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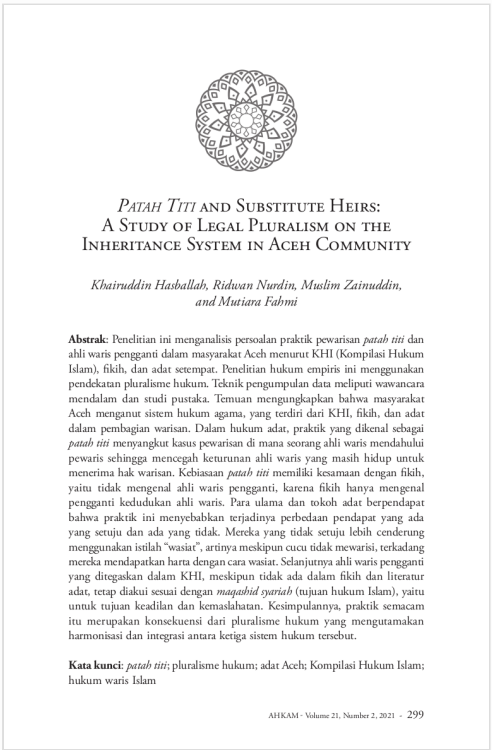

Patah Titi and Substitute Heirs:
A Study of Legal Pluralism on the
Inheritance System in Aceh Community

Khairuddin Hasballah, Ridwan Nurdin, Muslim Zainuddin, and Mutiara Fahmi

Abstrak: Penelitian ini menganalisis persoalan praktik pewarisan *patah titi* dan ahli waris pengganti dalam masyarakat Aceh menurut KHI (Kompilasi Hukum Islam), fikih, dan adat setempat. Penelitian hukum empiris ini menggunakan pendekatan pluralisme hukum. Teknik pengumpulan data meliputi wawancara mendalam dan studi pustaka. Temuan mengungkapkan bahwa masyarakat Aceh menganut sistem hukum agama, yang terdiri dari KHI, fikih, dan adat dalam pembagian warisan. Dalam hukum adat, praktik yang dikenal sebagai *patah titi* menyangkut kasus pewarisan di mana seorang ahli waris mendahului pewaris sehingga mencegah keturunan ahli waris yang masih hidup untuk menerima hak warisan. Kebiasaan *patah titi* memiliki kesamaan dengan fikih, yaitu tidak mengenal ahli waris pengganti, karena fikih hanya mengenal pengganti kedudukan ahli waris. Para ulama dan tokoh adat berpendapat bahwa praktik ini menyebabkan terjadinya perbedaan pendapat yang ada yang setuju dan ada yang tidak. Mereka yang tidak setuju lebih cenderung menggunakan istilah "wasiat", artinya meskipun cucu tidak mewarisi, terkadang mereka mendapatkan harta dengan cara wasiat. Selanjutnya ahli waris pengganti yang ditegaskan dalam KHI, meskipun tidak ada dalam fikih dan literatur adat, tetap diakui sesuai dengan *maqashid syariah* (tujuan hukum Islam), yaitu untuk tujuan keadilan dan kemaslahatan. Kesimpulannya, praktik semacam itu merupakan konsekuensi dari pluralisme hukum yang mengutamakan harmonisasi dan integrasi antara ketiga sistem hukum tersebut.

Kata kunci: *patah titi*; pluralisme hukum; adat Aceh; Kompilasi Hukum Islam; hukum waris Islam

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by Mutiara Fahmi

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Abstract: This research analyzes the issue of the practice of inheritance of *patah titi* and substitute heirs in Acehnese society according to the Compilation of Islamic Law (KHI), Islamic jurisprudence (*fiqh*) and local custom (*adat*). This empirical legal research uses a legal pluralism approach. Legal pluralism is a theory that analyzes the diversity of laws applicable and applied in the lives of society and the state. Data collection techniques include in-depth interviews and literature review. The findings reveal that the people of Aceh practice a religious legal system, which consists of the KHI, *fiqh*, and *adat* in the distribution of inheritance. In the customary law, the practice known as "*patah titi*" concerns the case of inheritance in which an heir predeceases the testator, thus preventing the heirs' living descendants from receiving inheritance rights. The customary practice in regards to *patah titi* bears a similarity to *fiqh*, in which it does not recognize a substitute heir, as *fiqh* only recognizes the replacement of the heir's position. According to *ulamas* and traditional leaders, the practice of *patah titi* causes a divergent of opinions in which some agree whereas others do not. Those who disagree are more likely to use the term "will", meaning that even though grandchildren do not inherit, sometimes they get property by way of a will. Furthermore, substitute heirs as confirmed in the KHI, although unavailable in *fiqh* and *adat* literature, are still recognized as they are in accordance with *maqāṣid sharīah* (the objectives of Islamic law), i.e. for justice and benefit purposes. To conclude, such a practice is a consequence of legal pluralism, which prioritizes harmonization and integration between the three legal systems.

