



# REDEFINING INHERITANCE JUSTICE: THE PRACTICE OF PATAH TITI AND THE ROLE OF SUBSTITUTE HEIRS IN ISLAMIC LAW IN SABANG CITY, ACEH

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## **Abstract**

Inheritance issues are common in daily life, one of which is the *patah titi* system, formally referred to as substitute heirs. In Sabang City, Aceh, this concept is still practiced children whose parents die before the inheritance giver are considered ineligible to receive inheritance. This stems from the belief that such children are not specifically mentioned in the Qur'anic inheritance divisions, and thus, do not qualify to inherit from their grandparents. This study aims to explore the concept of *patah titi* in Sabang society and analyze it through Article 185 of the Compilation of Islamic Law (KHI) regarding substitute heirs. The research uses an empirical legal approach combined with statutory analysis. Findings show that the *patah titi* practice remains active in Gampong Kuta Timu, Sabang, despite existing legal provisions on substitute heirs in the KHI. Misunderstanding the meaning of *patah titi* has created more negative than positive impacts not only in the inheritance process but also in weakening family bonds. In practice, grandchildren affected by *patah titi* may receive assets through grants, whereas grandchildren recognized as substitute heirs receive assets through inheritance.

**Keyword:** *Patah titi*; Substitute Heirs; Islamic Law; Sabang.

## **A. Introduction**

Islamic inheritance law is a law that regulates everything related to the transfer of rights or obligations over a person's property after he dies to his heirs. Thus, in inheritance law there are three main elements that are interrelated, namely the heir, the estate, and the heirs. Inheritance is basically an inseparable part of the law, while the law is part of the main aspects of Islamic teachings.

In principle, inheritance occurs preceded by death, then the person who dies leaves an inheritance that will be distributed to his heirs. This is stated in Article 830 Chapter XII of the Civil Code which states that inheritance only takes place due to death.<sup>1</sup> Regarding the positive rules governing inheritance, the Indonesian state does not yet have a national inheritance law.

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<sup>1</sup> Udiyo Basuki and Hendradi Setyawan, "Langkah Strategis Menangkal Hoax: Suatu Pendekatan Kebijakan Dan Hukum," *Jurnal Hukum Caraka Justitia* 2, no. 1 (2022): 1, <https://doi.org/10.30588/jhcj.v2i1.1033>.

Thus, there is a pluralistic inheritance law in Indonesia, which includes three legal methods governing inheritance, namely customary law, Islamic law, and Western Civil Law. Regulations regarding the transfer of wealth (inheritance) left by the dead and the consequences of this transfer for the people who acquire it. Both in the relationship between them and third parties based on western inheritance law regulated in Burgerlijk Wetboek (BW) or KUHPerduta. The law of inheritance, the elements of inheritance are divided into several types, namely: heirs, inheritance, and heirs. The heir is the person who gives the inheritance, namely the person who dies and leaves a number of assets. Inheritance is the property left by the heir, while the heirs are the people who are entitled to receive the heir's property.<sup>2</sup>

The inheritance must be distributed immediately and each inheritor gets the distribution of inheritance to be able to control or own the inheritance according to their respective parts. The inheritance is then divided which results in the heirs being able to control and own these parts to be enjoyed, cultivated, or transferred to fellow heirs, family members, or other people. Once the testator dies, the inheritance must be immediately distributed or transferred to the heirs. Article 833 of the Civil Code states that all heirs automatically legally obtain inheritance rights to goods, all rights, and all receivables from the testator. In connection with this right, each heir can demand that the inheritance that has not been distributed to be distributed immediately, even though there is an agreement to the contrary.<sup>3</sup>

Conflicts over inheritance still occur in many communities. In fact, the conflict often arises before the heir dies. The trigger of

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<sup>2</sup> Nor Annisa Rahmatillah, "Pluralitas Hukum Kewarisan Di Indonesia : Sebuah Tinjauan Normatif", *Jurnal Mitsaqan Ghalizan*, vol. 4, no. 2, (2024), pp. 126-3, doi:10.33084/mg.v4i2.9043.

<sup>3</sup> Dika Ratu Maru'atun, Dwi Juniyanto, Wahyu Rivaldi, & Asep Sunarya, Analisis Pembagian Harta Warisan Kepada Ahli Waris Menurut Hukum Perdata (BW), *Amandemen: Jurnal Ilmu Pertahanan, Politik Dan Hukum Indonesia*, vol. 1, no. 3, (2024), <https://doi.org/10.62383/amandemen.v1i3.449>.

the conflict is not only due to the low legal awareness of the community towards the distribution of inherited property, but also due to juridical problems related to inheritance law in Indonesia.<sup>4</sup> The juridical contradiction regarding inheritance in question is that there is still no uniform use of inheritance law in Indonesia.

Law, especially inheritance law, is always interesting to study, especially in relation to the socio-cultural conditions of the people in Indonesia. This is because the law of inheritance in Indonesia is still pluralistic, meaning that each group of people has its own law. This pluralism reflects the diverse traditions, customs, and beliefs that exist across various ethnic groups in the country. As a result, inheritance practices can vary significantly, influencing family dynamics and property distribution in ways that are deeply rooted in local culture.<sup>5</sup>

These various legal configurations will certainly have further consequences. Heirs can be faced with at least three juridical choices. If each heir in a family chooses a different system of inheritance law, of course, it allows for polemics between heirs and juridical problems. The issue of wasiat and the share of inheritance for family members with different religions, beliefs, and nationalities will become more complicated. This happens because each heir has a very strong argument about his/her belief in the determination/choice in inheritance law.<sup>6</sup>

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<sup>4</sup> I Nengah Pasek Suryawan, and Rineke Sara, Legal certainty regarding pluralism of inheritance law in Indonesia in the transfer of inheritance rights in Indonesia, *Indonesian Journal of Multidisciplinary Science*, vol. 4, no. 3, (2024), <https://doi.org/10.55324/ijoms.v4i3.1041>.

