

Heir Substitution in Inheritance Certificate Transfer: Legal Analysis Based on Decisions of the Religious Court

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ABSTRACT

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This normative legal research analyzes the alignment of judicial decisions on heir substitution with Islamic inheritance principles, focusing on its legitimacy and impact on land rights transfer. It examines laws, religious court rulings, and Islamic legal sources—primarily the Compilation of Islamic Law and fiqh al-farā'id—using both primary and secondary legal materials to assess the validity and consistency of these practices. In Indonesia's plural legal system, inheritance and land rights require formal legal instruments—such as authentic deeds and PPAT involvement—to ensure legal certainty and rights protection. For Muslims, Islamic inheritance must also comply with state procedures, particularly through formalization. Understanding the distinctions between inheritance systems, the role of authentic deeds, and PPAT functions is essential for resolving inheritance cases fairly and lawfully, aligning religious values with national law.

INTRODUCTION

Islamic Inheritance Law governs and regulates the transfer of inheritance from the deceased (*al-muwarrits*) to their heirs. This process is known as *al-farā'id*, a specific discipline within Islamic jurisprudence that discusses the rules and regulations concerning inheritance.¹ Inheritance law also identifies categories of individuals who may qualify as heirs and outlines the mechanisms for distributing the estate from the deceased to those legally entitled.

According to *fiqh al-mawārīth* (Islamic jurisprudence on inheritance), the law concerns the division of inheritance, the calculation of each heir's share, and the specific entitlements of those who are legally eligible to receive a portion of the estate.² In Islamic law, heirs are generally divided into two categories:

1. Heirs by blood (*nasabiyyah*) – those whose entitlement is based on blood relations or kinship.
2. Heirs by legal cause (*sababiyyah*) – those who are entitled due to marriage or having emancipated a slave.

The transfer of property rights from the deceased to the heirs does not occur automatically; it must follow legal procedures and include the formal process of title transfer. In accordance with Article 111 paragraph (1) letter (c) of the Regulation of the Minister of Agrarian Affairs/Head of the National Land Agency No. 3 of 1997, which implements Government Regulation No. 24 of 1997 on Land Registration, such transfer must be based on an official legal determination.³

Based on a Certificate of Inheritance (*Surat Keterangan Waris*) and the court's determination of substitute heirs (*Ahli Waris Pengganti*), such substitute heirs acquire the legal right to exercise authority over the inheritance. This authority includes both administrative and ownership actions over the inherited assets. In cases where the estate consists of land, the heirs may apply for the transfer of ownership (*balik nama*) at the local Land Office (*Kantor Pertanahan*).

In inheritance determination cases, religious courts may appoint a niece or nephew as a substitute heir when the niece or nephew's parent—who would have been a direct heir—has predeceased the decedent. This provision aligns with Article 185 of the Compilation of Islamic Law (*Kompilasi Hukum Islam*), which recognizes the principle of representation in inheritance (*successio in representationem*). If the

¹ Sayyid Sabiq, *Fiqh Sunnah*, Jilid 5, cet. ke-1, PT. Tinta Abadi Gemilng, Jakarta, 2013, hlm 531

² Beni Ahmad Saebani, *Fiqh Mawaris*, Pustaka setia, Bandung, 2012, hlm. 13.

³ Pasal 111 ayat (1) huruf c Peraturan Menteri Agraria/Kepala Badan Pertanahan Nasional Nomor 3 Tahun 1997 tentang Ketentuan Pelaksanaan Peraturan Pemerintah Nomor 24 Tahun 1997 Tentang Pendaftaran Tanah

deceased leaves no descendants or surviving siblings, a nephew or niece may legally replace the position of their deceased parent as heir. Furthermore, if the estate includes land and buildings, such assets may be included in the court's inheritance determination.

Upon such judicial determination, the substitute heir holds a valid legal basis to exercise rights of ownership, including the right to file for the transfer of land title in accordance with prevailing agrarian regulations.