Keywords: *patah titi;* legal pluralism; Acehnese customs; the Compilation of Islamic Law; Islamic inheritance law

Introduction

The national law in Indonesia is derived from three legal systems: Islam, customs (*adat*), and the West. These three legal systems affect the formalization of Indonesian law and the law practiced by the community as living law (Arifin, 1996; Azizy, 2002; Rofiq, 2001; Zada & Irfan, 2021). Likewise, in Aceh, the Compilation of Islamic Law (*Kompilasi Hukum Islam/KHI*), Islamic jurisprudence (*fiqh*), and customary law are integrated and practiced in various ways in society (Bowen, 2003; Salim, 2016; Syahrizal, 2004). Several forms of integration of the three legal systems can then be referred to as legal pluralism or legal diversity in inheritance distribution in Aceh.

Inheritance is the science that deals with the transfer of a deceased person's property to his/her family. However, *fiqh* stipulates that not all family members of the deceased receive an inheritance. The inheritance provisions in *fiqh* are sourced from the Qur'an, with relevant explanations contained in the Prophet traditions (*hadīth*) and consensus of Islamic scholars (*ijmā'*) (Haniru, 2014). The Qur'an spells out the laws relating to inheritance more precisely than other matters where the Qur'an only provides general descriptions, such as the procedure of prayers (sholat), whose detailed explanations are narrated in the Hadiths. The Qur'an aims to state detailed explanations of inheritance to avoid any family conflict as every heir may feel that he/she is the most entitled to the property of the deceased.

The KHI deals with inheritance issues in detail in a special section called the Second Book. There are 23 articles related to inheritance, starting from Article 171 to Article 193. Among the KHI rules related to inheritance, there is a special rule that is of concern, discussing substitute heirs as listed in Article 185. The provisions of this Article stipulate inheritance rights for descendants to replace the position of their father and/or mother who die before the testator. These descendants are called substitute heirs since they are the heirs whose position is as a substitute and not the primary heirs, and they can get inheritance rights as much as the rights received by the parents they replace (Mustofa, 2017).

The prevailing practice in Acehnese society, however, is that children whose parents predecease the testator are not given inheritance

rights. The people of Aceh and Central Aceh call this circumstance *"patah titi"* (literally meaning *broken bridge*), which suggests that the descendants of the heirs who die earlier than the testator are positioned as people who are no longer connected with the testator to receive the inheritance. This is due to the fact that their parents who are entitled to receive the inheritance, had passed away before the testator (Fauzi, 2019). The understanding of the Acehnese community is based on the concept of *fiqh,* which stipulates that a person can become an heir if the person is still alive when the testator dies. In addition, the *fiqh* rules also stipulate that not all heirs will inherit the property due to being blocked by other heirs who are closer to the testator, known as *aṣābah* (residuary), or because their position is included in the *dhawī al-arḥām* (distant kindred) category (al-Shabuni, 1979; Rahman, 1994).

The above discussion reveals that the issue of *patah titi* and substitute heirs emerges due to the diversity of the legal systems in Indonesia and Aceh in particular, such as the *KHI, fiqh,* and *adat,* which causes varied practices within society. Research on substitute heirs have been widely discussed; however, little is known on the inheritance for the heirs of *patah titi.* In addition, the findings are limited to a description of the benefits (*maṣlaḥah)* of the concept of substitute heirs.

A study by (Armiadi et al., 2020) examined the views of the *dayah* (traditional Islamic boarding school) *ulamas* (Islamic scholars) on the inheritance of the *patah titi* in Greater Aceh. Pratama and Kurniati (Pratama & Kurniati, n.d.) mentioned that the distribution of the inheritance of the *patah titi* in Aceh was contrary to the KHI. Fauzi (Fauzi, 2019) and Rifqi (Rifqi, 2018) also studied the *patah titi* in the Central Aceh context. Fauzi used legal pluralism as an approach that analyzed the negotiation of state law, Islamic law, and customary law. In contrast, Rifqi did not explicitly state the theory used, but only explained that his study included empirical legal research.

In light of the above discussions, this current research aims to examine the practice of *patah titi* inheritance in Acehnese society, the substitute heirs in the perspectives of *fiqh* and the KHI, and also legal pluralism on the inheritance of *patah titi* and substitute heirs.

This empirical legal research studied the law in a real sense in society (Efendi, 2018). The research used a legal pluralism approach, a theory

that examines and analyzes the diversity of laws that are applicable and applied in the social, national, and state life (Berman, n.d.; Friedman, 2009; Salim & Nurbani, 2017) Data collection techniques included in-depth interviews and literature review.

This research finds it essential to discuss the practice of legal pluralism, which is harmoniously integrated in the Acehnese society. There is a good harmony between the KHI, Islamic law, and customary law, especially regarding inheritance distribution. Even though there is dynamics on the patah titi tradition within society, the essence of inheritance distribution is still achieved because the heirs do not receive other assets. This will positively contribute to the development of Islamic law in Indonesia.

Islamic and Customary Inheritance Laws

Islamic inheritance law is a rule that regulates the transfer of property from a deceased person to his/her heirs. The regulation includes determining the heirs, the share of each heir, the share of the inheritance, and the inheritance given to the heirs. On the other hand, customary inheritance law governs the succession of inheritance from one generation to another, either related to property and/or material rights.

