religious Court decisions in DKI Jakarta, according to the author, there is a substitute heir. Where the inheritance should be given to his children, but his children have died first, so that there is a grandson heir. Whereas the status of this grandchild is veiled or obstructed by his parents, while his parents have passed away. Then this case was submitted to the Religious Court, which then the Religious Court in DKI Jakarta decided that the grandson was entitled to a share of his grandfather, because his parents had died first. So this is very interesting to study in more depth because in Islamic law there is no known Substitute Heir who is veiled.

Therefore, in accordance with the demands of the times and humanitarian needs, the provision of inheritance through the institution of successor heirs as contained in the KHI, is considered very important with the basic concept as the principle of justice and benefit and it is expected that the implementation of successor heirs as contained in the KHI will provide very high Indonesian justice, especially for children whose fathers die first from their grandfathers who are in the inheritance system Islam he will not get an inheritance.¹⁸

Based on the above problem about successor heirs because there is a hijab, in the Islamic legal system it is not known as successor heirs, but in Indonesia it is implemented, so in this case the author is very interested in researching further, and raised in a paper entitled “analysis of the construction and legal certainty of substitute heirs in the settlement of disputes over islamic inheritance in the compilation of islamic law and its application in the jakarta high religious court”.

METHOD

This research uses qualitative methods¹⁹ with normative legal approaches, legislation, judges' decisions, and Islamic legal literature, primary sources obtained from the decisions of the DKI Jakarta regional High Religious Courts (Pengadilan Tinggi Agama) number: 131/pdt.p/2022/pa.jp, number: 339/pdt.p/2021/pa.jp, number: 166/pdt.p/2021/pa-jb, 3950/pdt.g/2020/pa-js, compilation of Islamic law, religious court decisions related to successor heir decisions and other legal materials related to construction and legal certainty successor heirs. While secondary sources are obtained from literature research such as books, documents, and journals that have the same

¹⁸ Syaikh Et Al., “The Maqashid Sharia Construction On Inheritance In Dayak Ngaju Customs Within The Tumbang Anoi Agreement,” *El-Mashlahah* 13, No. 2 (2023): 181–202, <https://doi.org/10.23971/El-Mashlahah.V13i2.7375>.

¹⁹ Lonthor And Jamaa, “Moluccas Local Wisdom In The Role Of Marriage Arbitrators For Preventing Domestic Violence.”

relevance to this research. After the data is obtained and collected, data filtering will be carried out and grouped according to type, then the data is analyzed using descriptive analysis to be able to provide an overview of the existing problems and get conclusions as they are as found in the study.

RESULTS AND DISCUSSIONS

The position of Islamic law in Indonesia is very important for the development of national law. In addition to socio-anthropological and emotional factors between Islamic law and society, it is also a material factor of Islamic law that is complete and tested as a legal system that can regulate society. Islamic law in Indonesia is divided into two periods, namely: The period of acceptance of Islamic law as a source of persuasiveness and the period of acceptance of Islamic law as an authoritative source is a source that has power (*authority*).²⁰

The legal system that colors national law in Indonesia has been basically formed or influenced by three pillars of legal subsystems, namely the western legal system, customary law system, and Islamic legal system. From these three legal systems, it can be objectively judged that Islam has a greater opportunity to contribute and contribute to national preparation.²¹ The development of Islamic law in Indonesia is inseparable from the role of cleric and leader (government). This has been the case since the beginning of the development of Islamic law, present and future. The role of the cleric is to explain and study Islamic law, while the *Umara* (Government) with its authority can make policies on the enactment of a legal product.²²

Inheritance law in Indonesia is developing very rapidly, marked by the emergence of regulations and opinions from several experts. KHI²³ is the first codification and unification of inheritance law in Indonesia.²⁴ Its existence as a formulation of Islamic law reform in Indonesia has reflected the dynamics of the development of Islamic inheritance law thinking, especially with the definition of article 185 KHI concerning successor heirs, which is very different and deviates from conventional jurisprudence. The article in question reads:

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²⁰ Lonthor And Jamaa. Read In,

²¹ 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>.

²² Lonthor And Jamaa, "Moluccas Local Wisdom In The Role Of Marriage Arbitrators For Preventing Domestic Violence."

²³ Lonthor And Jamaa. A Azni Et Al., "The Timing Analysis Of Inheritance Distributions In The Compilation Of Islamic Law," *Al-Risalah: Forum ...*, No. Query Date: 2024-04-14 14:12:41 (2023), <https://shariajournals-uinjambi.ac.id/index.php/al-risalah/article/view/1431>.

²⁴ Saddam Rasanjani Khairuddin Hasballah, Dhaiful Mubarrak, "Disparity In Judge Decisions In Resolving Rad Inheritance Disputes: Case Study At The Sharia Court In Banda Aceh City" 6, No. 2 (2023): 249–61, <http://dx.doi.org/10.22373/Ujhk.V6i2.8612>.

