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The Concept of Successor Heirs as a Contemporary *Ijtihād* in the Perspective of *Ulama Dayah* in Woyla District

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Abstract

The Compilation of Islamic Law (KHI), Article 185, in Indonesia recognizes the concept of a successor heir. In contrast, traditional *fiqh* holds that the right to inheritance is lost if the prospective heir dies before the decedent. Meanwhile, *ulama dayah* in Woyla District continue to adhere to classical *fiqh* texts and have not adopted the KHI's provisions regarding successor heirs. This study aims to examine the views of *ulama dayah* in Woyla District on the concept of successor heirs and to analyze the concept from the perspective of Islamic law. The research employs a field study methodology with a juridical-normative-empirical approach. Data were collected through observation, interviews, and documentation, and were analyzed descriptively. The findings reveal that *ulama dayah* in Woyla District are unfamiliar with the concept of successor heirs as found in classical *faraidh* (Islamic inheritance law) literature. A paternal grandson may inherit in place of his deceased father if there are no other sons, whereas a maternal grandson cannot replace his deceased mother in the line of inheritance **(***patah titi***).** Furthermore, Islamic law, as reflected in the Qur'an, *hadith*, and *sunnah*, does not acknowledge the concept of successor heirs. In contrast, the Compilation of Islamic Law does recognize such a concept. These findings indicate a fundamental difference between the views of the *ulama dayah* in Woyla and the provisions of the KHI, particularly regarding the position of grandsons in inheritance matters.

Keywords: Concept of Surrogate Heirs; Contemporary *Ijtihad*; Ulama Dayah; Compilation of Islamic Law (KHI); Woyla District.

Introduction

Inheritance law is one of the important branches of Islamic law that has a strategic position. The Qur'an specifically regulates the issue of inheritance, considering that each individual will face this event in his or her life. The legal arrangement of inheritance focuses on the division of inherited property because, without detailed and clear provisions, serious conflicts can arise, even leading to bloodshed among family members.

The issue of inheritance in Islam also shows diversity, both in the study of *faraidh* or fiqh mawaris and in practice in society. Social reality shows that some people still maintain local cultural values that have interacted and mixed with Islamic

teachings. From the perspective of Islamic law, inheritance is understood as the process of transferring rights to inherited property, both tangible and intangible rights, from a deceased person to an heir who has rights based on the provisions of the law. Based on this definition, inheritance according to Islamic law only occurs after the heir is declared dead. In Islamic inheritance law, the process of inheritance is based on three main causes, namely the existence of marital relationships, kinship relationships, and guardianship relationships (*wala'*) (as-Shabana, 1988).

An heir in Islamic law is an individual who is entitled to receive the estate of a deceased person. The main basis of Islamic inheritance law is found in the Qur'an Surah An-Nisa' verse 7, which affirms that men and women have equal inheritance rights. This provision is also a form of Islamic recognition of the position of women as legal subjects who have rights and obligations. This is different from the conditions during the period of jahiliyah, where women were treated as objects that could be inherited like goods. Islam's recognition of women as subjects of law is strengthened through provisions in several verses of the Qur'an, which explicitly give inheritance rights to women, albeit in varying amounts according to the provisions of sharia (Muhibbin, et al., 2017).

The Qur'an Surah An-Nisa' verse 33 clarifies the provisions regarding the distribution of inheritance. After the previous verse, Allah forbade envy of the virtues bestowed on others, including in the distribution of inheritance. This verse emphasizes that every inheritance of parents and relatives has been determined by their heirs, such as children, wives, and parents. In addition, for individuals who have taken an oath of allegiance, Islam commands that they be given a share of the inheritance in accordance with a previously made agreement. This affirmation shows that Allah is the Witness of all things, including the implementation of the distribution of inheritance rights (Shihab, 2002).

The Compilation of Islamic Law (KHI) introduces the concept of successor heirs, namely individuals who have the right to replace the position of heirs who have died before them heirs. This provision stipulates that the share received by the successor heir must not exceed the share that should be received by the successor heir (Habiburrahman, 2021). Successor heirs are basically not direct heirs, but obtain inheritance rights for certain legally recognized reasons (Syarifuddin, 2018). In Mawaris fiqh, the concept of a successor heir refers to the descendants who replace the position of their father or mother who has died before the heir, namely replacing the position of the child of the heir (grandfather or grandmother) who has died earlier (Rofiq, 2019).