Under Government Regulation No. 24 of 1997 on Land Registration, which replaced Government Regulation No. 10 of 1961, the Regulation of the Minister of Agrarian Affairs/Head of the National Land Agency No. 3 of 1997 was issued to provide implementation guidelines. These regulations stipulate that in inheritance-related transfers of land rights, a Certificate of Inheritance is a mandatory legal document serving as the basis of such transfer.

In principle, if there is only one heir, the proof of entitlement may be sufficiently established with a legal document certifying their status as the sole heir. This aligns with Article 1 point 1 of Government Regulation No. 24 of 2016, which amends Government Regulation No. 37 of 1998 on the Position Regulations of the Land Deed Official (*Pejabat Pembuat Akta Tanah – PPAT*), further regulating the authority and legal basis for PPATs in drafting deeds concerning the transfer of land ownership due to inheritance.

Nominatively, the Land Deed Official (*Pejabat Pembuat Akta Tanah* or PPAT) is a public official authorized to draw up authentic deeds concerning specific legal actions related to land rights or condominium ownership, as stipulated in Article 1 point 1 of Government Regulation No. 37 of 1998 in conjunction with Article 1 point 24 of Government Regulation No. 24 of 1997. Its implementation is further governed by the Regulation of the Head of the National Land Agency (*Badan Pertanahan Nasional - BPN*) No. 1 of 2006.⁴

One such legal act is the division of inherited land. According to Article 37 of Government Regulation No. 24 of 1997, the transfer of land rights due to inheritance must be executed through a deed drawn up by and before a PPAT. However, in practice, the use of such authentic deeds in inheritance-related land transfers remains infrequent among the public. This research seeks to assess whether such judicial determinations are in accordance with the principles of Islamic inheritance law,

⁴ Peraturan Pemerintah Republik Indonesia Nomor 37 Tahun 1998 Tentang Peraturan Jabatan Pejabat Pembuat Akta Tanah

particularly regarding the legitimacy of heir substitution and its legal consequences in the transfer of land rights.

METHOD

This study applies a normative legal research method, focusing on the analysis of legal norms and doctrines governing heir substitution in inheritance certificate transfers. The research examines statutory regulations, judicial decisions of religious courts, and principles of Islamic inheritance law, particularly those derived from the *Compilation of Islamic Law* and *fiqh al-farā'id*. Legal materials used include primary sources such as legislation and court decisions, and secondary sources such as legal literature, commentaries, and scholarly articles. The study aims to assess the legal validity and consistency of heir substitution practices with both positive law and Islamic legal principles.

RESULT AND DISCUSSION

1. Islamic inheritance law

According to the majority of Islamic scholars, heirs are limited to those who are still alive at the time of the decedent's (pewaris) death. Therefore, as long as there are surviving heirs who are more entitled to the inheritance, the descendants of a predeceased heir do not have the right to claim the portion that their parent would have received had they survived the decedent. In this view, the principle of representation (*hak penggantian*) is generally not recognized in classical Islamic inheritance law. This interpretation reflects a strict adherence to the rules of inheritance (*faraid*), which are based on the actual status of potential heirs at the moment of the testator's death.⁵

In positive law, particularly in Article 171 letter (c) of the Compilation of Islamic Law (*Kompilasi Hukum Islam/KHI*) in Indonesia, an heir (*ahli waris*) is defined as a person who, at the time of the decedent's death, has a blood relationship or marital tie with the deceased, is of the Islamic faith, and is not legally barred from receiving an inheritance. This legal provision aligns with classical Islamic jurisprudence by emphasizing three primary qualifications for an individual to be considered an heir: (1) a recognized familial or marital relationship with the decedent, (2) adherence to Islam, and (3) the absence of any legal impediment such as homicide or apostasy.

Thus, both classical Islamic doctrine and codified Islamic family law in Indonesia underscore that inheritance rights are vested only in living individuals who fulfill specific religious and relational criteria at the time of the testator's death. The

⁵ Pasal 171 huruf c Kompilasi Hukum Islam

exclusion of descendants of predeceased heirs serves to uphold the principle of direct entitlement and clarity in the distribution of the estate, which is central to the integrity and implementation of Islamic inheritance law.

