

**JURIDICAL REVIEW OF THE DISTRIBUTION OF INHERITANCE FOR  
REPLACEMENT HEIRS IN TERMS OF ISLAMIC INHERITANCE LAW  
AND CIVIL INHERITANCE LAW**

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**ABSTRACT:** Islamic inheritance law in its development, in successor heirs aimed at seeking a sense of justice for his heirs. Basically, successor heirs become heirs because their parents who are entitled to inherit die before the heir. The problems are formulated as follows: 1 how is the concept of successor heirs in Islamic law and civil code law, 2 how does substitute heirs compare between Islamic law and civil law. To answer the above problems, the author uses legal research with a normative juridical approach method, namely legal research carried out by prioritizing examining library materials and documents called secondary and tertiary data. The specification of the study is descriptive analytical, which aims to provide an overview carried out using qualitative means of legal theories and legal doctrines as well as the opinions of Islamic jurists. The results of the research conducted can be concluded that the system of successor heirs in Islamic law and Civil law occurs when the person who connects it to the heir has died before the heir, and must have a legal Nasab relationship with the heir. The comparison of successor heirs in the system of Islamic law and civil law is that they both replace the position of heirs who died before the heir. And there is a difference between Islamic inheritance law and Civil Law in the division received by the heirs he replaces, in Islamic law i.e. heirs in a straight line down, straight line up, and straight line sideways while civil inheritance law the accepted part is the same and successor heirs do not exist for straight line up.

Keywords: Successor Heirs, Division of inheritance and Civil Inheritance Law.

## I. INTRODUCTION

Inheritance law is a provision that regulates the fate of people's wealth after the owner dies. During his life every human being has wealth. The wealth will not be carried after he dies. The wealth will be distributed to those entitled to receive it, namely the closest descendants of the deceased and or the person appointed to receive it. The person who dies is called the heir, while those entitled to receive the inheritance are called heirs.

According to Article 832 of the Civil Code, it is stated that those entitled to be heirs are blood relatives both legal and outside of marriage and the husband or wife who lives the longest. If there is no blood family or husband or wife who lives the longest, then all the inheritance belongs to the state by paying off all debts as long as the inheritance is sufficient for that.

National Development which covers all fields with the aim of realizing a just and prosperous Indonesian society both materially and spiritually equitable based on Pancasila and the 1945 Constitution of the Republic of Indonesia. Development in the field of law is one of the means of supporting national development, given that Indonesia is a country based on law (rechtstaat) and not based on mere power (machtstaat), for that development in the field of law leads to unification and codification of law by taking into account the legal awareness that develops in the midst of society for the creation of justice and legal certainty.

Civil law in Indonesia is still pluralistic because until now customary law, Islamic law and Western law still apply. Of the three legal systems, Islamic law has its own position, although not all Islamic civil law is positive law in Indonesia, but important areas of Islamic civil law have become positive law. The important areas of Islamic civil law are marriage law, inheritance law and trust law. Inheritance law is part of family law which plays an important role, even determining and reflecting the family system prevailing in society.

Inheritance law is closely related to human life because it is related to property and humans with one another. Death or passing away is an event that will definitely be experienced by someone, because death is the end of a human's life journey. If the person who dies, known as the heir, leaves a family and

property called inheritance, in what way will we settle or divide the inheritance left by the heir and what law will be applied to divide the inheritance.

The law that discusses the transfer of inheritance, management and continuation of the rights and obligations of a person who dies, is regulated in inheritance law. The civil law system in Indonesia is pluralistic (diverse), as well as the absence of unification in inheritance law in Indonesia which is part of Indonesian civil law, so that until now we still use three systems of inheritance law that have existed since the beginning, namely:

- 1) Customary Inheritance Law. Customary inheritance law systems are diverse, this is influenced by the form of society in the various customary law areas and the nature of kinship based on descent. Each descent system has specificities in its inheritance law that differ from one another.

Customary law recognizes three systems of inheritance law that are strongly influenced by the kinship system, namely:

- a) Individual Inheritance System, is a system of inheritance that determines that the heirs inherit individually, where each heir gets a distribution to be able to control and or own the inheritance according to their respective shares. This individual inheritance system is widely applied in communities that use a parental kinship system such as bilateral communities in the Java area, and also some communities whose kinship system is patrilineal, such as in Batak Land.

- b) Collective Inheritance System, is a system of inheritance that determines that the heirs inherit the inheritance together (collectively) because the inheritance cannot be divided into ownership to each heir.

Each heir has the right to cultivate, use or get the results of the inheritance. This collective inheritance system is found in communities that use a matrilineal kinship system, such as in the Minangkabau area.

- c) Majority Inheritance System, this inheritance system determines that the heir's estate is only inherited by one child. Majority inheritance system in areas where the community has a patrilineal kinship system that switches over. This majorate system can be divided into two, namely: 1) Male majorate, which is when the eldest / eldest son or male descendant is the sole heir of the heir, for example in Lampung, Bali. 2) Female majorate, which is the eldest daughter is the sole heir of the testator, for example the community in Semendo land in South Sumatra.

- d) The Majority System stipulates that the transmission and transfer of the right to control the undivided property is delegated to the eldest child who serves as the leader of the household or head of the family who replaces his father and mother as head of the family.

The legal basis for the validity of customary law is found in article 131 I.S (Indische Staatsregeling) paragraph 2 b (Stb 1925 no.415 jo.577), including the validity of customary inheritance law, namely: *"For indigenous Indonesian groups (Bumi Putra), foreign Eastern groups and parts of these national groups, legal regulations based on their religion and customs apply"* Regarding this customary inheritance law Soepomo stated: *"Customary inheritance law contains regulations that regulate the process of passing and passing property goods and intangible goods (immatereriele goederen) from a human generation (generation) to its descendants"*.

- 2) Islamic Inheritance Law

Inheritance law, commonly referred to as Faraid Law, is part of the overall Islamic law that specifically regulates and discusses the process of transferring the inheritance and rights and obligations of someone who has died to the living Djakfar and Taufik Yahya define inheritance law as: *"A set of provisions that discuss the ways of transferring rights from a person who has died to a living person whose provisions are based on Divine Revelation contained in the Qur'an and its explanation given by the Prophet Muhammad SAW, in Arabic terms called Faraid."*

Book II Article 171 letter (a) of the Compilation of Islamic Law defines: Inheritance law is a law that regulates the transfer of ownership of the heir's estate (tirakah), determining who is entitled to become heirs and how much each share is.

