

THE ROLE OF JURISPRUDENCE IN THE APPLICATION OF SUBSTITUTE HEIRS CONCEPT IN INDONESIA

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Abstract

The position of successor heirs in Indonesia lacks clear legal regulations, necessitating reliance on jurisprudence as a guiding framework for law enforcement officials. This study explores the benefits of jurisprudence in shaping the development of successor heirs' rights in Indonesia. Employing a normative juridical approach, the research relies on descriptive analysis and library research. The findings highlight two significant advantages of jurisprudence in this context. Firstly, jurisprudence clarifies material legal aspects by integrating provisions concerning successor heirs into Indonesia's legal system, notably through Article 185 of the Compilation of Islamic Law. This integration fosters legal coherence and clarifies successor heirs' rights and obligations. Secondly, jurisprudence aids in formal legal aspects by ensuring the completeness of administrative data for inheritance litigation in the Religious Court. This enhances procedural fairness and facilitates efficient resolution of cases involving successor heirs. Jurisprudence contributes to legal certainty, fairness, and societal benefits in inheritance matters. Its role in interpreting and supplementing existing laws underscores its importance in navigating legal complexities and ensuring justice for successor heirs in Indonesia.

Keywords: Indonesian successor heirs, jurisprudence, legal development, normative review.

Abstrak

Posisi ahli waris pengganti di Indonesia membutuhkan perhatian mendalam karena ketidakjelasan dalam peraturan hukum yang mengaturnya. Kurangnya regulasi secara eksplisit mengenai ahli waris pengganti menuntut pihak penegak hukum untuk mengandalkan sumber hukum lain sebagai pedoman dalam penyelesaian kasus terkait. Yurisprudensi menjadi penting dalam membantu hakim memutuskan kasus-kasus semacam itu. Penelitian ini bertujuan untuk menggali manfaat kaidah yurisprudensi terhadap ahli waris pengganti dalam konteks perkembangan hukum di Indonesia, menggunakan pendekatan yuridis normatif serta metode analisis deskriptif dan penelitian perpustakaan. Hasilnya menunjukkan bahwa kaidah-kaidah hukum yurisprudensi memberikan kejelasan terhadap kedudukan ahli waris pengganti dalam sistem hukum Indonesia, termasuk melalui Pasal 185 Kompilasi Hukum Islam. Selain itu, yurisprudensi juga membantu dalam aspek formalitas hukum dengan memastikan kelengkapan data administratif untuk proses peradilan di Pengadilan Agama. Dengan demikian, yurisprudensi dianggap dapat memberikan kepastian, keadilan, dan manfaat hukum bagi masyarakat terkait kasus kewarisan yang melibatkan ahli waris pengganti.

Kata Kunci: Ahli waris pengganti Indonesia; yurisprudensi; pengembangan hukum; tinjauan normatif.

Introduction

At least three inheritance laws are applied in Indonesia: Islamic inheritance law, customary inheritance law, and Burgerlijk Wetboek (BW) inheritance law. This fact significantly impacts the practice of inheritance in society, as seen in the concept of inheritance, the reason for inheriting, the share of heirs, the way it is calculated, and the form of settlement of inheritance disputes. These three subsystems of inheritance law are already functioning and have an ethical impact on several inheritance-related issues.¹

The Government compiled Islamic Law through the Presidential Instruction of the Republic of Indonesia No. 1 of 1991 for Muslim society. The Compilation of Islamic Law (Kompilasi Hukum Islam/KHI) was used as the primary reference material for judges in religious courts to resolve marital, inheritance, and waqf issues. KHI is a source of jurisprudence based on living law.² The issue of heirs relating to the replacement of heirs or *plaatsvervulling* (ed. dutch), as contained in article 185 of the KHI which reads: (1) Heirs who passed away before the heir, then the position may be replaced by their children, except for those referred to in section 173. (2). The share of the successor heirs shall not exceed that of the share of the heirs equal to the substitute. The provision hints that the successor heirs must have a clear position, especially in the division of inheritance. Even some experts and legal experts debate the existence of a substitute heir provision, which makes some argue that the determination of the existence of a successor heir is mandatory. At the same time, other arguments determine that a successor heir's existence is uncertain.

Another source of law that the Religious Court judges can use is jurisprudence. Even though the inheritance issue has been regulated, societies' dynamics may raise issues that have not been regulated yet and force the judges to take. It has legal rules which can play an active role in upholding justice.³

Previous research discussing successor heirs' position in Indonesia is diverse and varied. As stated by Khairuddin Hasballah et al.,⁴ based on the classification of heirs in the Islamic inheritance system, there is no known concept of heir replacement. Generally, classical literature states that a person is entitled to receive an inheritance (*furudul muqaddarah*) due to the causes of

¹ Hisam Ahyani et al., "Gender Justice in the Sharing of Inheritance and Implementation in Indonesia," *Ay-Syar'iah* 24, no. 2 (December 2022): 285–304, <https://doi.org/10.15575/as.v24i2.14640>.

