# *THE CONCEPT AND IMPLEMENTATION OF SUBSTITUTE HEIRS AT THE SHARIA COURT OF ACEH PROVINCE, INDONESIA*

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## ABSTRACT

The Quran and Hadiths specify rightful recipients of Zawil Furudl inheritance, creating a loophole for substitute heirs. Islamic scholars debate the concept of successor inheritance. This study explores substitute heirs and their status as alternate beneficiaries in Aceh's Sharia Court. The Aceh community rejects substitute heirs due to classical philosophy requiring the successor to be alive at the original heir's death. Despite not being present in fiqh and adat literature, substitute heirs are recognized in the Shariah Court under Article 185 of the Indonesian Compilation of Islamic Law. This recognition aligns with the objectives of Islamic law for justice and benefit. Legal pluralism allows for this practice, emphasizing harmonization between legal systems

**Keyword**: Implementation; Replacing Heirs; Sharia Court; Aceh Province; Indonesia

## INTRODUCTION

In Indonesia, there are multiple inheritance laws that coexist, applying to different legal subjects simultaneously in the same area. Additionally, there are variations in inheritance law arrangements within customary law.[1] The settlement of the problem of Islamic inheritance is the authority of the religious court/Mahkamah Syariah in Aceh

[1] Arskal Salim, "Dynamic Legal Pluralism in Indonesia: Contested Legal Orders in Contemporary Aceh," *The Journal of Legal Pluralism and Unofficial Law* 42, no. 61 (January 2010): 1–29, https://doi.org/10.1080/07329113.2010.10756640.

province. This is confirmed in the general elucidation of Law Number 7 of 1989 concerning Religious Courts as amended by Law Number 3 of 2006 concerning Religious Courts and the Second Amendment to Law Number 50 of 2009 concerning Religious Courts[2] . In Article 1 Paragraph (1) of Law Number 7 of 1989 concerning the Religious Courts, it is explained that the authority of the Religious Courts is limited specifically to people who are Muslim so inheritance matters fall under the authority of the Religious Courts . [3]

The process of determining Kompilasi Hukum Islam (KHI) is driven by the wishes of Indonesian Muslims,[4] especially religious court judges, who often differ in deciding the law on the same case. So on March 21, 1985, the Chief Justice of the Supreme Court and the Minister of Religion made a Joint Decree No. 07/KMA/1985 and No. 25 of 1985 concerning the designation of the Implementation of Islamic Law Development Projects through jurisprudence or better known as the Compilation of Islamic Law.[5] Furthermore, KHI was confirmed as an official guideline in the field of material law for judges in Religious Courts based on Presidential Instruction No. 1 of 1991.[6]

While the general Muslim population may not be aware of the rightful heirs, the Islamic Law Compilation as the substantive law in the Religious Court, recognizes the heir. It is becoming a reference for Religious Court judges when receiving, examining, and determining cases[7]. These two perspectives hinder the development of Islamic law, which is flexible and ever-changing. Failure to establish a resemblance between the two notions will result in an unjust application of the inheritance law. Therefore, it is

[2] Suhaili Alma'amun et al., "Legislative Provisions for Waṣiyyah Wājibah in Malaysia and Indonesia: To What Extent Do They Differ in Practice?," *ISRA International Journal of Islamic Finance* 14, no. 2 (September 5, 2022): 157–74, https://doi.org/10.1108/IJIF-01-2021-0013.
[3] Sarah Humaira, Mustamam, and Zulkifli AR, "Kedudukan Ahli Waris Pengganti Dalam Hukum Waris Islam," *Jurnal Hukum Dan Kemasyarakatan Al-Hikmah* 2, no. 3 (2021): 557–68, https://jurnal.uisu.ac.id/index.php/alhikmah/article/download/4361/3129.
[4] Muhammad Fitri Adi, "Hadhonah Rights of Children (Not Mumayyis) Based on Compilation of Islamic Law and Child Protection Act," *NUSANTARA: Journal Of Law Studies* 2, no. 1 (2023): 9–22, https://juna.nusantarajournal.com/index.php/juna/article/view/30.
[5] Wahidah Ideham, "Substitute Heirs in the Compilation of Islamic Law: An Overview from Gender Equality Perspective Case Study of the Religious Courts in Banjarmasin," *Samarah: Jurnal Hukum Keluarga Dan Hukum Islam* 6, no. 2 (December 31, 2022): 1046–64, https://doi.org/10.22373/sjhk.v6i2.12466.
[6] Suwardi Bahtiar, "Penerapan Ahli Waris Pengganti Menurut KHI Dan KUH Perdata Di Kabupaten Bone (Studi Kasus Di Pengadilan Agama Watampone)," *Jurisprudentie : Jurusan Ilmu Hukum Fakultas Syariah Dan Hukum* 5, no. 1 (February 5, 2018): 266–77, https://doi.org/10.24252/jurisprudentie.v5i1.4594.
[7] Naskur Bilalu et al., "Compilation of Islamic Law as Judge's Consideration at a Religious Court in North Sulawesi, Indonesia," *Samarah: Jurnal Hukum Keluarga Dan Hukum Islam* 6, no. 2 (October 3, 2022): 514–36, https://doi.org/10.22373/sjhk.v6i2.12441.

imperative to analyze the beneficial aspect of considering it as a replacement for their inclusion.