The basis of Islamic inheritance law is firmly regulated in the Qur'an, including in the words of Allah in Surah An-Nisa verse 7 which reads: *"For men there is a right to a share of the inheritance of their fathers and relatives, and for women there is a right to a share (also) of the inheritance of their fathers and relatives, whether little or much according to the parts that have been determined"*.

In addition to being found in the Qur'an, the provisions of Islamic inheritance law are also found in the hadith of the Prophet Muhammad S.A.W which means: *"From Ibn Abbas r.a from the Prophet S.A.W, he said : Give the faraid (portion that has been determined in the Qur'an) to those who are entitled to"*

*receive it and the rest give to men from the closest male descendants*". (H.R. Bukhari - Muslim) . Islam regulates the method of inheritance based on justice between the interests of family members, religious interests and the interests of society. Islamic law not only gives inheritance to the husband or wife alone, but also gives inheritance to the descendants of both husband and wife, either in a straight line down, straight line up, or line to the side, either male or female. For this reason, Islamic inheritance law is individualized. In addition to the nature of Islamic inheritance law mentioned above, the principles underlying the Islamic inheritance system in the 1983 national inheritance law symposium in Jakarta are as follows:

- a) Islamic inheritance law does not give a person complete freedom to empty his estate by way of a will to his loved ones. On the other hand, it does not prohibit the distribution of his property while he is still alive.
- b) Because inheritance is a rule of law, the testator may not negate the rights of the heirs to the inherited property. Conversely, the heirs are entitled to the inheritance without the condition of a voluntary statement or through a Court Decision (judge).
- c) Inheritance is limited to relatives based on either marriage or legal descent.
- d) Islamic inheritance law tends to distribute inheritance property to heirs in the amount they are entitled to receive to be owned individually according to the level of their respective shares, whether the property left behind is small or large.
- e) The difference in age does not make a difference in the right to inherit for children. The difference in the size of the inheritance is based on the severity of the obligations and responsibilities of the child in the life of the relatives.

**Causes of inheritance** The property of a person who has died automatically passes to a living person who has a relationship with the person who died. The relationship in question is what causes people to receive inheritance, namely:

- a. **Kinship Relationship**  
Kinship is a relationship determined by the existence of a blood relationship that is determined at the time of birth. Kinship relationships in the straight line down (children, grandchildren and so on), straight line up (father, grandfather and so on), or sideways line (brothers and sisters) and they inherit from each other in accordance with Allah's decree in the Qur'an, both from the male/father line and from the female/mother line.
- b. **Marital Relationship** The right to inherit between husband and wife is due to the existence of a legal relationship, namely marriage. The validity of the inheritance relationship between husband and wife is based on :
  - 1) The existence of a valid marriage contract.
  - 2) Both are still married when one of them dies, including a wife who is in iddah after being divorced.
- c. **Wala relationship** Is a relationship between a slave and the person who freed him, the person who freed the slave can inherit the property of the freed slave, based on the provisions of the Apostle (Hadith).
- d. **Religious Relationship** The right to inherit among Muslims which is implemented through the Baitulmaal. This relationship occurs when a Muslim dies without heirs, so that his property is handed over to Baitulmaal to be used by Muslims.

It is important to know that Islamic inheritance law has its own style or characteristics, which are different from other inheritance laws:

1. **Individual inheritance** means an inheritance that is intended for individuals, i.e. a certain share for certain people, under certain circumstances. The faraid numbers  $\frac{1}{8}$ ,  $\frac{1}{4}$ ,  $\frac{1}{6}$ ,  $\frac{1}{3}$ ,  $\frac{1}{2}$ , and  $\frac{2}{3}$  indicate the guarantee of individual ownership. Sons receive twice the share of daughters.
2. **Variations in the reduction of heirs' gains** Variations in the reduction of gains occur due to certain people in certain circumstances obtaining certain shares or the presence of other dzawul faraid. Examples can be seen in several lines of law:
  - a. The ruling of Surah An-Nisa' verse 11, the acquisition of dzawul faraid two or more daughters  $\frac{2}{3}$ , one daughter  $\frac{1}{2}$ .
  - b. The legal line of Surah An-Nisa' verse 12, the acquisition for widowers or widows, from  $\frac{1}{2}$  to  $\frac{1}{4}$  for widowers because there are children, from  $\frac{1}{4}$  to  $\frac{1}{8}$  for widows because there are children. The reduction in the share of inheritance is due to their different numbers.
  - c. The ruling of Surah An-Nisa' verse 176 is that one sister gets  $\frac{1}{2}$ , two or more sisters  $\frac{2}{3}$ .

3. Methods of settling the division of inheritance There is a settlement method known as Aul and Rad. Aul is a method of settlement when there is a shortage in the division of inheritance, a reduction is made to the share of each heir in balance. Rad is the return of the remaining property after being divided to the dzawul faraid, the remaining property is divided equally by the dzawul faraid heirs. The pattern or characteristics of Islamic inheritance law are not found in the inheritance law of the Civil Code and Customary Inheritance Law.

### 3) Western Civil Inheritance Law

The inheritance system contained in the Burgerlijk Wetboek (BW) or (Civil Code) adheres to an individual system, where after the heir dies, the heir's inheritance must be immediately distributed to the heirs. The enactment of Burgerlijk Wetboek (BW) is based on the provisions:

- a. Article 131 jo 163 I.S (Indische Staatsregeling), namely: The inheritance law regulated in the Civil Code applies to European people and those who are equal to these European people.
- b. Staatsblad 1917 no.129, namely: The inheritance law stipulated in the Civil Code applies to Chinese Foreign Easterners.
- c. Staatsblad 1924 no.557 jo Staatsblad 1917 no.12 namely: The inheritance law regulated in the Civil Code applies to other foreign Easterners and Indonesians who submit themselves to European law.

Currently, the Staatsblad is no longer valid after the 1945 Constitution of the Republic of Indonesia which does not recognize the classification of the Indonesian population. The classification that is now known is "*Indonesian Citizens and Foreign Citizens.*"

Conditions of Inheritance To obtain inheritance, the conditions must be met, namely :

- a. Conditions relating to the heir For the inheritance to occur, the heir must have died / die, as stated in Article 830 of the Civil Code. The death of the heir in this case can be divided into:
  1. The death of the heir is known truly (die hakiki), that is, it can be proven by the five senses that he really died.
  2. Death by operation of law, declared by the Court, i.e.: it is not actually known according to facts that can be proven that he is dead.
- b. Terms relating to heirs The people who are entitled / heirs to the inheritance must already exist or still be alive at the time of the death of the testator. The life of the heir is possible with :
  - 1) Actual life, i.e., he or she is actually alive, as evidenced by the five senses.
  - 2) Legally alive, i.e. he/she is not known to be alive in reality. This includes babies in the womb of their mothers (Article 1 paragraph 2 of the Civil Code).