The issue of surrogate heirs is an issue in inheritance law, because the provisions on this matter are not expressly and in detail in the Qur'an, resulting in a wide range of opinions. Article 185 of the Compilation of Islamic Law (KHI) states that "An heir who dies before the heir may be succeeded by his or her son (successor heir),"

unless they are involved in the act of murder or severe persecution of the heir, or if they have defamed the heir with a charge of a crime punishable by imprisonment or more severe (Article 173 KHI). Based on this provision, it can be concluded that in the KHI, the successor heir is entitled to receive a share of the inheritance equivalent to the share that should have been received by the heir he replaced. Meanwhile, in the fiqh of mawaris, the inheritance rights of a person who dies before the heir are not given to their descendants, because they are considered to have lost their rights to the inheritance (Armiadi et al., 2020).

The concept of surrogate heirs is a serious issue that continues to be a hot topic in the Acehnese community, especially in the Woyla District, West Aceh Regency. Woyla District is known as the birthplace of a charismatic scholar, Teungku Ibrahim bin Teungku Sulaiman bin Teungku Husen, known as Abu Ibrahim Woyla. He is not only famous in Woyla, but also throughout Aceh thanks to his extraordinary karomah. In addition to being a charismatic scholar, Woyla is also known for the great influence possessed by *ulama dayah* in the *matter of faraidh*, especially related to the concept of successor heirs. Most of the *ulama dayah* in Woyla, in resolving the *faraidh* problem, follow the opinions contained in the classical fiqh books or the yellow books of the Imam Shafi'i madhhab, which do not recognize the concept of a successor heir. This suggests that it is likely that the clerics in Woyla did not recognize the concept of a surrogate heir as stipulated in the Compilation of Islamic Law (KHI), which allows the children of the heirs who died before him to succeed him.

To ascertain whether *ulama dayah* in Woyla District have adopted the concept of surrogate heirs according to KHI or still adhere to classical fiqh books, the author conducted preliminary research. Based on an interview conducted on April 29, 2023, with the dayah leader in Woyla District, it was revealed that the scholars there still refer to classical fiqh books in determining the law of *faraidh*, especially regarding successor heirs. Therefore, this study aims to further examine the acceptance or rejection of the concept of surrogate heirs among *ulama dayah* in Woyla.

Islamic inheritance law, particularly regarding the concept of surrogate heirs, has been the main focus of various studies. In the study of inheritance law, there is a significant difference between the views of the Compilation of Islamic Law (KHI) and classical fiqh of inheritance. The concept of surrogate heirs is regulated in the KHI as an effort to provide justice to the descendants who are entitled to receive inheritance, even if their parents have died first (Muhibbin & Abdul Wahid, 2009). Meanwhile, in classical jurisprudence, the successor heirs are unknown, and the rights of the heirs are considered to be forfeited when the main heir dies first. (Zuhroh, 2017).

One of the studies that examined the acceptance of the concept of surrogate heirs in KHI stated that it is the result of adaptation to social developments that require flexibility in inheritance law to protect hereditary rights (Zaelani, 2018). In the context of Indonesian law, this aims to create justice for the heirs who are supposed to receive

a share of the inheritance, even if their parents have died before. In contrast, in classical fiqh, the provisions regarding surrogate heirs are not explicitly regulated, and most scholars do not recognize this concept in the Islamic inheritance system (Aziz, 2017). In Indonesia, differences of opinion on surrogate heirs also reflect the tension between state law and religious law. For example, in Aceh, which has a strong tradition in the teaching of classical jurisprudence, most *ulama dayah* still refer to ancient fiqh books in deciding inheritance matters, including the matter of surrogate heirs (Murlisa, et al., 2024).

Previous studies of the concept of surrogate heirs in Islamic inheritance law have shown a complex and diverse issue, with a variety of approaches and contexts influencing its implementation. Normatively, some scholars argue that Article 185 of the Compilation of Islamic Law (KHI) provides the basis for the concept of surrogate heirs, but its implementation varies depending on local customs and social context.

Research by Siagian (2025) highlights the dominance of the practice of *"patah titi"* in Sabang City, although it is contrary to KHI. The study focuses on community practices and their impact on kinship relationships, while this study emphasizes the contemporary ijtihad of *ulama dayah* as local religious authorities. Sabrina (2023) also examined a similar issue in Lhokseumawe and found a discrepancy between field practice and KHI provisions. However, the research focuses on the dispute resolution mechanism at the gampong level, not on the theological conceptual aspects of the ulama as in this study.