² Sita Hidayah, "From Unity in Diversity to Culture Wars? Aceh Women's Mastery over *Adat*, Islam, and the State Inheritance Laws," *Women's Studies International Forum* 103 (March 2024): 102881, <https://doi.org/10.1016/j.wsif.2024.102881>.

³ Muhammad Hasan, "Construction of Modern Islamic Inheritance Law Based on Ijtihad of the Judges at the Religious Court of Pontianak, West Kalimantan," *Samarah: Jurnal Hukum Keluarga Dan Hukum Islam* 7, no. 2 (2023): 650–68, <https://doi.org/10.22373/sjhk.v7i2.8852>.

⁴ Khairuddin Hasballah et al., "Patah Titi and Substitute Heirs: A Study of Legal Pluralism on the Inheritance System in Aceh Community," *Abkam: Jurnal Ilmu Syariah* 21, no. 2 (December 2021).

nasabiyah (heredity) and marriage. At the same time, the share received by the successor heir must not be greater than that of the replaced heir. Furthermore, Sofyan Mei Utama's research found that the legality of the successor heirs is guaranteed in Article 185 of the KHI. It is based on the principle of fairness in inheritance. It depends on the benefactor's wisdom, preemptive wisdom⁵, by distributing their property to the heirs or their descendants.

According to Mohamad Mirzalino,⁶ The problems with the successor heir concept lie in its implementation. The successor heir can obtain the estate if the consent of the primary heir(s) is obtained. Then Hazar Kusmayanti⁷ gave the understanding that the grandson's position as a successor heir in Islamic inheritance law is not listed in the Quran and Hadith, only recognised through the Ijtihad conducted by the scholars. However, in the KHI, the existence of a grandson is recognised as a substitute for their parents, who died before the benefactor's death. Commonly, the grandparent becomes the orphan's legal guardian. This custom becomes the ground of the substitute heir position through the affirmation to get full legalisation.⁸

Abdul Qodir Zaelani argues that the existence of a successor heir is an interpoint of Islamic law and local wisdom eclecticism. To solve their inheritance problems, people may use KHI, local wisdom, and jurisprudence. Another work coming from Nina Ismaya⁹ who focused on the successor heir's portion. Islamic law has determined the share of heirs according to the *furudul muqaddarah*, based on gender and descendant line level. In civil inheritance law, the inheritance portions are shared equally. It is similar to a case in the Kampar customary law found by Desma Royana.¹⁰ It explained that the inheritance share of the successor heirs is the same as their replaced predecessors. It relates to the stipulation under KHI Article 185 that the share shall not exceed the replaced heirs' portion, which may rule out the possibility of the successor heir obtaining less than/less than the share of the estate for the heirs he replaces. So this has

⁵ J E Penner, "Intergenerational Justice and the ' Hereditary Principle '" 8, no. 2 (2014): 195–217, <https://doi.org/10.1515/lehr-2014-0010>.

⁶ Mohamad Mirzalino Safryan Dilapanga, Desti Astati, and Eva Nurjannah, "Kedudukan Ahli Waris Pengganti (Plaatsvervulling) Dalam Memperoleh Harta Waris Menurut Hukum Islam," *Jurnal Komunikasi Hukum (JKH)* 7, no. 1 (2021): 450, <https://doi.org/10.23887/jkh.v7i1.31769>.

⁷ Hazar Kusmayanti, "Hak Dan Kedudukan Cucu Sebagai Ahli Waris Pengganti Dalam Sistem Pembagian Waris Ditinjau Dari Hukum Waris Islam Dan Kompilasi Hukum Islam," *Jurnal Ilmiah ISLAM FUTURA* 19, no. 1 (2019): 68–85, <https://doi.org/10.22373/jiif.v19i1.3506>.

⁸ Yong Kyu Gam et al., "How Inheritance Law Affects Family Firm Performance: Evidence from a Natural Experiment," *Pacific-Basin Finance Journal* 59 (February 2020): 101243, <https://doi.org/10.1016/j.pacfin.2019.101243>.

⁹ Nina Ismaya, "Tinjauan Yuridis Terhadap Ahli Waris Pengganti Dalam Hukum Kewarisan Islam Dan Hukum Kewarisan Perdata Di Indonesia," *ALDEV: Alauddin Law Development Journal* 4, no. 3 (2022): 760–70, <https://doi.org/10.24252/aldev.v4i3.20141>.

¹⁰ Desma Royana, "Eksistensi Ahli Waris Pengganti Dalam Hukum Adat Kampar Kecamatan Bankinang Perspektif Kompilasi Hukum Islam," *Al-Ahwal Al-Syakhshiyah: Jurnal Hukum Keluarga Dan Peradilan Islam* 3, no. 2 (2022): 144, <https://doi.org/10.15575/as.v3i2.19869>.

become a debate in Indonesia because in society, there are still parties who accept the existence of a provision for the position of division for successor heirs, and there are some parties who have not been able to receive this; in other words, still using the provisions of customary law.