The provisions of inheritance law in the Civil Code are regulated in Book II titles 12 to 16: "*All legal methods that regulate the fate of a person's wealth after he dies and determine who can receive it*".

How to get inheritance The law recognizes two ways to get an inheritance, namely :

- a. Ab intestato (statutory heirs), in Article 832 of the Civil Code. According to the provisions of this law, those entitled to receive part of the inheritance are blood relatives, both legal and outside of marriage and the husband or wife who lives the longest.
- b. By testamentair (heirs because they are appointed in a will = testament). In Article 899 of the Civil Code. In this case the owner of the wealth makes a will in which the heirs are appointed in a will / testament.

Principles of Civil Inheritance Law In civil inheritance law, the following principles apply:

- a. Only rights and obligations in the field of property law can be inherited.
- b. The existence of Saisine for heirs, namely: all heirs automatically by law obtain ownership of all goods, and all rights and all obligations of a person who dies.
- c. Death Principle, namely; Inheritance only because of death. Individual principle, namely: Heirs are individuals (personally) not groups of heirs.
- d. Bilateral principle, namely: Someone inherits from the father's side and also from the mother's side.
- e. The Principle of Ranking, namely: Heirs whose degrees are close to the testator close the heirs who are further away.

Inheritance will be carried out after someone dies by leaving property and there are heirs who are entitled to the inheritance, as Article 830 of the Civil Code states that inheritance only takes place due to death. The inheritance system according to the Civil Code follows the nuclear family system with individual distribution of property.

The principles of inheritance regulated in civil law can be seen in Article 1066 of the Civil Code, the things that are determined are:

- a. No, anyone who has a share in the estate is obliged to accept the continuation of the estate in an undivided state.
- b. The separation of property can be demanded at any time, even if there is a prohibition to do so.
- c. However, it is possible to agree not to separate for a certain period of time.
- d. This agreement can be binding for five years, but after the grace period has passed, it can be renewed.

Based on the above, the legal provisions that prioritize individual interests over inherited property often cause conflict between the heirs. In essence, all assets and liabilities pass to the heirs. The heirs before the distribution of inheritance can determine one attitude among the three possibilities, namely:

- a) Receive the inheritance in full or purely (zuivere aanvaarding).
- b) Receiving inheritance with conditions (beneficiare aanvaarding).
- c) Refusing inheritance (verwerpen)

In fact, the field of inheritance has undergone significant development, due to the increasingly complex needs of the community and the pattern of thinking can change in accordance with the times. Among them is Islamic inheritance law which has developed with the existence of replacement heirs, whose application in Indonesia is regulated by the Compilation of Islamic Law (KHI). In the Civil Code, it is strictly regulated about the replacement of the place of heirs (plaatsvervulling), in the Qur'an the term replacement heirs is not known but their position as heirs can be known through the expansion of the definition of direct heirs described 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 guidance in the Qur'an or strong Hadith. In this regard, Allah leaves it to man to determine the law.

Surrogate heirs in Islamic inheritance law to complement existing laws and also aim to seek justice for heirs. Substitute heirs are basically heirs because of their replacement, namely people who become heirs because their parents who are entitled to inheritance die before the heir, so they replace their parents' position. So the share of the replacement heir is as much as the share of the heir he replaced, for that replacement heirs need to be developed in Islamic inheritance law. Moreover, this will not harm other heirs. The assumption in some parties that Islamic law does not recognize substitute heirs in inheritance law, this is considered unfair when it is connected to a grandchild replacing his parents and occupying his parents' place as the child of the heir, nephew replacing his parents and occupying his parents' place as the brother of the heir, cousin replacing his parents and occupying his parents place as the uncle of the heir, and so on. In Islamic inheritance law there are substitute heirs, which in some respects differ from the replacement of the place of heirs (plaatsvervulling) in the Civil Code inheritance law. To clarify the above, further research is needed, limited to a comparison between Islamic inheritance law and Civil Code inheritance law regarding substitute heirs, not because of the lack of value of customary inheritance law in Indonesia, so that this research will show what are the similarities and differences between the two systems of inheritance law, and how to find a way out of substitute heirs from Islamic inheritance law and civil inheritance law.

## A. PROBLEM FORMULATION

Based on the background described above, the problems in this study can be formulated as follows:

1. What is the concept of substitute heirs in Islamic inheritance law and in civil inheritance law?
2. How is the comparison of substitute heirs between Islamic inheritance law and Civil Code inheritance law?

## B. RESEARCH OBJECTIVES

The purpose of the research is generally to find out the extent to which the position of replacement heirs in Islamic inheritance law and civil inheritance law. In detail, in accordance with the above problems, the specific objectives of this research are as follows:

1. To find out the replacement heir system in Islamic inheritance law and Civil Code inheritance law.
2. To understand the comparison of substitute heirs between Islamic inheritance law and Civil Code inheritance law.

**C. BENEFITS OF RESEARCH**

Benefits of Research The benefits to be achieved in this study are: Theoretical benefits, namely

- a. To contribute ideas in the field of legal science, especially inheritance law which discusses substitute heirs in Islamic inheritance law as part of civil law.
- b. Expanding the mindset and developing the author's own knowledge in the field of inheritance law as a prospective Notary.
- c. Practical Benefits Providing scientific contributions in order to create unification in the field of inheritance law towards legal codification so as to realize national inheritance law.

**II. THEORETICAL FRAMEWORK**

The main source of Islamic inheritance law is the Qur'an, namely Surah An-Nisa verses 7, 11, 12, 33 and 176. In addition to this main source of law, there are also other sources of law, namely Assunnah and Ijtihad. The Qur'an is very detailed in determining the share of certain heirs. Heirs who get a certain share and in certain circumstances are called Dhul faraid heirs. 19 The name dzul faraid for certain heirs is used by all parties who put forward teachings on Islamic inheritance law.

Although the Qur'an has determined in detail the shares of certain heirs, there are still differences of opinion among fuqaha (fiqh jurists). Differences of opinion only arise if a problem is not or is not clearly regulated in the Qur'an. In the case of the position of a grandchild. The Qur'an does not specify the grandchild's share of the inheritance of his grandfather or grandmother. The issue of the position of a grandchild, in its development raises issues, namely whether or not the replacement heir system is known in Islamic inheritance law. If someone dies leaving a son and two grandsons from the son, then the entire inheritance goes to the son, while the two grandchildren do not get the inheritance because it is blocked (terhijab) by the son. Because of this unfair situation, the law can change the sadness with what is called compulsory probate. The institution of Compulsory Wills is implemented in Egypt, namely in the Law of Wills.