The purpose of Islamic law is to direct mankind to acquire a noble personality, to enforce justice in society, and to maintain the good life[8]. For righteousness is one of the purposes of the law, which is the most important of all, the certainty of law and the usefulness of law [9]. Moreover, the purpose of the law is to establish true peace in the community, so that peace can be felt in the hearts of every citizen, and therefore it is the people who are willing to accept the law. The righteousness of the law is an attempt to bring fair rules to the society to build the society itself [10]. Therefore, it will be able to create tranquility and tranquility in its social interactions. This is the basis of the thought to enforce the heir substitute in the KHI which is the foundation of the establishment of the law by the Sharia court in the settlement of matters that are tried. KHI as a new phenomenon and breakthrough in responding to the conditions described above is very interesting to study as a discourse of legal thought in the present day.[11]

In the Aceh customary legal system, inheritance follows a sequential procedure, beginning with the transfer of assets to children, then grandchildren, siblings, and so forth. If there is no successor in the lineage, the subsequent course of action is to trace back to the parents, grandparents, or other ancestors. If it is not possible to choose between the two options, the concept that is followed is to prioritize the heir who is more closely related in terms of degree of affinity, above heirs who have a higher degree of inheritance[12].

From an empirical perspective, it is evident that certain individuals in Aceh still adhere to the notion of a disrupted lineage, whereby the death of an heir before their own offspring results in the termination of the inheritance rights that should have been passed down to the deceased heir's son as a substitute. This perspective is founded on the notion

[8] Ahmad Azhar Basyir, "Hukum Islam Di Indonesia Dari Masa Ke Masa," *Unisia* 16 (2016): 9–13, https://journal.uii.ac.id/index.php/Unisia/article/view/5599.
[9] Darji Darmodiharjo and Shidarta, *Pokok-Pokok Filsafat Hukum, Apa Dan Bagaimana Filsafat Hukum Indonesia* (Jakarta: Gramedia Pustaka Utama, 1995).
[10] Theo Huijbers, *Filsafat Hukum Dalam Lintasan Sejarah* (Yogyakarta: Yayasan Kanisius, 1982).
[11] Armiadi Armiadi, Edi Yuhermansyah, and Arifa Santi, "Pandangan Ulama Dayah Terhadap Warisan Patah Titi Ditinjau Dalam Perspektif Hukum Islam (Studi Di Kecamatan Kuta Baro Kabupaten Aceh Besar)," *El-USRAH: Jurnal Hukum Keluarga* 3, no. 2 (August 18, 2020): 211–26, https://doi.org/10.22373/ujhk.v3i2.7697.
[12] Diva Faradhila Ayu Amelia and Wahyu Fadilla Akbar, "Pembagian Warisan Patah Titi Menurut Hukum Adat Patrilineal Pada Masyarakat Aceh Dikaitkan Dengan Kompilasi Hukum Islam," *Kultura: Jurnal Ilmu Hukum, Sosial, Dan Humaniora* 1, no. 6 (2023): 84–92, http://jurnal.kolibi.org/index.php/kultura/article/view/586.

that the relationship is regarded as having been severed. Upon closer examination, it becomes evident that the notion of a shattered inheritance is highly unjust towards the grandchildren who have lost their parents before their grandparents' passing. In the realm of Islamic inheritance law, the core principle is the transmission of inherited rights from one successor to another, to preserve the continuity of the lineage or *nasab*. The fact above results in substitute heirs. The term "substitute heir" refers to an individual who takes the place of the original heir in the distribution of inheritance if the original heir passes away before receiving their inheritance[13].

The execution of the practice of dividing the tithes under Aceh customary inheritance law sometimes leads to the severing of relationships between heirs, particularly at the lower generational level, such as grandchildren. The endeavor to modernize the principles of Islamic inheritance law is seen in the execution of the Islamic Law Compilation (KHI), which seeks to guarantee its application in the extensive religious judicial system across Indonesia. This measure is an endeavour to align the implementation of inheritance legislation with the fundamental Islamic principles that underpin the continuation of the lineage. Based on the previous explanation, it is evident that incorporating the practice of tithe into the legal framework of Aceh customary inheritance adds complexity to the law, necessitating thorough and rigorous research. Therefore, examining some aspects of the development of Islamic law characterized by the presence of KHI about the national law reform agenda being encouraged is necessary.[14] The object of study and research in this article is Article 185 of the KHI, which is the rule of the existence of an institution of heirs in substitution.