This research examines jurisprudence's role in developing successor heir rights in Indonesia through a normative juridical review. The benefits are to provide a better understanding of the legal thinking regarding the rights of successor heirs, clarify the legal framework governing this issue, and provide recommendations for further developments in law enforcement and policy-making, and also a deeper understanding of the interpretation and application of Islamic inheritance law, especially regarding successor heirs.

This research can provide valuable guidance for judges and legal practitioners in handling inheritance cases involving successor heirs' rights by understanding jurisprudence's role in developing this aspect. In addition, it can also contribute new insights into how religious courts and the legal system in Indonesia adapt to social and cultural changes in upholding the principles of legal justice.

Methods

This research is expected to describe a situation or indicate the legal norm for the existing social situation that prevails in society regarding the inheritance of successor heirs so that it can provide a description and data related to the problem. This type of research uses a normative juridical approach, which is analytical descriptive research using qualitative data. This approach aims to analyse and describe the role of jurisprudence in developing successor heir rights in Indonesia. This research will explore the legal framework that regulates these issues and review the interpretation and application of existing laws, supported by various collected data through literature study in the form of legal experts' opinions, legal literature, legal documents, court decisions, and other sources related to the research topic. These various data were analysed descriptively. The analysis includes identifying patterns, trends, and perspectives in a straightforward, systematic narrative presentation. Furthermore, the researchers have tried to ensure the validity and reliability of information obtained from various sources and consider multiple perspectives and opinions in the analysis and interpretation of data.

Results and Discussion

Successor Heirs Reviewed in Compilation of Islamic Law (KHI)

Generally, *faraidh* (Islamic inheritance law) is a science of determining the inheritance portion or share. According to Muhammad al-Syarbiny, *faraidh* is the science of *fiqh* relating to inheritance, the question of the way of calculation that can complete the inheritance, and the knowledge of the obligatory parts of the

estate for each owner of the right of inheritance (heir).¹¹ Meanwhile, in Article 171 of KHI, the law of inheritance regulates the transfer of the right to own the heir's inheritance property (tirkah), determining who is entitled to be the heir and how much each share is. So, Islamic inheritance law is an Islamic Sharia rule about transferring ownership rights from the benefactor to his surviving heirs, whether the heritage is in the form of money, land, or rights.¹²

The elements of Islamic inheritance are the existence of an heiress, the existence of heirs, and the existence of inheritance. The heirs consist of 25 (twenty-five) groups, composed of 15 (fifteen) male and 10 (ten) female heirs groups. The male groups are the widower, children, grandchildren, fathers, grandfathers, brothers, nephews, uncles, cousins and freed slaves. Meanwhile, the female group consists of widows, children, mothers, mothers, mothers, siblings and freed slaves. However, not all heirs will get a share of the inheritance; only certain heirs are due to the principle of priority. This priority principle is based on Article 147 paragraph (2) of the KHI: "If all heirs exist, then only those who are entitled to inheritance are children, fathers, mothers, widows or widowers."

In addition to the priority principle, there is a prohibition for a person to have a share of the inheritance, as explained in Article 173 of the KHI: "A person is prevented from becoming an heir if by a judgment of a Judge who has the force of law, is punished for: First, it is blamed for having killed or attempted to kill or severely persecute the testator; Secondly, it is libelously blamed for having filed a complaint that the testator has committed a crime punishable by five years in prison or a more severe penalty."

In reality, the field of inheritance has experienced significant development due to society's increasingly complex needs and critical thinking. Among them is the concept of a successor heir, whose norm has been regulated in the KHI. Article 185 of the KHI states: (1) Heirs who die before the testator, then their position can be replaced by their children, except those mentioned in article 173; (2) The successor heirs' share shall not exceed the share of the replaced heirs. In addition, the results of the National Assembly of the Supreme Court of the Republic of Indonesia in 2010 and 2011 explained that the successor heirs are only up to the testator's grandchildren.¹³

¹¹ Muhammadiyah al-Syarbini Al-Khatib, Mughbu Al-Muhtaj, Juz 3 (Kairo: Musthafa al-Baby al-Halaby, 1958), 3.

¹² Fatahullah, & Sugiyarno, and Ita Surayya, "Antara Munasakhah Dan Ahli Waris Pengganti Pada Putusan Nomor: 0311/Pdt.G/2009/PA.SEL.," *Jurnal IUS Kajian Hukum Dan Keadilan* VI, no. 1 (2018): 112, <https://doi.org/10.29303/ius.v6i1.526>.

¹³ Kementerian Agama, *Kompilasi Hukum Islam, Cetakan Ke-11* (Bandung: Citra Umbara, 2019).

One condition of inheritance is the life of the heir. If someone dies, their living children can inherit their estate.¹⁴ If one of the children passes away before the testator, their position as an heir may be replaced by their children. The concept of replacing position results from scholars' *ijtihad* to the provisions of inheritance in the Qur'an and As-Sunnah. In (western) civil law, the heir replacement is called *plaatsvervulling*.

