# PRACTICE OF SUBSTITUTE HEIRS ON KHI PERSPECTIVE

(Case Study at East Batubellah Village, Dasuk District, Sumenep Regency)

THESIS

by:

Arini Nur Fatimah SIN 19210178



# ISLAMIC FAMILY LAW DEPARTEMENT

# SHARIA FACULTY

# STATE ISLAMIC UNIVERSITY MAULANA MALIK IBRAHIM

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# STATEMENT OF THE AUNTENTICITY

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In the name of Allah,

With consciousness and responsibility toward the development ofscience, the writer declares that thesis entitled:

PRACTICE OF SUBSTITUTE HEIRS ON KHI PERSPECTIVE (Case Study at East Batubellah Village, Dasuk District, Sumenep Regency) Is truly writer's original work which can be legally justified. If this thesis is proven result of duplication or plagiarism from another scientific work, it as precondition of degree will be stated legally invalid.

Malang, 15 November 2023 Writer, 90299049 Arini Nur Fatimah SIN 19210178

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# **APPROVAL SHEET**

#### APPROVAL SHEET

After reading and correcting thesis of Arini Nur Fatimah, Student ID19210178, Department of Islamic Family Law, Syari'ah Faculty of The State Islamic University Maulana Malik Ibrahim of Malang entitled:

PRACTICE OF SUBSTITUTE HEIRS ON KHI PERSPECTIVE

(Case Study at East Batubellah Village, Dasuk District, Sumenep Regency) the supervisor stated that this thesis has met the scientific requirements to be proposed and to be examinated on the Assembly Board of Examiners.

Malang, 15 November 2023

Acknowledged bay, The Head Departement of Islamic Family Law

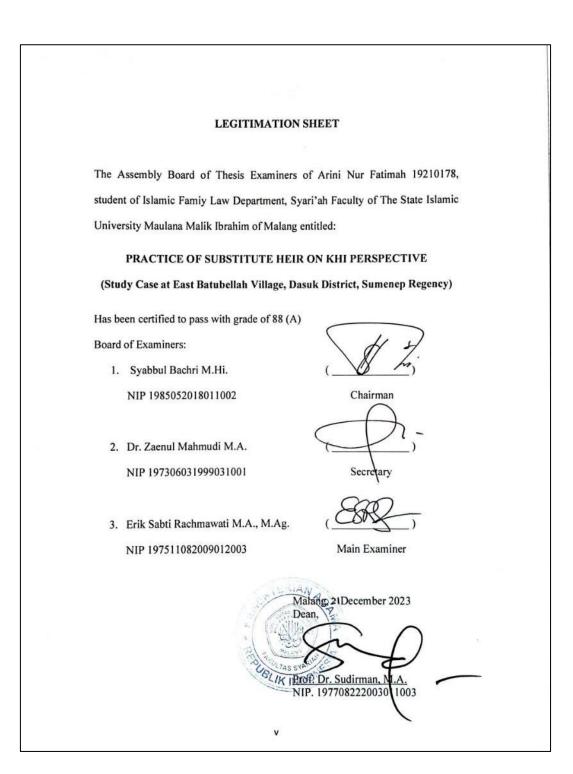
Erik Sabti Rahmawati MA,M.Ag. NIP. 197511082009012003

 $\cap$ 

Supervisor,

Dr. Zaenul Mahmudi.M.A. NIP. 197306031999031001

# **LEGITIMATION SHEET**



# ΜΟΤΤΟ

تِلْكَ حُدُودُ ٱللَّهِ ، وَمَن يُطِعِ ٱللَّهَ وَرَسُولَهُ, يُدْخِلْهُ جَنَّتٍ تَحْرِى مِن تَحْتِهَا ٱلأَنْهُ لَذُرُ خَلِدِينَ فِيهَا ، وَذَٰلِكَ ٱلْفَوْزُ ٱلْعَظِيمُ

"(These laws) are provisions from Allah. Whoever obeys Allah and His Messenger, Allah will surely admit them to Paradise where rivers flow, while they will abide therein eternally, and that is a great victory."

(Q.S. An-Nisa: 13)1

<sup>&</sup>lt;sup>1</sup> 'Https://Tafsirweb.Com/1545- Surah-an-Nisa-Verse-13.Html', n.d.

### ACKNOWLEDGMENT

Alhamdulillahirabbil'alamin, have given His rahmat and servan, so we can finish this thesis entitled "**PRACTICE OF SUBSTITUTE HEIRS ON KHI PERSPECTIVE (Case Study at East Batubellah Village, Dasuk District, Sumenep Regency**)" Peace be Upon into The Rasulullah Prophet Muhammad SAW who has taught us guidance (*uswatun hasanah*) to do activity correctly in our life. By following Him, may we belong to those who believe and get their intercession on the last day of the end. Amien. From all the teaching, advice, guidance, and helps of service for us to finish this thesis, then with all humility the writer will expresses the gratitude which is unequaled to:

- Prof. Dr. Zainudin, M.A., as the Rector of The State Islamic University Maulana Malik Ibrahim of Malang.
- Dr. Sudirman, M.A., as the Dean of Syariah Faculty of The State Islamic University Maulana Malik Ibrahim of Malang.
- Erik Sabti Rahmawati, M.A., M.Ag., as the Head of Islamic Family Law Department of Syariah Faculty of The State Islamic University Maulana Malik Ibrahim of Malang
- Prof. DR. Mufidah Ch., M.Ag., as supervisor lecturer of the writer during his study at Islamic Family Law Department of Syariah Faculty of The State Islamic University Maulana Malik Ibrahim of Malang.

- 5. Dr. Zaenul Mahmudi, M.A., as my thesis supervisor. The writer thanks for his spending time to guide, direct, and motivate to finish writing this thesis. The writer hopes that he and his family will be blessed by Allah.
- 6. All lecturers at Syariah Faculty of the State Islamic University of Maulana Malik Ibrahim Malang who have provided learning to all of us. With sincere intentions, may all of their charity be part of worship to get the pleasure of Allah SWT.
- Staff of Syariah Faculty of The State Islamic University Maulana Malik Ibrahim of Malang
- 8. Father and mother who always seek support, help and prayers
- My life companion, for the prayers, encouragement, and help that continues to be fought.

With the completion of this thesis report, the hope that knowledge which we have gained during our studies can provide the benefits of life in the world and the hereafter. As a human who has never escaped fault, the author is very hopeful for the forgiveness, criticism and suggestions from all parties for future improvement efforts.

Malang, 16 November 2023

Arini Nur Fatimah SIN 19210178

## **TRANSLITERATION GUIDELINES**

## A. Common

Transliteration is the transfer of words from Arabic to Indonesian, where the emphasis is not on translating from Arabic into Indonesian translation. Those who fall into this category include Arabic names of Arabs, while Arabic names of other nations are written using their national spelling, or as written in regulations made as references. Furthermore, writing the title of the book in the footnote or bibliography still uses this transliteration provision. The following transliteration used as a reference in this study is based on the results of a joint decree (SKB) of the Minister of Religious Affairs and the Minister of Education and Culture of the Republic of Indonesia Number: 158 of 1987 and Number: 0543b / U / 1987.

## **B.** Consonant

1	4	ض	Dl
ب	В	ط	Th
ت	Т	ظ	Dh
ث	Ts	ع	'(Comma facing up)
ح	J	ė	Gh
ζ	Н	ف	F
Ċ	Kh	ق	Q
د	D	ای	К
ć	Dz	ل	L
ر	R	م	М
ز	Z	ن	N
س	S	و	W

ش	Sy	هر	Н
ص	Sh	ي	Y

Hamzah (\*) which is often denoted by alif, when located at the beginning of a word then in its transliteration follows its vowel, not symbolized,. However, if it is located in the middle or end of a word, it is denoted by a comma above ('), reversed by a comma (') in place of the symbol "\zeta".

### C. Vocals, Length, and Diphthongs

Each Arabic writing in the form of the Latin vowel fathah is written with "a", kasrah with "i", dlommah with "u," while the long readings of each are written in the following way:

Vowel (a) Length	Â	example	قال	become qâla
Vowel (i) Length	Î	example	قيل	become qîla
Vowel (u) Long	Û	example	دون	become dûna

Especially for the reading ya" nisbat, it should not be replaced with "î", but still written with "iy" in order to describe ya" nisbat at the end. The same goes for the diphthongs, wawu and ya" sounds after fathah written with "aw" and "ay". Consider the following example:

Diphthong (aw) = و e.g. قول becomes Qawlun Diphthong (ay) = ي e.g. ي becomes Khayrun

### D. Ta' marbûthah (<sup>5</sup>)

Ta' *marbûthah* is transliterated with a "t" if it is in the middle of a sentence, but if it is at the end of a sentence, it is transliterated using an "h" e.g. الرسالة للمدرسة into *al risâlat li almudarrisah*, or when in the middle of a

sentence consisting of the arrangement of mudlaf and *mudlaf ilayh*, then transliterated using a "t" connected to the next sentence, e.g. فى رحمة الله becomes *firahmatillâh*.

### E. Clothing and Lafadhal-Jalalah

The clothing word "al" (U) is written in lower case, unless it is located at the beginning of the sentence, while the "al" in lafadh jalâlah is in the middle of the sentence that is propped up (*idhafah*) so omitted. Consider the following examples:

- 1. Al-Imâm al-Bukhâriy in his book muqaddimah explains...
- 2. Al-Bukhâriy says...
- 3. Masyâ' Allâh kâna wa mâ lam yasya' lam yakun Hamzah

## 4. Hamzah

Hamzah is transliterated with an apostrophe. However, that only applies to the hamzah located in the middle and at the end of the word. When located at the beginning of the word, hamzah is not symbolized, because in Arabic writing it is alif.

Example:	شيء	-	syaiun	۔ أمرت	umirtu
	النوءون	-	an-nauun	- تأخدون	ta'khudûna

### 5. Writing Arabic Words in Indonesian

In principle, any word derived from Arabic should be written using the transliteration system. If the name is an Arabic name of an Indonesian or an Indonesian Arabic language, it does not need to be written using the transliteration system.

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### ABSTRAK

Arini Nur Fatimah, 19210178. **Praktik Ahli Waris Pengganti Perspektif KHI** (Studi Kasus Desa Batubellah Timur, Kecamatan Dasuk, Kabupaten Sumenep) Skripsi, Program Studi Hukum Keluarga Islam, Fakultas Syariah, Universitas Islam Negeri Maulana Malik Ibrahim Malang. Pembimbing: Dr. Zaenul Mahmudi, M.A.

### Kata Kunci : Ahli Waris Pengganti, Kompilasi Hukum Islam

Status anak-anak daripada ahli waris yang telah meninggal telah diakui oleh pasal 185 ayat 1 dan 2 Kompilasi Hukum Islam. Hak mereka yang sebelumnya dianggap tidak berhak menerima warisan telah dianggap termasuk ahli waris yang berhak mewarisi setelah ditunjuk menggantikan orang tuanya yang meninggal sebelum pewaris, yakni dengan dicantumkannya ide ahli waris pengganti. Tujuan dari penelitian ini adalah untuk mendeskripsikan dan menganalsis praktik ahli waris pengganti di desa Batubellah Timur, Kecamatan Dasuk, Kabupaten Sumenep perspektif KHI.

Jenis penelitian yang digunakan dalam penelitian ini adalah penelitian hukum empris, dengan pendekatan deskriptif kualitatif. Adapun sumber data primer merujuk pada hasil penelitian lapangan di Desa Batubellah Timur agar memperoleh data yang akurat dengan teknik wawancara dan observasi. Kemudian sumber data sekunder berasal dari literatur yang mendukung diantaranya buku, jurnal, dan aturan yang berkaitan dengan ahli waris pengganti.