The comparison between Islamic inheritance law and customary inheritance law reveals that in customary inheritance law, inheritance can be indivisible, or the distribution of the estate can be delayed, whereas in Islamic inheritance law, each heir can demand the distribution of inheritance at any time. Customary inheritance law even gives adopted children the right to live off the inheritance of their adoptive parents, while in Islamic inheritance law, there is no such provision. Further, in customary inheritance law, the distribution is a joint action, carried out in harmony by paying attention to the particular circumstances of each inheritance. In contrast, in Islamic inheritance law, the share of the heirs has been predetermined (Haniru, 2014).

The implementation of inheritance law in Indonesia is strongly influenced by three legal systems: Islamic law, customary law, and western law. In the early days of the arrival of Islam in Indonesia, Islamic law dominated the implementation of inheritance law, which was intertwined with the customs and culture of the Muslim community.

However, during the colonial period, the Dutch East Indies colonial government began to apply Western legal policies for Europeans and Foreign Easterners, while a combination of Islamic law and customary law was applied for natives. Afterward, in the independence era, legal politics had changed along with the policy of codification and unification of law by incorporating Islamic law into the positive legal system in Indonesia, including in terms of the enforcement of inheritance law. However, nowadays, the implementation of inheritance law in Indonesia is more characterized by a combination of *adat* and *shari'a* (Komari, 2015).

An example of a case of inheritance law in Indonesia being influenced by *adat* is the practice of inheritance in the Minangkabau community in West Sumatra and Jambi who occupy the Sungai Manau Subdistrict. These two communities have their own customs and customary law with a matrilineal kinship system. The customary inheritance law system adopted and implemented by the community in Sungai Manau Subdistrict, Jambi, combines the individual inheritance system and the collective inheritance system. People in Sungai Manau distinguish between high inheritance, low inheritance, as well as self-acquired and inherited assets. The inheritance that can be distributed to heirs consists of high and low inheritance. The inheritance distribution is also distinguished based on whether or not the heir is survived by a child. If the husband and/or wife die and do not leave any child, the property is divided in two; however, if the husband and/or wife leave a child, the livelihood property is not divided, instead, it is inherited to the child. The division of inheritance is carried out by the *ninik mamak* (village elders) of the heirs by separating high inheritance and low inheritance from husband and wife's intrinsic property. Afterward, the estate can be distributed to the heirs. The settlement of inheritance disputes is usually resolved by traditional leaders in the form of unwritten decisions. Thus, it is recommended that the decisions of traditional leaders be made in a written form to avoid problems in the future and to become one of the efforts to document these decisions (Surwansyah, 2005; Yaswirman, 2011).

Another example is the distribution of inheritance in the Bugis society among the Muslim community in three villages, Watang Bacukiki, Lemoe, and Galung Maloang Villages. There are still locals in these three

regions who maintain customary law in the distribution of inheritance, such as the transfer of inheritance while the heirs are still alive (*grant*) and the amount of inheritance is equal between male and female heirs. However, some community members in the regions follow Islamic law in the distribution of inheritance, such as by dividing the property after the death of the testator (Fikri & Wahidin, 2017).

Over the years, Islamic inheritance law has undergone several changes to adjust to the community circumstances, including the issue of substitute heirs regulated in the KHI. Substitute heirs exist as an attempt to be fair and just to the living heirs. In principle, a substitute heir becomes an heir because his/her parents who are entitled to inherit had predeceased the testator. The concept of substitute heirs according to Article 185 of the KHI applies to all descendants of heirs who predecease the testator and the share of substitute heirs does not exceed the share of other heirs who are equal to the predeceased heirs. In addition, although the position of the substitute heirs is not explained in the *naṣ*, the essence of the *maṣlaḥah* is in line with the goal of sharia, that is to create a sense of justice for the heirs. This is because the position of a substitute heir is not contrary to *maqāṣid al-sharī'ah,* and therefore, the benefit is a matter of fact as it is the result of an *ijtihād* and consideration of justice for the inheritance for the heirs (Haeratun, n.d.; Mustofa, 2017).

Customary inheritance law is the customary law that contains provisions regarding the system and principles of inheritance law, inheritance, testator, and heirs, as well as the transfer of control and ownership of inherited assets from the testator to the heirs. Thus, customary inheritance law is the law of passing on wealth from one generation to their descendants (Hadikusuma, 2003).

In customary law, different kinship systems affect the customary law inheritance system. According to (Abubakar, 1998; Hazairin, 1982), in principle, there are three types of kinship systems: *first*, patrilineal, which refers to the kinship system drawn according to the father's line, puts men more prominently than women in inheritance. Each person (*ego*) always connects him/herself only to his/her father and so on according to the male line, so that the *ego* can only be a descendant of the father, as is found in the Gayo Alas, Batak, Nias, Lampung, Buru, Seram, Nusa Tenggara, and Papua communities. *Second*, matrilineal,

which is the hereditary system drawn according to the mother's line, puts women more prominently than men in inheritance. Everyone always connects him/herself only to his/her mother and therefore only becomes a member of the mother's clan, for example the Minangkabau and Enggano people. *Third*, bilateral or parental, referring to the kinship system drawn according to the parental line or according to the two-sided (father-mother) line, does not distinguish the position of men and women in inheritance. Everyone can connect his/herself to both his/her mothers and fathers, for example, the people of Aceh, East Sumatra, Riau, Java, Kalimantan, and Sulawesi.