Even though the Western, customary, and Islamic inheritance law acknowledges the concept of a successor heir, the descriptions differ. The definition of a successor heir in Islamic heir law is an heir who is only open due to the absence of the primary heir. These successor heirs are perceived as the act of instituting a replacement through modification.¹⁵ As stated in article 185 of the KHI, the acceptance of this institution is not unanimous but in the form of a modification, shown by the same share between the heirs and their successors. For example, suppose a testator has two heirs, and the inheritance is divided equally, but one is deceased before the testator. In this case, the children of the deceased heir will get an inheritance from the grandparent or the testator with the same amount of their late parent's share.¹⁶

What if the heir is not the descendant of the heir they replaced? Such as adopted children.¹⁷ Some *fiqh* experts say Islamic inheritance law does not recognise a replacement or *plaatsvervulling*.¹⁸ A granddaughter, the only daughter of an only son, will get half a share of the inheritance. Two or more granddaughters get two-thirds of a share. However, if the benefactor has another son who is still alive or two daughters, the granddaughter does not get a share.¹⁹ If the granddaughter has a brother or more, it becomes *ashabah*, heirs whose shares are not determined.²⁰ It means they get their share last after the primary heirs get their portion. Men get twice as share as women. A grandson or granddaughter from a daughter and a granddaughter or a grandson from a son are called *Zawil Arham*. According to Ali ibn Abi Talib, Ibn Abbas, Abu Bakr,

¹⁴ Alexander Lee and Jack Paine, "British Colonialism and Democracy: Divergent Inheritances and Diminishing Legacies," *Journal of Comparative Economics* 47, no. 3 (September 2019): 487–503, <https://doi.org/10.1016/j.jce.2019.02.001>.

¹⁵ Muhammad Syahrul Ramdhani, "Penyelesaian Kasus Munasakhah Dan Ahli Waris Pengganti Perspektif Fiqh Dan Kompilasi Hukum Islam" (Universitas Islam Negeri Syarif Hidayatullah Jakarta, 2019), <https://repository.uinjkt.ac.id/dspace/handle/123456789/48550>.

¹⁶ Oyo Sunaryo Mukhlas, *Pranta Sosial Hukum Islam* (Bandung: Refika Aditama, 2015).

¹⁷ Abdul Qodir Zaelani, "Kedudukan Ahli Waris Pengganti (Plaatsvervulling) Dalam Kompilasi Hukum Islam Dan Pemeahannya," *ADHKI: Journal of Islamic Law* 2, no. 1 (2020): 91–105, <https://doi.org/10.37876/adhki.v2i1.32>.

¹⁸ Samia Zouaoui and Khaled Rezeg, "Islamic Inheritance Calculation System Based on Arabic Ontology (AraFamOnto)," *Journal of King Saud University - Computer and Information Sciences* 33, no. 1 (January 2021): 68–76, <https://doi.org/10.1016/j.jksuci.2018.11.015>.

¹⁹ Sultan Mehmood and Avner Seror, "Religious Leaders and Rule of Law," *Journal of Development Economics* 160 (January 2023): 102974, <https://doi.org/10.1016/j.jdeveco.2022.102974>.

²⁰ Yusida Fitriyati, "Kedudukan Ashabah Dalam Kasus 'Aul Menurut Ibnu Abbas," *Nurani: Jurnal Kajian Syari'ah Dan Masyarakat* 14, no. 2 (2014): 1–12, <https://doi.org/10.19109/nurani.v14i2.106>.

Umar, and Usman, as well as some *tabi'in*, *Zawil Arham* only gets an heirloom if there are no more heirs entitled to *faraidh* or *ashabab*. According to Zaid bin Tsabit, which Imam Maliki, Shafi'i and others approve,²¹ *Zawil Arham* does not get heirlooms from the heir. If a deceased person has no heirs, either entitled to *faraidh* or *ashabab*, then their heirloom property is handed to the *baitul maal*, a state treasury in the Islamic State.

Faraidh encompasses the regulations governing the transfer of ownership rights from a testator to their living heirs. Nuances in inheritance rules, such as the absence of *Plaatsvervulling*, distinguish Islamic inheritance law from Western or customary practices, underscoring its unique legal framework. Clarifications regarding *Zawil Arham* add depth to inheritance discussions, illustrating varying interpretations among scholars and their implications on asset distribution. Ultimately, Islamic inheritance law is a dynamic system, evolving to address society's changing needs and complexities while upholding the principles of fairness and justice inherent in Islamic jurisprudence.

History of Development Regarding Successor Heirs in the Legal Rules of Jurisprudence

As stated above, inheritance law in Indonesia is influenced by three legal systems: Islamic, Western, and customary law. Legal development may come from religious law, which adapts the existing society's condition, positive laws, and customary law. This condition led to Islamic law in Indonesia, which uses a modern approach to changing or creating law.^{22,23}

This adaptation can be seen in judges' decisions and the legal rules of jurisprudence, which will be presented later.²⁴ This discussion will explain the history of a provision regarding the position and the division of inheritance to successor heirs for the development of the legal system in Indonesia.