The objectives of Islamic law (*maqāṣid al-sharī'ah*) can be viewed from two distinct perspectives: first, from the standpoint of the Lawgiver (*al-shāri'*), namely Allah and His Messenger; and second, from the perspective of human beings who serve as the subjects and implementers of the law. From the standpoint of the Lawgiver, the purposes of Islamic law are threefold: first, to realize the welfare (*maṣlaḥah*) of human life; second, to be understood (*ifhām*), obeyed, and implemented by human beings in their daily lives; and third, to ensure that such obedience and implementation are carried out properly and correctly, it is incumbent upon individuals to enhance their capacity to comprehend Islamic legal obligations (*taklīf*).⁶

From the perspective of the human subject—the one who acts in accordance with the law—the ultimate aim of Islamic law is to attain well-being and happiness in life. This is achieved by promoting benefits and repelling harm (*jalb al-maṣāliḥ wa dar' al-mafāsid*), which serves as a fundamental principle in Islamic legal reasoning. When formulated in general terms, the essential purpose of Islamic law is to secure the well-being, interests, and holistic happiness of humankind, while ultimately striving to attain the pleasure and approval of Allah (SWT) in both this worldly life and the hereafter.

In Islamic inheritance law, there are specific legal grounds (*asbāb al-mīrāth*) through which an individual may become entitled to a portion of an estate. These causes are rooted in both revelation and early Islamic practices and are outlined as follows:⁷

a. Consanguinity (Blood Relation)

Blood relations constitute the primary and most enduring cause of inheritance in Islamic law. Unlike the pre-Islamic tribal customs that limited inheritance rights to male warriors capable of fighting, Islam extended the right of inheritance to all individuals who share a legitimate blood relationship with the deceased, regardless of gender or physical ability. This reflects a universal application of consanguinity as a justifiable cause of succession.

b. Adoption Does Not Establish Inheritance Rights

In contrast to pre-Islamic Arab customary law, which equated adopted children with biological offspring for purposes of inheritance, Islamic law does not recognize adoption (*tabannī*) as a valid basis for inheritance. Under the previous system, adopted children were deemed equivalent to natural children, thus acquiring a legal status that entitled them to inherit equally. However,

⁶ Juhaya S. Praja, *Epistemologi Hukum Islam*, IAIN Syarif Hidayatullah, Jakarta, 1988, hlm. 196

⁷ Sayuti Thalib, *Hukum Kewarisan Islam di Indonesia*, Sinar Grafika, Jakarta, 2016, hlm. 10-13

Islamic inheritance law abolished this practice, affirming that adoption does not create legal filiation nor confer inheritance rights. The biological lineage remains the sole determinant in such cases, although adopted children may still be provided for through a testamentary bequest (*waṣiyyah*), subject to legal limits.

c. Covenant to Inherit (*Mu'āhadah bi al-Mirāth*)

In the early development of Islamic society, mutual inheritance agreements were sometimes formed, establishing reciprocal inheritance rights between individuals. However, such arrangements have been abrogated or reinterpreted by later Islamic scholars. The term "agreement" in this context has often been understood as referring to marital ties rather than formal pacts. Consequently, inheritance under such agreements has generally been replaced with the mechanism of testamentary bequests, which are executed prior to the distribution of the estate according to the fixed shares prescribed in Islamic law.

d. Emigration (*Hijrah*)

During the formative period of Islam, especially in the aftermath of the Prophet Muhammad's migration (*Hijrah*) from Mecca to Medina, those who emigrated together were, at one point, granted mutual inheritance rights—even in the absence of consanguinity. This provisional arrangement aimed to strengthen communal solidarity among early Muslims. However, this practice was later annulled by Qur'anic revelation, and inheritance rights reverted to being determined solely by blood and marital ties.

e. Brotherhood (*Mu'ākhāh*)

In specific historical circumstances, the Prophet Muhammad established bonds of brotherhood (*mu'ākhāh*) among certain individuals, particularly between the emigrants (*Muhājirūn*) and the natives of Medina (*Anṣār*), as a means of fostering social cohesion. Initially, this spiritual brotherhood carried legal implications, including reciprocal inheritance rights. However, this provisional ruling was subsequently revoked, and inheritance became restricted to those with legal kinship or marital relationships as defined by Islamic jurisprudence.