Hasil penelitian menunjukkan bahwa masyarakat Desa Batubellah Timur biasa memberikan bagian ahli waris yang meninggal kepada keturunannya dengan besaran yang seharusnya diterima orang tuanya, adapun dalam kasus kewarisan ibu Mahlawi, besaran bagian yang ditentukan secara mandiri terhitung tidak seimbang antara ahli waris langsung dan ahli waris pengganti. Hal ini membuktikan bahwa praktik ahli waris pengganti masyarakat Desa Batubellah Timur, Kecamatan Dasuk, Kabupaten Sumenep perspektif KHI telah sesuai sebagian, yakni aturan umum yang ada dimasyarakat telah sesuai dan sama dengan aturan yang ada dalm KHI, akan tetapi dalam praktik warga secara mandiri, ditemukan ketidaksesuaian berdasarkan perspektif KHI berkaitan dengan besaran harta waris.

### ABSTRACT

Arini Nur Fatimah, 19210178. **Practice of Substitute Heirs on KHI Perspective** (Case Study at Batubellah Timur Village, Dasuk District, Sumenep Regency) Undergraduate Thesis, Islamic Family Law Study, Faculty of Sharia, Maulana Malik Ibrahim State Islamic University Malang. Supervisor: Dr. Zaenul Mahmudi, M.A.

### Keywords : Substitute Heir, Compilation of Islamic Law

The status of children of deceased heirs has been recognized by article 185 paragraphs 1 and 2 of the Compilation of Islamic Law. The rights of those who were previously considered ineligible to receive inheritance have been considered to include heirs who are entitled to inherit after being appointed in place of their parents who died before the testator, namely by the inclusion of the idea of substitute heirs. The purpose of this study is to describe and analyze the practice of substitute heirs in Batubellah Timur village, Dasuk District, Sumenep Regency from the perspective of KHI.

The type of research used in this study is empirical legal research, with a qualitative descriptive approach. The primary data source refers to the results of field research in East Batubellah Village in order to obtain accurate data with interview and observation techniques. Then secondary data sources come from supporting literature including books, journals, and rules relating to substitute heirs.

The results showed that the people of East Batubellah Village used to give part of the heirs who died to their descendants with the amount that their parents should have received, while in the case of the inheritance of Mrs. Mahlawi, the amount of parts determined independently calculated unbalanced between direct heirs and substitute heirs. This proves that the practice of substitute heirs in the community of East Batubellah Village, Dasuk Subdistrict, Sumenep Regency KHI perspective has been partially appropriate, namely the general rules that exist in the community have been in accordance and the same as the rules that exist KHI, but in the practice of citizens independently, found discrepancies based on KHI perspective related to the amount of inherited property.

# مستخلص البحث

أريني نور فاطمة، ١٩٢١٠١٧٨. ممارسة عن مبدل الورثة وفقا للمجموعة الأحكام الإسلامية الإندونيسية (دراسة حالية في قرية شرق باتوبيلا، منطقة داسوك، مقاطعة سومينيب) أطروحة، برنامج دراسة قانون الأسرة الإسلامي، كلية الشريعة، جامعة مولانا مالك إبراهيم الإسلامية الحكومية مالانج. المشرف: دكتور زينول المحمودي، م. ء.

الكلمات المفتاحية: مبدل الورثة ، المجموعة الأحكام الإسلامية الإندونيسية

وقد تم الاعتراف بوضع أبناء الورثة المتوفين بموجب الفقرتين ١ و٢ من المادة ١٨٥ من كتاب الشريعة الإسلامية. إن حقوق من كانوا يعتبرون في السابق غير مستحقين للميراث أصبحت تشمل الورثة الذين لهم حق الميراث بعد تعيينهم ليحلوا محل والديهم الذين توفوا قبل الوريث، وذلك من خلال تضمين فكرة الميراث تبديلية. الهدف من هذا البحث هو وصف وتحليل ممارسة الميراث تبديلية في قرية شرق باتوبيلا، منطقة داسوك، مقاطعة سومينيب من وجهة وقفا لتجميع الشريعة الإسلامية.

ونوع البحث المستخدم في هذا البحث هو البحث القانوني التجريبي، ذو المنهج الوصفي النوعي. يشير مصدر البيانات الأساسي إلى نتائج البحث الميداني في قرية شرق باتوبيلا من أجل الحصول على بيانات دقيقة باستخدام تقنيات المقابلة والملاحظة. ثم تأتي مصادر البيانات الثانوية من الأدبيات الداعمة، بما في ذلك الكتب والمجلات واللوائح المتعلقة بالميراث تبديلية.

تظهر نتائج البحث أن أهالي قرية شرق باتوبيلا عادة ما يمنحون نصيب الورثة المتوفين لأحفادهم بالمبلغ الذي كان يجب أن يحصل عليه آباؤهم، أما في حالة ميراث السيدة المحلاوي فإن مقدار الحصة تم تحديدها بشكل مستقل على أنها غير متساوية بين الورثة المباشرين والورثة البديلين. و هذا يثبت أن ممارسة الورثة البديلين لسكان قرية شرق باتوبيلا، منطقة داسوك، مقاطعة سومينيب من منظور للمجموعة الأحكام الإسلامية الإندونيسية تتوافق جزئيًا، أي أن القواعد العامة الموجودة في المجتمع تتوافق مع قواعد للمجموعة الأحكام الإسلامية الإندونيسية الحالية ونفسها. ومع ذلك، في ممارسة المقيمين بشكل مستقل، تم العثور على مقاطعات بناءً على منظور للمجموعة الأحكام الإندونيسية فيما يتعلق

### **CHAPTER I**

# **INTRODUCTION**

### A. Research Background

Indonesia is a state of law as stated in article 1 paragraph 3 of the 1945 Constitution, which reads "The State of Indonesia is a state of law <sup>2</sup>". In Indonesia, there are three different forms of civil law: customary law, Islamic law, and western law. The Islamic legal system has its own place among the three legal systems. Most of Islamic civil law has developed into positive law in Indonesia, although this does not happen in all parts of Indonesia. Marriage law, inheritance law, and waqf law are the three main aspects of Islamic civil law that are taken into consideration.

In the field of family law, inheritance law is a very important component. Because inheritance law is related to the transfer of inheritance from one person to another, this is closely related to human existence. A person will inevitably meet death or pass away because this marks the end of every human's life journey. If the person who dies is known as an heir, then what the family and assets leave behind is called an inheritance. Inheritance law regulates the transfer of inherited assets, the management and continuation of the rights and obligations of people who die, as well as how to settle or distribute the inheritance left by the testator.

<sup>&</sup>lt;sup>2</sup>UNDANG-UNDANG DASAR NEGARA REPUBLIK INDONESIA 1945, vol. 105, 1945

Islamic law in Indonesia has a set of legal products which are contained in the Compilation of Islamic Law as stipulated in Presidential Instruction Number 1 of 1991. The Compilation of Islamic Law consists of three chapter of legal books totaling 228 articles. Inheritance law is one of the themes contained in the Compilation of Islamic Law, namely in Book II, starting from article 171 to article 214.

The Indonesian Islamic inheritance law system has a pluralism of teachings, such as Ahlusunnah Waljama'ah inheritance teachings, Shiite teachings, Hazairin teachings, inheritance from the Compilation of Islamic Law in Indonesia, and others. Due to the many inheritance law systems that apply in Indonesia, in their application, there will be a variety of applications. One of the problems that is quite deep in discussing inheritance in Islamic law is the substitute heir.

As for paragraph 171 letter c KHI, what is meant by heir is an individual who is related to the heir either by blood or marriage at the time of death, adheres to the Islamic religion, and is not legally prohibited from inheriting<sup>3</sup>. The heirs listed in the Compilation of Islamic Law (KHI) are basically the same as the heirs in Islamic jurisprudence books. It's just that in the KHI there is the possibility of adding the concept of substitute heirs, such as a daughter's granddaughter who replaces the position of heir of the rights of her deceased parents. This arrangement is stated in article 185 which reads:

<sup>&</sup>lt;sup>3</sup> Kompilasi Hukum Islam Berdasarkan Instruksi Presiden Nomor 1 Tahun 1991', n.d.

- Heirs who die before the testator can be replaced by their children, except for those mentioned in article 173.
- The share of the substitute heir may not exceed the share of the heir who is equal to the one being replaced <sup>4</sup>.

The status of those who were previously considered not entitled to receive an inheritance has been corrected by two paragraphs in this article. These people are now considered among the heirs who have the right to inherit after being appointed to replace their parents who died before the testator.

Then in its application, how does the concept of substitute heirs work in society. If in Islamic jurisprudence this concept is something new, then is it commonplace or even unknown in Indonesian Muslim society to change the position of heir.

As research into the existence and comparison of the concept of substitute heirs in society from the perspective of a compilation of Islamic law, the author has found a case of changing the position of heirs which took place in East Batubellah village, Dasuk District, Sumenep Regency.

Therefore, the title of the research that the author explores in writing this thesis is "Practice of Substitute Heirs on KHI Perspective (Case Study at East Batubellah Village, Dasuk District, Sumenep Regency)", based on the background of the problem that the author put forward.

<sup>&</sup>lt;sup>4</sup> Kompilasi Hukum Islam Berdasarkan Instruksi Presiden Nomor 1 Tahun 1991'.

It is hoped that the results of this research can contribute information to academic studies and as a reference in considering the formulation of laws and the resolution of problems related to inheritance, especially those relating to substitute heirs.

## **B.** Statement of Problem

- How did the people of East Batubellah Village, Dasuk District, Sumenep Regency to practice substitute heirs?
- 2. How did the people of East Batubellah Village, Dasuk District, Sumenep Regency relate to the practice of substitute heirs from the KHI perspective?

## C. Objective of Research

The objectives to be achieved by the author in this research are as follows:

- To describe the practice of substitute heirs in East Batubellah village, Dasuk District, Sumenep Regency
- To analyze the practice of substitute heirs in East Batubellah village, Dasuk District, Sumenep Regency from KHI's perspective

## **D. Benefit of Research**

Providing benefits, namely contributing ideas in the field of law, is the author's hope in this research, especially in the field of inheritance. These uses are:

- Scientifically useful, the author hopes that this research can contribute more or less insight regarding the practice of substitute heirs in the development of legal science in Indonesia, for writers, academics and the general public.
- 2. Of practical use, the author hopes that the research can become a source of information both in terminating inheritance cases involving substitute heirs for court institutions and the general public.

Operational definitions aim to provide correct understanding for readers in defining terms and key words contained in scientific works. Some terms that need to be interpreted include:

- Substitute Heir: A problem-solving concept for people who were not originally heirs (not people who have the right to receive an inheritance) but because of certain circumstances they become heirs and receive an inheritance in the status of an heir.
- 2. Compilation of Islamic Law: A rule of Islamic law whose source comes from the ijma' and ijtihad of Indonesian ulama. Then all the views of the ulama were finally put together, collected, and formed into a book using statutory language. The compilation of Islamic Law in question is as stipulated in Presidential Instruction Number 1 of 1991.

### E. Structure of Discussion

Writing systematics is the sequence or stages of discussion in a series of writings or scientific works. To understand this research, the author summarizes the outline into five major chapters, including: CHAPTER I is an introductory chapter which contains the following subchapters: operational definition, problem formulation, problem background, research objectives, and benefits.

CHAPTER II is a theoretical study as an analytical tool in explaining and describing research objects which includes a general explanation regarding the concept of substitute heirs in Islam and according to the Compilation of Islamic Law.

CHAPTER III discusses the research methods used in this research. The explanation of research methods includes types, approaches, locations, methods, research subjects, as well as sources, methods of data collection and processing. Chapter III is needed to provide direction for writers, so that the research is systematic and has scientific value.

CHAPTER IV is the core and main objective of the research, namely explaining the research results which contain solutions to problems that have been formulated, accompanied by a presentation of the data that has been collected and analysis based on the literature review in chapter II as a scientific effort in discussing the problems being researched.