[13] Nur Saniah, Nawir Yuslem, and Hasan Matsum, "Analysis of Maqāshid Sharī'a on Substitute Heir in Compilation of Islamic Law (KHI)," *Al-'Adalah* 20, no. 1 (June 22, 2023): 35–60, https://doi.org/10.24042/adalah.v20i1.16062.
[14] Habibah Fiteriana, "Konsep Ahli Waris Pengganti Dalam Perspektif Maslahah Jasser Auda," Islamic Law Jurnal Siyasah 8, no. 01 (2023): 1–10, https://ejurnal.iaipd-nganjuk.ac.id/index.php/law/article/view/623.

## RESEARCH METHOD

This research employs normative legal research, also known as doctrinal legal research, study which is carried out or addressed only to written legal materials[15]. It is also defined as research that uses the study of documents or libraries[16]. Therefore, the normative jurisprudence technique is employed to address the issue by examining the regulations of relevant legislation and the implementation of Islamic law in the context of customary justice. Normative Jurisprudence offers a captivating exploration of the conceptual evolution of the most significant and prominent schools of jurisprudence in our era. The text provides a clear and insightful examination of their progress and a pointed evaluation of their shortcomings[17]. A field research is also conducted by conducting interview with judges of the Sharia Court of Banda Aceh)

## RESEARCH OUTCOME AND DISCUSSION

### 1. Existence of Substitute Heirs

In Islamic inheritance law, the acceptance of inheritance is contingent upon the principle of *ijbari* which means that inheritance is automatically transferred according to the provisions of Allah SWT, without being dependent on the will of the heir or heirs[18]. Substitute heirs seek to uphold the rights of the heirs who are entitled to inherit the portion of the heir's estate that is transferred to their offspring, ensuring the perpetuation and reinforcement of familial ties between the heir and the substitute heir. Inheritance law has incorporated the concept of substitute heirs and has put it into practice, albeit not yet in the form of formal legislation, but rather through the implementation of an Islamic Law Compilation. [19]

[15] Bambang Waluyo, *Penelitian Hukum Dalam Praktik* (Jakarta: Sinar Grafika, 1996).
[16] Andri Gunawan Wibisana, "Menulis Di Jurnal Hukum: Gagasan, Struktur, Dan Gaya," *Jurnal Hukum & Pembangunan* 49, no. 2 (July 5, 2019): 471–96, https://doi.org/10.21143/jhp.vol49.no2.2014.
[17] Hanoch Dagan, "Normative Jurisprudence and Legal Realism," *University of Toronto Law Journal* 64, no. 3 (July 2014): 442–57, https://doi.org/10.3138/utlj.041813-02RA.
[18] Yusmita and Adnan Ahmed Usmani, "Substitute Heirs: An Overview From Perception And Role Of Ustad In Bengkulu, Indonesia," *Jurnal Ilmiah Mizani: Wacana Hukum, Ekonomi Dan Keagamaan* 10, no. 1 (2022): 136–46, https://ejournal.uinfasbengkulu.ac.id/index.php/mizani/article/view/2949.
[19] Fauzi Fauzi, "The Concept of Patah Titi: The Problem of Inheritance and Its Solution in Aceh Tengah," *Studia Islamika* 26, no. 1 (April 10, 2019): 33–73, https://doi.org/10.15408/sdi.v26i1.6529.

The usage of the word "can be replaced" in Article 185 paragraph (1) introduces ambiguity regarding the potential emergence of a successor heir[20]. The term "can" possesses a connotation of being optional or uncertain, suggesting that there are those who have the potential to be substituted and others who do not have this potential. Substitute heirs are individuals who acquire property as a result of replacing their deceased parents, who were originally entitled to the inheritance but passed away before the heir. Consequently, the substitute heirs assume the position of their parents in the inheritance.

The provision does not establish explicit limitations regarding substitute heirs, thereby allowing for a broad interpretation of substitute heirs as mentioned in Article 185 paragraph (1)[21]. The replacement of the heir encompasses both a vertical descent and a departure from the periphery. This article can accommodate the grandkids of individuals. The heirs, including both male and female offspring, are also able to include the descendants (children) of deceased relatives, although adhering to the hijab regulations, maintain a distinction between different levels of importance.

The substitute heir is to happen when the offspring of deceased primary beneficiaries have the opportunity to inherit assets that were originally designated for their deceased parents. The individuals who eventually became heirs were not initially designated as such, but due to specific circumstances, they assumed the role of heirs[22]. A substitute heir assumes the role of an heir in place of their deceased parent, designating their child as the successor due to the parent's premature demise. In this scenario, the grandson assumes the role of his deceased parents to inherit from his grandfather or grandmother. In Islamic law, the concept of a substitute heir is not recognized because the Qur'an does not provide regulations for such a scenario[23] .