Alsabi (2020) explores the perspective of scholars on the inheritance rights of girls who wear hijab as siblings, a different issue but still within the spectrum of ijtihadi interpretation in inheritance law. This research provides methodological inspiration in examining the differences in scholars' views on Nash, but the focus is different because it does not discuss successor heirs. Elawati (2024) examines the settlement of faraidh cases in Uteuen Gathom Village with a focus on the socio-legal context and the role of the community, while this study prioritizes the ijtihad of *ulama dayah* as authoritative agents in the formation of local laws.

Santi (2020) specifically highlights the views of *ulama dayah* in Aceh Besar on the concept of patah titi. This research is closest to this research approach, but the area of study is different, and Santi's research emphasizes more on the social practices of the community than the conceptual dimension of contemporary ijtihad. Murlisa and Suwardi (2024) present an in-depth study of the concept of kinship and the views of *ulama dayah* on successor heirs. This research is quite relevant and an important reference because it also highlights the differences in the views of scholars regarding Article 185 of the KHI. However, this study does not raise the aspect of contemporary ijtihad as a product of legal thought, as the focus of this research.

Iskandar (2022) examines the application of the concept of surrogate heirs in the Bireuen Syar'iyah Court and concludes that legal considerations are flexible by judges.

The focus is on the judicial aspect and the utility of legal institutions, not on the production of law through the specific views of *ulama dayah*.

Based on the existing social reality and literature, this article seeks to explore the views of *ulama dayah* in Woyla District regarding the concept of surrogate heirs and its implications for Islamic inheritance law. Therefore, this study uses a qualitative approach, including in-depth interviews with *ulama dayah* and focus group discussions. The collected data is analyzed interactively using relevant theoretical frameworks.

Research Methods

This research is a qualitative research with a type of field research that explores the views of *ulama dayah* in Woyla District, West Aceh Regency, related to the concept of surrogate heirs in the perception of *ulama dayah* in Islamic inheritance law (Moleong, 2018). The approach of this research is juridical-normative-empirical, which combines the study of the applicable legal regulations, especially the Compilation of Islamic Law (KHI) and the teachings of classical mawaris fiqh. Empirical data was obtained through interviews and direct observation. The juridical-normative approach is used to compare the legal norms in the KHI with the views and practices applied by local *ulama dayah*, while the empirical approach aims to obtain direct information from the community regarding the acceptance or rejection of the concept of surrogate heirs (Soekanto & Mamudji, 2019).

The main data was collected through in-depth interviews with local dayah leaders and scholars, as well as documentation studies of classical fiqh books and the Compilation of Islamic Law (Sugiyono, 2020). This interview aims to explore the views of *ulama dayah* regarding the application of the concept of surrogate heirs in inheritance practices, as well as the extent to which classical fiqh teachings influence their decisions (Arifin, 2021). In addition, a documentation study was conducted to analyze Islamic legal sources that are a reference in determining the distribution of inheritance, so that a comparison can be obtained between legal theory and practice (Habiburrahman, 2021).

The collected data will be analyzed qualitatively using thematic analysis techniques, where information from interviews and documentation will be grouped based on key topics such as acceptance or rejection of the concept of surrogate heirs, the influence of classical fiqh, and comparison with KHI (Miles et al., 2018). The source triangulation technique was used to test the validity of the data by comparing the results of the interviews with relevant Islamic legal literature (Creswell & Creswell, 2022). This research is expected to provide insight into the dynamics of the application of Islamic inheritance law in Aceh, especially related to the concept of surrogate heirs, which is a debatable issue among local scholars (Syarifuddin, 2018).

Results and Discussion

The Concept of Successor Heirs: A Multi-Faceted Scholarly Review

The concept of a surrogate heir can be reviewed from several scientific aspects. Etymologically, the term "successor heir" comes from the Arabic language, namely *al-wārith,* which means a person who is entitled to receive inheritance, and *khalifah* or *badal,* which means a substitute or a person who takes the place of another party (Al-Zuhaili, 2018). Thus, linguistically, a surrogate heir means someone who replaces the position of the main heir in receiving a share of the inheritance (Syarifuddin, 2018).