Successor heirs in inheritance law to complement existing laws aimed at seeking a sense of justice for heirs. Successor heirs are basically heirs due to succession, that is, people who become heirs because their parents who are entitled to inheritance die before the heir so that he appears in his place.²⁵

The provision of successor heirs in the KHI breaks through the understanding of the Indonesian Islamic community which predominantly adheres to Sunni jurisprudence,²⁶ because the form of succession of heirs in Sunni jurisprudence is different from the formulation of article 185 of the Compilation of Islamic Law, where the grandson of a new son can replace his parents, if the heir does not leave another surviving son; while the grandchildren of daughters cannot replace their parents.²⁷

Meanwhile, the framers of the KHI dared to establish a legal provision that factually violated the beliefs of the majority of the Indonesian Islamic community. This reality when examined from the theory of the ideal of law,²⁸ which states that the effectiveness of a rule of law will be more guaranteed if the provisions imposed are derived from the living law (the living of law) and are believed by the general public²⁹ Even in the methodology of Islamic law (*ushul fiqh*) it is determined that to strengthen one of several different opinions (*tarjih*), It must be considered the opinion that is believed by the majority.³⁰

From both sides, it turns out that the KHI violated it by setting new rules on successor heirs as part of the positive law that must be applied in the Religious Court and become a guideline for the Indonesian Islamic community.³¹ More interesting than the concept of successor heirs in the KHI is the facultative rule of law³² so that the consequences and consistency of the application of the law (*tathbiq al-hukm*) are very dependent on the criteria of the judge.

In fact, the concept of Sunni inheritance even includes the KHI recognizing and adhering to the principle of *ijbari* (compulsory), which *qadha'i* emphasizes more legal

²⁵ Muhammad Hasan, "Construction Of Modern Islamic Inheritance Law Based On Ijtihad Of The Judges At The Religious Court Of Pontianak, West Kalimantan," *Samarah* 7, No. 2 (2023): 650–68, <https://doi.org/10.22373/sjhk.v7i2.8852>.

²⁶ Hasan. Ah Bello, "Islamic Law Of Inheritance Among The Yoruba Of Southwest Nigeria: A Case Study Of Dar Ul-Qadha (Arbitration Panel)," *Journal Of Islamic Law (Jil)*, No. Query Date: 2024-04-12 15:13:15 (2024), <http://e-journal.iainptk.ac.id/index.php/jil/article/view/2058>.

²⁷ Hasan, "Construction Of Modern Islamic Inheritance Law Based On Ijtihad Of The Judges At The Religious Court Of Pontianak, West Kalimantan."

²⁸ Hasan. A Hasan, A Hafidzi, And Y Zaidah, "Modern Law Aspect On Procedural Decision Of Sultan Adam Law," *Al-Ahkam*, No. Query Date: 2024-03-12 11:48:55 (2019), <https://journal.walisongo.ac.id/index.php/ahkam/article/view/4285>.

²⁹ Hasan, "Construction Of Modern Islamic Inheritance Law Based On Ijtihad Of The Judges At The Religious Court Of Pontianak, West Kalimantan."

³⁰ Hasan. N Avita, Ar Idris, And F Oktalita, "Integration Of Tradition And Sharia: Dowry And Dui Menre In The Marriage Of The Bugis Community In Bone Regency," *El-Mashlahah*, No. Query Date: 2024-04-12 15:19:49 (2022), <http://e-journal.iain-palangkaraya.ac.id/index.php/maslahah/article/view/4712>.

³¹ Ahmad Wira Et Al., "Legal Study Of Dzurri Waqf And Its Implementation Towards Strengthening High Heritage Assets In Minangkabau, West Sumatra, Indonesia," *Juris: Jurnal Ilmiah Syaria* 22, No. 2 (2023): 329–41, <https://doi.org/10.31958/juris.v22i2.9383>.

³² Hasan, "Construction Of Modern Islamic Inheritance Law Based On Ijtihad Of The Judges At The Religious Court Of Pontianak, West Kalimantan."

certainty.³³ This difference in formulation gives rise to various interpretations, both among practitioners and academics. Furthermore, the application of the concept of successor heirs in the KHI will also be closely related to the concepts of hijab and *mahjub*³⁴ as well as the concept of *ashabab*³⁵ which is definitively regulated in the KHI.

