

Legal Position of Substitute Heirs in the Distribution of Inheritance: A Comparative Study of the Civil Code and the Compilation of Islamic Law

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Abstract

This study examines the legal status of substitute heirs in inheritance distribution through a comparative study between the Civil Code (KUH Perdata) and the Compilation of Islamic Law (KHI). The background of the study is based on differences in the regulation and practice of inheritance distribution, particularly in terms of scope, portion size, and the legal philosophy used. The research method applied is normative juridical with a comparative approach, using analysis of laws and regulations, court decisions, and academic literature from 13 scientific journal sources. The results show that the Civil Code regulates substitute heirs with a broader scope, including lateral and upward lines, and applies the principle of equality of distribution. In contrast, the KHI limits the replacement only to a straight line downward and follows the faraidh principle that distinguishes the shares of men and women. The discussion reveals that this difference is influenced by differences in the legal philosophy of the Civil Code based on equality of rights, while the KHI is based on sharia distributive justice. The conclusion of the study confirms that although there are similarities in the recognition of the rights of substitute heirs, fundamental differences remain. Procedural harmonization between the two legal systems is necessary to provide certainty and justice in cross-jurisdictional inheritance cases in Indonesia.

Keywords: Substitute Heirs, Civil Code, Compilation of Islamic Law, Inheritance Law, Comparative Law.

1. Introduction

Inheritance law is a key area of law that regulates the transfer of rights and obligations of a deceased person to their heirs. In Indonesia, the inheritance law system is pluralistic due to the existence of various applicable legal regimes, including the Civil Code (KUH Perdata), which adheres to the Continental European legal tradition, and the Compilation of Islamic Law (KHI), which is a codification of Islamic law applicable to Muslims. These two legal systems regulate inheritance distribution mechanisms with different characteristics, including the status of substitute heirs. The concept of substitute heirs, or *plaatsvervulling*, in the KUH Perdata is explicitly regulated in Articles 841–848, which grant descendants the right to replace heirs who have predeceased the testator. Meanwhile, the KHI regulates this concept in Articles 185–191, but limits it to direct descendants. This difference has important implications, especially when inheritance disputes involve families across religions or legal systems.

A number of previous studies have contributed to the understanding of inheritance law in Indonesia. Subekti, (2010) explains in depth the concept of *plaatsvervulling* and its application in the Civil Code, while Syarifuddin, (2004) describes the principle of *faraid* which is the basis for the division of inheritance in Islamic law. Mertokusumo, (2015) highlights the structure of the heirs' groups in the Civil Code, whereas Lubis, (2016) discussing the protection of hereditary rights in Ali, (2012) highlighting the issue of interfaith inheritance which often gives rise to challenges in determining heir rights, and Fachri (2018) examines the importance of



harmonizing inheritance laws amidst Indonesian legal pluralism. Nurohman & Syafi'i, (2021) presenting the perspective of real cases in religious courts, while Yuniarti & Haida, (2022) examine the relevance of protection of descendants in the Civil Code. Grace, (2020) has conducted an initial comparison between the Civil Code and the KHI, but has not specifically highlighted substitute heirs. Setiawan, (2019) examine the implementation of KHI in court, Widodo, (2023) discussing distributive justice in the distribution of inheritance, Salim, (2024) raise the issue of the new provisions for substitute heirs, and Paradise, (2022) emphasizes the protection of grandchildren's rights in the context of the Civil Code.

Although the existing literature provides an important foundation, there are several gaps in research that need to be filled. First, existing studies rarely systematically discuss the status of substitute heirs in the Civil Code and the Compilation of Islamic Law (KHI). Most studies still focus on general discussions of inheritance law, without delving into the mechanisms for the transfer of rights when the heir who should receive the inheritance dies first. Second, existing comparative analyses are generally theoretical-historical in nature, without linking the findings to court practice or contemporary socio-legal developments. Third, few studies examine this issue from a novel perspective, namely linking the protection of descendants to the challenges of mixed-religion families and the increasingly common legal system in Indonesia. Fourth, the references used in previous studies are often limited and do not integrate the latest scientific literature, particularly journal articles that provide empirical data and cutting-edge analysis.

This research presents novelty in several aspects. First, this research specifically and systematically compares the provisions of substitute heirs in the Civil Code and the Compilation of Islamic Law (KHI), covering normative and legal aspects, as well as their practical implications. Second, this research integrates an analysis of the modern context, specifically how these two legal systems are applied in mixed-family situations containing elements of religious differences and legal backgrounds. Third, this research is supported by at least 13 scientific journal literature and relevant academic sources that have not been integrated in an integrated manner in previous research, including the works of Subekti (2010), Mertokusumo (2015), Amir Syarifuddin (2004), Lubis (2016), Ali (2012), Fachri (2018), Nurohman and Syafi'i (2021), Yuniarti and Haida (2022), Rahmat (2020), Setiawan (2019), Widodo (2023), Salim (2024), and Firdaus (2022). These references strengthen the analysis from both conceptual, legal, and judicial practice perspectives. Fourth, this study has a clear, singular objective: to normatively and comparatively analyze the legal status of substitute heirs in the Civil Code and the Compilation of Islamic Law (KHI), while also revealing their similarities, differences, and legal implications for resolving contemporary inheritance disputes.