### **CHAPTER II**

## LITERATURE REVIEW

### A. Previous Research

In this section, previous research will be explained, namely research that has been carried out by previous researchers. This aims to avoid duplication of research, by showing and explaining the differences between the research carried out and previous research as proof of the originality of the research. Previous research can be in the form of books, dissertations, theses and other scientific works, especially in fields that are related to the research being carried out, both in substance and methodology used. The following is a review of previous research that is interesting to this research.

First, in the form of a thesis, entitled "Ahli Waris Pengganti ditinjau dari Kompilasi Hukum Islam (KHI) Pasal 185 dan Menurut Hazairin". Research conducted by Wenny Welia Sari in 2019, Faculty of Sharia and Islamic Economics, Curup Islamic Institute , Islamic Family Law study program. Based on research findings, a child can replace an heir who dies before the testator by receiving a share that is not greater than that of equal heirs, as stated in Article 185 of the Compilation of Islamic Law (KHI). Apart from that, according to Hazairin, a substitute heir is an heir who replaces another person to obtain part of the inheritance that should have been received by the original heir. This happens because the heir dies before the testator. The intermediary between the testator (the deceased's inheritance) and their heirs is the one who is replaced. Hazairin explained that the status of substitute heirs comes from the heirs and is not limited by division. This thesis is different from the research to be carried out, namely in that the research object is limited to searching and explaining the concept of substitute heirs in the Compilation of Islamic Law and Hazairin only, without any comparative analysis of community practices.<sup>5</sup>

Second, in the form of a thesis, entitled "Analisis Hukum Penetapan Ahli Waris Pengganti Menurut Kompilasi Hukum Islam (Studi kasus Penetapan Pengadilan Agama Makassar Nomor 3/Pdt.P/2011/PA.Mks)". Research conducted by Risma Damayanti Salam in 2013, Legal Studies Program, Faculty of Law, Hasanuddin University. The research concluded that according to Article 185 paragraph (1), a person can inherit because the person replaced by the child must have died before the testator and the person replaced by the child will be the heir if he is still alive. This means that grandchildren can replace their parents as heirs in the Islamic inheritance system, in accordance with the Compilation of Islamic Law based on the Decree of the Makassar Religious Court Number 3/Pdt.P/2011/PA.Mks. Apart from that, the most crucial requirement is that the heirs concerned and their substitutes must be Muslim. Article 185 of the Compilation of Islamic Law is a guideline in making legal decisions for judges regarding substitute heirs in the Makassar Religious Court Determination Number 3/Pdt.P/2011/PA.Mks. . This thesis is

<sup>&</sup>lt;sup>5</sup>Wenny Welia Sari, 'Ahli Waris Pengganti Ditinjau Dari Kompilasi Hukum Islam (KHI) Pasal 185 Dan Menurut Hazairin', *Institut Agama Islam Negeri Curup*, 2019, http://etheses.iaincurup.ac.id/545/.

different from the research that will be carried out, namely that the object studied is a court decision, not community practice.<sup>6</sup>

Third, in the form of a thesis, entitled "Kasus Penetapan Ahli Waris Pengganti di Pengadilan Jakarta Timur". Research conducted by Dodi Darwin in 2011, Ahwal Syakhsiyah Study Program, Faculty of Sharia and Law, Syarif Hidayatullah State Islamic University, Jakarta. Based on research findings, the Religious Court decision Number 0004/Pdt.P/2008/PA.JT often uses the meaning of jurisprudence because KHI does not explain how the heir died before the testator was replaced in his position. Then according to Islamic law, because the son covers the granddaughter and grandson with hijab, the granddaughter and grandson of the descendants of the son who died first will inherit if there is no other male heir who inherits something. The position of granddaughters and grandsons is as ashabah, who receives the remaining assets after being issued by the ashabul furudh, if the testator only has daughters or no children at all. Regarding the size of the portion given to the grandsons and granddaughters of daughters who died before the testator, they are dzawil arham and are never entitled to receive an inheritance under any circumstances. In addition, the Compilation of Islamic Law states that grandsons and granddaughters of sons and daughters who have died before the testator, are entitled to inheritance in place of their parents as heirs, although the amount of their share cannot be more than the share of the testator's living children. Lastly,

<sup>&</sup>lt;sup>6</sup>Risma Damayanti Salam, 'Analisis Hukum Penetapan Ahli Waris Pengganti Menurut Kompilasi Hukum Islam (Studi Kasus Penetapan Pengadilan Agama Makssar Nomor 3/Pdt.P/2011?PA.Mks', *Universitas Hasunuddin*, 2013, 1–19.

all grandchildren who receive inheritance property because they become substitute heirs because their parents have died, as stated in decision Number 0004/Pdt. P/2008/PA.JT East Jakarta Religious Court Judge regarding heirs is in accordance with the Compilation of Laws. The author states, because the actual heir did not die before the testator, the determination is not a substitute heir. In Islamic law, cases like this are called munaskhah. This thesis is different from the research that will be carried out, namely that the focus of the research is cases that occurred at the East Jakarta Religious Court <sup>7</sup>.

Fourth, in the form of a thesis, entitled "**Tinjauan Ahli Waris Pengganti dalam Hukum Kewarisan Islam dan Hukum Kewarisan KUH Perdata**". Research conducted by Pasnelyza Karani in 2010, master of notary study program, postgraduate at Diponegoro University, Semarang. Based on research findings, if an heir dies before his father, then the heir's child has the right to replace his father in receiving his grandfather's inheritance according to inheritance law, both Islamic and the Civil Code. In the sense that if the person connecting him to the heir has died, then he is given the right to inherit. The most crucial requirement is that there must be a legal lineage of heirs (blood marriage) between the heir and the substitute heir. Thus, there are certain similarities and differences between substitute heirs according to Islamic inheritance law and inheritance law according to the Civil Code. This thesis has

<sup>&</sup>lt;sup>7</sup>Dodi. Darwin, 'Kasus Penetapan Ahli Waris Pengganti Di Pengadilan Agama Jakarta Timur', 2011.

differences with the research that will be carried out, namely the object of study which is Islamic Inheritance Law and the Civil Code <sup>8</sup>.

Fifth, in the form of a thesis, entitled " Perbandingan Ahli Waris Pengganti antara Hukum Perdata dan Hukum Kewarisan Islam di Indonesia". Research conducted by Nurhidayah in 2021, postgraduate program at the Parepare State Islamic Institute. This study concludes that in terms of substitute heirs, sons and daughters of male descendants whose parents died before the testator have legal equality to replace their parents' position in obtaining property from their grandfather, otherwise sons and daughters of female descendants are not entitled to do so. The rights obtained by substitute heirs according to Islamic inheritance law, according to Al-Sunnah and Hazairin scholars, are not always the same as the rights of the person being replaced. It can also be smaller or the same as the heir's share being the same as the person being replaced. Meanwhile, children who replace their father according to the Civil Code can come from male or female offspring, the most important thing is that the person who is replaced has died before the testator and he is the intermediary between the heir and his child who replaces his father. The share received by the heir to his father's substitute is exactly the same as the share his father would have received if he were still alive, in accordance with the statutory regulations regarding inheritance in the Civil Code (BW). This thesis is

<sup>&</sup>lt;sup>8</sup>Pasnelyza Karani, 'Tinjauan Ahli Waris Pengganti Dalam Hukum Kewarisan Islam Dan Hukum Kewarisan KUH Perdata', *Universitas Diponegoro* (2010),?

different from the research that will be carried out, namely the object of study which is Islamic Inheritance Law and the Civil Code <sup>9</sup>.

No.	Researcher	<b>Researcher Title</b>	Equality	Difference
1.	Wenny	Ahli Waris Pengganti	The	The focus and
	Wella Sari,	ditinjau dari	discussion is	research
	2019.	Kompilasi Hukum	about	methods only
		Islam (KHI) Pasal 185	Substitute	aim to
		dan Menurut Hazairin	Heirs	compare the
			according to	concepts of
			KHI	KHI and
				Hazairin's
				substitute
				heirs, not in
				society.
2.	Risma	Analisis Hukum	The	The research
	Damayanti,	Penetapan Ahli Waris	discussion is	object is a
	2013.	Pengganti Menurut	about	case study at
		Kompilasi Hukum	Substitute	court
		Islam (Studi kasus	Heirs	decisions, not
		Penetapan Pengadilan	According	society
		Agama Makassar	to KHI	
		Nomor		
2		3/Pdt.P/2011/PA.Mks)	701	<b>T</b> 1 1
3.	Dodi	Kasus Penetapan Ahli	The	The research
	Darwin, 2011.	Waris Pengganti di	discussion is	object is the
	2011.	Pengadilan Jakarta Timur	about Substitute	decision of
		1 imur	Heirs	the Religious Court, not the
			nells	community
4.	Pasnelyza	Tinjauan Ahli Waris	The	The research
	Karani,	Pengganti dalam	discussion is	variables
	2010.	Hukum Kewarisan	about	consist of
	2010.	Islam dan Hukum	Substitute	Islamic
		Kewarisan KUH	Heirs	Inheritance
		Perdata Kon	riens	Law and Civil
		1 01 11111		Code
				Inheritance
				Law

Table 01 Comparison with Previous Research

<sup>&</sup>lt;sup>9</sup>Nurhidayah, 'Perbandingan Ahli Waris Pengganti Antara Hukuk Perdata Dan Hukum Islam Di Indonesia', 2021.

5.	Nurhidayah, 2021.	Perbandingan Ahli Waris Pengganti antara Hukum Perdata dan Hukum Kewarisan Islam di Indonesia	regarding the comparison of Substitute	Islamic
		Indonesia	Heirs	Inheritance
				Law in Indonesia

# **B.** Theoritical / Conceptual Framework

### 1. Substitute Heirs According to the Compilation of Islamic Law

The Compilation of Islamic Law in Indonesia is a judicial documentation which is a collection of Islamic legal material, consisting of three books. Book I is about Marriage Law, Book II is about Inheritance Law, and Book III is about Waqf Law. KHI is material law which is used as a guideline for judges within the Religious Courts, as applied law in resolving cases submitted to them. KHI was enforced by Presidential Instruction Number 1 of 1991 and Decree of the Minister of Religion Number 154 of 1991<sup>10</sup>.

The concept of the Compilation of Islamic Law resulting from the Team was then discussed by Muslim scholars and scholars in a Workshop held on the 2nd s.d. 5 February 1998 in Jakarta. The results of the Workshop were then submitted by the Minister of Religion to the President to obtain a juridical form for its implementation. Then on June 10 1991 Presidential Instruction No. 1 of 1991, which contains

<sup>&</sup>lt;sup>10</sup>Yusuf Somawinata, *Kewarisan Dzawil Arham Di Indonesia Studi Penerapan Pasal 185 Kompilasi Hukum Islam Indonesia Di Kecamatan Cimanuk Pandeglang*, 1st ed. (Serang: FTK Banten Press, LP2M IAIN Sultan Maulana Hasanuddin Banten, 2014), 8–9.

instructions to the Minister of Religion to disseminate the Compilation of Islamic Law as it was well received by Indonesian ulama at the 1998 Workshop.

Since the issuance of the Presidential Instruction and Decree of the Minister of Religion above, it means that the Compilation of Islamic Law has acquired the strength and juridical form to be used in practice in the Religious Courts or by other government agencies and the community who need it to resolve problems in the fields regulated by the Compilation. The areas of law regulated by the Compilation are the areas of Marriage, Inheritance and Endowment Law, the details of which are as follows:

a. Book I concerning Marriage Law: Articles 1 to 170

b. Book II concerning Inheritance Law: Articles 171 to 214

c. Book III concerning Waqf Law: Articles 215 to 229

This material law needs to be collected and placed in a judicial documentation or Islamic Law Compilation book, so that it can be used as a guide for judges within the Religious Courts as applied law in resolving cases submitted to them<sup>11</sup>.