<sup>5</sup> Diana Anisya Fitri Suhartono, Naysha Nur Azizah, Claressia Sirikiet Wibisono. "Sistem Pewarisan Menurut Hukum Perdata." *JURNAL HUKUM, POLITIK DAN ILMU SOSIAL (JHPIS)*, vol. 1, no. 3, (2022): 204–214. <https://doi.org/10.55606/jhpis.v1i3.921>.

<sup>6</sup> Berkah, Dian, and Tjiptohadi Sawarjuwono, "Inheritance Wealth Distribution Model and Its Implication to Economy", *Humanities & Social Sciences Reviews*, vol. 7, no. 3 (2019): 1–10. <https://doi.org/10.18510/hssr.2019.731>.

For Indonesian citizens, the settlement of inheritance cases is legally pursued through the organizing bodies of the general judiciary (district courts and high courts) and religious courts (religious courts and religious high courts). The *Ius Constitutum* (law that has been established and is currently in force) that guides judges in the Indonesian district courts and high courts is the Civil Code (KUHPerdata) or *Burgerlijk Wetboek* (BW). In the religious courts, judges use the guidelines of the Compilation of Islamic Law (KHI) as material law in resolving cases submitted to them.<sup>7</sup>

Stating that in *Fiqh Mawaris* what is meant by replacement heirs is a descendant who replaces the position of his mother's father who died before the testator (father and mother of the deceased or grandparents of the child who replaces his mother's father). In the understanding of the Acehnese, this case is called *patah titi*, meaning that the descendants of the person who died before the testator are positioned as people who are no longer related to the testator to receive inheritance, because the father and mother who are entitled to receive inheritance have died before the testator dies.<sup>8</sup>

Inheritance of *patah titi* according to Indonesian legislation in Presidential Decree No. 1 of 1991 concerning the Compilation of Islamic Law whose implementation is regulated based on the decision of the Minister of Religious Affairs of the Republic of Indonesia No. 154 of 1991 concerning the implementation of Presidential Decree No. 1 of 1991 which aims to accommodate the laws that have long lived in the community there are at least three

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<sup>7</sup> Dewi Noviarni, *Kewarisan Dalam Hukum Islam Di Indonesia*, 'Aainul Haq : Jurnal Hukum Keluarga Islam, vol. 1, no. 1, (2021).

<sup>8</sup> Habibah Fiteriana, "Konsep Ahli Waris Pengganti Dalam Perspektif Masalah Jasser Auda (Telaah Pengaturan Di Indonesia Dan Dunia Islam)", *Ahwaluna: Jurnal Hukum Keluarga Islam*, Vol. 3, No. 1, (2023), <https://doi.org/10.70143/ahwalunajurnalhukumkeluargaislam.v3i1.106>.

things that can be put forward with the national legal order, namely on the issue of marriage, inheritance, and waqaf.<sup>9</sup>

Stating that in principle people cannot replace the position of a living heir. So his position cannot be replaced by his heirs (plaatsvervulling). This principle underscores the importance of individual rights and responsibilities within the context of inheritance laws.<sup>10</sup> It emphasizes that while heirs may have the right to inherit, they cannot assume the specific role or position of a living heir, preserving the unique identity and obligations of the individual in question. Inheritance in Indonesia there are several regulations governing the inheritance system that can be applied, namely in the form of Civil Inheritance Law, Islamic Inheritance Law, and Customary Inheritance Law. The three legal systems have principal differences, for example between Islamic inheritance law and customary inheritance law, differ in terms of the family system, the definition of inheritance, the inheritance of heirs, the share of heirs, and the institution of replacing heirs.<sup>11</sup>

Islamic inheritance law in Indonesia is the law of inheritance that is based on the Qur'an Surah An-Nisa' verses 7, 11, 12, 33, 176 and the hadiths of the Prophet with universal laws. The division of inheritance by Islamic inheritance law has been strengthened by Law Number 7 of 1989 concerning Religious Courts and Presidential Instruction Number 1 of 1991 concerning the Compilation of Islamic Law. In article 49 of Law Number 7 of 1989

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<sup>9</sup> Diva Faradhila Ayu Amelia and Wahyu Fadhilla Akbar, "Pembagian Warisan Patah Titi Menurut Hukum Adat Patrilineal Pada Masyarakat Aceh Dikaitkan Dengan Kompilasi Hukum Islam", *Kultura: Jurnal Ilmu Hukum, Sosial, dan Humaniora*, vol. 1, no. 6 (December, 2023): 84-92, <https://jurnal.kolibi.org/index.php/kultura/article/view/586>.

<sup>10</sup> Tauratiya, and Lailasari Eka Ningsih. "Plaatsvervulling Dalam Hukum Waris Indonesia: Mengungkap Kedudukan Ahli Waris Pengganti", *ISLAMITSCH FAMILIERECHT JOURNAL*, 5, vol. 5, no. 2, (2024): 105-26, doi:10.32923/ifj.v5i2.5035.

<sup>11</sup> Akmaluddin Syahputra, Khalid Khalid, "Integration of Islamic Law and Customary Law on Inheritance (Case Study in Tanjung Pura District, Langkat Regency)", *Jurnal Akta*, vol. 11, no. 2 (2024): 283-294, <http://dx.doi.org/10.30659/akta.v11i2.36257>.

