

## The Essence of the Legal Position of the Successor According to Islamic Law and the Civil Code Based on the Decision of the Religious Court and the District Court in South Sulawesi

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### Abstract

*The essence of the legal status of successors in Islamic Law and the Civil Code shows significant differences in inheritance arrangements. In Islamic Law, a successor heir (al-mawaris al-badal) is the party who replaces the position of the heir who dies before the heir, with the same inheritance rights as he replaced. This aims to ensure a fair distribution of inheritance in accordance with the principle of distributive justice. On the other hand, the Civil Code recognizes successors with a more flexible approach, where the inheritance rights can be adjusted through a will. These differences affect the way inheritance is divided and disputes are resolved, especially in the context of Indonesia, which has a variety of legal systems. This study aims to explore the differences in the legal status of successors in the two systems, as well as their implications for inheritance practices and inheritance dispute resolution in Indonesia. Islamic law and the Civil Code have fundamental differences in the position of successor heirs. Islamic law stipulates that a successor heir replaces the position of the heir who dies before the heir with equal rights, based on the principle of distributive justice. Meanwhile, the Civil Code offers greater flexibility, allowing adjustments to inheritance rights through wills. These differences affect inheritance and dispute resolution practices in Indonesia, so it is important to find solutions that can harmonize the two legal systems to achieve justice and legal certainty.*

**Keywords:** *Heirs in Lieu of Islamic Law of the Criminal Code Civil Inheritance of Distributive Justice.*

### INTRODUCTION

Inheritance is a fundamental element in law that regulates the transfer of rights and obligations from heirs to their heirs. In Indonesia, the inheritance law system is pluralistic, including the Customary Inheritance Law, Islamic Inheritance Law, and the Civil Code. This diversity reflects the rich culture and legal traditions of Indonesia, but it also creates complexity in the application and enforcement of inheritance law. In Islamic Law, inheritance is regulated in detail in the Qur'an and Hadith. The concept of a successor heir (al-mawaris al-badal) is recognized, namely an individual who replaces the position of an heir who dies before the heir with equal rights. This is based on the principle of distributive justice reflected in surah Al-Baqarah (2:180) and Al-Nisa' (4:11-12), which regulates the fair distribution of wealth. Successors play an important role in ensuring that inheritance rights are maintained and do not just revolve among the surviving heirs. On the other hand, the Civil Code, which is an inheritance of Netherlands law, also regulates inheritance with a more flexible approach.

In the Civil Code, the successor is regulated in Article 832 and Article 832a, which allows the adjustment of inheritance rights through a will made by the heir. Article 832 provides that if an heir dies before the heir, then the children of the heir are entitled to take their parents' place in the inheritance. This approach provides flexibility but can create legal uncertainty. These differences are made more complex in Indonesia's diverse society, such as in South Sulawesi, where the practice of inheritance often involves considerations between customary law, Islamic law, and the Civil Code. The incompatibility between these three systems often leads to inheritance disputes and legal uncertainty, especially when it involves a surrogate heir. Therefore, it is important to understand the differences and similarities between Islamic Law and the Civil Code regarding the legal status

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of successors. This study aims to analyze the legal position of surrogate heirs in the two legal systems and find solutions to harmonize the application of inheritance law in Indonesia. Thus, it is hoped that better justice and legal certainty can be achieved for the community.

Islamic Inheritance Law is formulated as a set of legal provisions that govern the distribution of wealth owned by a person at the time of his death. The Civil Code inheritance law is basically a collection of regulations that regulate the law regarding wealth due to the death of a person, namely regarding the transfer of wealth left by the deceased and the consequences of this transfer for the people who acquire it, both in the legal relationship between them and them, as well as in the relationship between them and a third party. The inheritance system according to the Civil Code follows the nuclear family system with the division of property individually. The subjects of inheritance regulated in civil law can be seen in Article 1066 of the Civil Code, the matters that are determined are:

No person who has a share in the inheritance is obliged to receive the inheritance in an indivisible condition.

The separation of the property can be demanded at any time, even if there is a prohibition on doing so.

However, there can be an agreement not to do separation for a certain period of time.

The agreement can be binding for five years, but after the grace period has passed, it can be renewed.

Based on the above, that legal provisions that prioritize the interests of individuals over inheritance often cause conflicts between heirs, especially in the successor heirs regarding the distribution of heirs' inheritance.

In essence, all heritage assets, both assets and assets, pass on to their heirs. In fact, the field of inheritance has undergone significant development, due to the increasingly complex needs of the community and the mindset can change according to the times. Among them is Islamic inheritance law which has developed with the existence of a successor heir, whose application in Indonesia is regulated by the Compilation of Islamic Law (KHI). In the Civil Code, it is strictly regulated about the succession of heirs (plaatsvervulling), in the Qur'an the term successor heirs is not known but their position as heirs can be known through the expansion of the meaning of direct heirs explained in the Qur'an. As to the extent of their position as heirs in relation to the direct heirs they replace, both in terms of the share they receive and in terms of the strength of their position, there is no definite indication in the Qur'an or the Hadith that is strong. In this case, Allah leaves it up to man to determine the law.