In traditional societies, due to marital relations one kinship system and another can integrate or alternate, such as between patrilineal and matrilineal systems. However, there are still many people who persist in their old traditional kinship in rural communities systems. (Hadikusuma, 2003) mentions that customary inheritance law has its own style derived from the traditional mindset of the community whose kinship system is patrilineal, matrilineal, parental or bilateral.

Hazairin (Hazairin, 1982) adds that among traditional societies in Indonesia, there are three kinds of inheritance systems: first, the individual inheritance system, wherein inheritance can be divided among the heirs, is practiced in bilateral societies in Java and Batak. Second, the collective inheritance system, in which inheritance called heirloom is inherited by a group of heirs as a legal entity and may not be divided among the heirs although its use may be shared, is practiced in the matrilineal society of Minangkabau. Third, the majority inheritance system, wherein the eldest child at the death of the testator is entitled to inherit the entire inheritance or has the sole right to inherit a number of principal assets from a family, is practiced in the patrilineal society of Bali (the majority rights belong to the eldest son), and of Tanah Semendo in South Sumatra (the majority rights belong to the eldest daughter).

Substitute Heirs in *Fiqh* and the Compilation of Islamic Law (KHI)

Lexically the Legal Dictionary states that the replacement of the heirs' position/substitute heirs is a substitute in the distribution of inheritance, in which if an heir predeceases the testator, the inheritance can be received by the children of the predeceased heir (Puspa, 1977).

This suggests that someone replaces the designated heir to get a share of the inheritance that should be obtained by the designated heir who is replaced since the designated heir had passed away before the testator. The person who is replaced is the connection between the one who replaces him/her and the testator who leaves the inheritance.

On the other hand, some people differentiate between "substitute heir" and "heir's substitute". A substitute heir is a person who originally is not a designated heir, but because of certain circumstances, he/she becomes an heir and receives an inheritance in the status of an heir. For example, a testator is not survived by a child but by a grandson or granddaughter. In contrast, an heir's substitute is a person who originally is not a designated heir, but due to certain circumstances and certain considerations, may receive an inheritance although he/she remains in the status of not being an heir. For example, a testator is survived by children and also grandchildren, male or female grandchildren whose parents predecease the testator. Grandchildren's existence here becomes a substitute for designated heirs (Arwan, 1995; Mustofa, 2017).

Substitute Heirs in *Fiqh*

Fiqh does not recognize a substitute heir. However, if one refers to the category of heirs formulated in *fiqh*, the position of the replacement of a place in receiving inheritance can be divided into two groups: substitute heirs of *ubuwah* (*nasab* origin) line, and substitute heirs of *bunuwah* (descendants) line. The substitute heirs of the *ubuwah* line consist of the *sahih* grandfather (father's father) as a substitute for the father, and *shahih* grandmother (mother's mother and/or father) as a substitute for the mother. In addition, the substitute heirs of the *bunuwah* line consist of grandson from son as a substitute for son, and granddaughter from son as a substitute for daughter (Ash-Shabuni, 1979).

The explanation above indicates that the term "substitute heirs" as is understood in *fiqh* is an heir who occupies the replaced position of the predeceased designated heir. This position occurs in five possibilities: (1) father's grandfather replaces father, (2) mother's grandmother replaces mother, (3) father's grandmother replaces father and mother, (4) son's grandson replaces son, and (5) son's granddaughter replaces daughter.

Substitute Heirs in the KHI

The KHI specifically regulates substitute heirs in Article 185 which reads: Heirs who predecease the testator can be replaced by their children, except those mentioned in Article 173 (paragraph 1). The share of the substitute heirs may not exceed the share of the heirs who are of equal status to the heirs being replaced (paragraph 2).

The formulation in Article 185 paragraph (1) provides opportunities for substitute heirs to obtain the inheritance, but these opportunities are not immediately granted without other rules. Moreover, the use of the word "can be replaced" here shows that this situation may happen and should happen (Syarifuddin, 2004). The substitution of an heir cannot occur if it fulfills the provisions of Article 173, wherein a person is prevented from becoming an heir if by a judge's decision, which has become a permanent legal force, the person is punished because, first, the person is guilty for killing or trying to kill or severely ill-treating the testator, and second, the person is accused of slanderously filing a complaint that the testator commits a crime punishable by 5 years in prison or a heavier sentence.

M. Anshary explains that Article 185 of the KHI gives judges the flexibility to assess and consider whether or not a proposed case can be applied to the provisions of Article 185 of the KHI (Anshary, 2013). Therefore, the application of this Article is on a case-by-case basis. There may be some justice seekers (*yustitiabelen*) who file an inheritance dispute lawsuit to the Religious Courts and assume that the provisions of Article 185 paragraph (1) of the KHI regarding the replacement of heirs is an imperative (mandatory) provision, meaning that if there is an inheritance dispute case in which it involves a substitute heir, the provision of the Article is a must do by the Court. However, what is truly meant by the KHI is facultative (not mandatory), and therefore the word "can" has the interpretation of maybe "yes" and maybe "no", depending on the consideration of the panel of judges who examine the case (Anshary, 2013). Regarding its tentative nature, Article 185 is precisely the right arrangement because the purpose of including substitute heirs in the KHI is that there is a pity factor for the testator's grandchildren in some cases. Thus, applying the provisions for the substitute heirs is casuistic, and judges have a very decisive role in determining whether or not an heir can be replaced (Haeratun, n.d.).