Number 1 it is determined that the Religious Courts are authorized to hear cases of Muslims.<sup>12</sup>

In the discourse of *fiqh mawaris*, the position of grandchildren in receiving inheritance is closely tied to the doctrine of *ḥijāb ḥirmān*, which is the absolute obstruction of an heir due to the existence of another heir who is closer in lineage to the deceased. Theoretically, the grandchild's right to inherit will be completely blocked (*maḥjūb ḥirmān*) if, at the time of the testator's death, there are still living biological sons, in which case their uncle acts as the *ḥājib* (blocker). In the socio-cultural reality of Sabang society, this classical *fiqh* doctrine is strictly manifested in the *patah titi* tradition, in which the descendants of parents who died before the heir are positioned as having lost their inheritance rights. This practice of exclusion is based on the community's belief that the share for grandchildren is not specifically detailed in the Qur'an when there are heirs who are closer in lineage. As a result, orphaned grandchildren with *patah titi* status often do not receive inheritance from their grandparents.

Here we will discuss Islamic inheritance law from one of the regions in Indonesia, namely Sabang City. Sabang people have the principle that they must hold religious norms, norms of decency, norms of decency, which is an obligation that cannot be abandoned, as a guide for the Sabang people to live prosperously such as conveying holding on to a mandate and parental advice that must be upheld and carried out in social life to maintain religious norms and rules and customs. For now, religious norms and customary norms are still equal. The Sabang community also strongly upholds the family system by way of deliberation in resolving the division of inheritance.

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<sup>12</sup> Fradhana Putra Disantara, and Neny Rahmawati Neny, *Filsafat Keadilan Bermartabat Dalam Hukum Islam Anatomi Hak Waris Dalam Prinsip Sapikul Sagendhongan, Al Syakhsyiyah Journal (Journal of Law and Family Studies)*, vol 6, no. 4, (2024). <https://doi.org/10.21154/syakhsyiyah.v6i2.10168>.

Tradition is an aspect of community culture. Tradition is a custom, an order that lives in the midst of a society that has the same ideas. Customs arise in society because humans live in groups. Every custom owned by the Indonesian people is of high value to becoming a diverse national culture, this has the consequence of differences in customs and culture between ethnic groups, which must respect each other's cultural values. Respecting cultural values among ethnic groups will lead to high integration, communication, and solidarity. Customs become a habit of Indonesian society, customs are one of the manifestations of the soul of a nation of diverse ethnic groups, and each custom in this world has different customs from others, including in the distribution of inheritance property.<sup>13</sup>

The inheritance distribution system in Sabang society is based on a descent system drawn according to the father's line in the inheritance system (patrilineal) in which the position of sons gets more parts than the position of women in inheritance. It contains rules that regulate the process of continuing and passing property goods and intangible goods (*immateriele goederen*) from a human generation (generation) to its descendants and the process has started since the parents are still alive. But in reality, some Sabang people recognize a term "patah titi", namely the heir dies before the heir, so the heir's inheritance should fall to the grandchildren as a substitute for the heir but this does not happen because it is considered to have broken the relationship.

Islamic law does not clearly regulate replacement heirs or *patah titi* inheritance, but in Indonesia it regulates in detail about inheritance including replacement heirs. This is stated in KHI Article 185 which contains:<sup>14</sup>

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<sup>13</sup> Hamdani, Fahmi Fatwa Rosyadi Satria, Suci Pebrianti, Liza Dzulhijjah, and Hudzaifah Muhammad Maricar. 2022. "Traditional Law Vs. Islamic Law; An Analysis of Muslim Community Awareness in Inheritance Issues", *Al-Ahkam*, vol. 32, no. 1, (2022): 109-30. <https://doi.org/10.21580/ahkam.2022.32.1.11000>.

<sup>14</sup> Abdurrahman, *Kompilasi Hukum Islam di Indonesia*, (Jakarta: Akademika, 1992).

- a. Heirs who die before the testator then his position can be replaced by his children except those mentioned in article 173.
- b. The portion of the replacement heir may not exceed the portion of the heir who is equal to the one being replaced.

In KHI it clearly states that the transfer of heirs from parents who have died first from the original testator can be replaced by their children who are still alive. In this case the author concludes that the child is entitled to a portion of his grandfather's inheritance for the survival of children left behind by his parents.

In addition to the Compilation of Islamic Law (KHI), the Civil Code (KUHPerdata) also regulates inheritance issues including successor heirs. In Western language, it is called *Bij Plaatsvervulling*. This can be seen in articles 841 to 848 of the Civil Code. Article 841 states that "The replacement of rights to a person who replaces, to act as a substitute, in the degree and in all the rights of the person being replaced".<sup>15</sup>

One of the important studies related to substitute heirs is La Ode Ismail's writing in the *Lakidende Law Review* journal entitled "Kedudukan Ahli Waris Pengganti dalam Kompilasi Hukum Islam". In this article, the author normatively discusses the legal position of substitute heirs as outlined in Article 185 of the KHI. This research emphasizes that the existence of substitute heirs is a form of protection for the inheritance rights of children of heirs who have died first, especially grandchildren from the male line.<sup>16</sup> This article clarifies the legal limitation that substitute heirs only obtain inheritance rights that are part of their direct heirs, nothing more. This research is relevant to the theme of the article developed

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<sup>15</sup> Gusti Malayudha, Achmad, Widya Sari, and Angga Puja Asiandu, Indonesian Inheritance System Based on Islamic Law, Civil Code, Matrilineal Customs, and Gender Equality Perspectives. *SANGKĒP: Jurnal Kajian Sosial Keagamaan*, vol. 6, no. 1, (2023): 55–73. <https://doi.org/10.20414/sangkep.v6i1.6286>.

<sup>16</sup> La Ode Ismail, "Pembagian Waris Terhadap Anak Angkat Menurut Hukum Islam", *Lakidende Law Review*, vol. 2, no. 1, (2023): 376–382. <https://doi.org/10.47353/delarev.v2i1.44>.

because both examine the legal basis of Article 185 KHI, although it has not touched on local practices such as in Sabang.