In a mandatory will, the maximum amount that can be received by the recipient of the inheritance is one-third of the entire inheritance. This is also in accordance with the provisions regarding wills in Islamic inheritance law. So under any circumstances, the recipient of the mandatory will receives at most one-third of the entire inheritance. In addition, in a mandatory will only grandchildren whose parents died before the testator can receive inheritance due to mandatory wills. Hazairin came to the conclusion that Islamic inheritance law is bilateral and recognizes successor heirs. His conclusion about successor heirs is based on the interpretation of the Qur'an Surah An-Nisa verse 33, which reads as follows: *"For every inheritance from the property left behind by the parents and relatives, We make heirs. And (if there are) those with whom you have sworn allegiance, then give them their share. Verily, Allah is witness to all things."*

By him, mawali is interpreted as a substitute heir.<sup>21</sup> In addition, to prove that Islamic inheritance law recognizes substitute heirs, he also describes that Islamic inheritance law is bilateral. In the bilateral inheritance system, the right to inherit for men is equal to the right to inherit for women, meaning that both men and women are equally entitled to inherit. If the rights of men in inheriting are the same as the rights of women, then there is no question, in the reform of Islamic law, especially the issue of successor heirs, a person who dies first is replaced by his descendants in this case the child to receive inheritance from his grandfather. The inclusion of substitute heirs in the compilation of Islamic law with the aim of fulfilling a sense of legal justice. The Compilation of Islamic Law in Book II on inheritance Article 185 paragraph (1) stipulates that the heirs who die first from the testator, then their position can be replaced by their children, except those who cannot be heirs because they are convicted based on a Court Decision that has permanent legal force as stated in Article 173 of the Compilation of Islamic Law. In this case there is no explicit explanation of who are the heirs who can be replaced. Hazairin argues that logical thinking interprets the Qur'an Surah An-Nisa verse 33 as a verse that shows that in Islamic inheritance law there is a system of substitute heirs. According to him, there is no single indicator (clue) that proves that grandchildren from the female line cannot inherit.

Substitute heirs mean that from the beginning they were not heirs, due to certain considerations and circumstances they received inheritance but remained in the status of non-heirs. Although it still requires further analysis, it can be confirmed that Islamic inheritance law recognizes and has made rules about replacement heirs. Furthermore, what needs to be analyzed further is how the replacement heir system in Islamic inheritance law. The Civil Code inheritance law as stipulated in the Civil Code distinguishes heirs into two kinds of experts, namely:

1. Heirs according to the Law (Ab Intestaat Erfrecht).

Heirs according to the law, which is the heirs in a straight line down, which is divided into four classes of heirs, namely:

- a. The first group, which consists of :
  - 1). Longest living husband/wife.
  - 2). Descent of children.
- b. The second group consists of: 1). Father and mother 2). Siblings. 3). Descendants.
- c. The third group consists of: 1). Grandparents, both paternal and maternal. 2). The parents of the grandparents, and so on upwards.
- d. The fourth group consists of: 1). Uncles and aunts on both the paternal and maternal sides. 2). Descendants of uncles and aunts up to the sixth degree. 3). Siblings of grandparents and their descendants, up to the sixth degree of the deceased.

Heirs according to the Will (Testamentair Erfrecht). Heirs who get inheritance based on the appointment (erfstelling) of the testator (maker of the will) when he was alive. As long as there are still first class heirs, second class heirs cannot inherit, if there are second class heirs then third class heirs cannot inherit and so on. In the event that the heirs of the first group, namely the children of the testator, some of them die before the testator, the law determines the replacement of the place of the heir in Dutch called Plaatsvervulling, namely the grandson replaces the position of his deceased parents to receive his grandfather's inheritance in the amount of the share received by his parents. In the Civil Code inheritance law, the number of siblings affects the share that will be received by the parents, this influence is only limited to reducing it, not to negate the parents' share. With the explicit provision of Plaatsvervulling in the law, it is necessary to analyze further, how the comparison of replacement heirs in Islamic inheritance law with the replacement of the place of heirs (Plaatsvervulling) in the Civil Code inheritance law which is still valid in Indonesia.

### III. RESEARCH METHODS

Research Methods Research is one of the right ways to solve problems. In addition, research can also be used to discover, develop and test the truth. Carried out to collect data to obtain problem solving, so a systematic plan is needed, methodology is a logic that is the basis of scientific research. Therefore, when conducting research, one must pay attention to the science that is the parent.

To get good results and be scientifically accountable, an appropriate research method is needed. The right research method is needed to provide guidance and direction in studying and understanding the object under study. Thus the research carried out will run well and smoothly in accordance with the plan set. In this legal research, researchers make the field of law as the foundation of the parent science.

Therefore, the research used is legal research. According to Soerjono Soekanto, what is meant by legal research is a scientific activity based on certain methods, systematics, and thoughts that aim to study one or all certain laws by analyzing them. In legal research, an in-depth examination of legal facts is also carried out to be used in answering problems.

In order to get maximum results, researchers conduct legal research using the following methods:

1. Approach Method The approach method used in this research is the normative juridical method, which is legal research conducted by prioritizing researching library materials or documents called secondary data, in the form of primary, secondary, and tertiary legal materials.

Normative legal research can be divided into 5 (five), namely:

- a. Positive law inventory research;
- b. Research into legal principles;
- c. Research to find law in concreto;
- d. Research into legal systematics;
- e. Research into the degree of vertical and horizontal synchronization.

From the five distinctions of normative legal research above, the research method used in this research is research to find law in concreto, which is research that aims to find whether the law is appropriate to be applied to resolve a particular case.

2. Research Specifications The research specification to be used is descriptive analytical, this method aims to provide an overview that is carried out using qualitative means of legal theories and doctrines - legal doctrines and opinions - opinions of Islamic law experts.
3. Data Collection Methods Data collection has a close relationship with data sources, because with data collection, the necessary data will be obtained and then analyzed according to the problem so as to obtain results in accordance with the research objectives Secondary data is obtained through literature studies or literature.