In terminology, in the context of the Compilation of Islamic Law (KHI), a surrogate heir is a descendant of an heir who has died before the heir, so he is entitled to the share of the inheritance that should have been received by his parents (Habiburrahman, 2021). From an epistemological perspective, the concept of surrogate heirs was born in response to the need for social justice in modern society (Lubis & Simanjuntak, 2020).

In classical jurisprudence, the provisions regarding surrogate heirs are not known because the basic principle of inheritance emphasizes that the right of inheritance is lost if the heir dies before the heir (Al-Sabuni, 2017). However, in the legal context in Indonesia, the emergence of this concept in KHI aims to accommodate social changes and fulfill the principle of intergenerational justice (Abdurrahman, 2019). KHI introduces a legal mechanism that does not solely rely on traditional texts, but also considers the social realities that demand the protection of hereditary rights (Fadlullah, 2020).

The ontology of surrogate heirs is related to their existence as a legal instrument to ensure that hereditary rights to inheritance are maintained (Rofiq, 2019). The presence of this concept is recognized as a form of actualization of the principle of justice in Islamic inheritance law in Indonesia (Wahid & Rumadi, 2019). Meanwhile, the axiology of the concept of surrogate heirs lies in its goal to create equal distribution of inheritance rights and avoid injustice to the descendants left behind (Faizah, 2018). Thus, the application of this concept not only fulfills Sharia principles regarding the protection of family rights but also strengthens the integration of Islamic law with the social needs of contemporary society (Nurlaelawati, 2021).

Legal Basis of Successor Heirs

The concept of surrogate heirs in the Islamic inheritance legal system in Indonesia has a solid normative legal foundation, not only based on positive laws in the Compilation of Islamic Law (KHI), but also rooted in Islamic sharia values that have been compiled and thought about by classical scholars in the form of initial ideas about the importance of maintaining the continuity of inheritance rights in the family. KHI explicitly stipulates in Article 185 that if an heir dies before the heir, his position can be replaced by his or her child, as long as it is not hindered by the cause of

inheritance barrier, as in Article 173 of the KHI (Ministry of Religion of the Republic of Indonesia, 1991).

This provision is not just a contemporary compromise, but is ijtihad qiyasi (legal analogy) to the basic principles in the Qur'an and As-Sunnah, which prioritize inheritance justice and the protection of the rights of offspring. Epistemologically, this provision is based on universal values in QS. An-Nisa' verse 33 and the principle of justice affirmed in the hadith about the distribution of inheritance (HR. Bukhari No. 6732; Muslim No. 1615) (Asqalani, 2000; Shihab, 2000).

Furthermore, the idea of the right of heredity to inherit has actually been of concern to some classical scholars, although it has not been systematically formulated in the form of the concept of "surrogate heirs" as it is today. Imam Shafi'i in al-Umm emphasized the importance of maintaining the line of kinship in inheritance, although he did not explicitly discuss the successor of the heir who died first (al-Shafi'i, 2001). Imam Malik in al-Muwatta' discusses inheritance based on '*asabah* (close family of men) and opens up the opportunity of inheritance to more distant relatives if close relatives are absent, showing the logic of the sustainability of inheritance rights in the family (Malik, 1999). Ibn Qudamah in al-Mughni asserts that if the main heir is absent, the right moves to the next level in the hierarchy of descent, which in the modern context can be analogized as a "successor" in the lineage (Ibn Qudamah, 1997). Al-Nawawi in al-Majmu' also explains the importance of the continuity of inheritance, especially to maintain justice and balance in the Muslim family (al-Nawawi, 2005).

Classical scholars have basically realized the importance of the sustainability of inheritance rights in the family structure (Hallaq, 2019). They have not yet developed the term "successor heir", but the substance of their thinking leads to the preservation of hereditary rights as successors to heirs who die first (Zuhaily, 2018). Thus, the application of the concept of surrogate heirs in Indonesia's positive law through KHI is not a wild innovation, but is a reconstruction of legitimate Islamic inheritance law, based on the principles of ta'lil al-ahkam (rationalization of law) and maqashid al-shari'ah (the purpose of sharia), especially in the protection of nasab (descendants) and maal (property) (Kamali, 2008).

This conception is also strengthened by Tafsir Al-Mishbah, which emphasizes that the distribution of inheritance contains a dynamic message of justice in accordance with the social needs of the times (Shihab, 2000). Tafsir Al-Maraghi also shows that the distribution of inheritance is not just a mathematical calculation, but part of efforts to maintain social and family harmony (al-Maraghi, 2001). Moreover, the Companions have also carried out ijtihad on certain issues in the distribution of inheritance, such as gharawain, 'aul, and radd, akdariyah, musytarakah, and so on (Coulson, 2017).