After tracing the development of inheritance law thinking in Indonesia, it turns out that the concept of successor heirs has emerged long before the enactment of the KHI. The Indonesian legal expert who is known as the originator of the birth of the rule is Hazairin,³⁶ he analyzes the forms of society in relation to the inheritance system by making anthropology as his *frame of reference*. Through his research on the Nash al-Quran and hadith, he finally concluded that the nash al-Quran and Hadith contain a system of bilateral inheritance.³⁷ Based on this conclusion, he further interpreted the pronunciation of *al-mawali* in al-Nisa" verse 33 as the heir of the successor. The Qur'an, al-Nisa" verse 33 reads:

وَلِكُلِّ جَعَلْنَا مَوَالِي مِمَّا تَرَكَ الْوَالِدَانِ وَالْأَقْرَبُونَ ۚ وَالَّذِينَ عَقَدْتَ أَيْمَانُكُمْ فَأَوْهَهُمْ تَصْيِبُهُمْ ۚ إِنَّ اللَّهَ
كَانَ عَلَىٰ كُلِّ شَيْءٍ شَهِيدًا

"And for each (heir) who inherits the property left by the father's mother and close relatives, we make mawali; and if (there are) those who have sworn allegiance with them; and give them their share. Verily, Allah is All-Witnessing of all things." (QS, 4:33).³⁸

While early scholars interpreted the pronunciation with ordinary heirs or *asabah*.³⁹ Hazairin's reinterpretation of the Nash al-Qur'an, Surat al-Nisa, verse 33, has opened a new discourse in the development of Islamic legal thought in the field of inheritance. There are some opinions, among them Roihan A. Rasyid, stating that the rule of successor heirs in the KHI is the result of the *ijtihad* of Indonesian scholars who were influenced by Hazairin's opinion.⁴⁰

³³ Fahmi Fatwa Rosyadi Satria Hamdani Et Al, "Traditional Law Vs. Islamic Law; An Analysis Of Muslim Community Awareness In Inheritance Issues," *Al-Ahkam* 32, No. 1 (2022): 109–30, <https://doi.org/10.21580/Ahkam.2022.32.1.11000>.

³⁴ Hasan, "Construction Of Modern Islamic Inheritance Law Based On Ijtihad Of The Judges At The Religious Court Of Pontianak, West Kalimantan."

³⁵ Hasan. A Addiarrahman And I Yanti, "Dari Idealisme Ke Pragmatisme: Pergeseran Paradigma Dalam Pengembangan Hukum Ekonomi Syariah Di Indonesia," *Al-Manahij: Jurnal Kajian Hukum ...*, No. Query Date: 2024-04-12 15:42:17 (2020), <https://ejournal.uinsaizu.ac.id/index.php/almanahij/article/view/3408>.

³⁶ Hasan, "Construction Of Modern Islamic Inheritance Law Based On Ijtihad Of The Judges At The Religious Court Of Pontianak, West Kalimantan."

³⁷ Hasan. A Hafidzi, "Deliberating Marriage Payment Through Jujuran Within Banjarese Community," *Aj-Syir'ab: Jurnal Ilmu Syari'ah Dan Hukum*, No. Query Date: 2024-03-12 11:48:55 (2020), <http://www.asy-syirah.uin-suka.com/index.php/as/article/view/911>.

³⁸ Hasan, "Construction Of Modern Islamic Inheritance Law Based On Ijtihad Of The Judges At The Religious Court Of Pontianak, West Kalimantan."

³⁹ Hasan. A Hafidzi, "Eksistensi Advokat Sebagai Profesi Terhormat (Officium Nobile) Dalam Sistem Negara Hukum Di Indonesia," *Khazanah: Jurnal Studi Islam Dan Humaniora*, No. Query Date: 2024-03-12 11:48:55 (2015), <http://103.180.95.17/index.php/khazanah/article/view/517>.

⁴⁰ Hasan, "Construction Of Modern Islamic Inheritance Law Based On Ijtihad Of The Judges At The Religious Court Of Pontianak, West Kalimantan."

While others argue, for example M. Yahya Harahap, that the rationale of Indonesian Islamic jurists in determining successor heirs is solely to consider *maqashid al-shari'ah*.⁴¹ Thus, the existence of successor heirs in the KHI must be studied and analyzed, besides that there is also that methodology of the KHI is considered to make a lot of use of *talfiq* and superstitious institutions,⁴² even though the methodology of *ushul fiqh* such as *bayani, ta'lili and istishlahi* reasoning appears to be simultaneously and synergistically applied in its articles.⁴³

Kompilasi Hukum Islam relating to inheritance as stipulated in Article 185 states:

- a) Heirs who die before the testator may be succeeded by their children, except those mentioned in article 173.
- b) The share of the successor heirs shall not exceed the share of the heirs equal to the one being replaced.

Article 173 of the KHI states that a person is prevented from becoming an heir if by a judge's decision that has permanent legal force, he is punished for:

- a) Accused of having murdered or attempted to kill or severely mistreated the heir.
- b) The accused defamatorily has filed a complaint that the heir has committed a crime punishable by 5 years in prison or a harsher sentence.