Plaatsvervulling (successor heirs) is not an inheritance concept derived from Islamic law. The successor heirs are found in articles 841-848 of the Civil Code (*Burgerlijk Wetboek*). Generally, a successor heir is a person who replaces the position of an heir who died before their testator. The persons entitled to be the successor heir are the children of the deceased heir. In the Civil Code, if the parents die, the successor heirs will occupy the parents' position as an heir. All the rights and obligations of their parents are passed to them.

²¹ Musa Asy'ari, "Ahli Waris Pengganti Dalam Tinjauan Kompilasi Hukum Islam Dan Hukum Perdata," *ISTIDAL; Jurnal Studi Hukum Islam*, 7, no. 1 (2020): 53–78, <https://doi.org/10.34001/istidal.v7i1.2154>.

²² Ratna Lukito, *Tradisi Hukum Indonesia* (Yogyakarta: Teras, 2008).

²³ Sebastian Escobar, Henry Ohlsson, and Håkan Selin, "Giving to the Children or the Taxman?: Lessons from a Swedish Inheritance Tax Loophole," *European Economic Review* 153 (April 2023): 104382, <https://doi.org/10.1016/j.euroecorev.2023.104382>.

²⁴ Yulkarnain Harahab, "Kompilasi Hukum Islam Dalam Perpektif Hukum Perundang-Undangan," *Mimbar Hukum* 22, no. 3 (2010): 625–44, <https://doi.org/10.22146/jmh.16245>.

Article 841 of the Civil Code states that the replacement gives the right to the replacing person to act as a substitute in degree and in any right of the person he replaces. Furthermore, articles 842, 844, and 845 provide three types of heir substitution: firstly, replacement in a straight line down lasts continuously without end (Article 842); secondly, substitution in the sideways line (Article 844); and thirdly, substitution in a distorted sideways line.

The spirit of this concept of substitute (*representatie*) is then internalised into the preparation of KHI, the Inheritance Chapter. In the end, the provisions regarding the successor heirs were agreed upon by the drafters of the KHI, during which time the dissolution of this matter continued. Kotabumi Religious Court Judge Shobirin, in his paper entitled "Substitute Heirs in Islamic Inheritance from the Perspective of the National School", revealed an interesting debate at the National Working Meeting of Religious Court Judges in Palembang, 2009.²⁵

Based on the paper, Shobirin openly described the National Assembly of Religious Court Judges discourse in 2009. He explained the dissenting opinion of other judges regarding the presentation of Chief Justice Habiburrahman. The head of the Palembang Religious High Court at that time, Mukhsin Asyrof, replied to Habiburrahman's explanation that the provision of successor heirs, although not mentioned in fiqh as a mandatory will, was intended to provide justice to the heirs. While KH. Azhar Basyir, the leader of the KHI formulation meeting, asserted that the clerics had agreed upon the article of successor heirs at the time of ratification.²⁶

Shobirin then expounded on Hazairin's perspective on constructing the concept of a successor heir, which he said had its roots in the literature of Islamic legal sources. Citing Hazairin in his book "The Law of Bilateral Inheritance and the Quran and Al-Hadith", Shobirin explained the concept of a successor heir according to Hazairin. According to Shobirin, Hazairin interpreted the word *mawali* in the Quran Surat an-Nisa verse 33.

According to Hazairin, this verse implies that Allah institutes a *mawali* for the *fulan* (someone) of the estate of his parents and immediate family, giving the *mawali* the rights of his share. If the testator is a parent, the heir is their children or guardian. "If the children are still alive, of course, they are the ones who immediately take the inheritance based on verse 11 of surah An Nisa,"

Furthermore, this provision by Hazairin was considered more in line with the desired inheritance system in Islam, which adheres to bilateral principles. This is considered different from Arab culture, which adheres to patrilineal

²⁵ Rikson Adam, Erman Rahim, and Abdul Hamid Tome, "Analysis Of Judge ' s Decision Against Substitute Charities In Religious Courts Consider From Islamic Law Commission," *Estudiante Law Journal* 4, no. 2 (2022): 60–76, <https://doi.org/10.33756/eslaj.v4i2.16000>.

²⁶ Moch Dani Pratama Huzaini, "Mengenai Kembali Plaatsvervulling Dalam Hukum Kewarisan Nasional" (Indonesia, 2019), <https://www.hukumonline.com/berita/a/mengenai-kembali-plaatsvervulling-i-dalam-hukum-kewarisan-nasional-lt5cf785616f9ab/#!>

principles. "Thus, the Indonesian context is more appropriate with the Islamic inheritance system based on bilateral principles as is generally the case in Javanese and surrounding communities," Shobirin said, quoting Hazairin.²⁷

Meanwhile, research findings by Eko Budiono et al.²⁸ shows that the legal construction related to the concept of substitute heirs in KHI is carried out by placing the position of substitute heirs in order to give a sense of justice to their parents who have died beforehand.