Furthermore, based on Sharia maqashid, hifz al-nasl (protection of descendants) and hifz al-mal (protection of property) are the most relevant maqashid in the context of successor heirs (Auda, 2020). Posterity protection requires Islamic law to pay

attention to the rights of children and grandchildren, even if the parents have died before the heirs. Property protection requires that no part of the property is "severed" simply because of the death of the main heirs (Ibn Ashur, 2006; al-Syatibi, 2003; Kamali, 2008). Therefore, although not explicit, substantial values in the Qur'an and Sunnah support the birth of the concept of surrogate heirs as part of the dynamics of modern ijtihad (Nurlaelawati, 2021).

Argument of Ulama Dayah: The Position of the Yellow Book and the Rejection of the Successor Heir

Based on the results of field research through in-depth interviews with dayah leaders in Woyla District, it was found that there is no recognition of the concept of surrogate heirs as stipulated in the Compilation of Islamic Law (KHI) Article 185. All three scholars interviewed showed consistency in their views, although each had a different emphasis.

Tengku Abdullah Arif, the leader of Dayah Miftahul Jannah, on October 18, 2023, emphasized that in the law of faraidhh as taught in classical books, grandchildren only get inheritance rights if they come from the male line and provided that there are no other sons alive when the heir dies. He explicitly states that "there is no right in the book of faraidhh for the grandson of a daughter to succeed her parents."

Meanwhile, Tengku Indra Budiman, the leader of Dayah Ar-Raudhatul Awwaliyah, October 15, 2023, emphasized that the concept of inheritance in Islam is tsawabit (fixed), so legal innovations such as surrogate heirs in the KHI are considered contrary to the basic principles of sharia. He explained that although there is a social need to protect the rights of orphans, "in *faraidh*, there is no room for new ijtihad because the law of inheritance is a provision of *qath'i*."

Tengku Arman from Dayah Istiqamatuddin Raudhatul Mu'arrif, October 18, 2023, pays more attention to the social dimension of the community. He acknowledged that in social practice, there is sometimes an agreement to give grants to orphaned grandchildren, but this is done voluntarily and not on the basis of inheritance. In his view, *"patah titi"* is not only a fiqh provision, but also part of a local culture that is firmly rooted in the Woyla community.

The entire interview shows that the perception of the dayah Woyla scholars towards the concept of a surrogate heir is shaped by several main factors, both internal and external. Internal factors include the influence of classical fiqh education, the sacredness of faraidh science, and the structure of scientific authority in the dayah environment. Meanwhile, external factors involve the socio-cultural aspects of the Acehnese people, the historical separation from the national legal system, and the lack of methodological integration between classical Islamic law and positive Indonesian law.

In the context of dayah education, Woyla scholars generally follow a traditional curriculum based on the yellow book, which refers to the opinions of the Shafi'i school. Books such as *Fath al-Qarib wa Tuhfah al-Muhtaj* are the main references in teaching faraidh, which do not recognize the concept of succession of heirs (Shihab, 2017). This approach is in line with the findings of Armiadi et al. (2020), which revealed that *ulama dayah* in Aceh prioritize classical fiqh texts over national legal interpretations.

From the social side, the influence of the status of ulama as community leaders also strengthens resistance to legal innovation. In Woyla, the decision of the ulama in inheritance cases was accepted without resistance by the community, forming a living law based on local norms (Royana et al., 2022). This structure makes ideas of legal reform, including the recognition of successor heirs, difficult to accept without the risk of eroding the authority of the clerics (Muzakkir, 2019).

Another aspect that also has an influence is the perception of the sacredness of fariath. Inheritance is seen as part of divine law that should not be revised, as affirmed in the hadith on the importance of the science of faraidh (Al-Syaukani, 1999). This perception causes the concept of a surrogate heir in KHI to be considered a form of modern legal engineering that does not have Sharia legitimacy (Nasution, 2020).

The historical separation between Acehnese customary law and the national legal system reinforces this distance. Research by Ramadana and Bahri (2018) shows that even though national law has abolished the concept of fracture titi through Article 185 of the KHI, the people of Aceh still maintain the practice in settling inheritance. The rejection of the reform of inheritance law can also be understood as a form of cultural resistance to national laws that are considered to lack attention to the peculiarities of local traditions (Nurdin, 2018).