Many inheritance problems in the community occur due to the lack of understanding from the community in looking carefully at which is included in the category of heritage property, division and who is entitled to the inheritance property, who is entitled to receive inheritance property, or each party involved in the inheritance feels that their share is more than other parties while other parties are less will add to the complexity of the problem of property division cases the inheritance.⁴⁴

Cases for determining heirs which then continued with the division of inheritance occurred throughout Indonesia, including in the DKI Jakarta Religious Court. Settlement of inheritance disputes submitted to the Jakarta Religious Court from time to time is a dispute that cannot be resolved familiarly outside the Court, so heirs who feel their rights are harmed and want to get legal certainty, then choose to file an inheritance lawsuit to the Religious Court as the authorized institution for it.

This can be seen as happened in the case that was the object of this study, namely the decision of the DKI Jakarta PTA Regional Religious Court Case number: 131/Pdt.P/2022/PA. JP, Number 339/Pdt.P/2021/PA. JP, Number: 166/Pdt.P/2021/PA-Jb and 3950/Pdt.G/2020/PA-JS., in whose decision the panel of judges gave inheritance rights to the children of the deceased who succeeded him because the person concerned had died before the heir with a share of 14/96 of the total estate.

⁴¹ Hasan. A Hafidzi, "Prasyarat Poligami Dalam Kitab Fiqih Islam Dan Kompilasi Hukum Islam Perspektif Masalah Mursalah," *Al-Daulah: Jurnal Hukum Dan Perundangan Islam*, No. Query Date: 2024-03-12 11:48:55 (2017), <https://jurnalfsh.uinsa.ac.id/index.php/Aldaulah/Article/View/490>.

⁴² Hasan, "Construction Of Modern Islamic Inheritance Law Based On Ijtihad Of The Judges At The Religious Court Of Pontianak, West Kalimantan."

⁴³ Hasan.

⁴⁴ Ali Muhtarom Et Al., "Grants As A Model Of Inheritance Prospective Distribution In The Coastal Santri Community Based On The Civil Code (Kuh Pdt.) And Burgerlijk Wetboek . 1 And Customary Inheritance Laws . The Two Main Reasons Are , First , Because The" 32, No. 2 (2022): 169–88; Ilyas Ilyas Et Al., "The Accommodation Of Customary Law To Islamic Law: Distribution Of Inheritance In Aceh From A Pluralism Perspectives," *Samarah* 7, No. 2 (2023): 897–919, <https://doi.org/10.22373/sjhk.v7i2.15650>.

The construction and rationale of the KHI framers in determining the provisions for successor heirs are based on the understanding of the classification of heirs according to the jurisprudence of inheritance of Ahl al-Sunnah consisting of *ẓawu al-faraidh*, *ashabab and ẓawu al-arham*; hence the construction of such heirs is only possible for a very limited replacement of heirs with reference to the principles of patrilineal inheritance.⁴⁵

Therefore, it is necessary to conduct a careful study in order to expand and develop the conception of successor heirs in the relevant KHI. The expansion and development is possible from several aspects, including:

a. Aspects of Understanding Successor Heirs

Previously it has been stated that the articles of the KHI, both in general provisions, and general explanations, even the explanation of article 185 of the KHI itself, there is no explanation of what is meant by successor heirs. In fact, in accordance with the technique of preparing the articles of the KHI which follows the technique of drafting articles of laws and regulations, the general provisions should include the definition of the successor heir. Article 185 paragraph (1) of the KHI only formulates that: "Heirs who die before the testator, then his position can be succeeded by his children, except those mentioned in article 173".

From the formulation of this article, it can be concluded that the meaning of a successor heir is a child who replaces the position of his parents to obtain a share of the inheritance that he would have received, because this has died before the heir.

In this connection, according to Ahmad Azhar Basyir, if viewed from the principles of Islamic teachings so that wealth does not only circulate among rich people,⁴⁶ but can be enjoyed as much as possible by the family of the heir, then the understanding of the word "*aulad*" (children) can be extended or expanded to include grandchildren and great-grandchildren. Thus the meaning of "son" whose equivalent is "*walad*" in the verse mawarits has the possibility of being expanded and developed in meaning; Heredity, so that it can reach the degree of great-great-grandson male and female in its application. This is what Ibn *Qayyim al-Jauziyyah* meant by case law or ahkam *nafs al-waqi* or *ahkam da"wa al-waqi*.⁴⁷

When connected with the Qur'an, al-Nisa" verse 33 that the meaning of mawali is "successor heir of direct heir; which includes: heredity (male and female lines) for children and siblings or ancestors over parents, and second side line relatives for father and mother,

⁴⁵ Muhtarom Et Al., "Grants As A Model Of Inheritance Prospective Distribution In The Coastal Santri Community Based On The Civil Code (Kuh Pdt .) And Burgerlijk Wetboek . 1 And Customary Inheritance Laws . The Two Main Reasons Are , First , Because The"; Ilyas Et Al., "The Accommodation Of Customary Law To Islamic Law: Distribution Of Inheritance In Aceh From A Pluralism Perspectives."