Nevertheless, this opinion has been criticized by several legal experts who consider it a form of discrimination and unfairness. In addition, when the determination of substitute heirs depends on the judges' consideration, it will create legal uncertainty. The tentative nature of Article 185 must be interpreted not to rely on the judges' deliberation, but rather to depend on the will of the substitute heirs, whether or not they will take the position provided (Haeratun, n.d.).

The formulation of the provisions of Article 185 paragraph (1) reveals that the replacement of heirs can occur in a straight line down or a straight line to the side. This also confirms that the KHI does not recognize *zawil arham*. This suggests that *zawil arham* may have the possibility to get an inheritance as long as it is not hindered by people who are more closely related to the deceased. It also provides an opportunity for *zawil arham* to become a substitute heir (Pedoman Pelaksana Tugas Dan Administrasi Peradilan Agama, 2013).

Article 185 paragraph (2) also implicitly acknowledges the inheritance of grandchildren through daughters from the diction used "heirs who predecease" being replaced by their children that may be male or female (Harahap, 1992). Also, based on Article 185 paragraph (2) of the KHI, it can be understood that the replacement of heirs is relative, meaning that although he/she replaces the position of the designated heir, he/she cannot take more than the share of the living heirs who are of equal status to the heir being replaced. This indicates that the descendants who replace the position of their parents in receiving the inheritance shall get the inheritance rights as much as those received by their parents. For example, when a grandson from a daughter inherits property together with another living daughter, the share of the concerned grandson will not refer to the provisions of the Qur'an Surah an-Nisa' verse 11, which states that the share of a son is twice that of the daughter, but rather the grandson's inheritance share shall be as much as what is received by another living daughter (the heir of equal status to the replaced heir). This means that the grandson may not receive twice as much as a daughter, even if the grandson is a man since his position is to replace a predeceased daughter, not a predeceased son. Therefore, the grandson shall receive the same amount of inheritance that a daughter receives.

The principle of direct heirs and substitute heirs are stated as follows: first, direct heirs (*eigen hoofde*) are heirs referred to in Article

174 of the KHI; and second, substitute heirs (*plaatsvervulling*) are heirs regulated under Article 185 of the KHI, which consist of substitute heirs/descendants of the heirs mentioned in Article 174 of the KHI, including descendants from sons or daughters, descendants from brothers/sisters, descendants from uncles, and descendants from grandparents, namely aunts and their descendants (even though uncles are the descendants of grandparents, they are not substitute heirs because uncles are the direct heirs referred to in Article 174 of the KHI).

The following explanation regarding the group of heirs who get a share as substitute heirs is mentioned in the Supreme Court Manual (2013) as follows: *first*, the descendants of the children inherit the share they replace; *second*, the descendants of a male/female relative (siblings, consanguine brother-sister, or uterine brother-sister) inherit the share they replace; *third*, paternal grandparents inherit a share from the father in equal shares; *fourth*, maternal grandparents inherit a share from the mother in equal shares; *fifth*, paternal uncles and aunts and their descendants inherit part of the father if there is no paternal grandfather and grandmother; and *sixth*, maternal uncles and aunts and their descendants inherit part of the mother if there are no maternal grandfather and grandmother. Other than those mentioned above are not included as substitute heirs.

The above descriptions indicate that the substitute heirs referred to in the KHI include: *first*, the descendants of sons or daughters. In accordance with the principle of equal right and equal status, the provisions of Article 185 of the KHI, which confirm that "Heirs who predecease the testator can be replaced by their children" has the following understanding. The word "children" in this sentence can be understood as the descendants of either sons or daughters, who predecease the parents, hold the same position. *Second,* the descendants of the male/female relatives, including siblings, consanguine brother-sister or uterine brother-sister; *third*, the descendants from uncles, including paternal uncles and aunts and their descendants inherit a share from the father if there is no paternal grandfather and grandmother, and maternal uncles and aunts and their descendants inherit a share from the mother if there is no maternal grandfather and grandmother; *fourth*, the descendants of grandparents, namely aunts and their descendants (although uncles are also the descendants of grandparents, they are not substitute heirs

because uncles are the direct heirs referred to in Article 174 of the KHI), and also include the paternal grandparents inheriting part of the father, each sharing the same amount, and the maternal grandparents inherit the share from the mother, each sharing the same amount.

The discussion above is inseparable from the principle adopted by the KHI, which is bilateral. According to the Supreme Court (2013), the inheritance law of the KHI adheres to the bilateral/parental principle, which does not distinguish between men and women in terms of inheritance. Thus, it does not recognize the *dhawī al-arḥām*. This principle is based on: *first*, it does not differentiate between grandfather, grandmother, and uncle either from the father's side or from the mother's side (Article 174 of the KHI); *second*, grandchildren of daughters, daughters of brothers, and daughters/sons of sisters, paternal aunts, and maternal aunts, and descendants of aunts are substitute heirs (Article 185 of the KHI).