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[20] Suci Ramadhan and JR Muslimin, "Indonesian Religious Court Decisions on Child Custody Cases: Between Positivism and Progressive Legal Thought," Jurnal Ilmiah Syari'ah 21, no. 1 (2022): 90–100, https://www.researchgate.net/profile/Suci-Ramadhan/publication/361838404_Indonesian_Religious_Court_Decisions_on_Child_Custody_Cases_Between_Positivism_and_Progressive_Legal_Thought/links/62fb81b5e3c7de4c345fa73f/Indonesian-Religious-Court-Decisions-on-Child-Custody-Cases-Between-Positivism-and-Progressive-Legal-Thought.pdf.
[21] Barhamudin, "Kedudukan Ahli Waris Pengganti Dalam Kompilasi Hukum Islam," *Solusi* 15, no. 03 (2017): 296–315, https://jurnal.unpal.ac.id/index.php/solusi/article/view/75.
[22] Saniah, Yuslem, and Matsum, "Analysis of Maqāshid Sharī'a on Substitute Heir in Compilation of Islamic Law (KHI)."
[23] Ideham, "Substitute Heirs in the Compilation of Islamic Law: An Overview from Gender Equality Perspective Case Study of the Religious Courts in Banjarmasin."

The new successor is known after the implementation of Presidential Instruction Number 1, 1991 on the KHI whose implementation is regulated by the Decree of the Minister of Religious Affairs of the Republic of Indonesia Number 154, 1991. The basic idea of KHI as presented by Bustanul Arifin as the originator of this idea is that for Islamic law to be in force in Indonesia, there must be, among other things, clear laws that can be enforced both by law enforcement and by the public, the uneven perception of the Qur'an will and has led to the disagreement in determining what is called the Islamic law. The result was his inability to use the roads and tools that were available in the 1945 Constitution and other laws[24].

On 10 June 1991, the President of the Republic of Indonesia issued Presidential Instruction No. 1 of 1991 to the Minister of Religion to disseminate the KHI consisting of three books, namely 1st Book regarding Marriage Law, the 2nd Book regarding Legacy Law, and 3rd Book on Law of Marriage. In Indonesia, before the entry into force of Presidential Instruction No. 1 in 1991, the judges of the Religious Courts in dealing with matters relating to inheritance did not have a common and uniform legal basis. The judges still refer to different Fiqh books, so there is a possibility that two judges in two different places will examine and settle the same inheritance, but produce different verdicts. In general, the judges still use Islamic books that come from various doctrines of Syafi'i views.[25]

Revised from the hierarchy of legislation, the Compilation of Islamic Law is an unwritten law, as it is governed by Presidential Instruction No. 1 of 1991, which does not include the President's Instructions as a written source of law. According to A. Hamid S. Attamimi, the compilation of Islamic law should be compiled in a book and not written in the form of chapters, (moreover with “Book, Chapter, and Section”) which resembles the rule of the legislation[26]. Furthermore, A. Hammid s. Atamimi said that the Presidential Instruction only applies for one special purpose, as the President's Instructions No. 1 of

[24] Soerjono Soekanto and Sri Mamudji, *Penelitian Hukum Normatif Suatu Tinjauan Singkat*, 1st ed. (Jakarta: Rajawali Pers, 2010).
[25] Al Yasa Abubakar, *Ahli Waris Sepertalian Darah: Kajian Perbandingan Terhadap Penalaran Hazairin Dan Penalaran Fikih Mazhab* (Jakarta: INIS, 1998).
[26] Achmad Musyahid, “Sejarah Kodifikasi Hukum Islam Dan Pengembangan Teori Hukum Modern ,” *Jurnal Hukum Diktum* 10, no. 1 (2012): 11–20, https://ejurnal.iainpare.ac.id/index.php/diktum/article/view/250.

1991 contained the presidential instructions to the Minister of Religious Affairs of the Republic of Indonesia to disseminate the Book of the Islamic Law Compilation.

The compilation of the Islamic law that regulates the institution of the heir of a substitute is a series of legal discoveries, in which the law does not exist before or the source is not explicitly found in the Qur'an and Hadith. It is the moral responsibility of the judge or scholar to resolve any problem concerning the successor. Therefore, the judges and the scholars in dealing with matters need to have a book of the law, which contains all the laws applicable to the community of the judiciary of religion, which may be used as a guide by the judge in the exercise of his duties, so that the unity and certainty of the law are guaranteed[27]. The provisions concerning a substitute heir can be seen in Article 185 of KHI, that full text is as follows the heir who dies before the heir may be replaced by his son, except for those mentioned in Article 173 of the KHI and the share of the successor shall not exceed the share of an equal heir to that of the replaced.

## 2. The Implementation of Substitute Heirs at the Sharia Court of Aceh Province

This kind of heirs is against the concept of *patah titi* in most Acehnese views that there is no substitute heirs. A prevalent custom of inheritance among the Acehnese people is referred to as "*patah titi*". The heirs of *patah titi* are those who are direct descendants of the testator, but they are not entitled to inherit the assets left behind if their parent, who is also a child of the testator, dies before the testator[28]. Among the people of Aceh, there is a well-known saying regarding the descendants of the testator: "You no longer have any rights because the bridge has already been broken." This is an instance when an uncle informs his nephew that he would not receive any entitlement to the property left by the deceased (the nephew's grandfather) because the nephew's parent (the uncle's brother) passed away before the deceased. [29]

[27] Musyahid.
[28] Khairuddin Hasballah, Dhaiful Mubarrak, and Saddam Rassanjani, "Disparity in Judge Decisions in Resolving Rad Inheritance Disputes: Case Study at the Sharia Court in Banda Aceh City," *El-Usrah: Jurnal Hukum Keluarga* 6, no. 2 (December 30, 2023): 249–61, https://doi.org/10.22373/ujhk.v6i2.8612.
[29] Muhammad Mustofa, "Ahli Waris Pengganti Dalam Kompilasi Hukum Islam," Inklusif Jurnal Pengkajian Penelitian Ekonomi Dan Hukum Islam 2, no. 2 (December 1, 2017): 41–66, https://doi.org/10.24235/inklusif.v2i2.1551.