Basically, the issue of inheritance is always synonymous with the transfer of ownership of an object, the rights and responsibilities of the heirs to their heirs. In Islamic inheritance law, the receipt of inheritance is based on the principle of *ijbari*, namely inheritance transfers by itself according to the decree of Allah SWT without being dependent on the will of the heirs or heirs. This understanding will be fulfilled if the conditions and pillars of inheritance have been fulfilled and are not prevented from inheriting. In the distribution of inheritance, there are three main conditions that have been agreed upon by the ulama, the three conditions are:

The death of a person (heir) is both legally (for example, considered dead) and self-devotional.

There are heirs who are essentially alive at the time of the heir's death.

All heirs are known for sure their respective shares. In addition to the above conditions, the pillars of inheritance must also be fulfilled at the time of distribution of inheritance. According to Fatchur Rahman, the pillars of inheritance in Islamic inheritance law are known to have three, namely:

Mawaris is a person who inherits his inheritance or a person who bequeaths his property. The condition is that the mawaris must have really died, either literally dead or legally dead, that is, a death declared by the judge's decision on the basis of several reasons, even though he is actually not dead.

Heirs (heirs) are people who are declared to have a kinship relationship, either blood relations (*nasab*), causal relations or marital relationships, or because of the liberation of *sahaya* servants. The condition is that at the time of death of the heir, the heir is really alive. Included in this case is a baby who is still in the womb (*al-*

haml), there are also other conditions that must be met, namely between inheritance and heirs there is no obstacle to mutual inheritance.

Maurus or al-Miras, which is the property left by the deceased after deducting the cost of caring for the body, paying off debts and executing the will.

Substitute heirs in Islamic inheritance law to complement existing laws and also aim to seek a sense of justice for the successor heirs are basically heirs because of succession, namely people who become heirs because their parents who are entitled to inheritance die first from the heirs, so that he appears to replace him. So the share of the substitute heirs is as large as the share of the heirs he replaces, for that reason the replacement heirs need to be developed in Islamic inheritance law. Moreover, this will not harm other heirs.

## **METHOD**

This study uses a descriptive analytical approach to explore cases regarding surrogate heirs in religious court and district court decisions. This study will provide a detailed description of how cases of surrogate heirs are decided in court, as well as analyze the implementation of various rules related to surrogate heirs in the context of religious courts and district courts. This approach aims to obtain comprehensive data and information on the practice and application of the law of succession. In this study, a combination of normative legal research and empirical legal research is used. Normative law research is carried out by approaching legal norms or substance, legal principles, legal theories, as well as legal postulates and legal comparisons. This approach includes a review of library materials and secondary data related to the successor heirs, including a review of relevant laws and regulations.

## **RESULT AND DISCUSSION**

The Essence of Successor Heirs in the Islamic Inheritance Law System and the Civil Code

Wirjono Prodjodikoro, who served as Chief Justice of the Supreme Court from 1952 to 1966, interpreted inheritance law in Indonesia as the process of transferring the rights and obligations of a deceased person's wealth to a living person. In the framework of the analysis of the legal system of surrogate heirs, this study refers to the essence of surrogate heirs which includes aspects of legal certainty, equality of rights to inheritance distribution, and values of justice. To achieve this goal, it is explained how inheritance law in Indonesia, both in the Islamic legal system and the Civil Code in South Sulawesi Province, regulates the replacement of heirs. According to Lawrence M. Friedman, the legal system consists of a legal structure, legal substance, and legal culture, which must run effectively and harmoniously to achieve legal goals. The legal structure includes the creation, dissemination, enforcement, and administration of the law, while the substance of the law includes the legal products produced, and the legal culture reflects the attitude of the community towards the law. In the Civil Code, heirs can be categorized as heirs of *ab intestato* or testamentary, with a succession of places that follow the principle of lineage. On the other hand, in Islamic law, the successor heirs, which are regulated in the Compilation of Islamic Law (KHI), replace the position of the deceased heirs with the provision that their share of the inheritance shall not exceed that of the heirs of the same kind. Hazairin interprets that the term successor comes from customary law and is applied in the context of bilateral inheritance in Indonesia. Thus, the realization of legal certainty in the Islamic inheritance system and the Civil Code seeks to achieve justice and equality for all parties with rights.

In the inheritance law system, both in the Civil Code and Islamic law, the principles of heir succession play a crucial role in ensuring a fair distribution of inheritance and in accordance with applicable law. In the Civil Code, the replacement of places is regulated in detail through three types: substitutions in the downward line, side lines, and side lines. This succession allowed the descendants of deceased heirs to take their place, provided that a closer blood family would close the more distant line. For example, if an heir of the first group (child) dies before the heir, the children of that heir can take the place of their parents. On the other hand, in Islamic law, the concept of successors, as stipulated in the Compilation of Islamic Law (KHI) and interpreted by scholars such as Hazairin, emphasizes that successors are those who from the beginning do not belong to the class of heirs but have the right to inherit due to kinship with heirs who have died first. Article 185 of the KHI states that if an heir dies before the heir, the children of the heir may take their place, provided that the share

received by the successor heir shall not exceed the share of the heir equivalent to that of the successor. In practice, inheritance law in Indonesia tries to integrate these two systems to create a balance between the principles of customary law, civil law, and Islamic law. This is done to meet the needs of diverse communities by considering legal certainty, justice, and equality in the distribution of inheritance. The importance of understanding these rules and principles not only ensures the fair application of the law but also assists communities in planning and organizing their inheritance effectively. By understanding and applying the provisions of the applicable inheritance law, it is hoped that conflicts in the distribution of inheritance can be minimized, and the rights of heirs can be fulfilled in accordance with the applicable provisions both in the Civil Code and in Islamic law.