Jurisprudence can be defined as a rule that applies and can determine how humans must behave and act amid social life in society. This aims to protect the legal interests of others.²⁹ This is because the applicable legal rules are essentially a formulation or objective view that applies as a whole regarding an assessment that must be carried out and not carried out, followed by a prohibition or something that must be done or encouraged.³⁰

There are several rules of jurisprudence relating to successor heirs in the form of a judgment that has been determined by the Supreme Court of the Republic of Indonesia systematically based on the year of its formation, namely:

First: Decision of the Supreme Court of the Republic of Indonesia number 537 K/AG/1996 dated July 11, 1997, "Yudex Factie has misapplied the law because there are other heirs who are not included as parties in utilising the heir's estate". In the jurisprudence judgment, it has been explained that all heirs must be included in the division of inheritance. In their legal considerations, the judge has erred and only based on the testimony of the respondent's witnesses, the Banda Aceh High Religious Court and the Lhoksukon Religious Court have misapplied the law; therefore, in the said rule, other heirs who are not included as parties.

Second: Decision of the Supreme Court of the Republic of Indonesia number 332 K/AG/2000 dated August 3, 2005, "In the case of inheritance, to determine the inherited property first, it must be clear which is the inherited property and which is the common property. The inherited property returns to the heir's brother, and the common property, which is the heir's right, becomes the inherited property that must be distributed to the heirs. In dividing the estate, the persons entitled to be the heirs and their respective shares must be clearly stated. Suppose a grant is made to another party for an estate not distributed to

²⁷ Huzaini, "Ahli Waris Yang Meninggal Dunia Lebih Dahulu Dari Pada Si Pewaris Maka Kedudukannya Dapat Digantikan Oleh Anaknya," *Mengenal Kembali Plaatsvervulling Dalam Hukum Kewarisan Nasional*, n.d.

²⁸ Eko Budiono et al., "Analyzing the Legal Framework of Substitute Heirs in Islamic Inheritance Cases: DKI Jakarta High Religious Courts Perspective," *Syariah: Jurnal Hukum Dan Pemikiran* 23, no. 2 (2023): 281–99, <https://doi.org/10.18592/sjhp.v23i2.12545>.

²⁹ Mariaflavia Harari, "Women's Inheritance Rights and Bargaining Power: Evidence from Kenya," *Economic Development and Cultural Change* 68, no. 1 (October 2019): 189–238, <https://doi.org/10.1086/700630>.

³⁰ Ahmad Kamil dan M Fauzan, *Kaidab-Kaidab Hukum Yurisprudensi* (Jakarta: Prenada Media Group, 2006).

the heirs. In that case, the grant is null and void because one of the conditions of the grant is that the goods granted must belong to the grantor himself, not an undivided estate, nor does a dispute still bind the property.”

Third: Judgment no. 354.K/AG/1998, the judgment regarding the settlement of inheritance property cases that occurred in 1988, can be applied to "Compilation of Islamic Law" (which took effect in 1991 Presidential Instruction No. 1/1991) because the civil suit on the issue of inherited property was filed with the Religious Court in 1997, after the enactment of KHI. According to the KHI Article 185, The heir who dies before the "Heir", then the position of this heir may be replaced by his son referred to as the "Successor Heir", whose share of the Estate shall not exceed the share of the heirs equal to that which is replaced in the above case = heirs: a) The son Gets 6/18 share; b) the daughter of the successor heir gets 1/18th of the share; and c) the successor heir's son = 2/18 part.

Fourth: Judgment 334/K/AG/2005 states that "the successor heirs and the successor heirs have both died. Hence, the time of leaving must be clearly stated in the suit letter, and the contravening must be with the judge. If not, then the suit cannot be accepted (No) because it is vague". The rule of law is stated in the book Jurisprudence MA 2006 and 2010, which contains the rule of law. The successor heir is determined expressly and clearly by the death of the heir who is replaced earlier than the heir. If this is not the case, the lawsuit cannot be accepted because it is considered vague.

Fifth: Judgment 86/K/AG/2001, which has the legal principle of jurisprudence that the Grandsons and daughters of the sons and daughters of the heirs become successor heirs.

These jurisprudence decisions provide an overview of legal developments, especially in successor heirs in Indonesia, and show that judges are not *jumud* (static) in seeing legal events that occur in society to create laws that can provide a sense of benefit and fairness and provide legal certainty to the community. Jurisprudence is included in the renewal of the law carried out by judges; this provides benefits because if you wait for the renewal of the rules through legislation, it will take a long time while the need for inheritance law in the community is urgent. Hence, it dramatically affects the existing jurisprudence.