When examined in comparison with Islamic inheritance law, the inheritance system under the Indonesian Civil Code (KUHPerdata)—which is based on Western civil law traditions—reveals several fundamental differences, particularly in terms of the hierarchy of heirs, distribution mechanism, and underlying philosophical and theological foundations.⁸

⁸ Amir Syarifuddin. (2005). *Hukum kewarisan Islam*. Jakarta: Kencana.

As regulated in Book II of the Civil Code (Articles 830–1130),⁹ the Indonesian Civil Code classifies heirs into four hierarchical groups, each entitled to inherit in succession. The system operates on a principle of exclusivity, meaning that the existence of heirs in a prior class precludes those in lower classes from inheriting. For instance, if heirs from the first class (which typically includes spouse and children) are present, they will exclude second-class heirs (such as parents and siblings) from receiving any portion of the estate. This linear and rigid structure of inheritance emphasizes order and certainty in asset distribution but may limit inclusivity among extended family members.¹⁰

In contrast, Islamic inheritance law (*farā'id*), as outlined in the Qur'an, Hadith, and classical jurisprudence, does not follow a strictly hierarchical model but instead employs a fixed-share system (*al-farā'id*) in which specific relatives—regardless of class—are each assigned a predetermined portion of the estate. These shares are based on the closeness of relationship to the deceased and are designed to reflect justice, equity, and familial solidarity. For example, under Islamic law, both parents and children of the deceased may inherit simultaneously, each receiving a portion proportionate to their status. Additionally, Islamic law places strong emphasis on obligatory shares (*fardh*) and limits testamentary freedom to one-third of the estate, thus ensuring that rightful heirs are protected and cannot be disinherited at will.¹¹

Another notable contrast is the treatment of extended family and gender-based inheritance rules. Islamic law includes a broader range of heirs, such as grandparents, grandchildren, siblings, and even uncles or aunts, depending on the circumstances. The presence of these relatives does not automatically exclude others but instead modifies the allocation of shares. While the KUHPerdata system tends to be more exclusive and hierarchical, the Islamic system is inclusive and distributive, with a spiritual rationale rooted in achieving justice (*'adl*), public welfare (*maṣlaḥah*), and the divine mandate of fulfilling obligations toward kin.¹²

Moreover, from a theological standpoint, Islamic inheritance is not merely a civil matter but a religious duty. The distribution of wealth after death is seen as an act of obedience to God, and tampering with the prescribed shares is considered a serious moral and legal offense. In contrast, the civil law approach embodied in the KUHPerdata is secular in nature, prioritizing formal legality and social order without reference to divine injunctions¹³.

In conclusion, while both systems aim to regulate the transfer of assets after death and provide legal certainty, Islamic inheritance law offers a more nuanced, inclusive, and divinely guided framework, emphasizing obligations to family and

⁹ Subekti, R. (2009). *Pokok-pokok hukum perdata*. Jakarta: Intermasa

¹⁰ Mertokusumo, S. (2005). *Hukum waris Indonesia*. Yogyakarta: Liberty.

¹¹ Saebani, B. A. (2015). *Hukum waris Islam di Indonesia: Kajian komparatif antara Kompilasi Hukum Islam dan Fiqh Mawaris*. Bandung: Pustaka Setia.

¹² Zainuddin Ali. (2010). *Hukum waris Islam*. Jakarta: Sinar Grafika.

¹³ Az-Zuhaili, W. (2006). *Fiqh Islam dan dalil-dalilnya* (Vol. 8, terj.). Jakarta: Gema Insani.

the preservation of social harmony. The Civil Code model, though more rigid and hierarchical, provides its own strengths in terms of clarity and procedural consistency. In the Indonesian context—where both systems coexist depending on religious affiliation—understanding these differences is essential for ensuring that inheritance disputes are resolved appropriately, fairly, and in accordance with both religious and state laws.