Furthermore, Nawir Yuslem and his colleagues in the article "Discourse of Substitute Heirs in the Indonesian Heritage Legal Practice: Comparative Perspective". published in *Justicia Islamica*, examine the concept of substitute heirs in a comparative perspective between Compilation of Islamic Law (KHI) and civil inheritance law (KUHPerduta). This article shows that there are fundamental differences in the distribution of inheritance, where in Islamic law the share of successor heirs tends to be smaller, while in civil law the share is equalized with the straight line.<sup>17</sup> This research enriches the study of the legal position of surrogate children but does not examine social and customary factors such as patah titi in Aceh. Thus, the main difference lies in the approach and focus, although both articles discuss the issue of substitute heirs in the context of national law.

Problems regarding inheritance are often encountered in everyday life. Inheritance of patah titi, or what is formally called replacement heirs. Where people who still use the patah titi system for children left behind by parents as heirs of their parents' property who are basically still alive. This is part of the Acehnese community's decision that these children of parents who died first from the heirs did not get the inheritance because the child did not have a detailed division in the Qur'an so that the child was prevented from getting inheritance from his grandparents. Therefore, the author raises the title "Redefining Inheritance Justice: The Practice Of Patah Titi And The Role Of Substitute Heirs In Islamic Law In Sabang City, Aceh".

While previous studies, such as those by Ismail and Yuslem, have predominantly focused on the normative and comparative perspectives of substitute heirs under the Compilation of Islamic Law (KHI) and Civil Code, they have largely overlooked the

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<sup>17</sup> Nawir Yuslem, et al. "Discourse of Substitute Heirs in the Indonesian Heritage Legal Practice: Comparative Perspective". *Justicia Islamica*, vol. 18, no. 2, (2021): 211-26, <https://doi.org/10.21154/justicia.v18i2.2522>.

empirical realities of local customary practices in specific regions. This research fills this gap by offering a novel contribution: it investigates the specific clash between the customary practice of patah titi in Sabang City and the state-recognized law (KHI). Unlike prior research that views substitute heirs solely as a legal entitlement, this study reveals how the patah titi tradition functionally displaces legal heirs, offering a unique socio-legal analysis of how community consensus (deliberation) navigates the tension between religious texts, state law, and local wisdom.

Based on the above background, the objectives of this study are To find out how the concept of patah titi inheritance in the Sabang community and to find out how its practice is viewed from Article 185 KHI concerning replacement heirs The benefits of this research are to increase knowledge for the author and also students in the process of exploring and deepening the science of fara'id, which we as Muslims will find it easier to distribute inheritance in accordance with Islamic law. In addition, we will also know clearly the relationship between the heirs and the testator. So that we can avoid the unfair distribution of inheritance that can create divisions and disputes about the inheritance in the family.

In this research, the author uses 2 (two) approach models, namely the statute approach and the conceptual approach. The type of research in this study is empirical juridical, which in other words is field research, namely examining the applicable legal provisions and what happens in reality in society or in other words, research conducted on the actual situation or the real situation that has occurred in society with the intention of knowing and finding the facts and data needed.<sup>18</sup> Then for the sake of completeness of research data, the author also uses a type of juridical research. Where the law is conceptualized as a rule or basic norm of human behavior that is considered in accordance with the prevailing values in society. In this case, juridical research is deemed

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<sup>18</sup> Peter Mahmud Marzuki, *Penelitian Hukum*, (Jakarta: Kencana Prenada Media Group, 2005).

necessary to use so that later it does not deviate from the basic reference so that unexpected mistakes can be avoided.<sup>19</sup>

The data sources in this research are primary data and secondary data. In this research, primary data is obtained from interviews with informants and clear explanations from the parties who are used as sources.<sup>20</sup> Primary data contains laws and regulations that are closely related to replacement heirs, namely the Compilation of Islamic Law. Then primary data is also directly obtained at the research location, namely at institutions related to replacement heirs in Sabang City. These informants included *Keuchik*, village apparatus, parties to the case, and *fara'id* experts in Sabang City As for secondary data sources, namely data taken from library materials that support primary data materials. In this case, secondary data is obtained from books, theses, journals, scientific works, both theses, and documents related to the object of the author's research. The data collection technique used is by means of interview and documentation data (library material). After the data in the field is collected using the data collection method explained above, the author will manage and analyze the data using qualitative descriptive analysis.<sup>21</sup>

## **B. RESEARCH OUTCOME AND DISCUSSION**

### **1. The Concept of Patah Titi Inheritance in Sabang City Society**

The practice of settling inheritance as a case of patah titi heirs has been practiced for a long time in Aceh. The custom that occurred at the time of the distribution of inheritance involved people who were considered to have knowledge and influence at the gampong level. They are *fara'id* experts, *Keuchik*, *Tuha Peut* and *Teungku Imum*. In practice, the settlement of cases in Sabang

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<sup>19</sup> John W. Creswell, *Research Design: Qualitative, Quantitative and Mixed Methods Approaches*, (California: Sage Publications, 2014).

<sup>20</sup> Muhaimin, *Metode Penelitian Hukum*, (Mataram: Mataram University Press, 2020).

<sup>21</sup> Amiruddin dan Zainal Asikin, *Pengantar Metode Penelitian Hukum*, (Jakarta: Raja Grafindo Persada, 2012).