This legal development concerning successor heirs through jurisprudence, particularly in Indonesia, reflects a dynamic interaction between legal systems and societal norms. Ratna Lukito, an expert in legal sociology, highlights how integrating Islamic law into the Indonesian legal framework offers a modern approach that adapts religious principles to contemporary legal structures, incorporating customary and statutory regulations. The concept of *plaatsvervulling* (successor heirs) originated from the Dutch Civil Code, indicating the influence of colonial legal systems on Indonesian inheritance practices. Despite its foreign origins, the notion of successor heirs was internalised into Islamic inheritance discussions, reflecting a synthesis of legal traditions to serve the needs of Muslim

communities. This integration process was not without debate, as evidenced by conversations among religious court judges regarding including successor heirs in Islamic jurisprudence—the perspectives presented by judges such as Mukhsin Asyrof and KH. Azhar Basyir underscored the nuanced interpretations and adaptations of Islamic inheritance principles to suit local contexts. Hazairin's analysis further contributed to this discourse by aligning successor heirs with Quranic verses, emphasising the importance of bilateral inheritance principles over patrilineal norms in Indonesian society. The evolution of legal rules regarding successor heirs, as evidenced by Supreme Court judgments, reflects the responsiveness of judicial systems to societal needs and changing legal interpretations. These decisions clarify and guide inheritance matters, ensuring fairness and legal certainty for individuals and communities. In essence, jurisprudential developments in successor heirs signify a dynamic process of legal renewal driven by judicial interpretations and societal imperatives, ultimately shaping inheritance laws to meet the evolving needs of Indonesian society.

Benefits of Jurisprudence Legal Rules against the Position of Successor Heirs

At least there are two benefits of jurisprudence. Firstly, material benefits can be seen from the relevant regulations that reference establishing jurisprudence legal rules regarding successor heirs, which are then interpreted in such a way. Secondly, the aspect of formal benefits can be found in terms of its material usefulness in the process of implementing the use of the jurisprudence rule, whether it produces clarity on the existence of a substitute heir provision or vice versa that only applies as an existence based on the provisions of customary law that apply to certain societies? Therefore, the author describes some of these benefits as follows:

Firstly, the material benefits might be seen in KHI's preparation process, which passed in 1991. One of them that invited a pretty deep discussion among the drafters of the KHI was the adoption of the concept of *plaatvervulling* or successor heirs into the KHI. Although the Successor Heirs is not a new tradition in national law, internalising this Dutch and customary law inheritance concept into the KHI rooted in Islamic legal values demands more scrutiny from the drafters. Islamic law is static if it is only seen from its source. Therefore, most Muslims apply Islamic law in a sacred and eternal approach. However, in the process, implementing Islamic law into social life requires continuous interpretation to withdraw the relevance of Sharia law and jurisprudence to contemporary social problems. The enactment of the provision of a successor heir in the Islamic inheritance system in Indonesia or the legal system in Indonesia is an alternative to resolve difficulties in handling Islamic inheritance cases.

As from the provisions in article 185 of KHI, which is one of the relevant regulations in the preparation of jurisprudence taken by this judge, the provision that the heirs of a person who is replaced because the previous heirs have died and did not have time to obtain a share will get the protection of the rights for the deceased person, which is realised through their descendants or grandchildren.

It can realise a theory of the purpose of law in the form of the benefit of maintaining, protecting, and giving rights to man. The law is not for himself but for all citizens; it relates to the theory of legal pragmatism. So, it can be seen from the interpretation of article 185 of KHI that it dramatically affects the position of successor heirs and makes parties previously unable to obtain inheritance entitled to inheritance, whether it is the amount they will earn or their position.

The rules of jurisprudence included in the material benefits are Judgment no. 354.K/AG/1998 and judgment 86/K/AG/2001. The jurisprudence explains what a successor heir means, then the provisions for the division of the estate of the replaced heir and who is entitled to be the successor heir. Therefore, with the provision of jurisprudence rules involving a regulation in the form of a Compilation of Islamic Law regarding successor heirs, it can be interpreted that enacting jurisprudence law rules will create justice.³¹ This is because the provision was made starting from a reaction to the injustice of the rights of successor heirs, especially in the Indonesian state, which adheres to the Muslim-majority religion.³²

Secondly, the formal benefit affirms the provisions or position of the successor heirs, which is then emphasised by some of the legal rules of jurisprudence relating to the successor heirs, providing clarity in which the successor heirs get legality that with the existence of these provisions can be carried out and fulfilled the benefits of the formal in the form of completing the data in the administration of the case of the heirs to maybe settled and settled in the Religious Court authorised to handle the case of the successor heir. So, with all these benefits, it is very supportive of the creation of clarity of law because the existing law is not yet clear, and it can also create legal renewal and development.

This provision grants the heir the authority to allocate their inheritance according to their discretion, outlining how assets are to be divided and underscoring the significance of the successor heir's role in the process. This concept is known as pre-emption, which entails the heir distributing their estate

³¹ Hisam Ahyani, Memet Slamet, and Tobroni, "Building the Values of Rahmatan Lil 'Alamin for Indonesian Economic Development at 4.0 Era from the Perspective of Philosophy and Islamic Economic Law," *AL-IHKAM: Jurnal Hukum & Pranata Sosial* 16, no. 1 (June 2021): 111–36, <https://doi.org/10.19105/al-lhkam.v16i1.4550>.