2. Authentic Deeds and the Role of Land Deed Officials (PPAT)

An authentic deed (*akta otentik*) plays a crucial role in the Indonesian legal system, particularly as a written instrument that holds full evidentiary value. According to Article 1868 of the Indonesian Civil Code (*Kitab Undang-Undang Hukum Perdata*), an authentic deed is defined as a deed that is drawn up in a form prescribed by law by or before a public official authorized to do so in the place where the deed is made. As such, an authentic deed not only reflects the will of the parties involved but also carries significant legal weight because it is created formally by an authorized official in accordance with legal procedures. It is commonly used as primary evidence in civil litigation due to its probative strength.¹⁴

One of the most vital forms of authentic deed in the field of land law is the deed issued by a Land Deed Official (*Pejabat Pembuat Akta Tanah* – PPAT). A PPAT is a public official who is specifically authorized by the government, through statutory regulations, to draw up authentic deeds related to the transfer of land rights and ownership rights over apartment units.¹⁵ The duties and authority of PPATs are outlined in several legal instruments, notably Government Regulation No. 24 of 1997 on Land Registration and Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency Regulation No. 2 of 2018 on PPAT. The PPAT's responsibilities are not limited to drafting land sale and purchase deeds but also include deeds of gift, exchange, inheritance, relinquishment of rights, joint ownership division, mortgage rights, and other legal acts that result in a change or transfer of land rights.¹⁶

The deed drawn up by a PPAT is not only an administrative document but also carries binding legal force. In practice, every land-related transaction must be documented in a deed prepared by a PPAT, as this deed serves as the legal basis for registering changes in juridical data in the Land Registry Office (*Kantor*

¹⁴ Andriani, N. (2021). *Peranan Pejabat Pembuat Akta Tanah (PPAT) dalam Proses Balik Nama Sertifikat Warisan*. Universitas Hasanuddin. Retrieved from <https://repository.unhas.ac.id/id/eprint/9658/>

¹⁵ Basri, H. (2021). Tanggung Jawab PPAT dalam Pembuatan Akta Pembagian Waris Berdasarkan Hukum Waris Islam. *Jurnal Hukum Cendekia*, 6(2), 142–158. Retrieved from <https://ejurnal.stih-pm.ac.id/index.php/cendekiahukum/article/view/175>

¹⁶ Dewi, A. Y., & Lestari, W. (2020). Akta Pembagian Hak Bersama (APHB) dalam Pembagian Waris Berdasarkan Putusan Pengadilan Agama. *Authentica: Jurnal Ilmu Hukum*, 3(2), 165–180. <https://authentica.fh.unsoed.ac.id/index.php/atc/article/view/350>

Pertanahan).¹⁷ Without a PPAT deed, the transfer of land rights cannot be legally recorded and is therefore not recognized as valid against third parties. Consequently, a PPAT deed is a vital legal instrument to ensure legal certainty, protection of ownership, and orderly land administration.

Moreover, the authentic deed prepared by a PPAT enjoys the same probative value as other authentic deeds, meaning it has perfect evidentiary strength as long as it is not proven otherwise by legal means. This implies that the content of a PPAT deed is presumed to be accurate and truthful regarding the statements made and signed by the parties involved, unless contrary evidence is presented. This feature makes PPAT deeds particularly significant in land disputes, as they place the holder in a legally strong position.

Therefore, the relationship between authentic deeds and the role of PPATs in Indonesia's land law system is deeply interconnected. The authentic deed serves as a legally binding and recognized form of documentation, while the PPAT acts as the public official who guarantees the accuracy, legality, and validity of land transactions. Together, they form the foundation of a transparent, orderly, and secure national land administration system. As such, a deep understanding of both authentic deeds and the role of PPATs is essential for anyone involved in the study or practice of agrarian law in Indonesia.

In the context of Islamic inheritance law (*faraid*),¹⁸ the role of authentic deeds and the Land Deed Official (PPAT) becomes increasingly significant, particularly when it involves the legal transfer and registration of inherited land or property. Islamic inheritance law dictates a specific, mandatory distribution of an estate among heirs based on Quranic prescriptions, which must be adhered to by all Muslims. The division of inheritance according to Islamic principles often requires formal legal acknowledgment to be recognized in the national legal system, especially when land or real property is involved. This is where the role of the PPAT becomes crucial.