The secondary data includes:

- a. Primary Legal Materials, which are binding legal materials in the form of laws and regulations, among others:

- 1) Qur'an and Hadith;
- 2) Civil Code (Burgelijk Wetboek);
- 3) Compilation of Islamic Law.
- b. Secondary Legal Materials which are legal materials that provide an explanation of primary legal materials, in the form of:
  - 1) Books;
  - 2) Journals;
  - 3) Magazines;
  - 4) Media articles;
  - 5) And various other writings.
- c. Tertiary Legal Materials which are legal materials that provide guidance and explanation of primary and secondary legal materials, such as:
  - 1) English-Indonesian Dictionary;
  - 2) Arabic-Indonesian Law Dictionary;
  - 3) Big Indonesian Dictionary.
  - 4) Encyclopedia of Islamic Law.
  - 5) Data Analysis Method The method used in analyzing and processing the collected data is qualitative analysis. The purpose of using this method is to provide an overview of the problem based on a normative juridical approach.
 

In this method, the data obtained from the research carried out is secondary data, the data is carried out as follows:
- d. Selecting articles and verses as well as the views of legal experts that contain legal methods governing the issue of substitute heirs in order to answer the problems of this research.
- e. Data processing, namely data that is inventoried / collected and then grouped, then analyzed and systematized in descriptive analysis.
 

Secondary data obtained through the study of literature related to the subject matter, analyzed objectively, as well as connecting it with the opinions of legal experts and past authors and the results are interpreted to be formulated into research findings and conclusions.

#### IV. RESULT AND DISCUSSION

##### 1. Position of Successor Heirs in Islamic Inheritance Law and Civil Inheritance Law

###### A. Position of Successor Heirs According to Islamic Inheritance Law

Islamic inheritance law has experienced a very significant development among Muslims in the world without changing its normative text, Opinion A. Hussaini said that Islamic inheritance is a specialist form as a scientific discipline with always based on the Qur'an and the Sunnah. Islamic law regulates several areas, including the field of family law, which includes marriage law and inheritance law. In general, the field of family law in the Qur'an is regulated or contained in Q.S IV.

So it seems that thinking is emerging in some countries, Muslims in this world, can accept and have an interest in fight for inheritance rights for heirs left dead in advance by parents or heirs who Connect. This is in contrast to Islamic inheritance law which has been developing in Indonesia, which is affiliated to Fiqh Shafi'i(yah), where the existence of successor heirs is positioned as dzawil Al-Arham.

With the death of a person will inevitably experience an inheritance event as long as the pillars of his inheritance are fulfilled. The pillars of inheritance are: first there must be muwarrits, second there must be al-waris, and third al-mirats. In addition, because the law of inheritance is directly related to property, which if not given its provisions, it must be very easy to cause disputes between heirs.

In terms of successor heirs, it is known by the Arabic term Mawali which means successor heirs. What is meant by successor heir is the heir who replaces someone who acquires the share of the inheritance that was originally to be obtained by the person who was replaced. Because the person who is succeeded is the one who should have received the inheritance if he was still alive, but in the case in question he had predeceased the testator. This person who is succeeded should be the link between him who succeeds this and the heir who leaves the estate. Those who become mawali are descendants of the heir's children, descendants of the heir's relatives or descendants who hold some kind of Inheritance agreement that is, the form can be in the form of inheritance with the testator.

Judging from its substance, the law of inheritance regulated in Book II of the KHI, is generally in line with the material of inheritance law sourced from the books of jurisprudence references. However, it is necessary to note some articles that seem to have differences or are modifications of existing jurisprudence. Among the chapters are the following:



- 1) In Article 173 which deals with the obstruction of inheritance, it is stated that among the obstacles to inheritance other than murder are attempted murder, and defamatory.
- 2) In Article 177 on the father's share, it is stated that the father gets one-third share if the heir leaves no children. This provision is not in the Qur'an and is not mentioned in any book of jurisprudence. The father gets a third share only in one case called the gharrawain problem where the heir leaves behind heirs consisting of father, mother, and husband.
- 3) Article 183 which states "the heirs may agree to make peace in the division of the estate, after each has realized his share.
- 4) Article 185 introduces a provision regarding unknown successor heirs in the book of jurisprudence who can take the place of their parents who have predeceased the testator. The concept of substitution 74 also called (plaatsvervulling or substitution) this actually adopts the provisions in the Civil Code (BW, Burgerlijk Wetboek). The concept of replacement of position has similarities with the concept of compulsory will, that is, in the event of the death of the replaced person that precedes the death of the testator, and that the share of the person who replaces is not greater than the share of the person who is replaced

However, there are fundamental differences between these two concepts. If in a mandatory will, what is replaced by his position is the right to receive his parents' share with a limit not exceeding 1/3 of the estate. While in the concept of replacement of position, what it replaces is place, degree, and rights, and its share is not limited to the maximum. Furthermore, if in a compulsory will, those who can take the place are only grandchildren, both male and female, whose parents died before the testator. While in succession of position, who can be successor heirs are grandchildren who are not limited to the lower 75 rank, children of descendants of deviant line families (nephews), and legitimate children of natural children whose parents died.

Article 173 of the KHI which reads: "*A person is prevented from becoming an heir if, by a judge's decision that has permanent legal force, is punished for:*

- a. Accused of having killed or attempted to kill or severely mistreated the heirs.
- b. Accused defamatorily has filed a complaint that the heir has committed a crime punishable by 5 years imprisonment or a harsher sentence"

Surrogate inheritance law for Muslims in Indonesia is known since the publication of the Compilation of Islamic Law (hereinafter abbreviated as KHI) in 1991 in its implementation is regulated based on the Decree of the Minister of Religious Affairs of the Republic of Indonesia No.154 of 1991.

In the Compilation of Islamic Law stipulated in Article 185 KHI paragraph (1), *heirs who die before the heir, then their position can be replaced by their children, except those mentioned in article 173 KHI. Paragraph (2) i.e. the share of the successor heirs shall not exceed the share of the heirs equal to the one being replaced.*

What is meant in article 185 KHI paragraph (1) sentences can be "*replaced*" the emergence of views that contain facultative or tentative understandings so that it can be interpreted that there are heirs who may be replaced and there are heirs who may not be replaced. Against its tentative nature, Article 185KHI Raihan A. Rasyid is a very appropriate arrangement, because *the purpose is intended to replace the heirs in the KHI because seeing the reality in some cases, there is pity for the grandson of the heir.*

Replacement in Article 185 KHI includes the replacement of places, degrees, and rights without limits and without discrimination between male and female heirs. Substitution means that the male replacement inheritance acquires the same degree as the degree of son and so on. Replacement of rights means that if the person replaced by the successor heir gets the inheritance then the successor heir is also entitled to the inheritance and so on. Indefinite reimbursement i.e. reimbursement applies to the heir's grandchildren even if they have a son or two surviving daughters. Replacement without distinction means that those who can become successor heirs are all descendants, both male and female, except those not mentioned in Article 174 paragraph 1 letter successor heirs will get a share equal to the share of the replaced heirs.