³² Miftakhul Huda et al., "Development of Progressive Islamic Law in Indonesia Regarding 'Apostasy' as Grounds for Divorce: Insights from Maqasid Sharia," *Ulul Albab: Jurnal Studi Dan Penelitian Hukum Islam* 6, no. 1 (2022): 73–85, <https://doi.org/10.30659/jua.v6i1.36754>.

while they are still alive to designated heirs, including potential successors identified during discussions. This preemptive action ensures that the distribution of assets aligns with the heir's intentions and minimises the potential for disputes or ambiguity after their passing. It also allows the heir to proactively manage their estate, considering factors such as family dynamics, financial needs, and the long-term well-being of beneficiaries, including potential successor heirs.³³ By exercising pre-emption, the heir can maintain control over the distribution of their assets, ensuring that their wishes are carried out effectively and under legal and ethical considerations. This approach reflects a proactive and thoughtful approach to estate planning, promoting clarity, fairness, and peace of mind for all parties involved.³⁴

The legal rules of jurisprudence related to the formal benefits are the decision of the Supreme Court of the Republic of Indonesia number 537 K / AG / 1996 dated July 11, 1997, the decision of the Supreme Court of the Republic of Indonesia number 332 K / AG / 2000 dated August 3, 2005, and Decision 334 / K / AG / 2005. In these formal rules of jurisprudence, it is stipulated how to argue in a religious court just as all the heirs concerned must be included as parties to the application for heirs and must be clearly stated; otherwise, the suit is considered not accepted, and the estate must be precise. Indeed, in the division, it must be furthest like discrimination where there must be nothing that reflects the difference between the sexes than the distinction between pure heirs or successor heirs aimed at justice or benefit in the life of society. It can also certainly provide a legal builder or reconstruction.

Of course, in the material and formal aspects, it has an impact on the application or suit of heirs for which there are successor heirs so that the decisions of jurisprudence provide guarantees against the right of inheritance for the heirs who died first for the heirs, and with the decision of jurisprudence avoids disputes, and fosters a sense of sharing among the heirs because they are still bound by *nasab* and marriage.

The jurisprudential legal rules concerning the position of successor heirs offer both material and formal benefits that contribute to the clarity and fairness of inheritance laws, particularly in Indonesia. Material benefits stem from incorporating successor heir concepts into legal frameworks like the KHI, facilitating the resolution of complex inheritance cases. Article 185 of the KHI, for instance, ensures that descendants or grandchildren of a deceased heir are protected and entitled to inherit, thereby upholding principles of justice and legal expediency. Judicial decisions such as no. 354.K/AG/1998 and no.

³³ Wahidah Ideham, "Substitute Heirs in the Compilation of Islamic Law: An Overview from Gender Equality Perspective Case Study of the Religious Courts in Banjarmasin," *Samarah: Jurnal Hukum Keluarga Dan Hukum Islam* 6, no. 2 (December 2022): 1046–64, <https://doi.org/10.22373/sjhk.v6i2.12466>.

³⁴ Sofyan Mei Utama, "Kedudukan Ahli Waris Pengganti Dan Prinsip Keadilan Dalam Hukum Waris Islam," *Jurnal Wawasan Yuridika* 34, no. 1 (2016): 68–86, <https://doi.org/10.25072/jwy.v34i1.109>.

86/K/AG/2001 further reinforce these provisions, enhancing legal protections for successor heirs and rectifying past injustices. Formally, jurisprudential rulings clarify the rights and obligations of successor heirs, enabling efficient case management in religious courts. Supreme Court decisions number 537 K/AG/1996, 332 K/AG/2000, and 334/K/AG/2005 outline procedural requirements for inheritance disputes, ensuring inclusivity of all relevant parties and delineating clear guidelines for asset distribution. These formal rules promote transparency, mitigate conflicts, and foster a sense of equity among heirs, ultimately contributing to legal stability and societal harmony. Overall, the combined material and formal benefits of jurisprudential legal rules regarding successor heirs uphold the principles of justice, efficiency, and social cohesion within inheritance law.

Conclusion

Based on this analysis, it can be concluded that the role of jurisprudence is vital in managing the complexity of problems relating to successor heirs in Indonesia. Jurisprudence provides clear direction, precise guidance, and the fairness necessary to efficiently run the inheritance law system. In the realm of the KHI, jurisprudence is a critical instrument in interpreting and applying legal principles relating to successor heirs, thereby providing fair guarantees for the rights of heirs. The history of the development of jurisprudence law also emphasises the importance of adapting to social dynamics to maintain the relevance of legal rules regarding successor heirs. Not only that, the benefits of fiqh legal rules on the position of successors are significant, helping to resolve inheritance conflicts and promoting social harmony. Thus, jurisprudence has a crucial role in upholding the protection of the rights of heirs and facilitating the fair and equitable distribution of inheritance.

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