The explanation from the Supreme Court illustrates that the substitute heirs apply to all categories of heirs, except the wife or husband. The broad concept of substitute heirs and the unavailability of the concept of *dhawī al-arḥām* in the KHI have indirectly resulted in a change in the concept of *aṣābah* (residuary heirs), which also causes an impact on the change in the concept of *hijāb* (being blocked) known in *fiqh*. This is because, in principle, *aṣābah* is the recipient of the remaining inheritance after *dhawī al-furūḍ* (primary heirs) take their shares, and since the position of *aṣābah* is more closely related to the testator, they are more entitled to the rest of the inheritance after blocking other heirs who are more distant in kinship with the testator. However, under the concept of substitute heirs, the heirs who are more distant in kinship are still entitled to receive an inheritance even though there are heirs of the *aṣābah* category who are closer in relationship to the testator, as these substitute heirs replace the position of other heirs who are also more closely related to and predecease the testator.

The existence of substitute heirs and the above discussions reveal that there has been dynamics and developments in terms of inheritance law in Islam and the state law (KHI). Such developments have also occurred in other Muslim countries such as Egypt, Morocco, Syria, and Pakistan, following the social changes and social order in the respective countries.

Views of *Ulama* and Customary Leaders on the Practice of *Patah Titi*

One common practice of inheritance among the Acehnese people is known as "*patah titi*". Those with the status of the heirs of *patah titi* are surviving descendants of the testator, but do not get the right of the inheritance left behind as their father/mother who is the child of the testator predeceases the testator (Fauzi, 2019). There is a popular remark among the people of Aceh towards the grandchildren (of the testator) in this regard, "You have no rights anymore because the bridge is already broken (*patah titi*)". This is an example of when an uncle tells his nephew that he will not get any inheritance rights from the property left by the decedent (the grandfather of his own nephew) as the parent (uncle's brother) of the nephew predeceases the decedent. Further, another remark, "We are no longer in a relationship because it is *patah titi"* is usually said by a nephew to his uncle which does not literally mean that there is no kinship with his uncle, but rather to tell the uncle that he will not get any inheritance rights from his grandfather's property because his parents predecease his grandfather. There is also an expression, "You can't claim any inheritance right because it is *patah titi*", which implies that a grandson cannot claim his right to his grandfather's inheritance since his parents predecease his grandfather, whereas at the death of the grandfather his parents still have a brother who is alive who blocks the grandson (nephew) of the testator from getting an inheritance (Armiadi et al., 2020).

This section describes the views of the *ulama* as religious leaders and the traditional leaders in Aceh regarding the implementation of inheritance involving *patah titi* case. The issue surrounds the inheritance distribution in which the heir predeceases the testator, and the heir is survived by his/her descendants. In many cases, the practice of inheritance distribution in the *patah titi* case in Aceh is not yet found in the KHI which regulates substitute heirs. According to the view of the majority of the Acehnese, those who predecease the testator are no longer entitled to inherit, including their descendants, if there is another living male heir. The position of the male heir is in the position of the *ashabah,* who spends all the remaining assets by blocking the other heirs. Some of these views are explained as follows:

The first view is from the *ulamas* represented by the Aceh Ulema

Consultative Assembly (*Majelis Permusyawaratan Ulama*/MPU). MPU is a fairly strategic and respected *ulema* institution in Aceh. This institution consists of charismatic Islamic scholars from the *dayah* and also academicians, and therefore they have social, religious, and even juridical legitimacy to provide *fatwas* (formal ruling on Islamic law) and considerations to the Aceh government. One of the Deputy Chairpersons of the Aceh MPU, Tgk. H. Daud Zamzami, is also one of the leaders (*ulema*/*teungku*) of traditional *dayah* in Aceh interviewed in this research. He stated that the practice of inheritance distribution prevailing in Acehnese society in the case of "*patah titi"* is in accordance with Islamic inheritance law as there are no rules regarding substitute heirs in Islam or *fiqh*.

The position of these heirs (grandchildren) is blocked by the presence of other sons, causing the grandchildren unable to inherit. Grandchildren can only inherit if there are only living daughters and there are no other sons (uncles/father's brothers) because the position of daughters cannot block grandchildren. He explained that the presence of children creates a wall to grandchildren, preventing them from receiving inheritance. Islam does not recognize the term "substitute heirs" because Islam has its own order of succession in inheritance. A grandchild is not a substitute and he/she is blocked, and thus not receiving any legacy or inheritance. However, he admitted that there is the term "substitute heirs" stated in the KHI. He continued that grandchildren can inherit only if there are no living sons, and only daughters. In general, Acehnese receive knowledge from *ulamas,* and all Acehnese *ulamas* accept the term "*patah titi"*, which may be different from other regions. If one reads all the books written by *ulamas,* none of them discuss substitute heirs. This is due to the inheritance link is disconnected or lost, and the order in the verse of the Qur'an does not include grandchildren, but rather only children, and that is the underlying issue (Zamzami, 2018).

The above statements show that most Acehnese gain religious knowledge, including the matter of inheritance from the *ulamas*, and Acehnese *ulamas* do not accept the term substitute heirs due to the broken connection (*patah titi*). Their understanding is in accordance with the provisions in the *fiqh* books written by previous *ulamas* who never discussed the issue of substitute heirs. The *ulamas* perceive that the heirs are already blocked, and there is no mention of grandchildren,

only children, in the order of inheritance in the Qur'anic verse. As such, grandchildren will only receive an inheritance if children are not present.