Because the KHI refers to two different "legal orders", it bears the burden of integrating the two. In general (principles and systematic) KHI is consistent with applicable laws and regulations. However,

<sup>&</sup>lt;sup>11</sup>Suparman Usman and Yusuf Somawinata, *Fiqh Mawaris Hukum Kewarisan Islam* (Jakarta: Gaya Media Pratama, 1997), 194–96.

technically there are inconsistencies as can be seen in the terms (and even concepts) used. Such symptoms are not only found in KHI, but are also found in higher levels of legislation.

In the field of inheritance and endowments (Book II and Book III), it is basically a transition in the form of inheritance law and endowment law according to the view of the fuqaha. However, there are provisions related to pluralistic societies, especially with traditions that apply in various local community units, including the provisions of Article 185 concerning substitute heirs (plaatsvervulling), Article 189 concerning inherited assets in the form of agricultural land of less than two hectares as inheritance. "collective", and Article 209 concerning mandatory wills between adoptive parents and adopted children<sup>12</sup>.

Inheritance law as regulated by the Compilation of Islamic Law in Indonesia, is basically inheritance law adopted from the opinion of the Jumhur Fuqaha (including Syafi'iyah in it), however, in several cases there are exceptions.

a. Heir

Heirs are the people who will receive ownership rights to the assets inherited from the testator. Article 171 letter c is formulated as follows: An heir is a person who at the time of death is related by blood

<sup>&</sup>lt;sup>12</sup>Cik Hasan Bisri, *Kompilasi Hukum Islam Dalam Sistem Hukum Nasional*, 1st ed. (Jakarta: PT Logos Wacanallmu, 1999), 12.

or marriage to the testator, is a Muslim and is not prevented by law from becoming an heir <sup>1314</sup>.

Heirs must have inheritance chapters and fulfill the inheritance requirements. In relation to the chapters and inheritance requirements, article 171 letter c of the Compilation of Islamic Law (KHI) formulates the chapters and inheritance requirements. As follows, the chapters are:

- 1) Having a family relationship or blood relationship
- 2) Having a marital relationship

Then among the conditions are:

- a) The heir lives when the testator dies
- b) Muslim religion
- c) There are no inheritance obstacles

Based on the chapter, the heirs in article 171 letter c are then further detailed in the formulation of article 174 paragraph (1) of the Compilation of Islamic Law (KHI) as follows:

- 1) The heir groups consist of:
  - a) According to blood relationship:
    - (1) The male group consists of: father, son, brother, uncle and grandfather.
    - (2) The women group consists of: mother, daughter, sister and grandmother.

<sup>&</sup>lt;sup>13</sup>Zainal Abidin Abubakar, *Kumpulan Peraturan Perundang-Undangan Dalam Lingkungan Peradilan Agama*, 3rd ed. (Jakarta: Yayasan AlHikmah, 1993), 348.

<sup>&</sup>lt;sup>14</sup> Kompilasi Hukum Islam Berdasarkan Instruksi Presiden Nomor 1 Tahun 1991'.

 b) According to the marital relationship, they consist of: widower or widow.

Details of the Heirs in article 174 paragraph (1) letter a above, as many as 9 people consisting of 5 male gender groups and 4 female gender groups. The amount of the heir's share in the compilation of Islamic law is located in chapter III, as follows,

Heir	Circumstances	Part	Chapter
	One (No other children)	1/2	
Daughter	Two or more (No men)	2/3	176
	With the son	2:1	
Father	No children	1/3	177
	There are children	1/6	1//
	There are children There are $\geq 2$ siblings	1/6	
Mother	No children There are no ≥2 brother/sister	1/3 ( After being taken by the widow or widower if together with the father )	178
Husband	No children	1/2	179
Tusballu	There are children	1/4	177
Wife	No children	1/4	180
wite	There are children	1/8	100
Uterin brother/	There are no children and no father	1/6	
Uterin sister	There are no children and no father and the number is $\geq 2$	1/3 together	181
Fullister/	There are no children and no father	1/2	
Consanguine sister	There were no children and ≥2 fathers	2/3 together	182

## Table 02 Share of Heirs in KHI

With fullbrother/consanguin e brother	2:1	
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Apart from the amount of the heir's share, there are additional guidelines, namely:

- Article 183: That the heirs are allowed to ignore the amount of the heir's share that has been determined in the compilation of Islamic law and use a separate distribution on the condition that each heir knows the actual share of his/her rights to the inheritance.
- 2) Article 184: Whereas an heir who is entitled to inherited assets but is not yet old enough to manage and receive the inherited assets, he/she still has the right and must receive the inherited assets through a guardian appointed either by a judge or at the suggestion of a family member.
- Article 185: That the explanation of this article will be explained in the substitute heir material.
- 4) Article 186: That as inheritance rights are broken between father and biological child outside of marriage, the child only has the right to inherit from his mother and his mother's family.
- 5) Article 187: This article explains how to distribute inheritance assets after the heir dies, namely appointing several people who will be responsible for taking care of the heir's legacy, from dependents and debts to the rights of the heirs.
- Article 188: This article provides legal power for each heir to request their rights from the inheritance.

- Article 189: This article is a method for managing and distributing inherited assets in the form of agricultural land.
- Article 190: Especially for heirs who are polygamous, according to the compilation of Islamic law, the wife's share of inheritance comes from joint assets or assets produced after the marriage bond between each wife.
- 9) Article 191: The following relates to the situation when an heir discards inheritance and there is no one or no one knows who is entitled to be the heir, then by the decision of the religious court, control of the inheritance must be handed over to Baitul Mal for the benefit of the Islamic religion and general welfare.
- b. Substitute Heirs

With the publication of Presidential Instruction Number 1 of 1991 dated 10 June 1991 concerning the Socialization of the Compilation of Islamic Law and Decree of the Minister of Religion of the Republic of Indonesia Number 154 of 1991 dated 22 July 1991 concerning Implementation of Presidential Instruction Number 1 of 1991, the term substitute heir was first recognized in formal law. Religious Courts are contained in the Compilation of Islamic Law (KHI). <sup>15</sup>.

<sup>&</sup>lt;sup>15</sup>Syarifah Aini and Happy Pian, 'Ahli Waris Pengganti Dalam Perspektif Filsafat Hukum Islam-', 2022, https://badilag.mahkamahagung.go.id/artikel/publikasi/artikel/ahli-waris-pengganti-dalam-perspektif-filsafat-hukum-islam-oleh-syarifah-aini-dan-happy-pian-16-6.

The only article in the KHI that discusses substitute heirs is Article 185 which is divided into two paragraphs, which reads:

- Heirs who die before the testator can have their position replaced by their children, except for those mentioned in article 173.
- The share of the substitute heir may not exceed the share of the heir who is equal to the one being replaced.

Continuing the provisions of paragraph 1, namely article 173: A person who is prevented from becoming an heir if, by a judge's decision which has permanent law, is punished for:

- Being accused of killing or attempting to kill or seriously ill-treating the heirs.
- He was accused of slanderously filing a complaint that the testator had committed a crime punishable by 5 years in prison or a heavier sentence <sup>16</sup>.

Based on the relatively short text of the items as well as general explanations and article by article explanations, it can be concluded that the Compilation of Islamic Law does not provide a strong and clear picture regarding substitute heirs.

The phrase "replaceable" implies that the use of substitute heirs can and cannot be replaced depending on the circumstances. This shows that the change is an option and not a necessity. It is up to the judge to decide whether the replacement technique is in the best interests of the

<sup>&</sup>lt;sup>16</sup> 'Kompilasi Hukum Islam Berdasarkan Instruksi Presiden Nomor 1 Tahun 1991'.

heirs as a whole. As a result, courts make decisions based on case law and not generally accepted law. The meaning of child is not explained in Article 185 or the illustrative articles. Do the children usually consist of son and daughter, or just son <sup>17</sup>.

Article 185 of the Compilation of Islamic Law regulates the replacement of positions, ranks and privileges without restrictions or distinctions between male and female substitutes. Nephews replace their parents as heirs, grandchildren replace their parents as heirs, and so on. Change of title, if a son is replaced by a substitute heir, then the son's title is given to the substitute heir, the daughter's title is given to the substitute heir, the daughter's title is given to the substitute heir, and so on. Replacement of rights, if the original heir has the right to receive the inheritance, then the substitute heir also has the right to receive the inheritance, and so on. Unlimited replacement, if the heir has two living daughters or sons, then the deceased heir's substitute is still counted and is not ignored. Replacement of heirs is permitted for every descendant, male or female, with replacement without distinction.

The Administrative and Technical Guidelines for Religious Courts restate the rules of Article 185 of the Compilation of Islamic Law by referring to the principle of direct heirs and substitute heirs, which

<sup>&</sup>lt;sup>17</sup>Muhamad Sauki Alhabsyi and Syahrul Mubarak Subeitan, 'Ahli Waris Pengganti Di Indonesia Dengan Historisitasnya', *Indonesian Journal of Shariah and Justice* 1, no. 1 (2021): 23, https://doi.org/10.46339/ijsj.v1i1.1.

<sup>&</sup>lt;sup>18</sup>Ahmad Zahari, 'Telaah Terhadap Pembatasan Lingkup Ahli Waris Pengganti Pasal 185 Khi Oleh Rakernas Mahkamah Agung Ri Di Balikpapan Oktober 2010', *Jurnal Dinamika Hukum* 14, no. 2 (2014): 326, https://doi.org/10.20884/1.jdh.2014.14.2.300.

states that the heirs are those mentioned in Article 174 of the Compilation of Islamic Law. Meanwhile, the heirs referred to in Article 147 of the Compilation of Islamic Law or substitute heirs are those who fall under the provisions of Article 185 of the Compilation. both male and female descendants, as well as the descendants of grandparents and uncles, especially aunts and their descendants. According to Article 174 of the Compilation of Islamic Law, uncles are direct heirs, not substitute heirs, even though they are descendants of grandparents<sup>19</sup>.

According to KHI, the following groups of heirs will receive a share as substitute heirs:

- 1) Children's descendants.
- 2) Brothers/sisters's (full/consanguine/uterine) descendants.
- 3) Dad's parents.
- 4) Mother's parents.
- 5) If dad's parents are absent, then the father's share is inherited by uncles, aunts and their descendants on the father's descendants.
- 6) If mother's parents are absent, then the mother's share is inherited by uncles, aunts and their descendants on the mother's descendants
   20.

Therefore, it can be said that the existence of substitute heirs as intended in Article 185 KHI will affect the amount, existence and

<sup>&</sup>lt;sup>19</sup>Muchit A. Karim, *Problematika Hukum Kewarisan Islam Kontemporer Di Indonesia* (Jakarta: Badan Litbang dan Diklat Kementerian Agama RI, 2012), 251.

<sup>&</sup>lt;sup>20</sup>Mahkamah Agung Republik Indoneisia, *Pedoman Teknis Administrasi Dan Teknis Pengadilan Agama* (Jakarta: Mahkamah Agung RI, 2009), 163–163.

allocation of inheritance assets that were originally obtained by other heirs. According to Article 174 paragraph (1), there are eleven heirs, namely mothers, daughters, sisters, grandmothers and widows, as well as fathers, sons, brothers, uncles, grandfathers and widowers. On the other hand, the number increases to 41 (22 men and 19 women) if Article 185 KHI which regulates the existence of substitute heirs is taken into account <sup>21</sup>. They are:

- 1) Son
- 2) Son's son
- 3) Daughter's son
- 4) Father
- 5) Father's father
- 6) Mother's father
- 7) Fullbrother
- 8) Consanguine brother
- 9) Uterine brother
- 10) Fullbrother's son
- 11) Fullsister's son
- 12) Consanguine brother's son
- 13) Consanguine sister's son
- 14) Uterine brother's son

<sup>&</sup>lt;sup>21</sup>Zahari, 'Telaah Terhadap Pembatasan Lingkup Ahli Waris Pengganti Pasal 185 Khi Oleh Rakernas Mahkamah Agung Ri Di Balikpapan Oktober 2010', 173.