⁴⁶ Muhtarom Et Al., "Grants As A Model Of Inheritance Prospective Distribution In The Coastal Santri Community Based On The Civil Code (Kuh Pdt .) And Burgerlijk Wetboek . 1 And Customary Inheritance Laws . The Two Main Reasons Are , First , Because The"; Ilyas Et Al., "The Accommodation Of Customary Law To Islamic Law: Distribution Of Inheritance In Aceh From A Pluralism Perspectives."

⁴⁷ Muhtarom Et Al., "Grants As A Model Of Inheritance Prospective Distribution In The Coastal Santri Community Based On The Civil Code (Kuh Pdt .) And Burgerlijk Wetboek . 1 And Customary Inheritance Laws . The Two Main Reasons Are , First , Because The"; Ilyas Et Al., "The Accommodation Of Customary Law To Islamic Law: Distribution Of Inheritance In Aceh From A Pluralism Perspectives."

as discussed earlier;⁴⁸ then the concept of KHI can be developed by formulating that "successor heirs are heirs who replace the position of direct heirs who have died before the heir.⁴⁹ This formulation means that a person who has been considered or qualified is not or has not been entitled to receive a share of the inheritance is placed into the class of heirs who are entitled to receive a share of the inheritance, so that his rights become effective because the death of the heir directly precedes the heir.⁵⁰

From the aspect of siblings, it may appear that your children as successor heirs replace the position of their parents as direct heirs who have died before the heir. Then the aspect of ancestry above parents, may appear grandparents as successor heirs in place of father or mother as direct heirs who died before the heir.

Finally, in terms of relatives, the second side line (for fathers and mothers) may appear that the children of uncles and aunts become successor heirs, replacing the uncle or aunt as direct heirs who have died before the heir. In connection with this expansion of the scope of successor heirs, one of the messages of the Prophet (peace be upon him) in the case of the will of Sa'ad ibn Abi Waqqas, states:

إنك إن تذر ورتتك أغنياء خير من أن تدعهم عالة يتكفون الناس. رواه البخاري

"Surely if you leave your heirs rich, it is better than you to leave them poor, destitute, orphaned, begging others." (Narrated by al-Bukhari).⁵¹

Such conceptions and understandings are philosophically encouraged and supported by the affirmation of the Qur'an, al-Nisa" verse 8, which reads:

وَإِذَا حَضَرَ الْقِسْمَةَ أُولُو الْقُرْبَىٰ وَالْيَتَامَىٰ وَالْمَسَاكِينُ فَارْزُقُوهُمْ مِنْهُ وَقُولُوا لَهُمْ قَوْلًا مَعْرُوفًا

"If during the division of the inheritance there are relatives, orphans and the poor, then give them from the property (inheritance) and speak to them good words, ma'ruf". (QS. Al-Ahzab: 8).⁵²

⁴⁸ Muhtarom Et Al., "Grants As A Model Of Inheritance Prospective Distribution In The Coastal Santri Community Based On The Civil Code (Kuh Pdt .) And Burgerlijk Wetboek . 1 And Customary Inheritance Laws . The Two Main Reasons Are , First , Because The"; Ilyas Et Al., "The Accommodation Of Customary Law To Islamic Law: Distribution Of Inheritance In Aceh From A Pluralism Perspectives."

⁴⁹ Maizuddin Maizuddin Et Al., "The Typology Of Hadith As The Bayan Of The Qur'an And Its Implications For The Reform Of Islamic Inheritance Law," *Samarah* 7, No. 2 (2023): 760–80, <https://doi.org/10.22373/Sjhk.V7i2.17467>; Fauzan Zenrif And Syabbul Bachri, "Critical Study Of Amina Wadud's Thought In The Issue Of Inheritance," *De Jure: Jurnal Hukum Dan Syaria* 15, No. 1 (2023): 39–53, <https://doi.org/10.18860/J-Fsh.V15i1.22217>.

⁵⁰ Sri Lumatus And Saifuddin Zuhri Qudsy, "The Controversy Of Customary Law And Islamic Law In The Inheritance System" 23, No. 2 (N.D.): 403–22.

⁵¹ Muhtarom Et Al., "Grants As A Model Of Inheritance Prospective Distribution In The Coastal Santri Community Based On The Civil Code (Kuh Pdt .) And Burgerlijk Wetboek . 1 And Customary Inheritance Laws . The Two Main Reasons Are , First , Because The"; Ilyas Et Al., "The Accommodation Of Customary Law To Islamic Law: Distribution Of Inheritance In Aceh From A Pluralism Perspectives."

⁵² Muhtarom Et Al., "Grants As A Model Of Inheritance Prospective Distribution In The Coastal Santri Community Based On The Civil Code (Kuh Pdt .) And Burgerlijk Wetboek . 1 And Customary Inheritance Laws . The Two Main Reasons Are , First , Because The"; Ilyas Et Al., "The Accommodation Of Customary Law To Islamic Law: Distribution Of Inheritance In Aceh From A Pluralism Perspectives."