Further, in regards to the KHI rules on substitute heirs, Tgk. Daud Zamzami had a different view. He believed that the rules are not very proper as the inheritance law agreed upon by the *ulamas* is already perfect in *fiqh*. In this case, the MPU has never issued a *fatwā* regarding the *patah titi;* however, he answered that his understanding comes from the right knowledge and the Acehnese people also entrust the *dayah*-based *ulamas* when solving inheritance issues. Grandfathers may not give inheritance to grandchildren if children are present, but grandfathers may bequeath to grandchildren, which shall not exceed a third of inheritance (Zamzami, 2018).

The second view obtained in this research is from the *dayah* institution, Dayah Inshafuddin. Dayah Inshafuddin is one of the modern *dayahs* in Banda Aceh currently led by Drs. Tgk. H. Abdullah Usman. He is one of the figures who disagrees with the concept of *patah titi* as he perceives that the KHI rules regarding substitute heirs are quite relevant to the current condition of society. In his opinion, when *dhawī al-furūḍ* dies earlier, the child of the decedent is entitled to inherit assets from the grandfather. Substitute heirs are people who can replace their parents' position. As the parents pass away earlier, it is the children who are left behind that replace their parents' rights, either in inheritance or in other matters, such as marriage (Usman, 2018).

The explanation above illustrates that Tgk. Abdullah Usman strongly agreed with the concept of substitute heirs regulated in the KHI, wherein if an heir of the *dhawī al-furūḍ* category predeceases the testator, the child of the predeceased heir has the right to inherit from the grandfather. He viewed that substitute heirs are those who replaces their parents' position because of their predeceased parents. The substitute heirs are the surviving children who replace their parents, both in terms of receiving inheritance rights and other matters such as guardianship in marriage. Here, it is interesting to note that he correlated inheritance to guardianship in marriage; and thus, it can be understood that descendants have responsibilities to the family, and it is only right that they are also entitled to inherit assets as a consequence of the obligations/responsibilities they carry.

In addition, Tgk. Abdullah Usman also mentioned that *patah titi* concept occurs because generally the Acehnese people read traditional/ classic books or literature that are *mu'tabar* within the *dayah* community, such as *Bājuri* and *I'ānah,* among others, and in those books, there is no such a term as "substitute heirs", as those who have died are already blocked. However, he observed that some *dayahs* have also started to accept the concept of substitute heirs, perhaps influenced by some interests or other emergency situations, while others still reject it. Thus, he opined that one of the most appropriate ways to eliminate the differences between the *dayah ulamas* and the community is by giving a *waṣiyyat wājibah* (mandatory will) with an equivalent amount as a way out (Usman, 2018).

Based on the above statements, as most Acehnese only know the traditional Islamic books in terms of inheritance, whereas some already open up to another concept such as substitute heirs, Tgk. Abdullah Usman tried to offer the concept of *waṣiyyat wājibah* to resolve the differences in view between the *dayah ulamas* and the community as a solution in the case of the *patah titi* heirs.

Tgk. Abdullah Usman further emphasized that the Shafii school of thought never mentions the issue of substitute heirs, and therefore, the Acehnese do not implement it. He assumed that the Shafi'i school might not mention about substitute heirs due to no precedents in the past or due to strict guardianship performed at the time, in the sense that surviving children were not abandoned by their guardians. This may be in contrast to the present time that there are many cases where orphans are neglected, and therefore, it is only proper that the abundant wealth of their grandparents is rightfully given to them, and this scenario may be the rationale of contemporary scholars today (Usman, 2018).

Tgk. Abdullah Usman also perceived that the concept of substitute heirs seems to be the best solution considered by Islamic scholars today in the case of *patah titi*. Therefore, it is necessary to disseminate such concept to the community, i.e. through seminars or other forms of meetings, which can be carried out by resource persons from contemporary scholars and *dayah ulamas* to actively discuss the issue in order to overcome the gaps that occur in society (Usman, 2018).

The third view discussed in this research is from the traditional leaders of the Aceh Traditional Council (*Majelis Adat Aceh*/MAA). The

MAA is one of the institutions at the level of the Office of the Province of Aceh which reports directly to the Governor, but is elected by the members of the MAA District/Cities. Badruzzaman Ismail, the long-standing chairman of the Aceh Province MAA interviewed here, was also a lecturer at IAIN Ar-Raniry at the Sharia Faculty. He stated that the issue of inheritance of the *patah titi* is not only known in Aceh, but also nationally in other regions of Indonesia with different terms. He further explained that in Islamic law, this *patah titi* implies that in terms of inheritance, if a person dies, the inheritance is only accepted by surviving heirs (still alive). This, however, is different in customary law. Customary law understands that the position and responsibility lie on the children as the successor of the family when the father is not present. Therefore, if someone dies, his/her position can be replaced by the children. Likewise, the same goes to the right to inherit property (Ismail, 2018).