Integrating all these analyses, a comparison of internal and external influence factors on the attitude of the dayah Woyla ulama can be compiled as follows:

Aspects	***Internal Influence***	***External Influences***
Scholarly Resources	Yellow book education based on Shafi'i fiqh	Lack of socialization of KHI and national law in the dayah community
Authority Structure	The authority of the ulama as the guardians of the classical scientific heritage	Tradition of community respect for the decisions of scholars
Sanctification *of Faraidh*	The perception of *faraidh* as a fixed law must not be changed	Social need for the protection of orphans that does not translate into formal law
Historical Context	A preference for traditional Islamic law due to the history of dayah education	Historical separation from the national legal system and legal modernization

Social Flexibility	Giving grants to grandchildren is voluntary, not rights-based (Maghfirah, 2024)	Prompted by social realities but without official changes to the legal structure of the dayah

The attitude of the *ulama dayah* of Woyla towards the concept of surrogate heirs is influenced by a combination of internal factors in the form of the strength of scientific traditions and social structures, as well as external factors in the form of local social realities and separation from the national legal system. In this context, resistance to surrogate heirs is not just a legal issue, but part of the dynamics of the legal culture of the Acehnese people.

***Maqāṣid al-Sharī'ah*: Justice, Protection, and Social Resilience**

The concept of maqāṣid al-sharī'ah places justice and protection of rights as central principles in Islamic law. As Jaser Auda said, "*ignoring the rights of orphans contradicts the very essence of Islamic ethics*" (Auda, 2008). Therefore, preventing an orphaned grandchild from inheriting his grandfather's property is contrary to the principles of social justice and benefit.

Ignoring the rights of orphans is directly contrary to the principles of Islamic ethics. The Qur'an expressly denounces those who neglect or oppress orphans. In Surah Al-Ma'un, Allah says: "*Do you know (those who deny religion)? So that is the one who rebukes orphans.*" In addition, the Qur'an warns that eating the property of an orphan unjustly is a great sin: "*Indeed, those who eat the property of orphans unjustly, they swallow fire into their stomachs.*"

The Prophet Muhammad himself was an orphan, setting an example in treating orphans with compassion. He said: "*I and the one who bears the orphan (his position) in Paradise like this, then he gestured with his index and middle fingers and stretched them a little.*" This hadith shows the special closeness between the Prophet and those who cared for orphans, as a form of appreciation for this noble deed.

In Islam, caring for and protecting orphans is a reflection of noble faith and morals. Ignoring their rights is not only contrary to the teachings of Islam but also shows a deficiency in one's faith. Therefore, Muslims are encouraged to always treat orphans with compassion, justice and give them the rights they deserve. Orphans as heirs *of broken titi are* appropriately used as heirs to replace their parents, who have passed away first. Kamali stated that the protection of orphans is a fundamental goal in sharia, and inheritance law must ensure this (Kamali, 2003).

In this context, the concept of surrogate heirs is a realization of maqṣad *ḥifẓ al-nasl* and ḥifẓ *al-māl*, which seek to maintain the continuity of the descendants and economic protection. Therefore, the ijtihad that gave birth to this concept can be accounted for in Sharia.

Maslahah Mursalah and the Legitimacy of Collective Ijtihad

The concept of maslahah mursalah, which is a benefit that is not explicitly stipulated in the nash but is justified by *syara'* (Al-Ghazali, 1993), is very relevant in justifying the concept of a surrogate heir. According to Fazlur Rahman, when a new situation arises, ijtihad is not only allowed but also mandatory for the benefit of the ummah (Rahman, 1982), so that ijtihad can be applied in situations that are not explicitly regulated in the nash due to urgent legal needs.

In the context of inheritance law in Indonesia, the Compilation of Islamic Law (KHI) is prepared through a collective ijtihad forum involving scholars, academics, and legal practitioners (Ministry of Religion of the Republic of Indonesia, 1991). The legitimacy of this ijtihad should not be underestimated just because it does not come from Middle Eastern authorities (Hallaq, 2009). On the other hand, local ijtihad has its value because it better understands the social reality of the local community (Mas'ud, 2006). This approach is in line with the spirit of Islamic law reform that uplifts the dignity and dignity of women and protects the oppressed.