- 15) Uterine sister's son
- 16) Uncle (father/mother's fullbrother)
- 17) Uncle (father/mother's consanguine broter)
- 18) Uncle (father/mother's uterine broter)
- 19) Uncle's (father/mother's fullbrother) son
- 20) Uncle's (father/mother's consanguine broter) son
- 21) Uncle's (father/mother's uterine broter) son
- 22) Husband
- 23) Daughter
- 24) Son's daughter
- 25) Daughter's daughter
- 26) Mother
- 27) Father's mother
- 28) Mother's mother
- 29) Fullsister
- 30) Consanguine sister
- 31) Uterine sister
- 32) Fullsister's daughter
- 33) Fulbrother's daughter
- 34) Consanguine sister's daughter
- 35) Consanguine brother's daughter
- 36) Uterine sister's daughter
- 37) Uterine brother's daughter

38) Uncle's (father/mother's fullbrother) daughter

39) Uncle's (father/mother's consanguine broter) daughter

- 40) Uncle's (father/mother's uterine broter) daughter
- 41) Wife.

Lastly, regarding the rules regarding substitute heirs in article 185 paragraph (2) which states, "The share of the substitute heir must not exceed the share of the same heir as the one being replaced. Therefore, chapter III Compilation of Islamic Law can be used to determine the amount of inheritance that must be given to substitute heirs.

#### 2. Substitute Heir According to Hazairin

Hazairin is one of the Indonesian legal figures who seeks to utilize the results of contemporary science (anthropology) when implementing Fiqh (inheritance) laws, in order to create a more unified and comprehensive system. According to him, the birth and development of anthropology has opened up opportunities to see inheritance verses in a broader framework, namely the family system in various societies in the world. He considers this opinion appropriate to express, because the Qur'an is universal, for all humans in all places and at all times. He is dissatisfied with the reality that has developed so far, which applies the rules of the Qur'an directly to the practical life of a society while patchily changing things that are felt to be contradictory. Even more dissatisfied are narrower views, which see inheritance verses within the framework of the customs of Arab society at the time of the Prophet Muhammad only, which according to him has caused "clashes and feelings of alienation" by communities with different family systems or forms.

The use of contemporary science as an additional "frame of reference", which causes Hazairin's reasoning to not be based firmly on the framework of ushul fiqh, even though formally he still claims to pay attention to and use its rules.<sup>22</sup>.

a. Heir

Hazairin first divided the descendants of the heir into 2 (two) groups, namely the principal line of precedence and the principal line of succession <sup>23</sup>. The basic line of precedence is a legal line that determines the hierarchy within the heir's family, indicating that one group takes precedence over another group. Based on this line of precedence, those who are related by blood are categorized into the following groups <sup>24</sup>:

- First priority: children, children's mawali, parents, and widower or widow.
- Second priority: siblings, sibling's mawali, parents, and widower or widower.
- 3) Third priority: parents and widow or widower.
- 4) Fourth priority: widow or widower, mother's mawali and father's

<sup>&</sup>lt;sup>22</sup>Hazairin, Hukum Kewarisan Bilateral Menurut Qur'an Dan Hadits (Jakarta: Tintamas, n.d.), 4.

<sup>&</sup>lt;sup>23</sup>Soerjono Soekanto, Hukum Adat Indonesia (Jakarta: Raja Grafindo Persada, 2011), 260.

<sup>&</sup>lt;sup>24</sup>Soekanto, 261.

mawali

Each group of priorities is either the first, second, third or third priority fourth formulated with full, It means group priority Which The lower group cannot inherit together with the higher priority group, because the lower priority group is covered by the higher priority group<sup>25</sup>.

If there are several heirs who have inheritance rights to each other and are closer in blood relationship to that heir than to other heirs, then this method of determining bilateral inheritance is used to resolve this problem.

According to Hazairin, Islamic Inheritance Law adheres to a bilateral inheritance system. Tafsir of the Al-Qur'an Surah An-Nisa verse 11 is the basis. The verse indicates that sons and daughters inherit from their mothers and fathers, and that fathers and mothers inherit from sons and daughters. This means that inheritance rights are the same for men and women, meaning that both genders have the same right to inherit regardless of the gender of the person receiving the inheritance.

b. Substitute Heirs

According to Hazairin, Al-Qur'an Surah An-Nisa verse 33 which means: "For every inheritance From the wealth left by parents and close relatives, we make the heirs and (if there are) those to whom

<sup>&</sup>lt;sup>25</sup>Sajuti Thalib, *Hukum Kewarisan Islam Di Indonesia* (Jakarta: Sinar Grafika, 2002), 88.

you have sworn allegiance to them, then give them their share. Indeed, Allah is a witness of things <sup>26</sup>" is interpreted as a substitute heir.

Hazairin believes that this verse implies the idea of changing the place of heirs <sup>27</sup>. The following is Hazairin's interpretation of Surah An-Nisa verse 33: "And for each person, I (Allah) have provided mawali for the inheritance of the father/mother and the inheritance of the immediate family, as well as the inheritance in your agreement, therefore give them their share of inheritance".

This verse in the Qur'an underlies the existence of a substitute heir, in this verse there is the word *mawali*. The meaning of mawali is when a descendant replaces a deceased heir to inherit the share of property that should have been received by the heir. The person being replaced functions as an intermediary between the heir and the inheritor. The heir's children, siblings, or descendants of the person who made an agreement (for example a will) with the heir are among those who have the right to become mawali. <sup>28</sup>.

Heir is father or mother, if father or mother die so which inheriting is child (if there is child), but if the child and or one of his children dies before the testator (father or mother) then the inheritance is given to the grandchildren as mawali of the child who died first.

If someone dies, then leaves behind heirs consisting of children,

<sup>&</sup>lt;sup>26</sup> 'Https://Tafsirweb.Com/1565-Surat-an-Nisa-Ayat-33.Html'.

<sup>&</sup>lt;sup>27</sup>Hazairin, Hukum Kewarisan Bilateral Menurut Qur'an Dan Hadits, 27.

<sup>&</sup>lt;sup>28</sup>Thalib, *Hukum Kewarisan Islam Di Indonesia*, 80–81.

grandchildren, siblings, father, mother, and grandfather and grandmother A determination is made of who has the right to receive a share of the inheritance. If there is no link between the heir and the testator, then it can be said to have inherited directly, like a child inheriting from its parents, but if there is no living link between the heir and the testator, it can be said that the heir inherits due to replacement, for example a grandchild his parents died before the testator. This is what Hazairin calls line principal replacement, that is the main thing is is every person in a group of priorities, with the condition that between the heir and the testator there is no liaison or no other liaison who is still alive.

The problem of substitute heirs stems from Hazairin's perception that the current inheritance distribution system is unfair, especially because the granddaughter whose father died first does not have the right to inherit her grandfather's property. In terms of inheritance from the next heir, Hazairin tries to uphold a sense of justice based on verse 33 of Surah An-Nisa in the Al-Qur'an.

It can be concluded that mawali can fully replace his parents as heirs. Apart from that, the position of paternal or maternal grandparents, can also replace their child's position as substitute heirs. Grandchildren can replace the position of their parents who have died first even if the heir has children still alive. Mawali does not differentiate whether male or female from both male and female offspring.

#### 3. Substitute Heirs According to the Civil Code

The Civil Code differentiates between two ways of obtaining the position of heir, namely by substitute (plaatvervulling) and by sechapter oneself (uit eigen hoofed). Articles 841 to 848 contain regulations for substitute heir (Plaatsvervuling) in the Civil Code.

Substitute heirs are inheritances where the heir receives the inheritance and takes the place of the heir who is entitled to receive the inheritance who has died before the testator. According to Article 841 of the Civil Code, it is stated that: "Replacement gives the person replacing him the right to act as a substitute, in the degree and in all the rights of the person being replaced."

There are several conditions that must be met to become a substitute heir. Among these prerequisites are the following:

- a. Based on Replaced Person: This replacement can only be done if the person concerned has died before the testator. Article 847: "No one is permitted to act for a living person as his substitute."
- b. Based on Replacement Person
  - The person who replaces must be a legal descendant of the person being replaced. What is meant by legal descendant is a child born from a valid marriage.
  - 2) The person who succeeds must fulfill the general inheritance requirements, which are as follows:

- a) Living at the time the inheritance is open: The person who has the right to inherit must be alive at the time the inheritance is open as explained in Article 836 of the Civil Code, with exceptions as contained in Article 2 paragraph 2 of the Civil Code. " A child in a woman's womb is considered to have been born, whenever the interests of the child so require. If he dies when he is born, he is considered to have never existed. "
- b) Not a person who is declared inappropriate: A person who is onward means that person is still alive, so their position cannot be replaced. However, if you pay close attention to Article 840 of the Civil Code, it is possible for the children of this inappropriate person to inherit based on their own position, and not replace them.
- c) Not rejecting the inheritance: The person who rejects the inheritance is a person who is still alive and is not represented by means of replacement as regulated in Article 1060 of the Civil Code. In principle, people cannot replace the position of a living heir. So his position cannot be replaced by his heirs.

According to the Civil Code, there are three types of inheritance changes, namely as regulated in Articles 842, 844, 845 of the Civil Code. In every inheritance change, it takes place without end. The various types of inheritance changes are as follows: a. In a straight line downwards and upwards: Replacement of inheritance according to Article 842 of the Civil Code, namely in a straight line downwards without limit. According to Article 156 paragraph (2) of the Civil Code, it is also permissible for the children of the deceased to inherit jointly with the children of the child who died first. The line straight down means descendants: Children, grandchildren, great-grandchildren and so on, without distinguishing between sons and daughters. Without limit here means continuing downwards without limitation to any degree. Thus, it can be concluded that blood relations in a straight line can:

# Table 03 Substitute heirs Up and Down

To the top	Down
Testator	Testator
Testator's father	Testator's children
Testator's grandfather	Testator's grandson
Testator's great-grandpar	rents Testator's great-grandchildren and
and so on	so on

b. Replacement in Lateral Lines: According to Article 844 of the Civil Code, all children and descendants of deceased brothers and sisters are entitled to receive an inheritance or replacement of profits, and they will inherit together with their uncles and aunts. Blood relationships in side lines, for example:

- 1) The relationship between the heir and his siblings.
- 2) The heir's relationship with his uncles or aunts.
- The relationship between the heir and his grandfather's or grandmother's siblings.

#### **CHAPTER III**

# **RESEARCH METHODS**

Research methods are procedures, techniques, which are regularly prepared to be used as a guide for researchers in collecting data, information adapted to the subject and object of research<sup>29</sup>. In a broader sense, research method is a branch of science that examines how to make integrated and mature observations through scientifically structured steps to collect, organize, evaluate, and synthesize data with the aim of discovering, developing, and testing the truth of science based on divine guidance<sup>30</sup>.

## A. Type of research

The type of research that the author uses in preparing this legal writing is empirical legal research. Empirical legal research is a type of legal research in which, in the process, the researcher will be directly involved in the subject of study in order to search for and collect the required data and information. In this research, researchers must directly try to find research data and information in the field, namely in East Batubellah Village, Dasuk District, Sumenep Regency, either by interview or observation.

#### **B. Research Approach**

The research approach used in this study is qualitative descriptive research which will produce data and information in the form of explanations

<sup>&</sup>lt;sup>29</sup>Irawan Soehartono, *Metode Penelitian Sosial: Suatu Teknik Penelitian BidangKesejahteraan Sosial Dan Ilmu Sosial Lainnya*, 1st ed. (Bandung, 1995), 9.

<sup>&</sup>lt;sup>30</sup>Cholid Narbuko and Haji Abu Achmadi, *Metodologi Penelitian* (Jakarta: Bumi Aksara, 1999), 11.

and presentations obtained from literature and the behavior of someone who is the object of the research <sup>31</sup>.