City can always be resolved by deliberation and this is proven by making Sabang City an example for other regions. The stages used are:

a. Resolved by deliberation between families

The distribution of inheritance is done by deliberation among the family members. The whole family is gathered to discuss who is the rightful heir *aṣḥabul furuḍ* or *'aṣabah* in the family, and then the inheritance is divided according to the science of *fara'id* and witnessed by witnesses from non-heirs. Once the agreement is accepted, it will be made in black and white so that there is no dispute over the heirs. As for the place of settlement of cases that are carried out in a family manner, it depends on the heirs themselves.

b. Resolved by deliberation at the Keuchik level

For the division of inheritance carried out by deliberation at the Keuchik level if the settlement between families is not accepted. The venue is the *Keuchik's* office attended by village officials, *fara'id* experts, heirs who are entitled to be heirs, and those who do not accept the decision made by deliberation between families, because if all families gather and participate in dividing it will not be completed. After that, it is divided according to the science of *fara'id* and witnessed by witnesses from non-heirs. After the agreement is accepted, it will be made black and white so that there will be no heir disputes.

c. Settled in the court of the Sabang City *Syar'iyah* Court.

The case of an inheritance lawsuit regarding the determination of a patah titi heir in the Sabang City *Syar'iyah* Court leads to the determination of a just law that must be based on the four foundations of sharia, namely the Qur'an, hadith, ijma', and qiyas. Likewise, the results of the determination of inheritance cases regarding replacement heirs must not be far from the legal stipulations that Allah has

set. If the case does not contradict the four sources of law, it will only be determined based on the KHI legal theory. The Sabang Syar'iyah Court in resolving the inheritance case of *patah titi* has its own view, the determination of the law to be decided by the panel of judges must be able to solve the problem, and no new problems must arise. So if the application of KHI does not cause new problems, it will still be guided by the law.<sup>22</sup>

As in Decision Number 7/Pdt.P/2018/MS.Sab concerning the Determination of Successor Heirs, where the practice of successor heirs has occurred in Ramli's family, the incident occurred in 2018, when Ramli's wife named Nurhayati died. That deceased Nurhayati had 6 siblings, 3 of whom had died first, each of whom had 2 children. So it can be said that deceased Nurhayati left heirs, namely a husband, 3 siblings, and 6 nephews. In *fara'id* 6 nephews of deceased Nurhayati are veiled and do not get inheritance, but her brother and sister siblings give the property from the legacy of deceased Nurhayati to 6 nephews of deceased Nurhayati even though most of the property is not fully equal to the share of her parents who died first.

## **2. Analysis of the Distribution of Inheritance for *Patah Titi* Heirs in Sabang City Based on Article 185 KHI**

Based on the results of the research found several cases of *patah titi* heirs in Sabang City. So that the author takes 1 from each case as comparative data in the settlement of the distribution of *patah titi* inheritance and replacement heirs in Sabang City. The first case occurred in 2018, namely Number 7/Pdt.P/2018/MS.Sab concerning the determination of replacement heirs.<sup>23</sup> A woman (Nurhayati) died on 20 January

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<sup>22</sup> Tarmizi and Asni Zubair. "Toleransi Hukum Islam Terhadap Sistem Kewarisan Adat Di Indonesia", *ADHKI: JOURNAL OF ISLAMIC FAMILY LAW*, vol. 4, no. 2, (2023): 131-47, doi:10.37876/adhki.v4i2.98.

<sup>23</sup> Putusan MS SABANG Nomor 7/Pdt.P/2018/MS.Sab.

2018. She left assets in the form of deposits, Simpeda savings BPIH funds, land, 1 adopted daughter (Nenis) and her heirs namely: A husband (Ramli)

- a. 2 siblings (Juariah and Siti)
- b. 1 male sibling (Zainal)
- c. 2 nieces (Agus and Sari) from a biological sister (Nurmalasari) who died in 2004
- d. 2 nephews (Teguh and Fadhli) from a male sibling (Zainal Arifin) who died in 2006
- e. 2 nephews (Agam and Ali) from a male sibling (Zaini) who died in 2016

In this case, the panel of judges considered based on Surah An-Nisa verse 12 “And your share (husbands) is half of the estate left by your wives, if they have no children. If they (your wives) have children, then you get a quarter of the estate left by them after (fulfilling) their wills or (and after paying) their debts. Wives shall receive one-fourth of the property you leave behind if you have no children. If you have children, then your wives shall receive one-eighth of the property you leave behind (after fulfilling) your will or (and after paying) your debts. If someone dies, whether male or female, leaving no father and no children, but having a brother (from the same mother) or a sister (from the same mother), then each of these two types of siblings shall receive one-sixth of the estate. But if there is more than one sibling from the same mother, they shall share one-third of the estate, after fulfilling any will made by the deceased or paying off any debts, without causing hardship to the heirs. Such is the decree of Allah. Allah is All-Knowing, Most Forbearing.”

In addition to these Qur’anic provisions, the provisions of Article 179 of the Compilation of Islamic Law which states that “widowers get half the share if the heir does not leave children”. Thus, Ramli as the husband received  $\frac{1}{2}$  of the share. In addition, the witnesses testified that deceased Nurhayati and Ramli had an adopted child named Nenis and did not leave any will regarding

her adopted child. Therefore, based on Article 209 paragraph (2) of the Compilation of Islamic Law, which states "adopted children who do not receive wasiat are given wasiat wajibah as much as 1/3 of the inheritance of their adoptive parents". Therefore, Nenis is entitled to receive a wasiat wajibah of 1/3 of the estate of her adoptive parents.