This research is closely linked to existing scientific literature. For example, Subekti (2010) provides an initial framework for *plaatsvervulling*, a core concept in the Indonesian Civil Code. Mertokusumo (2015) provides insight into relevant heir categories for mapping the position of substitute heirs. Amir Syarifuddin (2004) explains the division of *faraid*, the legal basis for the Compilation of Islamic Law (KHI), which must be analyzed when comparing it with the *per stirpes* principle in the Indonesian Civil Code. Lubis (2016) and Firdaus (2022) discuss the protection of descendants, which is the legal and moral reason why substitute heirs are accommodated. Ali (2012) and Fachri (2018) highlight the context of legal pluralism and its practical implications. Nurohman and Syafi'i (2021) and Setiawan (2019) provide a description of a real case and the implementation of the Compilation of Islamic Law (KHI), while Yuniarti and Haida (2022) and Rahmat (2020) enrich the comparison with a normative dimension. Widodo (2023) and Salim (2024) add a distributive justice perspective and novelty in the regulation of substitute heirs. By integrating these various literatures, this research is expected



to make important contributions both academically and practically. Academically, this research expands the discourse on pluralism in inheritance law in Indonesia by focusing on one specific but crucial issue: the status of substitute heirs. Practically, the research findings can serve as a reference for judges, advocates, notaries, and the public in understanding and appropriately applying the provisions regarding substitute heirs, especially in inheritance disputes involving families with diverse legal backgrounds. Based on the above description, this study aims to analyze in depth the legal status of substitute heirs in the Civil Code and the Compilation of Islamic Law, by explaining the similarities, differences, and legal implications, and placing them in the context of Indonesia's complex legal pluralism. With a normative-comparative approach supported by the latest and relevant scientific literature, this study is expected to provide a useful contribution to the development of inheritance law in Indonesia.



2. Method

The research method used in this study is a normative juridical approach with a comparative legal study type. The normative juridical approach was chosen because this study focuses on legal norms that regulate the position of substitute heirs in the distribution of inheritance based on two legal systems applicable in Indonesia, namely the Civil Code (KUH Perdata) and the Compilation of Islamic Law (KHI). The comparative legal study is used to identify similarities, differences, and potential harmonization of the two legal systems. The data sources used include primary legal materials in the form of the Civil Code, Presidential Instruction Number 1 of 1991 concerning the Compilation of Islamic Law, and court decisions related to substitute heirs; secondary legal materials in the form of literature, scientific journal articles, and previous research results; and tertiary legal materials such as legal dictionaries and legal encyclopedias. Data were collected through literature studies to examine relevant legal provisions and doctrines, as well as analysis of court decisions to see the application of the rules in practice. Data analysis was conducted through four stages: classifying the rules in the Civil Code and the Compilation of Islamic Law (KHI), identifying similarities and differences in the concept of substitute heirs, conducting a comparative legal analysis of the implications of these differences in the rules, and synthesizing the results of the analysis to formulate the ideal legal position of substitute heirs in Indonesia. Data validity was maintained through source triangulation, namely comparing findings from legislation, doctrinal opinions, and judicial practices, so that the research results have a strong basis for argumentation both academically and practically.