A systematic, accurate and factual description of the research location is the goal of a qualitative approach in understanding certain factors and characteristics <sup>32</sup>. This is in accordance with this scientific work, in chapter the author in researching the study, collecting facts and empirical data in Batubellah Village through data observation and direct interviews with the aim of obtaining appropriate, original and accurate data so as to produce research that can be trusted.

#### C. Research sites

The research location in this scientific work focuses on Sumenep Regency, Dasuk District, East Batubellah Village.

#### **D.** Data source

Data sources are useful in answering and analyzing the problem formulation of a research study. One or more data sources are needed, the more data sources collected, the more problem descriptions that can be described. In empirical legal research, there are two types of data sources, namely as follows:

1. Primary data

Primary data is data obtained either through interviews with informants or observation, or can be said to be a source of data directly from the source, and then processed by researchers <sup>33</sup>.

<sup>&</sup>lt;sup>31</sup>Burhan Ashshofa, *Metode Penelitian Hukum* (Jakarta: Rineka Cipta, 2004), 15–16.

<sup>&</sup>lt;sup>32</sup>Bambang Sunggono, *Metode Penelitian Hukum* (Jakarta: Raja Grafindo Persada, 1997), 36.

<sup>&</sup>lt;sup>33</sup>Zainuddin Ali, *Metode Penelitian Hukum* (Jakarta: Sinar Grafika, 2011), 175.

Because it is obtained directly at a location, it can also be interpreted as a field data source <sup>34</sup>. In relation to this research, primary data is data obtained from East Batubellah Village directly, either in the form of interviews or other observations.

2. Secondary data

Secondary data comes from sources such as books, documents, online searches, and literature relevant to the research topic <sup>35</sup>. Another way to describe secondary data is information that is not collected directly from research subjects but is obtained through intermediaries. The following are examples of research-related literature used by researchers:

- a. Zainal Abidin Abu bakar, Kumpulan Peraturan Perundang-Undangan
   Dalam Lingkungan Peradilan Agama
- Muchit A. Karim, Problematika Hukum Kewarisan Islam Kontemporer
   Di Indonesia
- c. Journal of Muhamad Sauki Alhabsyi and Syahrul Mubarak Subeitan,
   Ahli Waris Pengganti Di Indonesia Dengan Historisitasnya
- d. Ahmad Zahari Journal, Telaah Terhadap Pembatasan Lingkup Ahli
   Waris Pengganti Pasal 185 Khi Oleh Rakernas Mahkamah Agung Ri Di
   Balikpapan Oktober 2010
- e. Al-Qur'an and its translation
- f. Compilation of Islamic Law

<sup>&</sup>lt;sup>34</sup>Peter Mahmud Marzuki, *Penelitian Hukum* (Jakarta: Preada Media, 2011), 181.

<sup>&</sup>lt;sup>35</sup>Ishaq, *Penelitian Hukum Dan Penulisan Skripsi, Tesis, Sera Desertasi* (Bandung: Alfabreta, 2017), 71–72.

- g. Constitution of the Republic of Indonesia 1945
- h. Administrative and Technical Guidelines for Religious Courts

#### E. Technique of Data Sources Collection

1. Interview Method

One technique for collecting information that cannot be obtained through observation is the interview method<sup>36</sup>. The interview method can also be understood as an oral question and answer method for collecting data where the interviewee asks questions and the interviewee provides the answers. Interviews are conducted using notes related to the main topic you want or will ask about. To obtain information regarding the practice of substitute heirs in the village, interviews will be conducted with community leaders and other relevant residents. The following sources will be questioned:

Table 04 Data on Informant Names

No	Name	Status
1	Mr Sugianto	Public figure
2	Mrs Wahyu	Batubellah Village residents
3	Tarnudji	Heir
4	Indah	Substitute Heirs

2. Documentation Method

The documentation method uses information in the form of events or documents related to the main problem. The aim of this approach is to collect references that support the author's work.

<sup>&</sup>lt;sup>36</sup>Ashshofa, Metode Penelitian Hukum, 59.

#### F. Data Analysis

The next step is data processing, which is carried out after collecting research-related data. Apart from being a step to ensure the accuracy of the data collected, processing this data also seeks to facilitate understanding. Researchers use the following processing techniques:

1. Editing/Editing

The editing process involves verifying the accuracy and completeness of the data collected, particularly regarding completeness of responses, readability of writing, and understanding with respect to the researcher's desired data <sup>37</sup>.

2. Classification

Sorting the collected data into categories facilitates researcher's analysis and helps them address pre-existing problem formulations. To ensure the research is thorough and targeted, researchers must categorize data collected through interviews or other methods<sup>38</sup>.

3. Verification

The verification process involves examining the information and data that has been collected with the aim of ensuring the accuracy of the data that has been obtained.

4. Data analysis

<sup>&</sup>lt;sup>37</sup>Soerjono Soekanto, *Pengantar Penelitian Hukum* (Jakarta: UI Press, 1989), 264.

<sup>&</sup>lt;sup>38</sup>Muhaimin, *Metode Penelitian Hukum* (Mataram: Mataram University Press, 2020), 104.

The purpose of data analysis is to increase the researcher's understanding of the subject under study by methodically searching and organizing all findings from observations, interviews and other sources. Therefore, to answer the current problem formulation, all data that the author has collected regarding the subject under study ultimately needs to be analyzed thoroughly.

5. Conclusion

The step taken after collecting the necessary data is the conclusion. At this point the problem under study will become clear<sup>39</sup>.

<sup>&</sup>lt;sup>39</sup>Muhaimin, 102.

#### **CHAPTER IV**

# PRACTICE OF SUBSTITUTE HEIRS ON EAST BATUBELLAH VILLAGE ACCORDING KHI

#### A. General description of East Batubellah Village

1. A Brief History of East Batubellah Village

It is said that in Sumenep there were many hermits, one of whom was the king of Sumenep, namely Joko Tole. The origin of the formation of Batu Belah Timur village itself begins with history with the presence of a large stone located in Laok (Turun Malam) hamlet. At first this large stone was believed to be able to speak and at that time this was heard by the king of Sumenep, Joko Tole. He made a pilgrimage to the rock with magical consultations and apparently during the consultation there was a misunderstanding, that the occupants of the large rock were outside Islamic law. One of the things that is outside Islamic law is inviting people around them to commit shirk.

So when there is a problem, anger arises that cannot be resolved properly. At that time, hatred and revenge emerged, resulting in a split and splitting of the large stone which was done using a cemuti or in Madurese called "Pechot", the large stone was hit and then split into 2 parts. By splitting the stone towards the West and towards the East, a village was formed with the name Batu Belah Timur and Batu Belah Barat village. And the stone that was split according to the story is still intact and it is believed that the stone holds its own mystical story. 2. Geographical location

There are fifteen villages in Dasuk District, Sumenep Regency, including East Batubellah Village. East Batubellah Village consists of 3 hamlets including: Girgunung Hamlet (Mountain Edge), Tengah Hamlet, and Laok Hamlet (Turun Malam). With 7 RW, 14 RT, and 53 DasaWisma. This village has a population of 1,539 people, 561 families, and an area (km<sup>2</sup>) of 2.33 people. Regarding infrastructure and facilities that help village community activities, there are three mosques, a village hall, postu, and educational facilities such as the State Elementary School and Rhoudhotut Tholibin MI.

## Table 05 Population Data

Number of families	Total population
561	1,539

#### 3. East Batubellah Village Community Education

Based on population data in the village, in general the population of East Batubellah Village is 328 people, who have not received elementary school education, and 416 people have completed elementary school. 173 people have completed middle school education, and 149 people are enrolled in high school. Eleven individuals are pursuing associate's, associate's, and associate's degrees at postsecondary educational institutions, while twelve are pursuing a bachelor's degree and one is pursuing a master's degree<sup>40</sup>.

<sup>&</sup>lt;sup>40</sup>'Visualization of Population Data' <a href="https://gis.dukcapil.kemendagri.go.id/peta/">https://gis.dukcapil.kemendagri.go.id/peta/</a> [accessed 5 September 2023].

#### Table 06 Education Data

No/Not yet at school	328
Not finished elementary school yet	
Finished elementary school	
junior high school	173
high school	149
D1 and D2	7
D3	4
S1	12
S2	1
S3	0

#### **B.** Practice of Substitute Heirs at East Batubellah Village

1. Procedures for East Batubellah Village Community in Sharing Heritage

To get an idea of the procedures and habits of the East Batubellah village community in resolving inheritance cases, the researcher interviewed local community leaders. The first resource person was Mr Sugianto who is a community leader in East Batubellah who is also a teacher. Mr Sugianto explained that:

"Kalau di desa kita pakainya faraidh, ndak ada adat-adat gitu, ya pakai syari'at Islam. Kebanyakan memang hibah kalau masih ada anaknya, tapi kalau sudah ndak ada biasanya langsung ke kiyai"

Which means: In our village we use faraidh, there are no customs like that, we use Islamic law. Most of them are grants if they still have children, but if they don't, they usually go straight to the kiyai."

Based on what Mr. Sugianto said, East Batubellah Village does not have certain traditional provisions regarding inheritance, but uses Islamic law, namely faraidh rules, which are then assisted by local kiyai or religious figures. Mr. Sugianto continued regarding the inheritance habits of the village community:

"Ahli waris itu keturunan ke bawah, anak, cucu. Kalau ke samping biasanya hanya jika anaknya sudah tidak ada. Tapi kalau keduanya masih ada, ya yang ke samping tidak dapat"

Wich means: The heirs are descendants, children and grandchildren. If you go to the side, it's usually only when the child is no longer there. But if both are still there, then the one on the side won't get it.

Regarding the determination of heirs, people's custom is to divide only the descendants down. Family aside, as relatives can only be heirs when children and grandchildren are not around.

"Bagian waris laki-laki dan perempuan ya sama kayak di faraidh, perbandingan 2:1, kecuali kalau hibah ya, kan kalau hibah terserah yang memberi, tapi untuk waris memang 2:1"

Wich means: "The share of male and female inheritance is the same as in faraidh, the ratio is 2:1, except for gifts, yes, if it's a gift it's up to the person who gives it, but for inheritance it's 2:1"

Then regarding the fate of the substitute heir, Mr Sugianto explained:

"Ya memang cucu gantiin waris orang tuanya yang sudah meninggal, baik anak lainnya masih ada atau tidak, pasti dapat bagian" Wich means: Yes, it is true that grandchildren replace the inheritance of their deceased parents, whether the other children are still there or not, they will definitely get a share.

The second resource person, namely one of the residents of East Batubellah village, Mrs. Wahyu. He stated regarding village inheritance and heirs:

"Kalau adat khusus memang tidak ada, nurut aturan agama saja. Ahli waris itu anak-anaknya, kalua tidak punya anak pembagiannya diserahkan saja ke kiyai minta tolong dibagikan gimana faraidhnya" Wich means: There are no special customs, just follow religious rules. "The heirs are his children, if you don't have children, just hand over the distribution to the kiyai, asking for help how to distribute the faraidh.

Then Mrs. Wahyu also confirmed the change of heir to her grandson: "Tetap dibagi rata kesemua anak, baik sudah meninggal atau belum, nanti kalua bagian anak yag sudah meninggal ya tinggal diberikan keanaknya lagi"

Wich means: It's still divided equally among all the children, whether they have died or not, then if the share of the child who has died will just be given to another child.

#### 2. Practice of Substitute Heirs in East Batubellah Village

After the researcher conducted interviews with local figures and residents regarding community habits in dividing and managing inheritance, the researcher then interviewed several heirs of Mrs. Mahlawi, where in preresearch, the researcher found that in the case of Mrs. Mahlawi's death, she left behind heirs including one son and four granddaughters from his deceased son.

This case is interesting to study, because in classical jurisprudence, these grandchildren have absolutely no rights to their grandmother's inheritance, because they are veiled by the son of the heir or their uncle. However, in the Compilation of Islamic Law which was inaugurated by the 1991 presidential decree, grandchildren are positioned as substitute heirs, replacing their father's position, and have rights to the inheritance left by their grandmother with several conditions.