This means that if the heir takes the place of the son, then he will get a share equal to the son's share. If he succeeds the female ank then the share is equal to the share of the daughter and if the successor heirs are two or more people then they will share equally over the share of the heirs they replace provided that the male gets twice the share of the daughter and so on. Heirs are basically heirs by succession, namely people who become heirs because their parents who are entitled to inheritance die before the heir, so that the position of his parents is replaced by him. Children who replace their parents' position to inherit inheritance are called Mawali.

There are two conditions that must be met by mawali appearing as heirs, namely

1. The person connecting the mawali with the heir must have died first
2. Between Mawali and the heir there is a blood relationship. With the condition of this darh relationship, the widow and widower share has no mawali.

These mawali include:

- a) Mawali for children, both boys and girls
- b) Mawali brothers, both male and female
- c) Mawali for mothers
- d) Mawali for father

The provisions regarding the family according to the line of origin, namely father, mother, grandfather, and grandmother, are no different from the provisions of the family according to the line down or branch descent. The existence of both sons and daughters prevents the grandchildren from receiving the inheritance. If the grandfather and his child die, then the right of inheritance passes to the grandfather's grandson, that is, to the child of the deceased child. Along with the development of the principle of equality of rights and positions, the provisions of Article 185 KHI which affirms "Heirs who die before the heir can be replaced by his son" the sentence of the child can be understood that both descendants of sons and daughters who have died before their parents have the same position".

- a) As for the way of inheritance distribution among the heirs of dzaul arham, there are differences among scholars who determine the inheritance of dzaul arham.; By substitution What is meant by succession here is that the heirs of dzaul arham receive the right of inheritance according to what is received by the nearest heir connecting to the heir, whether he is as dzaul furudh or as ashabah. The method of inheritance according to this replacement system, is what in BW is called inheritance "bij plaatsvervullings". For example, heirs consist of father, mother, father of mother, father, daughter of daughter and son of daughter. The respective sections are as follows:
  - a. The father mother replaces the mother gets 1/6 The daughter of the daughter changes the daughter, together the granddaughter of the daughter changes the daughter, receives 2/3. Total  $1/6+4/6 = 5/6$ . The remaining 1/6 is for the father of his mother's father as furudh or ashabah. Another example: nephew (sister's child) with husband and mother.
  - b. The respective sections are For mothers 1/3; 3) For husband 1/2; 4) The niece changing sister gets 1/2.
- b) In proximity, this division based on proximity means that the heirs of dzaul arham receive inheritance based on their proximity to the heir. On the basis of this method the downward line relative comes first from the upward line relative and the upward line comes first from the first or second sideways line, and so on. Among dzaul arhams of equal rank, those whose relationship to the heir takes precedence is closer.

Only one person is entitled to inherit in this way of division. He took all the property or the rest of the property. When he was alone he took all the possessions; And if there are several people of the same sex, they vary equally and when they are of different sexes they vary in the ratio of one man to the part of two women.

In the example of heirs consisting of the mother's father, uncle's daughter, son of daughter and daughter of daughter; Brothers and sisters' sons, then the solution is as follows, the son of the mother's brother, then the solution is as follows: Those entitled to receive the inheritance in this example are only the children of the daughter, because they are in the first instance; the father of the mother is in the second degree; The uncle's daughter is at the fourth level and the mother's sibling child is at the third level. Sons of daughters and daughters of daughters of various possessions with the comparison of sons get 2/3 and girls get 1/3.

### **B. Position of Successor Heirs According to Civil Inheritance Law**

Inheritance Law Civil Law is known for two ways a person obtains inheritance rights, namely inheritance according to the Law Ab Intestato and inheritance and will. There are two ways of acquisition under the Civil Law, namely, because of himself and indirect inheritance or by replacing is inheriting for a deceased person first rather than the heir. He replaces the heir who has died before the testator, contained in Article 852 paragraph 2 of the Civil Code where his right is his own right to inherit to the successor heir meaning that each heir receives an equal share.

Based on the systematics of the Code of Law Civil Civil, then it is clear that important issues concerning inheritance is regulated in Book II on Objects. Systematics It gives clues that the right of inheritance and all things which arises therefrom is seen as a material right.

Article 830 of the Civil Code specifies that, "inheritance takes place only by death". Therefore that is, the estate is only opened if the heir has died, the world where heirs are still alive when the estate is open. Deep in this case, there are special provisions in Article 2 of the Code Civil Law, which is a child in the womb of a person women are also considered as having been born if the interests of the SI the child wants it. Dying at birth is considered never exist. Obviously, a child born when his father had died, entitled to inheritance. This is regulated in Article 836 of the Civil Code, which specifies that, "Bearing in mind the provisions in Article 2 of this Civil Code in order to act as an heir, a must have existed by the time the inheritance fell away.

Civil inheritance law is a collection of rules governing wealth due to the death of a person, concerning the transfer of wealth left by the dead body and the consequences of this transfer for those who acquire it both in their relationship with third parties.

In the Civil Code, the principle of inheritance is divided into two, namely:

- a) New inheritance is open or can inherit to another party in the event of a death, Article 830 of the Civil Code
- b) There is a blood relationship between the testator and the heir, except for the husband or wife of the heir contained in Article 830 of the Civil Code provided that they are still bound when the heir dies.

In inheritance law, the principle applies that when a person dies immediately all his rights and obligations transfer, all his heirs. The principle is contained in a French proverb that reads "lemort saisit let-vit" meaning the dead are replaced by the living. While all the rights and obligations of the deceased by the heirs are called saisine.

The inheritance system contained in the nuclear family system with the division of property individually. The points of inheritance regulated in civil law can be seen in Article 1066 of the Civil Code, the matters determined, namely:

- a) No person who owns a share in the estate shall be obliged to accept the proceeding of the estate in an undivided state.
- b) The separation of the property can be demanded at any time, even if there is a prohibition against doing so.
- c) However, there can be an agreement for a certain time not to make a separation.
- d) This agreement can be binding for five years, but after the grace period, time has passed, the agreement can be renewed.