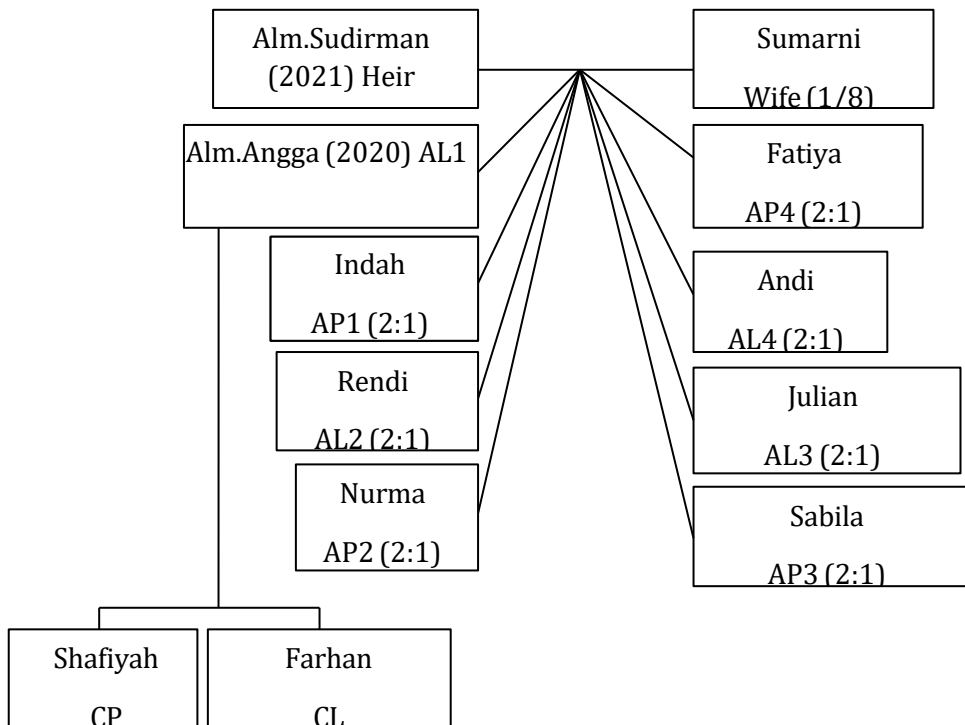
In addition, because the deceased Nurhayati has 6 siblings and 3 of them have siblings who are still alive, then based on Surah An-Nisa verse 12 and verse 176 and the provisions of Article 182 of the Compilation of Islamic Law, which states that if "a person dies without leaving children and a father, while he has one biological sister or seayah, then he gets half the share. If the sister is together with a brother, it's two versus one with the sister". Thus, the surviving sister of the deceased Nurhayati is entitled to receive the remaining portion of the *aşabah bil gairi* after excluding the husband's  $\frac{1}{2}$  share and the *wasiat wajibah*  $\frac{1}{3}$  share.

Based on the above considerations, it is important to recognize that because deceased Nurhayati also has 3 siblings who have died first and each of them has 2 children, it means that the heir died before the testator, then based on Article 185 paragraph (1) of the Compilation of Islamic Law which states "The heir who dies before the testator, then his position can be replaced by his child". Thus, in this case, there are substitute heirs from the three brothers of the deceased Nurhayati who have died first. So that for the 3 brothers deceased Nurhayati whose position was replaced by his children received one part, because based on the provisions of Article 185 paragraph (2) of the Compilation of Islamic Law which states "The share of the replacement heir may not exceed the share of the heir who is equal to the replaced". The judge means that the portion of the replacement heir cannot exceed the portion of the smallest heir. In this case, the smallest part is the share of the sister's heir, which is one part, so that the replacement heir's share cannot exceed one part.

The second inheritance case occurred in 2021, involving a man named Sudirman who passed away on January 14, 2021. Upon his death, he left behind assets totaling Rp.1,508,000,000. The process of distributing this inheritance required identifying his legal heirs, who consisted of several close family members. These included his lawful wife, Sumarni, as well as seven biological children four daughters named Indah, Nurma, Fatiya, and Sabila, and three sons named Rendy, Andi, and Julian. Additionally, the inheritance extended to the third generation, comprising two grandchildren: Farhan and Shafiyah. These grandchildren were the children of Sudirman's late son Angga, who had passed away earlier in the same year. This case illustrates the complexities often involved in family inheritance matters, particularly when descendants of deceased heirs are also entitled to a share, emphasizing the importance of understanding inheritance laws to ensure a fair and lawful distribution of wealth.

The details of the settlement are as follows:

*Fara'id* portion structure



Scheme Description:

P = Heir	AL1 = Son who has died before the Heir
I = Wife	AL2 = Son 2
AP1 = Daughter 1	AL3 = Son 3
AP2 = Daughter 2	AL4 = Son 4
AP3 = Daughter 3	CP = Granddaughter whose parent has died
AP4 = Daughter 4	CL = Grandson whose parent has died

In the distribution of inheritance according to the principles of *fara'id*, based on the estate left by the late Sudirman amounting to Rp.1,508,000,000, and with no outstanding debts or burial expenses, the division of assets was governed by the legal status of each heir. The male grandchild, Farhan, and the female grandchild, Shafiyah, were excluded from receiving a share of the inheritance due to the presence of Sudirman's surviving sons, which disqualifies grandchildren from inheriting under these circumstances. His wife, Sumarni, was entitled to one-eighth of the total inheritance, amounting to Rp.188,500,000, in accordance with *fara'id* provisions applicable to a surviving spouse with descendants.

The remaining estate was divided among Sudirman's four daughters Indah, Nurma, Fatiya, and Sabila and three sons Rendy, Andi, and Julian based on the concept of *'aṣabah bil gairi*, where male heirs receive twice the portion of female heirs. Accordingly, each daughter received Rp.131,950,000, while each son was allocated Rp.263,900,000. This form of distribution reflects the Islamic legal principles of fairness in inheritance, where the allocation is determined by both familial relationship and gender, ensuring that the rights of each heir are fulfilled as prescribed by sharia law.

Four daughters (Indah, Nurma, Fatiya, Sabila) received Rp.131,950,000 each and three sons (Rendy, Andi, and Julian) received Rp.263,900,000 each, while the two grandchildren of the deceased (Farhan and Shafiyah) did not receive any inheritance because the *fara'id* portion can be spent by the *aṣhabul furuḍ* and *'aṣabah* who are closest to the deceased. However, the heirs agreed to give each of the inheritance portions that had been received as a form of affection for the nephews (grandchildren) whose parents had died.