In the inheritance law system in Indonesia, both in the context of the Civil Code and Islamic law, the regulation of successors plays an important role in ensuring a fair and lawful distribution of inheritance. The Civil Code stipulates that if an heir dies first, his position can be replaced by his descendants with the principle that a closer group in kinship replaces the position of a more distant group. In Islamic law, the Compilation of Islamic Law (KHI) and the interpretation of scholars such as Hazairin stipulate that a successor heir can take the place of the deceased heir, provided that the share received does not exceed the share of the original heir. Challenges in the implementation of inheritance law include a lack of community compliance, the complexity of integration between legal systems, and cultural diversity. To address these challenges, it is important for relevant parties to provide adequate education and continue to improve regulations to suit the needs of society and the principles of justice.

The implementation of the inheritance law system, both in the Civil Code and Islamic law, faces significant challenges in practice, including differences in public understanding and compliance with applicable regulations. In the context of the Civil Code, the regulation regarding the replacement of heirs ensures that the descendants of the deceased heirs can replace their positions, provided that the inheritance share is adjusted based on kinship proximity. On the other hand, Islamic law through the Compilation of Islamic Law (KHI) and the interpretation of scholars stipulates that the successor heirs, such as the grandchildren of the deceased children, can take the place of their deceased parents, provided that the share of the inheritance received does not exceed the share of the heirs who are replaced. Challenges that arise include public misunderstanding of legal provisions, the complexity of integration between civil law and Islamic law, and cultural differences that affect the implementation of inheritance law. To address this issue, it is imperative for legal institutions and practitioners to increase legal education to the public and ensure that inheritance regulations continue to be adjusted in order to meet the needs of the community fairly and effectively. With a better understanding and more consistent implementation, the main objectives of inheritance law—namely legal certainty, justice, and equality in the distribution of inheritance—can be achieved.

In Islamic inheritance law, the bilateral principle affirms that inheritance passes to the heirs through both parties, both from male and female bloodlines, without distinguishing between genders in inheritance rights. The principle of balanced justice emphasizes that rights and obligations, as well as the receipt of inheritance, must be balanced and fair for all heirs, regardless of gender. This is reflected in the Qur'an, which regulates inheritance rights equally between men and women. In addition, Islamic inheritance law stipulates that the transfer of property only occurs after death, cannot be done as long as the heir is alive. In Indonesia's civil law, the principle of death stipulates that inheritance only occurs after death, as stipulated in Article 830 of the Civil Code. The principle of blood relations and marriage determines inheritance rights based on the closeness of blood or marriage relations with the heirs. The principle of equality stipulates that families who are closer to the heirs have priority in inheritance. The principle of succession of places allows heirs who die before the heirs are replaced by their descendants, as stipulated in the KHI, to ensure fairness in the distribution of inheritance. The bilateral principle also applies in civil law and customary law, granting inheritance rights to sons and women as well as married couples. Finally, the principle of everything passing to the heirs stipulates that all rights and obligations of the heirs pass to the heirs, with the option of accepting in full, accepting conditionally, or rejecting the inheritance.

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## **CONCLUSION**

The fundamental difference between Islamic law and the Civil Code (KUHP) in terms of inheritance reflects two different but complementary approaches in achieving legal justice. Islamic law, with its sharia basis, stipulates the division of inheritance with very specific and detailed provisions. Each heir gets a clearly defined share in the Quran and Hadith, reflecting the principles of justice relating to balance and rights that cannot be ignored. On the other hand, the Criminal Code provides room for flexibility through the making of wills, which allows the heirs to determine the division of the inheritance according to their wishes, as long as it does not violate the basic rights of the legitimate heirs. In practice, Religious Courts tend to strictly comply with the provisions of sharia, focusing on the application of Islamic law to ensure that the distribution of inheritance is carried out in accordance with the provisions that have been set by the religion. This includes respecting the prescribed parts and applying the principles of justice in accordance with Islamic law. In contrast, District Courts, which operate under the framework of the Penal Code, are often more flexible in accommodating wills made by heirs. Nevertheless, they must still pay attention to and maintain the rights of legal heirs in accordance with the provisions of the applicable civil law. The correlation between these two legal systems shows that there is an attempt to harmonize the principles of justice within different legal frameworks. This emphasizes the importance of adjusting between religious norms and positive law in resolving inheritance disputes. In this way, both legal systems seek to create balance and fairness for all parties involved, despite differences in the approaches and basic principles applied.

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