In addition, it is common for a nephew to inform his uncle that they are no longer in a relationship due to "patah titi." This phrase does not imply a lack of kinship, but rather signifies that the nephew will not receive any inheritance from their grandfather's property because their parents passed away before their grandfather. Another phrase, "You can't claim any inheritance right because it is patah titi," suggests that a grandson is unable to assert his entitlement to his grandfather's inheritance if his parents pass away before his grandfather. In this scenario, even though the grandson's parents have already died, the presence of a living brother of the testator (grandfather) prevents the grandson (nephew) from receiving any inheritance[30].

Neither the Qur'an nor the ancient Scriptures contain any other successor. Nevertheless, by Islamic jurisprudence, the heir is a surrogate who is included in the compilation. The inclusion of *al-maslhahah al-mursalah* in Islamic law has made it worthy of consideration, as it serves to safeguard against harm and preserve utility. If the inheritance is not bequeathed to the designated heir, the child will suffer harm as they will be unable to sustain their livelihood. This is because the adoptive parents can no longer provide financial support for their offspring[31].

The research conducted at the Sharia Court of Aceh province revealed that out of the 23 District Courts in Aceh, 8 of them were chosen for the study. It was found that the judges in these selected courts had implemented the practice of appointing substitute heirs, following Article 185 of the KHI. There are 15 judges have implemented Article 185 of KHI. It measn that there is an exitence of the substitute heirs in the Sharia Courts of Aceh in 2021. The Shariah Court relies on Article 185 of the Compilation of Islamic Law as the legal foundation for applying the concept of the successor. Based on the aforementioned provision, it is understood that if an heir dies before the specified time, their position can be filled by their son. In article 185 KHI, the term "child" has a broad interpretation that encompasses sons, nephews, and cousins, among others. Based on the investigation findings, it is established that the concept of a surrogate heir is limited to the grandchildren of the heir. However, there are instances where a judge interprets it

[30] Hasballah, Mubarrak, and Rassanjani, "Disparity in Judge Decisions in Resolving Rad Inheritance Disputes: Case Study at the Sharia Court in Banda Aceh City."
[31] Armiadi, Yuhermansyah, and Santi, "Pandangan Ulama Dayah Terhadap Warisan Patah Titi Ditinjau Dalam Perspektif Hukum Islam (Studi Di Kecamatan Kuta Baro Kabupaten Aceh Besar)."

more broadly, encompassing the son of the brother, the child of the uncle, and even the heirs of *zawil arham*. The author argues that the matter of substitute heirs should be restricted. We should consult the historian who was born in Article 185 of KHI, since there is a belief, defence, and focus on the grandchild when they are with their parent. This is because, according to the Sunni concept, the grandchild is completely protected by the parent in such a situation.

The fact we see is true, that the grandchildren of the heir left by his parents should be given serious attention through the replacement system to defend the rights of the orphan who is the grandson of his heir. Egypt and Tunisia, for example, in defense of the inheritance of grandchildren, chose the way of giving a portion or part of the estate of the heir through a compulsory will. The basic reasons for the establishment of a substitute heir in Islamic law can be found in the An-Nisa letter, paragraphs 8 and 9, which means the following:

a. and when relatives come, orphans, and poor, then give them only part of the inheritance. And speak good words to them (Koran. An-Nisa' verse 8).
b. and let them fear Allah if they had left behind their weak children, for whom they were afraid. Let them therefore fear Allah and speak good words. (Wisdom in worship not more than 1/3 of the inheritance) (Koran. An-Nisa' verse 9).

It implies that those who have lost their parents before them will inherit the inheritance. According to some respondents, including Judges of the Shariah Court of the province of Aceh, the basis for the establishment of Article 185 of the Compilation of Islamic Law is (Anwar, a judge at Sharia Court of Banda Aceh):

a. Because the government is inspired by a mandatory will, such as the one in Egypt, the Arab, Morocco, Syria, Tunisia, Kuwait, Algeria, Iraq and Jordan, Pakistan, where grandchildren are to be given inheritance even if their grandparents leave a child other than the child who died before the heir.
b. Article 185 of the Compilation of Islamic Law is a merger of Hazairin's thoughts with Egyptian law concerning obligatory will. A comparison was made between Indonesian inheritance law and inheriting law in Egypt, where, according to the inheritors' law of Indonesia before the Compilation of Islamic Law, a grandson

whose parents died before his heir (grandfather) did not become an heir. On consideration of justice, then given inheritance to the grandchildren.

c. Among the practitioners, they do not want to accept the agency of heirs in substitution, because they are very fanatical of Shafi'i view. They argue that the combination of the Compilation of Islamic Law with the mind of Hazairin if expanded can interfere with the position of other heirs to receive the inheritance. To counter the scholar's understanding, a substitute heir institute was formed in the Compilation of Islamic Law. [32]
d. The overpulling plate system can be extended if it does not violate the basis of inheritance.
e. The compilation of Islamic Law is a combination of several religious views which is books called Indonesian Islamic views, because of the fate of orphans left by their parents in weak and suffering conditions.