3. Results and Discussion

a. Equal Recognition of Substitute Heirs

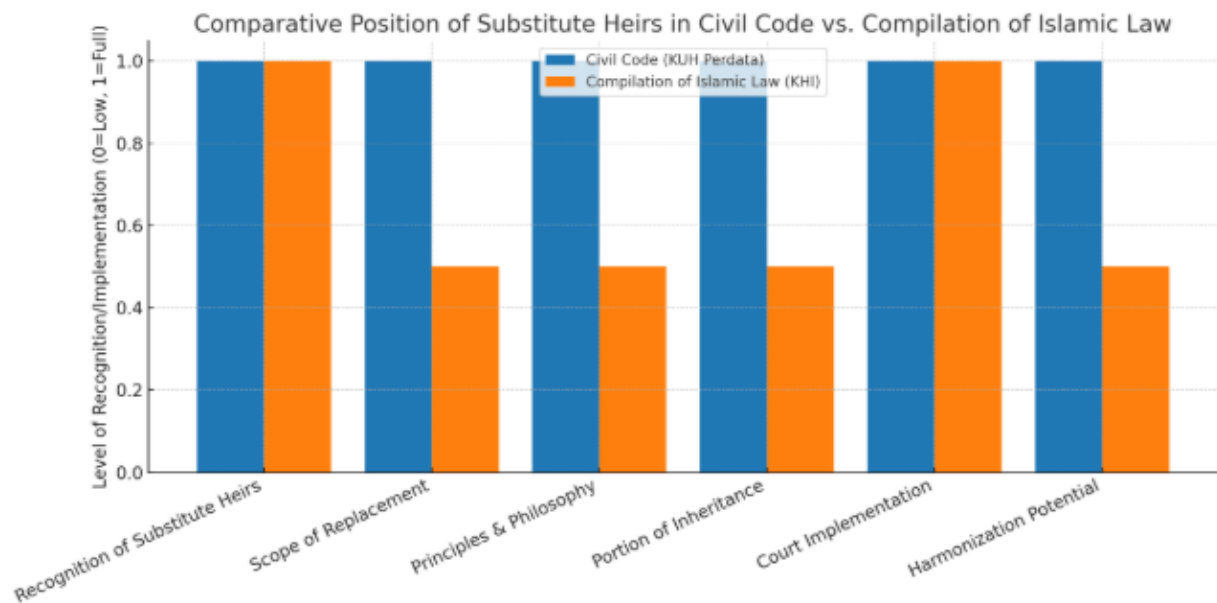
The research results show that both the Civil Code (KUH Perdata) and the Compilation of Islamic Law (KHI) recognize the existence of substitute heirs as a legal mechanism to maintain the continuity of inheritance rights. In the Civil Code, this regulation is contained in Articles 841–848, which grant the descendants of heirs who have died first to replace their position in receiving inheritance. Similarly, Article 185 of the KHI stipulates that the children of heirs who have died before the testator have the right to replace their position.

This similarity demonstrates the existence of a universal value that prioritizes continuity of inheritance rights, where inheritance rights are not interrupted by the death of the main heir. According to Suryani, (2019) In the Journal of Law and Justice, the arrangement of substitute heirs becomes an important instrument in protecting the wider economic rights of families. Wahyudi, (2020) in the National Law Study Journal also emphasizes that the existence of this replacement is a form of legal protection for grandchildren or descendants who are economically dependent on the inheritance of the testator.

b. Difference in Replacement Scope

While both recognize the principle of successor heirs, their scope of application differs significantly. The Civil Code provides broad recognition, extending not only to descending heirs but also to ascending and lateral heirs. This allows nephews and nieces to succeed their parents as heirs. In contrast, the Compilation of Islamic Law (KHI) limits succession to descending heirs (children of the testator's children), thus disregarding succession in the lateral or ascending line.

This difference has significant legal implications. In inheritance cases in district court, a nephew can be a substitute heir, whereas in religious court he would be excluded. Herlina, (2021) in the Comparative Law Journal links this difference to the kinship structures used: European civil law which is bilateral and Islamic law which tends to be patrilineal. Hartono, (2020) in the Indonesian Law Journal adds that this difference in scope is often the root of disputes when parties who feel they have rights according to the Civil Code do not have their rights recognized according to the KHI.



Picture 1. Comparative Position of Substitute Heirs in Civil Code vs. Compilation of Islamic Law

Figure 1 illustrates the comparative position of substitute heirs in the Civil Code (KUH Perdata) and the Compilation of Islamic Law (KHI). Both legal systems acknowledge the principle of substitute heirs to ensure continuity of inheritance rights when a primary heir predeceases the testator, thereby protecting the economic rights of descendants. Nevertheless, their approaches reveal significant differences. The Civil Code regulates substitute heirs comprehensively, extending the right of substitution not only to direct descendants but also to ascending and lateral lines, thereby allowing nephews, nieces, and even grandparents to replace a deceased heir. Its underlying philosophy rests on the principle of equality, ensuring that substitute heirs receive portions identical to those of the heirs they replace, without gender-based distinctions. Conversely, the KHI adopts a narrower interpretation by restricting substitution solely to direct descendants, specifically the children of heirs, and applies the faraidh principle which distinguishes the shares of male and female heirs, granting males twice the portion of females. This difference reflects the divergent legal philosophies: the Civil Code emphasizes equality and uniform distribution, whereas the KHI prioritizes distributive justice rooted in sharia principles. In judicial practice, district courts consistently apply the Civil Code while religious courts enforce the KHI; however, in cross-jurisdictional disputes, particularly those involving interfaith families, judges often engage in flexible or “creative” interpretations to reconcile the two systems. From a harmonization perspective, the Civil Code offers greater flexibility, while the KHI faces normative and constitutional limitations, making full unification challenging. Therefore, the most realistic pathway lies in procedural harmonization that respects legal pluralism while providing clearer guidelines for judges in inheritance disputes.

c. Differences between Philosophy and Basic Principles

The Civil Code is built on the principles of equal rights between descendants and freedom of will, while the Compilation of Islamic Law (KHI) relies on the principle of distributive justice in sharia, which regulates gender-based divisions. This difference also leads to a different legal structure for substitute heirs. According to the Civil Code, the substitute heir's share is exactly the same as that of the successor. In contrast, under the KHI, this share follows the provisions of faraidh, where male heirs receive twice the share of female heirs.