Based on information obtained by the author, so far, specifically in the settlement of the *patah titi* inheritance case above, it can be accepted by the people of Sabang City until the stage of deliberation between families which is resolved at the *keuchik's* office. Every division of inheritance if no one understands, then it will be given an understanding so that it does not affect the next stage of settlement.

In the distribution of inheritance for the position of grandchildren, there are two possibilities, namely getting inheritance or not. For those who do not receive inheritance property, it is called *patah titi*. In *fiqh*, the position of substitute places in receiving inheritance can be divided into two groups, namely from the *ubuwah* line and the *bunuwah* line.<sup>24</sup> Heirs from the *ubuwah* line consist of a grandfather as a substitute for a father and a grandmother as a substitute for a mother. In addition, the heirs of the *bunuwah* line consist of grandchildren of sons instead of sons and grandchildren of daughters instead of daughters. The explanation above shows that what is meant by substitute heirs as referred to in *fiqh* is the heir who replaces the position of the heir who has died.<sup>25</sup>

The formulation in Article 185 paragraph (1) provides an opportunity for substitute heirs to obtain inheritance, but this opportunity is not necessarily given without other rules. Moreover, the use of the word “may be replaced” here indicates that this situation may occur. Replacement heirs cannot occur if they meet the provisions of Article 173, where a person is prevented from becoming an heir, if by a judge's decision that has permanent legal force, the person is convicted because, first, the person is guilty of killing or attempting to kill or treating the testator very badly, and second, the person is accused of slander by filing a complaint that the testator committed a crime punishable by 5 years imprisonment or a heavier sentence.<sup>26</sup>

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<sup>24</sup> Hasbiah Tunnaim Harahap. “Alternatif Lain Pembagian Warisan: Perdamaian, Ahli Waris Pengganti Dan Sistem Kewarisan Kolektif”. *ALWAQFU: Jurnal Hukum Ekonomi Dan Wakaf*, Vol. 3, No. 01, (July 2025), <https://jurnal.alwaqfu.or.id/index.php/alwaqfu/article/view/340>.

<sup>25</sup> Khairuddin Hasballah dkk, “Patah titi And Substitute Heirs: A Study Of Legal Pluralism On The Inheritance System In Aceh Community”, *Jurnal Ahkam*, Vol. 21, No. 2, (2021): 141-157. <https://doi.org/10.14421/ahwal.2023.16107>.

<sup>26</sup> Putra Pratama, and Yeti Kurniati, *Pelaksanaan Pembagian Harta Warisan dan Patah Titti Berdasarkan Kompilasi Hukum Islam di Daerah*

The formulation of the provisions of Article 185 paragraph (1), reveals that the succession of heirs can occur in a straight line down or a straight line to the side. This shows that *zawil arham* has the possibility to get inheritance as long as it is not hindered by people who are closer to the deceased and become substitute heirs.<sup>27</sup> As for Article 185 paragraph (2) KHI, it is understood that the replacement of the heir is relative, meaning that even though he replaces the position of the designated heir, he cannot take more than the share of the surviving heirs whose position is equal to the heir he replaced.<sup>28</sup>

As for Article 185 paragraph (2) KHI, it is understood that the replacement of heirs is relative, meaning that even though he replaces the position of the designated heir, he cannot take more than the share of the surviving heirs whose position is equal to the heir he replaced.<sup>29</sup> This shows that descendants who replace their parents in receiving inheritance will get as many inheritance rights as their parents received. For example, if a grandson of a daughter inherits the joint property of another living daughter, then the share of the grandson concerned will not refer to the provisions of the Qur'an surah An-Nisa' verse 11, which states that the share of sons is twice that of daughters, but the share of the grandson's inheritance is the same as that received by other living

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Masyarakat Gayo Aceh Tengah, Wacana Paramarta: Jurnal Ilmu Hukum, Vol. 16, No. 3, (2017): <https://doi.org/10.32816/paramarta.v16i3.51>.

<sup>27</sup> Sapriadi, et.al, Kedudukan Ahli Waris Pengganti (Dzawu Al-Furudh) Dalam Peralihan Kewarisan Di Indonesia, *Jurnal Al-Ahkam: Jurnal Hukum Pidana Islam*, Vol. 6, No. 2, (2024): <https://doi.org/10.47435/al-ahkam.v6i2.3127>.

<sup>28</sup> Muhammad Yusron and Mu'taz Ramadhan Alfaraby, "Inheritance Patterns Of Interfaith Families In Pekalongan Regency", *Indonesian Journal of Shariah and Justice*, Vol. 5, no. 1, (June 2025): 1-26, doi:10.46339/ijjs.v5i1.182.

<sup>29</sup> Karjoko, Lego, Abdul Kadir Jaelani, Hilaire Tegnan, Henning Glaser, and Muhammad Jihadul Hayat, "Islamic Court's Approach to Land Dispute in Inheritance Cases", *AHKAM: Jurnal Ilmu Syariah*, vol. 21, no. 2 (2021): 213-38. <https://doi.org/10.15408/ajis.v21i2.21864>.

daughters (heirs who are equal in position to the heirs who are replaced). This means that the grandson cannot receive twice as much as the daughter, even though the grandson, because of his position replaces the deceased daughter, not the deceased son. Therefore, the grandson will receive the same inheritance that the daughter received.<sup>30</sup>

Based on the 2018 case, the nephew and niece of the deceased Nurhayati were correctly declared as substitute heirs. However, not by obtaining one share, in the settlement of this case the author considers that Decision Number 7/Pdt.P/2018/MS.Sab is not in accordance with Article 185 paragraph (2), which states "The share of the replacement heir may not exceed the share of the heir who is equal to the one being replaced" because the judge interprets this article to mean that the share of the replacement heir may not exceed the share of the smallest heir. In this case, the smallest part is the share of the female heir, which is one part.