The concept of a successor heir can be seen as a manifestation of maslahah mursalah produced through contemporary collective ijtihad. Without the application of this concept, the unclear status of the surrogate heir has the potential to cause harm, especially for orphans who have lost one or both parents. In many cases, orphans do not get fair inheritance rights because there are no clear provisions regarding surrogate heirs (Mas'ud, 2006; An-Lord, 2008). This can lead to injustice and long-term economic losses for them.

In the case of *patah titi* in Aceh, especially in Woyla District, where an heir dies before the heir, the application of the concept of surrogate heirs through ijtihad based on maslahah mursalah is carried out to protect inheritance rights and prevent economic losses to the family.

KHI, as a product of collective ijtihad, is prepared through a series of stages ranging from problem identification, scientific deliberation, formulation of a manuscript based on consensus or argumentative majority, involving experts in the field of Islamic law and positive law, to verification by stakeholders before promulgation. The legitimacy of KHI as a material law in religious courts is actualized through Presidential Instruction Number 1 of 1991, Law Number 1 of 1974, and Government Regulation Number 9 of 1975.

The advantage of collective local ijtihad lies in the contextuality of Indonesian culture, customs, and social character, so that the resulting solutions are more applicable and easily accepted by the community. Its transparent process—meeting documents, drafts, and open reference to the public and academia, as well as responsiveness to cutting-edge issues, such as post-pandemic changes in family structure, affirms the role of collective ijtihad in the renewal of Islamic law. The combination of the maslahah mursalah and the deliberative mechanism underlies

every inheritance policy, on a comprehensive analysis of benefits and risks, and stakeholder collaboration to minimize bias. Thus, this approach is not just an option, but a shari'a obligation to maintain justice and the benefit of the ummah.

Criticism of Blind Taqlid and Legal Conservatism

The rejection of the concept of surrogate inheritance by *ulama dayah* in the Woyla District indicates the existence of a symptom of blind taqlid *(taklid buta),* which is characterized by following the opinions of classical scholars without critical evaluation and contextualization. This has the potential to freeze fiqh and make it unresponsive to social dynamics and contemporary needs, even though fiqh departs from the spirit of *"shalihun likulli zamanin wa makanin"*. Furthermore, their rejection of the contemporary collective ijtihad carried out in the preparation of the KHI shows a preference for traditional scientific authority structures and skepticism of the legitimacy of ijtihad carried out outside of that structure. These limitations show the importance of reevaluating the methodology and epistemology of ijtihad in the current context. Fazlur Rahman (1982) criticized fiqh conservatism, which made Islamic law rigid and insensitive to social dynamics. In the context of Aceh, excessive respect for classical fiqh without contextual ijtihad can create structural injustice, especially for orphans.

The Role of Ulema as Transformational Figures

Clerics in Aceh are not only religious leaders, but also holders of moral and social authority. In the Woyla community, *ulama dayah* are often used as the main reference in legal and social issues, including inheritance (Hasjmy, 1983). The power of this influence makes the position of the ulama strategic in the socio-religious transformation. Therefore, they are not only obliged to maintain the purity of the teachings, but also responsible for ensuring that the teachings remain relevant and just.

As transformational agents, scholars should be able to translate Islamic normative values into the context of modern social life (Madjid, 1995). This transformation requires intellectual courage, epistemological ability, and ethical will to open up a new ijtihad space that is responsive to the needs of the ummah. This is in accordance with Arkoun's (2002) view that the task of scholars is to present a critical reading of the text in order to free the ummah from the confines of non-contextual literality.

In this regard, the attitude of rejecting the concept of a successor heir without academic dialogue and the study of maqāṣid reflects intellectual surprise. If scholars stick to the legalistic paradigm without considering social benefits, then they risk affirming structural injustices suffered by vulnerable groups such as orphans (Kodir, 2020). Scholars are not only guardians of traditions but also agents of change who are supposed to promote social justice. Therefore, a reformulation of the role of scholars is

urgently needed so that they can carry out their prophetic functions comprehensively: conveying truth, upholding justice, and protecting the weak. The ulama must be a bridge between text and context, between revelation and reality, so that Islamic law remains a blessing for the universe.