If the provision in this verse is to be qualified as a "moral obligation", it is appropriate and appropriate, to elevate the "moral values" that qualify the law, into the formulation of Islamic legal rules in the development of the conception of successor heirs to the KHI.

b. In terms of the nature of the replacement of heirs

Earlier it has been revealed that the provisions of article 185 paragraph (1) of the Compilation of Islamic Law are facultative, which is a flexing and softening of the principle of *ijbari* (*imperative, compulsory*) of Islamic heritage. This subsection reads: "The heir who dies before the testator, may be succeeded by his son...." This provision implicitly recognizes the right of inheritance of grandchildren through daughters which reads from the formula "heirs who died first" who are succeeded by the child, possibly male and possibly female. This provision eliminates and removes the discriminatory nature of the inheritance law of Ahli al-Sunnah, which prioritizes grandchildren over sons of the heir.

This is in accordance with Indonesian culture which mostly adheres to the parental (*bilateral*) family system. The word "may" in this article which contains a facultative nature means that if under certain circumstances fame requires the existence of a successor heir, then the provision of successor heirs applies.⁵³ However, if certain conditions of benefit require otherwise, then no provision for successor heirs will be applied and other provisions that provide more benefit are applied in order to realize the principles and principles of balanced justice in inheritance.⁵⁴

If criticized and confronted with the provisions of the Qur'an surah al-Nisa" verse 33, where the word "*mawali*" means successor heir,⁵⁵ then the provisions of article 185 paragraph (1) of the KHI should be formulated with the formulation: "Heirs who die before the heir, are succeeded by their descendants, or ancestors above parents and or relatives of the second side line of father and mother, according to the line connecting him directly with the testator, except those mentioned in article 173".

Such a formulation contains imperative principles and principles (*ijbari*) with the removal of the word "may" in the previous article of the Compilation of Islamic Law. So that the replacement of heirs has legal certainty (*rechtzekerheid*), if someone who is a direct heir has died before the heir. This is not only based on various provisions of the Qur'an that affirm the principle of imperative (force, *ijbari*) inheritance in Islamic law⁵⁶ and the

⁵³ Lumatus And Qudsy, "The Controversy Of Customary Law And Islamic Law In The Inheritance System"; Dewi Sukarti, Hasyim Asyari, And Zulkifli, "Legal Education On Women's Property Inheritance Rights In South Sumatera," *Abkam: Jurnal Ilmu Syariah* 23, No. 2 (2023): 497–518.

⁵⁴ Kamarusdiana, Muhammad Ilham Fuadi, And Muhammad Ishar Helmi, "Keadilan Waris Islam Dalam Kedudukan Anak Perempuan Sebagai Hājib Hirmān Terhadap Saudara Dalam Putusan Mahkamah Agung," *Al-Manahij: Jurnal Kajian Hukum Islam* 15, No. 2 (2021): 221–32, <https://doi.org/10.24090/Mnh.V15i2.4960>; Lumatus And Qudsy, "The Controversy Of Customary Law And Islamic Law In The Inheritance System."

⁵⁵ Muhtarom Et Al., "Grants As A Model Of Inheritance Prospective Distribution In The Coastal Santri Community Based On The Civil Code (Kuh Pdt .) And Burgerlijk Wetboek . 1 And Customary Inheritance Laws . The Two Main Reasons Are , First , Because The"; Ilyas Et Al., "The Accommodation Of Customary Law To Islamic Law: Distribution Of Inheritance In Aceh From A Pluralism Perspectives."

⁵⁶ Muhtarom Et Al., "Grants As A Model Of Inheritance Prospective Distribution In The Coastal Santri Community Based On The Civil Code (Kuh Pdt .) And Burgerlijk Wetboek . 1 And Customary Inheritance Laws . The Two Main Reasons Are , First , Because The"; Ilyas Et Al., "The Accommodation Of Customary Law To Islamic Law: Distribution Of Inheritance In Aceh From A Pluralism Perspectives."

articles of the Compilation of Islamic Law itself, it is⁵⁷ also supported by the statement of the Qur'an which "forbids" (in quotes) from seeking other alternatives to the provisions and principles that have been established by Allah and His Messenger. The Qur'an Surah al-Ahzab verse 36 states:

وَمَا كَانَ لِمُؤْمِنٍ وَلَا مُؤْمِنَةٍ إِذَا قَضَى اللَّهُ وَرَسُولُهُ أَمْرًا أَنْ يَكُونَ لَهُمُ الْخِيَرَةُ مِنْ أَمْرِهِمْ ۗ وَمَنْ يَعْصِ اللَّهَ وَرَسُولَهُ فَقَدْ ضَلَّ ضَلَالًا مُّبِينًا