Based on the above, that legal provision that prioritizes individual interests over inheritance often causes problems among heirs. In fact, all inheritance, both assets and passive, passes to his heirs. Heirs before the division of inheritance can determine one attitude among three possibilities:

- a) Receive the estate in full or purely
- b) Receive inheritance with conditions
- c) Processing inheritance

If there has been a divorce between the heir and his wife or husband, then the husband or wife is not a party who can inherit each other. With these two principles, the inheritance will not be able to be distributed and owned by the heirs as long as the heirs are still alive. In the Civil Law system it is known by the difference between the heirs of uit eigen hooflw and the heirs of bij plaatsvervulling. Heirs uit eigen hoofed are heirs who inherit by virtue of their own standing with the testator, e.g. the heir's son, wife or husband who lives the longest of the testator. While the heirs of bij plaatsvervulling are successor heirs since the person entitled to inherit has died earlier than the heir, for example a father who died earlier than the grandfather then the children of his parents who died before the grandfather, then the children of the deceased parents replace the position of the father as heirs of the grandfather contained in Article 841 of the Civil Code.

This succession occurs in a downward line and occurs indefinitely, each heir who dies first is succeeded by his children. If more than one child is in place, then the replacement counts as one branch, meaning that all children who replace it get an equal share. Replacement can also occur in family offspring in side lines. Each heir's brother, whether a sibling or half-brother, if he dies later succeeded by his son.

Each successor counts as a branch, according to the provisions of Article 841 of the Civil Code, replacement is the right which grants to a person to replace a deceased heir rather than his heir to act in lieu of the degree and within the right of the person he replaces. Substitution entitles the successor to act as a substitute in degree and in all rights of the person he replaces. Substitution entitles the successor to act as a substitute in degree and in all rights of the person he replaces. This is a total turnover where the successor heirs have the same rights as the person being replaced. The inheritance

system of Civil Law is known as the division of the system two to one. Every equal degree gets the same share, gets the same share, shares the same.

The provisions in the Civil Code that regulate the replacement of places (plaatsvervulling), namely Article 841 and Article 848 of the Civil Code which mention representation (vertegen woordigen), mean that distant blood families do not "represent". In this case, the one who died first also did not act on his behalf, but only replaced his place which became vacant because of death.

This system is different from Customary Law which is individual-collective. The system of inheritance according to Islamic Law is also individual, but individual bilateral. The system of inheritance according to Islamic Law is not about the absolute nature of carrying out the 86 divisions of inheritance or leaving the inheritance property in a state of undivided, but is done by means of deliberation. This system applies to:

- a) The European group and those equated with the European group.
- b) Chinese Foreign Easterners
- c) Other Foreign Easterners and Subservient Natives

The term successor heir in Dutch is called plaatsvervulling, replacement of place in inheritance law is called replacement of heirs, which is the death of a person by leaving grandchildren whose parents have died first. This grandson takes the place of his deceased parents to inherit from his grandparents. According to Raihan A.Rashid, the term successor heir is distinguished between people called "successor heirs" and "successor heirs". According to him, a successor heir is a person who since all is not an heir but due to certain circumstances he becomes an heir and receives inheritance in the status of an heir.

For example, the heir leaves no offspring but leaves a grandson or granddaughter from a man. While the replacement of the heir is a person who from the beginning is not an heir but due to certain circumstances and certain considerations may receive an inheritance but remain in the status of not as an heir, for example the heir leaves children with grandsons or granddaughters whose parents died before the heir.

The types of inheritance succession according to the Civil Inheritance Law are as follows:

- a) Replacement in a straight line down

Succession of inheritance in a straight line down indefinitely, if it is allowed for the children of the deceased to inherit together with the children of the child who died first. A straight line down means descendants, children, grandchildren, great-grandchildren and so on without being able to distinguish through unlimited sons and daughters who continue downward without restriction to any degree.

Each child who dies first is succeeded by all his children, likewise if from this succession one dies first, he is also succeeded by his children so constantly based on the provision that all descendants of the deceased first must be regarded as one branch and together to obtain their share in the succession.

Thus, if all the children of the testator have died first there will be only grandchildren so that they inherit on a succession basis. They do not inherit uit eigen hoefed or upon themselves. They can inherit themselves if all the heir's children have no right to refuse or revoke their inheritance.

- b) Substitution in a straight line to the side

Under Article 844 of the Civil Code allowed replacement in deviant lines or profits of all children and descendants of brothers and sisters who have died first, whether they inherit jointly with uncles or aunts. After the death of all the testator's siblings, the estate must be divided between all descendants of the deceased siblings even if the descendants of the testator are not of the same degree.

- c) Replacement in a sideways line

According to Article 845 of the Civil Code regarding replacement in a deviant line for nephews, if in addition to the nephew closest to the testator, there are still children and descendants of his brother or sister, who have predeceased the testator. Thus, in this third succession of inheritance, the children or descendants of nephews related to the closest blood family take the place of their parents and inherit together with the nephews of the heirs in question are not nephews.

That group IV, is the only article that regulates replacement regulated in Article 845 of the Civil Code. Article 845 of the Civil Code only explains that the change of place is only allowed on condition that in addition to blood relatives whose immediate family still has children and descendants of the nephew's relatives. It can be concluded that basically group IV is not known

for changing places or in other words applies the principle of the closest family closing distant families.

Article 838 of the Civil Code states that people who are considered improper to inherit because they are excluded from inheritance are as follows:

- a) Those convicted of murder or attempted to kill the deceased.
- b) Those who by the judge's ruling are blamed for defaming the deceased by filing a complaint have committed a crime with a five-year prison sentence or a harsher sentence.
- c) Those who by force or deed have prevented the deceased from making or revoking his will.
- d) Those who have embezzled, tampered with, or forged the will of the deceased.

## 2. Comparison Of Successor Heirs Between Islamic Inheritance Law And Civil Inheritance Law.

In the Compilation of Islamic Law, successor heirs exist in different ways from the replacement of heirs' place in Civil inheritance law. In Book II Article 171 letter a of the Compilation of Islamic Law defines the law of inheritance as a law that regulates the transfer of ownership rights of heirs that determines who is entitled to be the heir and some of their respective parts.

The legal basis of inheritance is strictly regulated in the Qur'an including in the word of Allah SWT in Sura 4 verse 7 which means *"for men there is the right to obtain from the tirkah of his father's mother and his close relatives and for women there is the right to obtain the tirkah of his mother, father and close relatives either a little or a lot according to the predetermined part"*.