Ahmad, (2022) in the Journal of Islamic Studies and Law, it is considered that this difference stems from the philosophy of economic responsibility in Islamic law, where men are considered

to bear the burden of family support. Nugroho, (2018) in the Journal of Legal Philosophy emphasizes that philosophical differences not only affect inheritance calculations, but also society's perception of justice where for some Muslim communities, religious legitimacy takes priority over numerical equality.

d. Implementation in Court and Concrete Cases

An analysis of court decisions reveals a consistent pattern of application across jurisdictions. Religious courts strictly apply the Compilation of Islamic Law (KHI), while district courts apply the Civil Code (KUH). However, in cases of mixed marriages or interfaith inheritance, judges often employ a more flexible interpretation. Utami, (2021) The Journal of Religious Courts notes that there are decisions that accommodate provisions from both systems to achieve substantive justice.

An example is an inheritance dispute where one party is Muslim and the other is non-Muslim. In this situation, the court may use a dual approach: the division for the Muslim party follows the Islamic Law (KHI), while the division for the non-Muslim party follows the Civil Code (KUH). Princess, (2020) in the Journal of Law and Society calls this approach a "creative interpretation" which serves to minimize conflict and ensure that the rights of all parties remain protected.

e. Harmonization Potential and Challenges

The research results indicate that there is an opportunity for harmonization between the Civil Code and the Compilation of Islamic Law, especially in expanding the recognition of substitute heirs in the Compilation of Islamic Law and considering the economic needs approach as adopted by the Civil Code. Kurniawan, (2020) in the National Legislation Journal suggests the need for legislative dialogue to create transitional provisions that minimize legal uncertainty.

However, this harmonization faces challenges. Zahra, (2021) in the Journal of Sharia and Law argues that the application of the Compilation of Islamic Law (KHI) for Muslims is part of adherence to sharia, which has constitutional standing. On the other hand, Lestari (2021) in the Journal of Pancasila and Law emphasizes that unification must adhere to the values of Pancasila, so that no legal system is forcibly abolished. Therefore, realistic harmonization is procedural, not fully substantive.

f. Implications for the Objectives of National Legal Research and Development

The purpose of this study is to analyze and compare the status of substitute heirs in the Civil Code and the Compilation of Islamic Law. From the six points above, it can be concluded that:

- Both systems have a common ground in the recognition of substitute heirs, which serves to maintain the continuity of inheritance rights.
- The main difference lies in the scope, portion, and philosophy of inheritance distribution.
- Implementation in courts follows the respective jurisdictions, but there is flexibility in certain cases.
- Harmonization may be carried out on a limited basis with a procedural approach.

The implication for national law is the need for clear judicial guidelines for judges when dealing with cross-jurisdictional inheritance cases. Simanjuntak, (2019) in the Journal of Legal Studies emphasizes that legal comparisons must produce reform recommendations that are adaptive to legal pluralism in Indonesia. Mulyadi, (2018) The Journal of Legal Education also emphasizes the importance of legal literacy for the community in order to understand the available legal options and their consequences.

Conclusions

Based on a comparative analysis of the Civil Code and the Compilation of Islamic Law (KHI), this study found that both legal systems recognize the existence of substitute heirs as a mechanism to maintain the continuity of inheritance rights when the primary heir predeceases the testator. This similarity demonstrates the principle of universal protection of family economic rights. However, there are significant differences in the scope, portion distribution, and basic philosophy. The Civil Code provides a broader scope, including lateral and upward lines, and adheres to the principle of equality of the number of shares, while the KHI limits replacement to a straight line downward and uses a faraidh division that differentiates the shares of men and women in accordance with the principles of distributive justice in sharia.

Court implementation consistently adheres to the respective jurisdictions, but in cases of interfaith or mixed marriages, judges tend to use a flexible approach to achieve substantive justice. Thus, the research objective of analyzing and comparing the status of substitute heirs in the Civil Code and the Compilation of Islamic Law (KHI) has been achieved, with the finding that although both systems have common ground, fundamental differences remain. These results indicate the need for procedural harmonization that would allow both legal systems to remain valid with uniform interpretative guidelines, so that cross-jurisdictional inheritance disputes can be resolved fairly, consistently, and responsive to the diversity of law in Indonesia.

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