"It is impermissible and unworthy for believers and not for believers when Allah and His Messenger have decreed a decree (rules, principles, principles), there will be for them other options regarding their affairs."⁵⁸

When compared with some other Islamic countries, precisely to realize the principle of forcing (*ijbari*) from inheritance, then they potent the method of "obligatory will" by following the opinion of Ibn Hazm, al-Thabari and Abu Bakr ibn Abdul Aziz from the Hanabilah group who argue that mandatory wills are still applied to people or relatives who do not inherit because they are walled (*mahjub*); It even extends it to those who are hindered due to religious differences. So for the testator who does not have such a will, the heirs are obliged to remove it from the estate and return it to them.⁵⁹

The legal basis that is guided and used is the Qur'an Surat al-Baqarah verse 180: which reads:

كُتِبَ عَلَيْكُمْ إِذَا حَضَرَ أَحَدَكُمُ الْمَوْتُ إِنْ تَرَكَ خَيْرًا الْوَصِيَّةَ لِلْوَالِدَيْنِ وَالْأَقْرَبِينَ بِالْمَعْرُوفِ ۗ حَقًّا عَلَى الْمُتَّقِينَ

"It is incumbent upon you, when any one of you comes (signs) of death, if he leaves a lot of property, testaments to his father's mother and close relatives *ma'ruf*, (this is) an obligation upon those who practice piety".⁶⁰

Syrian, Tunisian and Moroccan legislation took over and followed the new principle applied by Egypt, with minor changes, namely the Syrian Law of 1953 article 257 affirmed that compulsory wills can be made only on direct descendants of sons who predeceased the testator. For direct descendants of daughters who have predeceased their fathers, no compulsory will applies.⁶¹ According to Moroccan Law 1958 articles 266 to

⁵⁷ Muhtarom Et Al., "Grants As A Model Of Inheritance Prospective Distribution In The Coastal Santri Community Based On The Civil Code (Kuh Pdt .) And Burgerlijk Wetboek . 1 And Customary Inheritance Laws . The Two Main Reasons Are , First , Because The"; Ilyas Et Al., "The Accommodation Of Customary Law To Islamic Law: Distribution Of Inheritance In Aceh From A Pluralism Perspectives."

⁵⁸ Muhtarom Et Al., "Grants As A Model Of Inheritance Prospective Distribution In The Coastal Santri Community Based On The Civil Code (Kuh Pdt .) And Burgerlijk Wetboek . 1 And Customary Inheritance Laws . The Two Main Reasons Are , First , Because The"; Ilyas Et Al., "The Accommodation Of Customary Law To Islamic Law: Distribution Of Inheritance In Aceh From A Pluralism Perspectives."

⁵⁹ Muhtarom Et Al., "Grants As A Model Of Inheritance Prospective Distribution In The Coastal Santri Community Based On The Civil Code (Kuh Pdt .) And Burgerlijk Wetboek . 1 And Customary Inheritance Laws . The Two Main Reasons Are , First , Because The"; Ilyas Et Al., "The Accommodation Of Customary Law To Islamic Law: Distribution Of Inheritance In Aceh From A Pluralism Perspectives."

⁶⁰ Muhtarom Et Al., "Grants As A Model Of Inheritance Prospective Distribution In The Coastal Santri Community Based On The Civil Code (Kuh Pdt .) And Burgerlijk Wetboek . 1 And Customary Inheritance Laws . The Two Main Reasons Are , First , Because The"; Ilyas Et Al., "The Accommodation Of Customary Law To Islamic Law: Distribution Of Inheritance In Aceh From A Pluralism Perspectives."

⁶¹ Muhtarom Et Al., "Grants As A Model Of Inheritance Prospective Distribution In The Coastal Santri Community Based On The Civil Code (Kuh Pdt .) And Burgerlijk Wetboek . 1 And Customary Inheritance

269, compulsory wills can be made against children regardless of decline, but only from sons who predecease the testator.

Whereas Tunisian Law 1959 article 192 states that compulsory wills can be made only on grandsons and granddaughters, the first offspring of a son or girl who died before the testator, the male gets two shares and the female gets one share.⁶²

c. In terms of the quality of the existence of successor heirs

As discussed earlier, the words children in article 185 paragraph (1) of the KHI include boys and girls; so that both sons and daughters can become successor heirs in place of their parents who died before the heir.