So then what the researcher questions is how these heirs respond to their position, whether they refer to the classical division of inheritance, bearing in mind that the people of East Batubellah village are a religious community who follow the recommendations of local religious figures who of course have an understanding of Shafi'i jurisprudence like most East Javanese people or using the provisions set out in khi, or in other ways.

The interview was started by Mr Tarnudji as the son of Mrs Mahlawi. Regarding who the parties involved are in the distribution of inheritance assets, Mr. Tarnudji explained:

"Saya yang bertanggung jawab atas pembagian harta waris, karena saya anak pertama dari dua bersaudara, saya dan Syaiful Adnan, sedangkan saudara saya sudah lama meninggal dan hanya meninggalkan 4 anak perempuan yang masih kecil. Kemudian memang dari keluarga adik saya, mereka serahkan ke saya juga, jadi mereka menerima saja dari yang saya bagi"

Wich means: I am responsibilitor for the distribution of inheritance assets, because I am the first child of two brothers, Syaiful Adnan and I, while my brother died a long time ago and only left behind 4 daughters. still small. Then indeed, from my sister's family, they handed it over to me too, so they just accepted what I shared.

Firstly, it is known that the person responsible and dividing the inheritance is Mr. Tarnudji himself, based on the agreement of the extended family. As for how he determines heirs and their shares, he continues as follows:

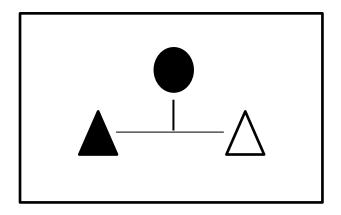
"Saya tidak benar-benar menggunakan syariat Islam karena tidak terlalu paham, prinsipnya hanya keadilan saja, jadi saya bagi warisan itu untuk berdua, saya dan saudara, karena memang ibu tidak punya saudara atau ahli waris lain"

Wich means: I don't really use Islamic law because I don't really understand it, the principle is just justice, so I divide the inheritance between the two of me, my brother and I, because my mother doesn't have any siblings. or other heirs.

Mr. Tarnudji, distributed inheritance using the principles of justice, without knowing the proper rights and rules in both classical jurisprudence and the Compilation of Islamic Law. Based on interviews, there are 2 actual heirs from Mrs. Mahlawi, namely (Picture 01):

- a. Tarnudji (Mrs. Mahlawi's son)
- b. Almarhum Syaiful Adnan (Mrs. Mahlawi's son)

Picture 01 Heirs of Mrs. Mahlawi



As Mr. Tarnudji said, when Mrs. Mahlawi died, Syaiful Adnan, who was Mrs. Mahlawi's second child, had died first.

Picture 02 Death certificate of Mr. Syaiful Adnan

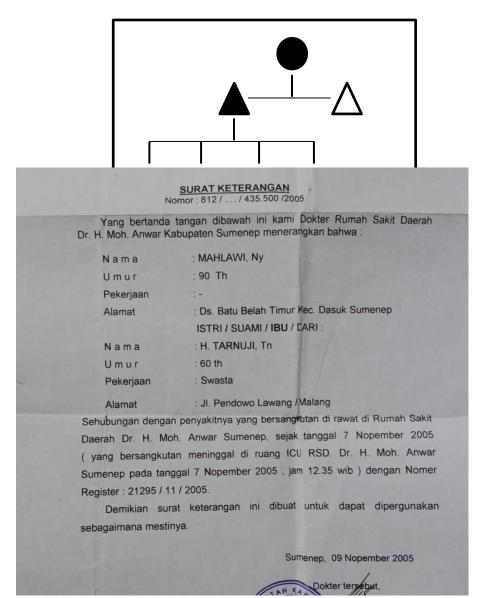
UNTUK YANG BERSANGKUTAN		
SURAT KEMATIAN No. 32/402.05/X/1993		ŧ a
Yang bertanda tangan di bawah ini menerangkan bahwa :		
Nama H.SAIFUL ADNAN		
Kelamin LAKI - LAKI Alamat JL.TRUNOJOYO VI A		
NO. OG KOLOR Umur 45 ( TAHUN )		
telah meninggal dunia pada		
Hari SABTU		
Tanggal 25 SETEMBER 1993 Di DESA KOLOR KEC.		
DESA KOLOR KEC. KOTA SUMENEP	i i	
Disebabkan karena KECELAKAAN LALU LINTAS DI DESA MARENGAN		
KECAMATAN KALIANGET.		
Surat keterangan ini dibuat atas dasar yang sebenarnya.		
STATURE 27 - 10 -19 93		
Kepala Desa Man KOLOR		

Picture 03 Death Certificate of Mrs. Mahlawi

So then Mr. Tarnudji gave his brother's share of the inheritance to his nephews. As for Mrs. Mahlawi's heirs, after Syaiful Adnan replaced her children, they became like this (Picture 04):

- a. Mr Tarnudji
- b. Yayuk (Saiful Adnan's substitute heir)
- c. Nur (Saiful Adnan's substitute heir)
- d. Indah (Saiful Adnan's substitute heir)
- e. Yatik (Saiful Adnan's substitute heir)

Picture 04 Heirs and Substitute Heirs of Mrs. Mahlawi



After that, Mr. Tarnudji explained about inheritance and its distribution:

"Kalau peninggalan adanya hanya tanah. Tanahnya ada tujuh. Karena setelah meninggalnya adik itu bertahun-tahun yang merawat dan mengurus keperluan bapak ibu hanya saya, jadi saya baginya untuk saya 4 tanah pekarangan, sedangkan 3 tanah pekarangan untuk ponakan, tapi saya serahkan ke ibunya karena mereka masih kecil, harapannya ya bisa untuk tambahan biaya hidup dan sekolah anakanak itu"

Wich means: The inheritance is only land. There are seven lands. Because after the death of my sister, for many years the only one who cared for and took care of my father and mother's needs, so I gave them 4 plots of land for me, while the 3 plots of land were for my nephews, but I handed them over to their mother because they were still small, I hope that this can be used for additional costs. children's lives and schools.

"Kemudian ada juga rumah tinggal itu memang pembagiannya ke saya, tapi sebenarnya rumah tinggal itu tidak dihitung warisan, tapi tanggung jawab, karena selain tidak boleh dijual, rumahnya justru menghasilkan pengeluaran biaya perawatan. Karena kalu di desa gini mau disewakan juga tidak akan laku"

Wich means: Then there is also a residence that is distributed to me, but actually the residence is not counted as an inheritance, but a responsibility, because apart from not being able to be sold, the house actually results in maintenance costs. Because if you want to rent it out in a village like this, it won't sell.

The details of the inheritance explained by Mr. Tarnudji are as follows, part of Mr. Tarnudji:

a. Temor land with an area of 991  $m^2$  with an estimated value of 20 million



Picture 05

Karang land with an area of 1,191 m<sup>2</sup> with an estimated value of 24 million



c. Lepor land with an area of 1,480 m<sup>2</sup> with an estimated value of 29.5 million



Bedi-bedi land with an area of 2,669 m<sup>2</sup> with an estimated value of 53 million



Picture 08

Mr Syaiful Adnan's part:

a. The first land with an area of 1,370  $\mathrm{m^2}$  was given to Nur (second child)

with an estimated value of 27.5 million



b. The second and third lands with an area of 2,314 m<sup>2</sup> were given to Yayuk and Indah (first and third children) with an estimated value of 46 million



The distribution of inheritance conveyed by Mr. Tarnudji was later confirmed by Indah, who is the second child of Mr. Syaiful Adnan. He also added regarding the division of inheritance among the substitute heirs:

"Dibagi 4 sejumlah anak pak syaiful. Karena hanya 3 bidang maka dek yati mendapatkan bagian dari tanah bapak yang pernah dibeli bapak semasa hidup"

Wich means: Divided into 4 children, Mr. Syaiful. Because there are only 3 plots, the one who will get part of the father's land that he bought during his life.

# C. Practice of Substitute Heirs for the Community of East Batubellah Perspective of Compilation of Islamic Law

The inheritance system used by the people of East Batubellah village, Dasuk District, Sumenep Regency is an Islamic inheritance system, namely faraidh, without any special customary provisions. If the heir still has children, then usually they will distribute the inheritance by gift, or distribute it before the testator's death, specifically for descendants below without any binding provisions in the form of a ratio of shares between son and daughter. However, if there is an heir who has not distributed his assets or does not have any heirs from below, then the settlement will be handed over to a religious figure or kiyai with faraidh provisions which of course means that the next family will get a share of the inheritance.

What are the views of community leaders regarding the inheritance rights of deceased heirs, according to community custom, it is said that of course grandchildren will replace the inheritance portion of their deceased parents, without any detailed provisions regarding the amount of the portion that the substitute heirs will receive. Then The following is the practice of substitute heirs by Mrs. Mahlawi's family, in the perspective of the Compilation of Islamic Law article 185 paragraphs 1 and 2.

Article 185 paragraph (1): Heirs who die before the testator can be replaced by their children, except for those mentioned in article 173<sup>41</sup>. Based on paragraph 1, as evidenced by the death certificates of Mrs. Mahlawi and Mr. Syaiful Adnan, it can be confirmed that Mr. Syaiful Adnan died before Mrs. Mahlawi. This is in accordance with the provisions which state that the heir who dies before the testator can be replaced by his child. Mr. Tarnudji's decision was correct, namely when he did not ignore the inheritance rights of his younger brother who had died before his mother with his statement that he continued to distribute the inheritance to the two of them, namely Mr. Tarnudji and his younger brother Syaiful Adnan, even though he was later replaced by his nephews by entrusting them to their mother because immaturity of the substitute heir.

As a result of the distribution of Mrs. Mahlawi's inheritance to Mr. Tarnudji and Mr. Syaiful Adnan, both of whom are sons and there are no other heirs, of course it should be based on the KHI rules which are based on Hazairin's opinion and based on the rules of the Civil Code. The amount of inheritance received by both parties must be equal, even though the KHI article only states, Article 185 paragraph (2): The share of the substitute heir

<sup>&</sup>lt;sup>41</sup> 'Kompilasi Hukum Islam Berdasarkan Instruksi Presiden Nomor 1 Tahun 1991'.

must not exceed the share of the heir who is equal to the one being replaced<sup>42</sup>.

As for the amount of Mrs. Mahlawi inheritance that Mr. Tarnudji received, with details of temor land (991 m<sup>2</sup>), karang land (1,191 m<sup>2</sup>), lepor land (1,480 m<sup>2</sup>), and bedi-bedi land (2,669 m<sup>2</sup>), if added up, the total land area obtained is 6,331 m<sup>2</sup>. Then the size of the inheritance received by the heir who replaced Mr. Syaiful Adnan with details of land covering an area of 1,370 m<sup>2</sup> and 2,314 m<sup>2</sup>, the total is 3,684 m<sup>2</sup>.

Ahli Waris	Peninggalan	Nilai	Total Nilai
	Temor Land (991 m <sup>2</sup> )	20 million	
Tarnudji	Karang Land (1.191 m <sup>2</sup> )	24 million	126,5
	Lepor Land (1.480 m <sup>2</sup> )	29,5 million	million
	Bedi-bedi Land (2.669 m <sup>2</sup> )	53 million	
Syaiful	First Land (1.370 m <sup>2</sup> )	27,5 million	72.5 million
Adnan	Second and Third Land (2.314 m <sup>2</sup> )	46 million	73,5 million

Table 07 Section of the Heirs of Mrs. Mahlawi

The provisions for the amount received by the substitute heir, based on article 185 paragraph 2, only state that it must not exceed the share of the heir who is equal to the one being replaced. In the sense that the inheritance share of Mr. Syaiful Adnan's children as substitute heirs cannot exceed Mr. Tarnudji's share as heirs who are equal to Mr. Syaiful Adnan.