In Indonesia, although Islamic inheritance law is substantively applicable to Muslims under *Kompilasi Hukum Islam* (KHI) and enforced through the Religious Courts (*Pengadilan Agama*), the transfer of ownership of inherited land still requires a legally valid process that complies with national land registration laws. After the Religious Court issues a decree on the determination of heirs (*Penetapan Ahli Waris*), the legal transfer of rights must be followed up by the making of an authentic deed by a PPAT, such as a deed of inheritance transfer (*Akta Pembagian Hak Bersama* or *Akta Pembagian Waris*). This deed then becomes the basis for updating the land registration at the National Land Office (BPN).

¹⁷ Hidayat, S. (2022). Peranan PPAT dalam Menyelesaikan Permasalahan Hukum Waris atas Tanah. *Enrichment: Journal of Management*, 12(1), 55–61. <https://journalenrichment.com/index.php/jr/article/view/112>

¹⁸ Hadikusuma, H. (2003). *Hukum waris adat*. Bandung: Alumni.

The PPAT thus serves as a bridge between religious inheritance rulings and state legal administration, ensuring that the Islamic division of inheritance is not only religiously valid but also legally recognized by the state. Without this authentic deed, the legal status of the transferred land remains uncertain and cannot be registered in the name of the heirs. Additionally, the deed serves as strong legal evidence if disputes among heirs arise in the future.

Moreover, the process reinforces legal certainty and protection for Muslim heirs. It formalizes and documents the distribution process in accordance with Islamic law, while also aligning it with state procedures, thereby integrating religious norms into the national legal framework. Through this integration, authentic deeds and the role of the PPAT uphold both the religious legitimacy of inheritance distribution and the legal enforceability of property rights in Indonesia's land law system.

In sum, when Islamic inheritance results in the transfer of land rights, the issuance of a Religious Court decree must be followed by the preparation of an authentic deed by the PPAT. This process not only ensures compliance with Islamic legal obligations but also guarantees the legal formalization and administrative recognition of land ownership in accordance with Indonesian national land law.

CONCLUSION

The comparison between Islamic inheritance law and the Indonesian Civil Code (KUHPerdata) highlights fundamental differences in terms of inheritance structure, distribution mechanisms, and underlying philosophical and theological principles. The Civil Code emphasizes a hierarchical and exclusive classification of heirs, ensuring procedural certainty and legal order in the transfer of estates. In contrast, Islamic inheritance law adopts a fixed-share system (*farā'id*) that is inclusive and distributive, rooted in religious obligations, justice (*'adl*), and public welfare (*maṣlaḥah*). It guarantees proportional rights to a broader range of heirs, reflecting both legal precision and moral accountability.

In the realm of agrarian law, the role of authentic deeds, particularly those prepared by Land Deed Officials (PPATs), is crucial in safeguarding the legality and validity of land-related transactions. An authentic deed—defined under Article 1868 of the Civil Code—serves not only as a formal record but as a primary instrument of legal evidence. PPATs, as state-authorized officials, are responsible for drafting deeds that formalize the transfer of land rights. These deeds serve as the legal foundation for registration with the Land Office (BPN) and are essential for ensuring that property rights are legally recognized, protected, and enforceable against third parties.

Thus, in both inheritance arrangements and land rights administration, the Indonesian legal system places significant emphasis on formal legal instruments—such as authentic deeds and the functions of PPATs—to uphold legal certainty, protection of rights, and orderly governance. At the same time, when Islamic

inheritance law is applied by Indonesia's Muslim population, religious principles guiding asset distribution must align with state procedural requirements, particularly the need for legal formalization through authentic deeds.

In conclusion, a comprehensive understanding of the differences in inheritance systems, the legal significance of authentic deeds, and the institutional role of PPATs is vital for resolving inheritance matters in a way that is fair, lawful, and aligned with both religious values and national legal frameworks. Proper integration of these legal instruments supports the realization of harmonious coexistence between religious and state law in Indonesia's pluralistic legal system.

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