The institution of substitute inheritance is very important to be applied in this modern age. In general, the old inherited legal system is no longer applicable to society due to cultural and customary changes as well as the emergence of new problems such as tsunamis. The tsunami swallowed many lives and left orphans, so the substitute inheritance system was a solution to seeking justice for the grandchildren whose father died in the tsunami.

From the sound of article 185 of the Compilation of Islamic Law, if interpreted contextually, the ideas or messages contain when the inheritance replacement occurs, the inheritor's replacement characteristics, the group or the coverage of the heir's replacement dan provisions concerning the acquisition of heirs substitution and the provision of a heir substitute.

### 2.1 When does a substitute heirs exist?

According to Article 185 (1) of the Code, if an heir dies before the primary heir, their son can take their position. Article 185 of the KHI does not contain rules that specify the extent to which the restriction of replacement applies. Examining the concept of justice

[32] Al Yasa Abubakar, *Ahli Waris Sepertalian Darah: Kajian Perbandingan Terhadap Penalaran Hazairin Dan Penalaran Fikih Mazhab* (Jakarta: INIS, 1998).

as a fundamental value in the legal system, Sucipto Rahardjo argues that the idea of injustice that should be prevented in the inheritance law of KHI is the punishment of an individual for not receiving their inheritance solely because their father passed away before the heir.[33]

The deceased heiress provided significant assistance to the heir throughout his lifetime. The fulfillment of justice occurs when the deceased heir's son assumes his father's position. It is unjust for an heir to be replaced while they are at the peak of their position, and instead be replaced only after they reach the same age as the deceased inheritor's son. However, in its implementation, the Aceh Provincial Sharia Court uses a vertical and horizontal line to represent the substitute heir. [34]

### 2.2 Nature of Heirs Replacement.

The replacement of an heir is provisional, meaning it can be replaced and it is not compulsory (imperative or mandatory) depending on the case. In practice, almost all cases relating to the application of a substitute heir are admitted by a judge in the Shariah Court of the province of Aceh. If an heir dies before the heir, his position may be replaced by his son. The word may mean that, although the inheritor died before his, but not imperatively or compulsorily his position is replaced with his son, this depends largely on the judge's discretion.[35]

### 2.3 Scope of Replacing Heirs.

As for the group of substitute heirs, it is limited only to the heirs according to the blood of the descendants of heirs who have died before the heir, which includes sons and daughters. When the motivation of the constitution of the substitute inheritors is to cover up the injustice against the grandson stated that his parents had died before heirs as many experts, for example, M. Yahya Harahap[36]. So the recipient of the substitute heir is ideally

[33] Mustofa, "Ahli Waris Pengganti Dalam Kompilasi Hukum Islam."
[34] Komari Komari, "Eksistensi Hukum Waris Di Indonesia: Antara Adat Dan Syariat," *Asy-Syari'ah* 18, no. 1 (August 31, 2015): 157–72, https://doi.org/10.15575/as.v18i1.656.
[35] Rahmat Haniru, "Hukum Waris Di Indonesia Perspektif Hukum Islam Dan Hukum Adat," *The Indonesian Journal of Islamic Family Law* 04, no. 02 (2014): 457–74, https://jurnalfsh.uinsa.ac.id/index.php/alhukuma/article/download/283/416/621.
[36] Muhammad Gazali Rahman, "Kompilasi Hukum Islam Sebagai Hukum Terapan Bagi Hakim Pengadilan Agama ," *Tahkim* 11, no. 2 (2015): 66–88, https://jurnal.iainambon.ac.id/index.php/THK/article/view/18.

not confined only to the grandchildren, but covers the entire line of inheritance, both line down and side down.