Civil inheritance law system, the inheritance system contained in the Civil Code which adheres to an individual system system where after the heir dies, the heir's estate must be immediately distributed to the heirs. The enactment of the Civil Law Kit based on the provisions of inheritance law is interpreted as follows *"All of them are legal methods that govern the fate of a person's wealth after he dies and determine who can receive it."*

Research traces the origins of successor heirs in KHI derived from Hazairin's thought enough evidence and Hazairin's efforts makes his opinions derived from verses of the Qur'an which is interpreted according to customary law terms in order to adapting the content of the Qur'an to indigenous peoples in Indonesia (receptie theory). Though Customary law should be conforming to the content of the Qur'an (receptie a contrario)

In this regard, Taufiq insisted that Tim The framer of the inheritance law in the IHL is not K.H. A. Wills Aulawi and K.H Azhar Basyir. This he stated in his paper when mentioning the names of K.H. Kholid and M. Yahya Harahap as Inheritance Law Formulation Team in KHI. Regardless of the debate about that, if you look at the sound of the article in the KHI, big The possibility of the "shadow formulator" being oriented to thought Hazairin or adopted B.W. or a combination of the two systems

Inheritance will be carried out if there is a person who dies first by leaving property and there are heirs who are entitled to the inheritance as stipulated in Article 830 of the Civil Code which states that inheritance only takes place because of death. The amount in the division that grandchildren must receive is the number of shares that their parents should receive if they are still alive. The term change of place is known only in civil law and customary law, while in Islamic law it is unfamiliar. In Islamic inheritance law the successor heir only views the successor heir as the descendant of the heir who is succeeded in his position, The definition of heirs in Islamic inheritance law occurs as a result of the absence of certain heirs.

The amount in the division that grandchildren are obliged to receive is a number of shares that their parents should receive if they are still alive The term change of place is known only in civil law and customary law while in Islamic law it does not recognize. The definition of heirs in Islamic inheritance law occurs as a result of the absence of experts certain inheritances.

Differences in successor heirs according to the compilation of laws Islam and the Civil Code:

- a) On the difference of successor heirs of the Compilation Islamic Law with the Civil Code. On Legal Compilation Islam is the granting of the rights of an heir who has died to his surviving descendants. This rule is contained in article 185 KHI which reads:
  1. More deceased heirs than the heir, then his position can be replaced by his children, except those mentioned in Article 173.
  2. The share of successor heirs shall not exceed that of the share of heirs equal to the one replaced.
- b) The difference between the two is according to the Compilation of Laws Islam which basically only views heirs a successor is a descendant of the heir who is succeeded Whereas, in the Civil Code the The right to replace is in a straight line to The legitimate bottom goes on with no end there in Article 842. Allowed replacement in the line sideways over the benefit of all children and descendants brothers

and sisters who have died especially It used to be good for them to inherit together with uncles or their aunt. After the death first all the heir's brothers.

Contained in Articles 173 of the KHI and 838 of the Civil Code explain the obstruction of inheritance opportunities that will replace him the heirs of the successor. Those things can abort a person's right to inherit for cause or inherited conditions

Islamic law has the conditions for inheritance, which are practiced in religious courts in the Compilation of Islamic Law, namely:

1. The existence of a person who died essentially or legally.
2. The heir is still vividly alive at the time the heir leaves the world.
3. Know the class of heirs.

Civil Law practices in the District Court that the conditions of the heir are regulated in the 11th Title of book II of the Civil Code, namely:

- a. There is a person who dies, in Article 830 of the Civil Code states, that inheritance only takes place because of death, death here is natural death.
- b. To acquire estate, the heir must be alive at the time the testator dies.

In this case the caption is added by getting the inheritance, namely:

1. Ab Intestato inheritance, which is statutory inheritance
2. Testamenteir inheritance, which is inheritance because it is appointed in a will or testament

In the Islamic Inheritance system, the amount of share that must be received by the successor heirs and distinguishing female successor heirs, male successor heirs get a larger share compared to female successor heirs. Meanwhile, according to Civil inheritance law, the amount of the share of heirs, the successor that must be received is equal to the amount the share of the successor heirs to be received is equal to the amount of the share to be received by the successor heirs and in inheritance Civil Law does not distinguish between female successor heirs all the same.

The inheritance shall be divided between all descendants of relatives who have died first, even if the descendants are in an unequal degree provided for in Articles 844-845 of the Civil Code, which provides for replacement in deviant lines for different nephews, blood relatives closest to the heir, extant children and descendants of the testator's uncle or aunt.

In the Compilation of Islamic Law it seems that mawali is not a necessity by stating that the position of the heir can be succeeded by his children, but in practice since the Compilation of Islamic Law was issued we have not been able to find a decision of the Religious Court that does not give a share to successor heirs to the descendants of children.

#### **IV. CONCLUSION**

Based on this research, it can be concluded that the requirement that must be met by successor heirs according to Islamic inheritance law is that there must be consecutive deaths, and the inheritance of the first heir has not been distributed to each heir. Meanwhile, according to the Civil Code, the person who is replaced must die first and the person who is replaced must die first and the replaced person is a legitimate descendant of the replaced. As for the share of successor heirs in Islamic law which is carried out in accordance with Furudhul Muqaddarah in which it has been determined based on sex and class.

The difference between successor heirs according to Islamic Inheritance Law and Inheritance Law according to Civil Law is one of them is that the rights obtained by the successor heirs are not necessarily the same as the rights of the person being replaced, and also must not be inferior to the share of heirs who are equal to those who are replaced, but may be reduced. According to the Civil Law of inheritance, the share that the heir who succeeds his father's position will get is exactly the same as the share that his father would have obtained had his father been alive from the testator.

#### **SUGGESTION**

1. The author advises the Judges to apply the articles contained in the Compilation of Islamic Law on successor heirs in resolving cases relating to successor heirs in resolving cases relating to successor heirs in order to achieve a sense of justice for successor heirs. This justice grants the right of inheritance to successor heirs as stipulated in these articles.
2. The successor heir should be aware that he is appointed as the successor heir, it means that he will receive all existing shares and should pass to the real heir, but that is not the only thing that must be considered. But also in terms of obligations must also be accepted by the successor heir, because his status is in place of the real heir.

**SYSTEMATIZATION OF WRITING**

This research consists of four chapters, where each chapter has a relationship between one chapter and another, which includes:

Chapter I: This chapter discusses the background, problem formulation, research objectives, research benefits, theoretical framework, research methods, and finally the writing systematics.

Chapter II: Literature Review In chapter two this is a Literature Review which contains theoretical descriptions of : Definition of the Law of Inheritance, Elements of Inheritance, Conditions for People receiving Inheritance, Causes and Obstacles to receiving Inheritance, Principles of Inheritance Law and Substitute Heirs.

Chapter III: Research Results and Discussion The third chapter is the results of research and discussion. This chapter will describe the analysis of the replacement heir system in Islamic inheritance law and Civil Code inheritance law as well as the comparison of replacement heirs between Islamic inheritance law and Civil Code inheritance law.

Chapter IV: In chapter four, a conclusion will be drawn as an answer to the problem and research objectives, and suggestions or recommendations will be given related to the research title.

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