The settlement of the 2018 case should have been that the husband of the deceased Nurhayati (Ramli) received 1/2 share, the adopted daughter of Ramli and the deceased Nurhayati (Nenis) received 1/3 share, and 3 female siblings (the deceased Nurmalasari, Juariah, and Siti) became *'aṣabah bil gairi* with 2:1 shares, as well as 3 male siblings (deceased Zainal Arifin, deceased Zaini, and Zainal Abidin) = *'aṣabah bil gairi* 2:1.

Thus, in the distribution of inheritance, Nurhayati's siblings, both those who are still alive (Juariah, Siti, and Zainal Abidin) and those who have passed away earlier (deceased Nurmalasari, deceased Zainal Arifin, and deceased Zaini), are entitled to receive the remaining share of *'aṣabah bil gairi* after excluding the husband's 1/2 share and the compulsory bequest for adopted children of as much as 1/3 share.

The deceased Nurmalasari is the heir who received the property as *'aşabah bil ghairi*, which is one share. Because Nurmalasari died before the heir, her share is given to her two children, namely the daughter and the son (Agus and Sari), whose share is 2:1 *'aşabah bil ghairi*. Agus gets two shares while Sari gets one share. The deceased Zainal Arifin is the heir who gets the property as *'aşabah bil ghairi*, which is 2 shares. Since Zainal Arifin died before the testator, his share is given to his two sons (Teguh and Fadhli) whose shares are *'aşabah binafsih*, which they can share equally. The deceased Zaini is the heir who received the property as *'aşabah bil ghairi*, which is two shares. Since Zaini died before the testator, his share is given to his two sons (Agam and Ali), whose share is *'aşabah binafsih*, which they can share equally.

Furthermore, in the case of 2021, the grandson and granddaughter of the son were declared as heirs of *patah titi*. According to the author, the settlement of this case is in accordance with the intention of fiqh that grandchildren do not get inheritance because they are veiled by other heirs. However, the settlement of this case is different from Article 185 KHI. According to Article 185 KHI, male and female grandchildren who are declared as *patah titi* can replace their father who has died as replacement heirs. The settlement of the 2021 case should be as follows: Four sons are the heirs who receive the property as *'aşabah bil gairi*, each of whom receives Rp.219,916,666. Because Angga has passed away before the heir, the property is given to 1 grandson (Farhan) and 1 granddaughter (Shafiyah). So for 1 grandson (Farhan) get Rp.146,611,110 and 1 granddaughter (Shafiyah) get Rp.73,305,555

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<sup>30</sup> Yeni Salma Barlinti, *Inheritance Legal System In Indonesia: A Legal Justice For People*, *Indonesia Law Review*, Vol. 3: No. 1, (2013). <https://doi.org/10.15742/ilrev.v3n1.28>.

From the settlement of the case, the settlement can be grouped, namely by customary law, fiqh and Article 185 KHI. The conclusion is as follows:

<b>Customary Law</b>	<b>Fiqh</b>	<b>Article 185 KHI</b>
One grandson (Farhan) and one granddaughter (Shafiyah) of a son (Angga) as heirs of <i>patah titi</i> .	One grandson (Farhan) and one granddaughter (Shafiyah) of a son (Angga) are veiled by <i>ashabul furuḍ</i> and <i>'aṣabah</i> .	One grandson (Farhan) received Rp.146,661,110 and one granddaughter (Shafiyah) received Rp.73,305,555.

The practice of customary law in resolving inheritance cases as *patah titi* heirs is the same as fiqh, which does not recognize replacement heirs. However, they can get property through wills or grants. Based on information obtained by the author, specifically in the case mentioned above, those who became *patah titi* received property through grants, and the shares received were the result of the agreement of their respective families. Meanwhile, the *patah titi* mentioned in Article 185 KHI can serve as substitute heirs, and the share they receive comes directly from the distribution of inheritance rather than through wills or grants, as is the case for the heirs they replace.

### C. Conclusion

The implementation of *patah titi* in the distribution of inheritance in Gampong Kuta Timu, Sabang City is still used today even though regulations have been issued regarding the existence of replacement heirs in the distribution of inheritance according to Islamic law, namely in the Compilation of Islamic Law. The implementation of *patah titi* still has a negative impact rather than a positive one because it is wrong in assessing the meaning of *patah titi* itself. Besides that, the problem of *patah titi* is not only

limited to the division of inheritance but even makes family relations no longer harmonious. The legal effect of the implementation of this patah titi is that the heirs affected by the patah titi do not get the inheritance at all, which is based on the provisions contained in *fiqh mawaris*, but if a dispute occurs and is resolved through a court, then this patah titi does not exist, and the heirs who were originally said to be patah titi will change to replacement heirs and still get inheritance with the basis contained in the Compilation of Islamic Law. The practice of resolving cases of patah titi heirs in Sabang City can be resolved by deliberation between families, resolved by deliberation at the *Keuchik* level, and resolved by deliberation at the court level. The inheritance distribution system for patah titi heirs in Sabang City reviewed according to Article 185 KHI, is not in accordance with paragraphs (1) and (2), because the division system carried out in Sabang City does not recognize the existence of replacement heirs but the practice of patah titi. Islamic inheritance law does not originally recognize successor heirs because the Qur'an does not explicitly regulate them, and their recognition only came after Presidential Instruction No. 1 of 1991 on the Compilation of Islamic Law (KHI) and Minister of Religion Decree No. 154 of 1991. Article 185 KHI stipulates that if an heir dies before the testator, their position can be replaced by their child, but the replacement heir's share may not exceed that of the replaced heir. Thus, although successor heirs are not known in classical Fara'id law, the regulation provides that the *zawil arham* group may act as substitute heirs to replace their parents in receiving inheritance.

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