Regarding the line of inheritance of the successor inheritor regulated in Indonesia there is no difference between the Egyptian and Pakistani laws, i.e. as regards the inheritable line that can be replaced there are no restrictions at all, in this case, including the three directions of succession, as follows; 1) relationship downward, as children, and grandchildren downward (mature), 2) relationship upwards, as fathers, and great-grandfathers upwards (mother), and 3) relationship to the side, as brothers, and their offspring relationship. It shall be as the descendants of the sons and the children, the fathers and the grandparents, and the brothers and sisters. By making these three lines of inheritance the basis for the determination of the successor, it means having created justice in the distribution of the estate. [37]

Article 185 of KHI states that a successor recognizes the right of succession, the child may replace the parent who died before the heir. As for anyone who becomes a substitute heir, in WHEN only the named son can replace the position of his parents who died before the heir. For he who is a heir of the inheritance shall be appointed in the place of his father, and his son shall be assigned to his father; and he who takes his place shall not be distinguished from the male or from the female.[38]

As to the inheritance rights of the wholesale, when the heir does not have another heir *ashabul furudh*, there are differences of opinion among the scholars. Some scholars believe that the heirs of the Wawil Arham will obtain the right of inheritance when there is no other heir. While others believe that heirs cannot inherit from the heir even though there are no heirs from *the ashabul furudh* and *'ashabah* because of his relationship of affinity with heirs considered weak. If the inheritor leaves only the heirs of the wholesalers, it is said that the heir will be handed over to the *Baitul Mal* to be circulated to the Muslims as an inheritance. This is because in the law of Islamic inheritance, religious relations are one of the reasons for inheriting other than marital relations, blood relations, and bonds for the liberation of slaves. This view was held by Zaid bin Tsabit

[37] Al Yasa Abubakar, *Ahli Waris Sepertalian Darah: Kajian Perbandingan Terhadap Penalaran Hazairin Dan Penalaran Fikih Mazhab* (Jakarta: INIS, 1998).
[38] Habibah Fiteriana, "Konsep Ahli Waris Pengganti Dalam Perspektif Maslahah Jasser Auda," Islamic Law Jurnal Siyasah 8, no. 01 (2023): 1–10, https://ejurnal.iaipd-nganjuk.ac.id/index.php/law/article/view/623.

ra, Malik, al-Awza'i, Shafi'i, Abu Tsaur, David, and Ibnu Jarir who argued that *Zawil Arham* could not receive inheritance.[39]

The group of scholars who acknowledge the inheritance of the wicked have different opinions about the way they inherit. Most of them, including Ali, Ahmad, Masruq, al-Sya'ibi, Al-Nakha'i, al-Tsauri, Hammad, and Ibn Abi Laila, argued that the way inheritance of the Wawil Arham uses the substitution system in the sense that he replaces the heir who connects him with the heirs. Besides the question of whether a *zawil arham* can inherit when there is no other heir, the other question is about the replacement of the heir by them. In practice in the court, the replacement of an heir may also be carried out by a group of heirs. From the results of the investigation in the Syar'iyah Court of the province of Aceh, concerning the inheritance matters in which there is a substitute heir there are several judgments that give the heir rights to the group of heirs *zawil arham* (Anwar, judge at Sharia Court of Banda Aceh).

Among them, in Banda Aceh's Sharia Court Decision Decision Number 0101/Pdt.P/2014/MS.Bna, the judgment No. 0062/Pdt.P/2014/MS.Bna and the judgment No. 014/Pgt.P/2014-MS. Bna. In these judgments, the judge accepted the request of the heir of the archive in accepting the right of inheritance as a substitute heir. For example, in judgment 0101/Pdt.P/2014/MS. The judge appointed an heir to the heir whose whole is a substitute heir, consisting of three male grandchildren of the son, three daughters of the son's daughters, and two sons of a female daughter. The judge gives the right to the grandson who replaces the position of his parents, who in this case the son's son inherits along with the daughter's grandson so that if seen from his position the son-in-law of the daughter is inherited together with *'ashabah* but because they do the replacement then their position changes to the place of the heir to be replaced, that is, his parents who are in the position as *ashabul furudh* if they are still alive so that their position becomes equal priority (Fauzi, judge at Sharia Court of Banda Aceh). [40]

In judgment No. 0062/Pdt.P/2014/MS. The judge approved the petitioner's application and appointed an heir for the heir consisting of one brother-in-law (the

[39] Fauzi Fauzi, "The Concept of Patah Titi: The Problem of Inheritance and Its Solution in Aceh Tengah," *Studia Islamika* 26, no. 1 (April 10, 2019): 33–73, https://doi.org/10.15408/sdi.v26i1.6529.
[40] Mohd. Kalam Daud, "Hareuta Peunulang: Protection of Women in Aceh According to Customary and Islamic Law.," *SAMARAH: Jurnal Hukum Keluarga Dan Hukum Islam*, 4, no. 1 (2020): 259–81, https://jurnal.ar-raniry.ac.id/index.php/samarah/article/view/5921/4224.

applicant) and seven sisters. The sons of the sister were inherited by the inheritors of the brother's inheritance. The same is true of judgment No. 014/Pdt.P/2014/MS.Bna, the judge shall give inheritance to the heir, whose inheritors shall be the sons, the daughters, the sons of the sons. The children of the daughters of the inheritors of the wicked are inherited by the sons of the uncle who is appointed as *Ashabah.* It can be concluded that the heir of the *Zawil Arham* may also be a substitute heir in his practice in the Shariah Court. Regarding the replacement that was made by the heir of the *Zawil Arham*, that "It is the inheritance of an inheritor who is obliged to inherit a successor. The judgment is given based on the rule in Article 185 para. (1) If a child can replace the position of a parent who died before the heir, then the position can be replaced by his son, except those in Article 173. If a judge does not grant the right to such an arbitration, then the judge may be deemed to have violated the rule of law in Indonesia".