<sup>&</sup>lt;sup>42</sup> 'Kompilasi Hukum Islam Berdasarkan Instruksi Presiden Nomor 1 Tahun 1991'.

The distribution of land inheritance, if seen from the provisions in article 185 paragraph 2, is certainly appropriate, that the substitute heir receives an amount that does not exceed the equal heir, namely Mr. Tarnudji. However, this division becomes odd when seen from the amount that Mr. Syaiful Adnan should have received when he was still alive. Because he has the same heir status as Mr. Tarnudji, namely as the son of Mrs. Mahlawi, of course the amount he receives should be the same as what Mr. Tarnudji receives based on Hazairin and the Civil Code. In practice, the land, which if all the inheritance is added up, results in an estimated value of 200 million and if divided equally, each receives 100 million, Mr. Tarnudji distributes the inheritance of Mr. Syaiful Adnan's substitute heirs far less than their rights, where the amount received is only worth 73.5 million or a percentage of 36.76% of the total inheritance.

Mr. Tarnudji explained the background to his decision, namely giving this smaller amount on the grounds that the care and expenses of his parents after the death of Mr. Syaiful Adnan were borne by Mr. Tarnudji alone, plus the inheritance in the form of a residence that Mr. Tarnudji received was actually not a profitable inheritance. On the contrary, it imposes a burden on maintenance costs because usually residential homes cannot be sold and must be maintained. Therefore, instead he took a larger amount of inheritance from Mrs. Mahlawi than Syaiful Adnan's portion. According to the textual rules of the compilation of Islamic law, Mr Tarnudji's division of inheritance does not violate Article 185 paragraph 2 and he also has reasons for justice in the amount that is not appropriate.

Researchers assess that the inheritance by Mrs. Mahlawi's family can be said to have implemented the concept of substitute heirs. It's just that in the distribution, the amount received by the substitute heir is far below the rights they should receive. According to researchers, if this is based on provisions in the compilation of Islamic law, it is certainly considered inappropriate or deviant.

The distribution of the amount of inheritance can be justified on the basis of Mr. Tarnudji's background in dividing the amount of inheritance, namely the principle of justice, in which Mr. Tarnudji, as the recipient of the burden of expenses before and after the death of Mrs. Mahlawi, feels entitled to get more share.

This can also be justified by two additional reasons, namely that Mr. Tarnudji, as the bearer of the responsibility for looking after his parents after the death of Mr. Syaiful Adnan, can be considered the most beneficial heir as stated at the end of the AnNisa letter, paragraph 11 with the sentence "Aqrobu lakum naf'aa " which means closest to the benefits. Then the second justification is the principle of distributive justice, which of course cannot be equated in terms of the justice received between Mr Tarnudji and the late Mr Syaiful Adnan. So it is appropriate that the difference of 53 million be handed over to Mr Tarnudji as the bearer of more responsibility. However, the reasons justified above cannot be the basis for justification from the KHI perspective, because they can be refuted by article 183 which confirms that heirs can agree to make peace in the distribution of inheritance, after each is aware of their share. Meanwhile, apart from the justification reasons above, Mr. Tarnudji forgot the main condition for agreement and peace in dividing inheritance, namely that each heir must be aware of his or her proper share.

As Mr. Tarnudji stated, in dividing the inheritance, he himself did not know the actual size of the share. Additionally, in his statement, he stated that the responsibility for distribution was handed over entirely to Mr. Tarnudji without any joint consultation with Mr. Syaiful Adnan's substitute heirs.

Thus the researchers concluded that the practice of substitute heirs in the community of East Batubellah Village, Dasuk District, Sumenep Regency in the perspective of KHI has been partially appropriate, namely the general rules that exist in the community have been in accordance and the same with the rules that exist in KHI, but in the practice of citizens independently, found discrepancies based on KHI perspective related to the amount of inheritance property.

### **CHAPTER V**

### CLOSING

### A. Conclusion

Several things can be concluded from the research that has been carried out with two problem formulations as follows:

- 1. The people of East Batubellah Village have a habit of giving part of the heirs who have died to the descendants down to the amount that their parents should have received. As for the practice of substitute heirs, it also occurs in the inheritance of Mrs. Mahlawi, where part of the inheritance of her son who died before Mrs. Mahlawi (Mr. Syaiful Adnan) is received by the four grandchildren as substitute heirs with the amount of inheritance that is far below the amount of inheritance received by the surviving child (Mr. Tarnudji), which is only worth 73.5 million or a percentage of 36.76% of the total inheritance, with reasons based on distributive justice where the surviving heirs bear the burden of financing parents during life and maintaining the house.
- 2. The practice of substitute heirs in the community of East Batubellah Village, Dasuk District, Sumenep Regency in the perspective of KHI has been partially appropriate, namely the general rules that exist in the community have been in accordance and the same with the rules that exist in KHI, but in the practice of citizens independently, found discrepancies based on KHI perspective related to the amount of inheritance property.

### **B.** Suggestion

Based on the results of research that has been carried out and discussed by the author in the previous chapters, there are several suggestions from the author relating to the research carried out, among these suggestions are:

- To the people of East Batubellah Village to stick to the practice of faraidh inheritance and the practice of substitute heirs as it has been running in the community, because according to researchers, the general rules in the village are in accordance with what is stated in KHI. As well as continuing to make religious leaders a place to ask questions related to religious issues, especially in the field of inheritance.
- 2. To the researchers, that in this study there are limitations, namely the lack of cases found as the object of research, it is hoped that in further research to be able to find and collect more cases related to substitute heirs so that the results of the study obtained become more absolute.

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### **APPENDIXES**

### Interview Guide

Researchers used semi-structured interview techniques when conducting interviews. Interviews that use a series of open-ended questions are called semistructured interviews. To explore more detailed information during the session, this method allows new questions to be raised based on the resource person's answers.

Table 08 List of Interview Questions	Table	08 List	of Inte	erview	Questions
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No	Variable	<b>Interview Questions</b>	Informant
1.	Practices of Substitute Heirs for the Community of East Batubellah Village, Dasuk District, Sumenep Regency, Compilation Perspective of Islamic Law	<ol> <li>What are the habits of the people of Batubellah Village in distributing inheritance? (Islam/Tradition) (Inheritance/Grant)</li> <li>What is the concept of community inheritance in Batubellah Village (person responsible for inheritance, heirs, part of the inheritance, authority to judge)?</li> <li>What are the procedures for resolving inheritance issues using customary law? (The process starting from the death of the testator until the distribution of inheritance)</li> <li>What happens to the children of deceased heirs? Do you get an inheritance share?</li> </ol>	Public, religious figures, traditional figures.
		<ol> <li>What do you know about Islamic heritage?</li> <li>Do you know about the rules for substitute heirs in the compilation of Islamic law?</li> <li>Who has the authority to be involved in the inheritance distribution process?</li> </ol>	Residents concerned with the case

4	What principles are used in	
	dividing inherited assets?	
5	Who is declared entitled to be an	
	heir?	
6	What inheritance assets are left	
	behind and how much inheritance	
	does each heir receive?	
7	Are there any disputes that occur	
	during the process of dividing	
	inheritance?	

Table 09 List of Interview Result

## Village Data (Disdukcapil)

Prop_No	35
District_No	29
No_District	14
Ex_No	2,004
Spatial_Village_Code	3,529,142,004.00
Prop_Name	East Java
District_Name	Regency. Sumenep
Name_District	Dasuk
Name_Ex	East Batubellah
Total population	1,539
Number of families	561
Area (km2)	2.33
Population density	661.60
Migration	1
Number of Deaths	1,539
Data change	1,184
Required Number of KTPs	1,186
Number of Mandatory KTP Records	1,134

# Religion

Islam	1,539
Christian	0
Catholic	0
Hindu	0
Buddha	0
Confucian	0
Belief in God Almighty	0

## Gender

Man	751
Woman	788

### Marital status

Single	522
Marry	837
Divorced	31
Death divorce	149

# Age Group

Age 0-4 years	103
Age 5-9 yrs	99
Age 10-14 yrs	108
Age 15-19 yrs	100
Age 20-24 yrs	100
Age 25-29 yrs	101
Age 30-34 yrs	107
Age 395-39 years	101
Age 40-44 yrs	108
Age 45-49 yrs	92
Age 50-54 years	103
Age 55-59 years	100
Age 60-64 years	108
Age 65-69 years	84
Age 70-74 years	49
Age 75 years and over	76

# Population growth

Population growth in 2018 (%)	1
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Population growth in 2019 (%)	2
Population growth in 2020 (%)	2
Population growth in 2021 (%)	2
Population growth in 2022 (%)	1

## School Age

School age 5-6 years	35
School age 7-12 years	131
School age 13-15 years	64
School age 16-18 years	59

### Education

No/Not yet at school	328
Not finished elementary school yet	449
Finished elementary school	416
junior high school	173
high school	149
D1 and D2	7
D3	4
S1	12
S2	1
\$3	0

## Work

Retired	3
Taking care of household	280
Not Yet/Not Working	271
Other	-
Trading	16
Nurse	1
Fisherman	2
Student/Students	228
Teacher	1
Self-employed	174
Lawyer	0



### KEMENTERIAN AGAMA REPUBLIK INDONESIA UNIVERSITAS ISLAM NEGERI MAULANA MALIK IBRAHIM MALANG FAKULTAS SYARIAH

Jl. Gajayana 50 Malang 65144 Telepon (0341) 559399 Faksimili (0341) 559399 Website Fakultas: <u>http://syariah.uin-malang.ac.id</u> atau Website Program Studi: <u>http://hk.uin-malang.ac.id</u>

### CONSULTATION PROOF

Name Student Number Department Supervisor Thesis Title : Arini Nur Fatimah : 19210178 : Islamic Family Law : Dr. Zaenul Mahmudi, M.A.

Dr. Zaenul Manmudi,

: Practice of Substitute Heirs on KHI Perspective (Case Study at East Batubellah Village, Dasuk District, Sumenep Regency)

No	Hari/Tanggal	Materi Konsultasi	Paraf
1	Monday, 26/09/2022	Title and Background Consultation	1.
2	Thusday, 20/10/2022	Consultation CHAPTER I	1
3	Wednesday, 16/11/2022	Consultation CHAPTER II and III	1.
4	Friday, 18/11/2022	Proposal Consultation	1
5	Thusday, 09/022023	ACC Proposal Seminar	1
6	Friday, 24/02/2023	Proposal Revision	1
7	Friday, 10/03/2023	Changes in Research Types	7
8	Friday, 08/09/2023	Research Object Consultation	7
9	Friday, 22/09/2023	Revision of Research Objects	1
10	Friday, 29/09/2023	Pre-Research Consultation	1
11	Tuesday, 03/10/2023	Secondary Data Consultation	4
12	Tuesday, 31/10/2023	Consultation CHAPTER IV	4
13	Tuesday, 7/11/2023	Abstrack Revision	1.
14	Friday, 10/11/2023	Revision of CHAPTER 5	1.
15	Tuesday, 13/11/2023	ACC Thesis Seminar	1-

Malang, *IL* November 2023 Acknowledged by:. Head Department of Islamic Family Law

Erik Sabti Rahmawati, M.A., M.Ag. NIP. 197511082009012003

## **CURRICULUM VITAE**



Name	: Arini Nur Fatimah
SIN	: 19210178
Address	: Persada Bhayangkara L19 Singosari District, Malang
	Regency
PDB	: Malang, 28 December 2000
Mobile Number	: 085230594704
Email	: <u>a.arininur@gmail.com</u>

# **History of Education**

1.	Bani Hasyim Kindergarten	: 2005-2007
2.	Bani Hasyim Elementary School	: 2007-2013
3.	Ar-Rohmah Junior High School for Girls	: 2013-2016
4.	Al-Firqoh An-Najiyah High School	: 2016-2019
5.	Maulana Malik Ibrahim State Islamic University Malang	: 2019-2023