With the appearance of a daughter as an heir who can take the place of her father or mother, the question arises: is her quality able to veil the brothers of the heir? Before answering this issue, it should be noted that if the condition of the heirs is not as mentioned in article 174 paragraph (2) of the KHI, where not all heirs exist; Then it is likely that the heirs also consist of the heir's brothers and/or sisters. In this case, when referred to the cassation verdict Mahkamah Agung (MA) R.I No. 86K/AG/1994 date 27 July 1995 which states that as long as there are children, both male and female, the inheritance rights of those who are related by blood to the testator, except parents, husband and wife, become *veiled*.⁶³

So based on the analogy (*qiyas*) in the case of a daughter being able to veil the heir's brother, it is possible that the granddaughter who is in the position of successor heir can also cover (*hijab*) the heir's siblings. However, when it is connected with the modification of article 185 paragraph (2) of the KHI, where the share of successor heirs must not exceed the share of heirs who are equal to those who are replaced, it means that the quality of the existence of successor heirs is not unanimous and full; And therefore it cannot cover (*veil*) with the hijab of *hirman* (total cover) of the heir's brothers, but its development is possible only in the sense of the hijab of *nuqshan*, that is, it can reduce the share of inheritance from the heir's brothers.

Likewise, if the successor heir is the grandfather who takes the father's place to inherit, in the event that the father has predeceased the testator, then the grandfather does not fully and completely replace the father, so he does not veil the brother to obtain a share of the inheritance. Similarly, in the case of the grandmother as the successor heir who replaces the mother to inherit, in the case of the mother has predeceased the testator, nor does the veil of other siblings. The same is also of such quality, in the case of successor heirs for example arising from relatives of the second side line for father and mother.

Laws . The Two Main Reasons Are , First , Because The"; Ilyas Et Al., "The Accommodation Of Customary Law To Islamic Law: Distribution Of Inheritance In Aceh From A Pluralism Perspectives."

⁶² Muhtarom Et Al., "Grants As A Model Of Inheritance Prospective Distribution In The Coastal Santri Community Based On The Civil Code (Kuh Pdt .) And Burgerlijk Wetboek . 1 And Customary Inheritance Laws . The Two Main Reasons Are , First , Because The"; Ilyas Et Al., "The Accommodation Of Customary Law To Islamic Law: Distribution Of Inheritance In Aceh From A Pluralism Perspectives."

⁶³ Muhtarom Et Al., "Grants As A Model Of Inheritance Prospective Distribution In The Coastal Santri Community Based On The Civil Code (Kuh Pdt .) And Burgerlijk Wetboek . 1 And Customary Inheritance Laws . The Two Main Reasons Are , First , Because The"; Ilyas Et Al., "The Accommodation Of Customary Law To Islamic Law: Distribution Of Inheritance In Aceh From A Pluralism Perspectives."

Such a limitation on the quality of the existence of successor heirs is functionally appropriate and reasonable, because the position of successor heirs does not achieve the quality of equality with the direct heirs he replaces. So that it is appropriate and worthy, its presence does not wall other heirs and its share does not exceed the share of heirs who are equal to the direct heirs he replaces.

Therefore, the formulation of article 185 paragraph (2) of the IHL that the share of successor heirs must not exceed the share of heirs who are equal to those who are replaced, rationally, juridically and sociologically and philosophically have accommodated and realized human values and justice in Muslim societies carrying Islamic law.

CONCLUSION

The research findings confirm the legal construction and rationale behind the concept of substitute heirs in the Compilation of Islamic Law. The term "mawali" in the Quran's Surah al-Nisa verse 33 presents several interpretations, one of which pertains to substitute heirs. The legal construction of this concept in the DKI Jakarta Religious Courts prioritizes justice in the distribution of inheritance from deceased parents to their heirs. Recognized under KHI Article 185, substitute heirs play a significant role in Islamic inheritance law in Indonesia.

Despite the clarity of regulations regarding substitute heirs in the KHI, challenges persist in their application. Issues such as public understanding of KHI, lack of strong evidence to prove familial relationships, and conflicts with local customs hinder the implementation of the substitute heir rule. To address these challenges, enhanced socialization and education on KHI, particularly concerning substitute heirs, are essential. Furthermore, counseling and education initiatives should be conducted to raise awareness among the public. Clearer and more stringent regulations are necessary to reinforce the position of substitute heirs in inheritance disputes.

The implications of this research are multifaceted. Firstly, the findings shed light on the legal construction and application of substitute heirs in Islamic inheritance law, providing valuable insights for legal practitioners, scholars, and policymakers. Understanding the nuances of substitute heirs' role in inheritance disputes is crucial for ensuring justice and fairness in inheritance distribution.

Secondly, the identification of obstacles and challenges in implementing the substitute heir rule underscores the need for targeted interventions. Efforts to enhance public awareness and understanding of the Compilation of Islamic Law, particularly concerning substitute heirs, are essential. This could involve educational campaigns, workshops, and seminars aimed at both legal professionals and the general public.

Moreover, the research highlights the importance of strengthening the legal framework surrounding substitute heirs. Clearer and firmer regulations are needed to address ambiguities and inconsistencies in the application of the substitute heir rule. Policymakers should consider revising existing laws or enacting new legislation to provide greater clarity and guidance in inheritance disputes involving substitute heirs.

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