### 2.4 Provision on the Portion of the Replacing Heir

The provision concerning the position of the successor in the acquisition of inheritance is to take fully what is the right of the replaced person if he is still alive at the time of the heir's death, provided that his share shall not be greater than the equal of the person replaced. According to the standard used in determining the inheritance of a substitute heir is the person to be replaced, then the size of the small share of the substitute inheritor depends on the position and proportion of the person that is replaced either because of the status of his proximity to the heir, or concerning the type of the latter.[41]

### 2.5 Provision on the Prevention of the Replacing Heirs

As in the case of the inheritance of a substitute, the substitute shall inherit every person whom he or she has appointed. It applies generally regardless of the sex of the successor, both male and female. For example, the position of the grandchildren as successors without distinction of their gender (men, or women) can be a brother-in-law. Imron AM, agrees with this, as evidenced by his arguments as follows: "In this article 185, the word 'child' is referred to in absolute terms, that is, without reference to 'man' or 'woman'. This means that if there is a child with no distinction between male and female,

[41] Muhammad Anshary, Hukum Kewarisan Islam Indonesia Dinamika Pemikiran Dari Fiqh Klasik Ke Fiqh Indonesia Modern (Mandar Maju , 2013).

then it is possible to have peace with one's brothers or uncles. Where, according to Sunni philosophy, if the girl can only hijab *nuqsham* (reducing the portion of *ashabah* inheritance). [42]

There are differences in the law of bribery that exist in the KHI with the Sunni mind, understood because of the differences of perception in the establishment of the measure of rejection itself, as the case is that the granddaughter replaces the position of the son, because he died before the heir. The logic is as follows: Firstly, when the person who is replaced is perceived as being a son alive at the time of the heir's death, in such a situation the son who is still alive will remain alive to his brother, and the uncle who is alive until the heirs die (this is agreed by the scholar), then because the boy is already dead, his position is taken, and replaced by the granddaughter who is also alive till the deceased. Thus, she made peace with her brother, and with her uncle.[43]

Moreover, the Sunni views that it does not perceive at all the position of the person who has died, he only sees in his form, whoever is entitled to appear as an heir, in the circumstances as described earlier, concerning the heir who exists only grandchildren, then what is concerned is only the statute of *Hajib mahabib* of the daughter, in connection he can only hijab brother and uncle with *hijab nuqshan*, then this is what happens. The differences in logical perception of thinking KHI with Sunni mentality as presented resulted in the birth of a different understanding of the provisions of the possibility of the hypothesis.[44]

## CONCLUSION

The concept of substitution of heirs is absent in Islamic sources, as neither the Quran, the Hadith of the Prophet, nor scholarly opinions provide any basis for such a provision. A substitute heir pertains to the legal identification of succession by the fuqaha. The regulations concerning successors are delineated in Article 185 of the Islamic Compilation of Laws. Shariah courts in Aceh province have established an inheritance system that governs asset distribution. The enforcement of legislation regarding the

[42] Fauzi, "The Concept of Patah Titi: The Problem of Inheritance and Its Solution in Aceh Tengah."
[43] Fikri & Wahidin Fikri & Wahidin, "Konsepsi Hukum Waris Islam Dan Hukum Waris Adat (Analisis Kontekstualisasi Dalam Masyarakat Bugis)," *Al-Ahkam: Jurnal Ilmu Syari'ah Dan Hukum* 2, no. 2 (January 8, 2017): 194–204, https://doi.org/10.22515/al-ahkam.v2i2.500.
[44] Fiteriana, "Konsep Ahli Waris Pengganti Dalam Perspektif Maslahah Jasser Auda."

appointment of substitute heirs is currently in place. To elucidate the legal principles in contemporary society, the application of ijtihad is essential, as the successor of the substitute heir presents new challenges that must be addressed to uphold justice in society.

Indonesia recognizes the national legal system, fiqh, and adat as part of legal pluralism, emphasizing harmonization and integration of laws rather than conflict. In Acehnese society, various inheritance practices, such as "patah titi" and "substitute heirs," stem from a blend of the state legal system (the KHI), fiqh, and adat. "Patah titi" in customary law refers to cases where heirs predecease the testator, leading to their descendants being excluded from inheritance rights. While similarities exist between "patah titi" in customary law and fiqh, where substitute heirs are not available, fiqh provides for the replacement of inheritance rights. The allocation of inheritance in "patah titi" cases has sparked differing opinions among ulamas and traditional leaders, with some advocating for the use of wills to distribute property to grandchildren. Additionally, substitute heirs, recognized in the KHI but absent in fiqh and customary law literature, align with the objectives of Islamic law, promoting justice and benefit. The diversity of legal practices within legal pluralism reflects negotiations and integration between customary law, fiqh, and the KHI in a homogeneous society

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**Interview**

(Anwar, The judge at the Syari'ah Court Banda Aceh 2023)

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