Legal-Formal Dimension: KHI as a Positive Law

The Compilation of Islamic Law (KHI) is a national legal product promulgated through Presidential Instruction No. 1 of 1991. As a source of positive law that applies in the religious justice environment, KHI has formal and operational legitimacy in resolving Islamic family law cases in Indonesia, including inheritance (Hazairin, 1971). KHI is not only a normative guide for judges, but also a reflection of the collective ijtihad of scholars, scholars, and legal practitioners in responding to the legal needs of the Indonesian Muslim community.

The stipulation of Article 185 of the KHI regarding surrogate heirs shows that KHI carries the approach of maslahat and maqāṣid al-sharī'ah in determining its legal provisions. This provision was born out of the concrete need for justice and protection for economically and socially vulnerable grandchildren. This is emphasized by Nurrohman (2011) that KHI seeks to accommodate the principles of substantive justice within the framework of Islamic law.

The rejection of some scholars against KHI reflects the problem of the relationship between positive law and traditional authority. In this case, the rejection of the enactment of Article 185 of the KHI by the dayah scholar Woyla shows that there is an epistemological tug-of-war between the classical literal nash and the modern legal construction of the state. The view of A. Qodri Azizy (2004) emphasizes that in the national legal system, Islamic law must be developed contextually and transformatively, not statically and literally.

Anthony Giddens' (1994) structuring theory can be a foundation for understanding the role of scholars in responding to KHI. According to Giddens, social actors can redefine structures, rather than simply passively reproduce traditions. Thus, recognizing KHI as a positive law does not mean abandoning classical fiqh, but rather placing it within the framework of maqāṣid al-sharī'ah that is broader and relevant to the contemporary context.

Social Implications: The Neglect of Orphans' Rights Due to the Dominance of Local Ulema Views

The rejection of the concept of surrogate heirs by *ulama dayah* in the Woyla District not only has an impact on scientific discourse but also has very significant social implications, especially on the fate of orphans. In many cases, orphans who lose their parents before the heirs (e.g., their grandfathers) are the most socially and economically disadvantaged parties if the provisions of classical fiqh that do not

recognize the existence of a surrogate heir are still applied (Hazairin, 1971). In fact, in the context of maqāṣid al-sharī'ah, the protection of the rights of orphans is included in the categories of ḥifẓ al-nafs and ḥifẓ al-māl (safeguarding one's soul and property), two of the five main maqāṣid in Islamic sharia (Auda, 2008).

The dominance of local scholars' opinions in communities that are very obedient to religious authorities, such as in Aceh, is a key factor in the perpetuation of structural injustice. Scholars not only function as teachers, but also as moral, social, and legal references (Geertz, 1960). When their opinion rejects the legitimacy of the concept of surrogate heirs, society tends to follow uncritically, so that the rights of orphans as legally positive legal heirs are ignored.

This condition shows how the hegemony of local religious authorities can weaken the implementation of positive laws that are more inclusive and progressive. The direct result of this rejection is the increasing vulnerability of orphans to economic and social marginalization (Sen, 2000). Not being given a share of the inheritance from their grandfather just because their father died first is a form of structural discrimination that is contrary to the principles of justice in Islam.

As emphasized by Arkoun (2002), the stagnation of Islamic thought is not due to a lack of sources, but because of the epistemological closure of the historical reality of Muslims. The rejection of the concept of a surrogate heir shows that there is resistance to the dynamics of Islamic law as a system that should be responsive and flexible to the changing times.

Therefore, an educational approach is needed—one that empowers the community not to accept authority blindly, but to understand that contemporary ijtihad, such as that found in the Compilation of Islamic Law (KHI), represents progress in Islamic law by upholding justice and protecting vulnerable groups, including orphans.

Conclusion

The rejection of the *ulama dayah* of Woyla District to the concept of a surrogate heir reflects a reluctance to move away from a literalistic approach to classical fiqh. The Compilation of Islamic Law (KHI) has determined surrogate heirs as a form of legal contextual ijtihad to realize social justice and protect the rights of orphans. Loyalty to the yellow book without considering maqāṣid al-sharī'ah has the potential to create structural injustices in society, especially against *the mustaḍ'afīn* group.

In the social context of Aceh, especially the ulama of Woyla District, where the ulama have high authority, this view is very influential and leads to the neglect of the inheritance rights of orphans. Therefore, scholars need to be more open to contemporary ijtihad to maintain the relevance and benefits of Islamic law. This study recommends increasing progressive Islamic legal literacy, involvement of scholars in

contextual ijtihad training, and strengthening the implementation of KHI socially and legally.

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