Badruzzaman Ismail also reaffirmed that in terms of inheritance, there is an understanding that if we agree to follow the religion, the agreement is considered law, and mutual agreement is also law. Thus, such understanding should be recognized by the community so that there will be no protest among the people. However, this is hard to implement in Aceh because the people here probably have deep understanding about Islam, and therefore, it is a bit difficult to shift the people's perspective to accept the concept of substitute heirs. Yet, when we have to follow the KHI, some people do not accept it because they also have a basis that they have agreed upon and have become one rule of law. As people here have based their understanding on the *teungku/ulamas*, they are used to become silent (*as-sukutu ala ridha*) since they believe that silence is a blessing. However, today's world has shown that orphans are heavily neglected although they should be taken care of by their guardians. To address this situation, the KHI emerges to strengthen the inheritance case (Ismail, 2018).

One interesting point to examine further based on the statements above is that the issue of inheritance involving *patah titi* used to be not a serious problem because the orphans (grandchildren of the testator whose children die early) was taken care of by their guardians (uncles). Such a situation has now become vastly different since many orphans are neglected today. Thus, the KHI rules appear to regulate this matter.

What people should understand here is that the benefit that needs to be maintained is the care of orphans. This is what is often ignored by the heirs, and so it is often found that the inheritance rights of orphans are not given on the grounds of *patah titi*; yet, on the other hand, they are not responsible for the sustainability of the orphans.

The chairman of the MAA also said that most families basically do not have adequate knowledge. In addition, people's understanding has been highly influenced by the *fatwās* of *salaf* scholars which may not be appropriate to apply in this current context. Therefore, the existence of the KHI helps to formulate the succession of inheritance. He also added that even when people are still alive, the inheritance may immediately be distributed equally to avoid any conflict in the family and a sense of injustice. Thus, whoever predeceases the testator, the property can be handed over to the children or grandchildren of the deceased testator. All children or grandchildren get an equal amount of inheritance managed by the mother or elder brother/sister in the family. Customary law puts emphasis on the benefit, and if there is no dispute, then the inheritance distribution can be carried out with full wisdom and assets are divided equally (Ismail, 2018).

From some of the arguments of the Acehnese figures here, it is illustrated that the implementation of inheritance distribution in Aceh has not entirely referred to the provisions of Article 185 of the KHI. Most Acehnese people, especially Shafiite, have followed *fiqh* closely in terms of all legal matters, including inheritance, which they consider perfect and final, making it difficult to accept changes or reforms. In addition, most *ordinary* people only follow the opinions of the *dayah ulamas/teungku* without asking for other views from other experts, such as academics. In fact, some people, especially Shafiite, think that the views of experts who are not *dayah teungku* should not be followed because their thoughts are already beyond *fiqh*.

In general, the implementation of the inheritance among the Acehnese people is not affected by the kinship system adopted, which is bilateral. The people of Aceh, who are deeply rooted with Islamic law, carry out inheritance distribution in accordance with *fiqh*, which is based on the patrilineal system as adopted by the Arab community. In this case, the people of Aceh distribute the shares of inheritance by asking the opinions of religious experts (i.e., *ulamas/teungku*, especially from

traditional *dayah*) and follow what is written in *fiqh* books, especially the Shafiite. Therefore, the practice of inheritance distribution in Aceh is exactly the same as written in the Shafi'i books, including in the case of *patah titi*.

Inheritance Law Practices in Legal Pluralism

Legal pluralism is not a new concept in the contemporary legal system and in fact, it can be traced to the practice of the people of Medina who had promoted legal awareness among the community and also of the Islamic leaders who had created diverse value systems, cultures and ethnicities. Legal pluralism is the analysis and operation of multiple legal systems coexisting in one system of the government of a state (Sumardi et al., 2021b). Law in the *shari'a* sense contains a universal-centralistic normative concept, whereas law in the *fiqh* sense has a local cognitive aspect as a manifestation of pluralistic teachings. Legal pluralism puts forward the dialogical concept instead of reasoning the conflict between state law and *fiqh* law, all of which are combined in one unified divine legal system (Sumardi, 2016).

More comprehensively (Salim, 2015) asserts that legal pluralism in Aceh can be mapped into three: pluralism of legal institutions, pluralism of the rule of law, and pluralism of legal processes. These three legal systems have been reinforced, particularly after the implementation of the Aceh privileges in 1999 which was marked by the revitalization of traditional institutions. Specifically, legal pluralism is derived from the differences in three legal systems, they are: Islamic law in the sense of *fiqh*, customary law, and state law or the Compilation of Islamic Law. This was previously acknowledged by (Bowen, 2003) when conducting a legal ethnography in the Gayo region, Central Aceh, wherein he found the existence of these three legal systems, each of which was practiced by the local community.

Despite having three different legal systems, in actuality the community can obtain a sense of legal justice. For example, there are legal cases that can be resolved quickly, cheaply, and equally, and also the fulfillment of victims' rights by the customary law system that both national law and *fiqh* law are unable to cover. Another reason is that the customary law that exists in Acehnese society is an adaptation of

Islamic law, and therefore there is no resistance to adhere to it. This can be seen from cases of inheritance law, domestic disputes, minor theft, fights between residents, minor abuse, and other cases categorized into minor offences (Kasim & Nurdin, 2020; Sumardi et al., 2021a).

Therefore, the KHI as state law is applied when the distribution of inheritance is carried out in the Sharia Court which recognizes the term substitute heirs. On the other hand, *fiqh* settlement is usually carried out by religious leaders in the community, while the settlement under the customary law is performed by traditional leaders and religious leaders at the village level. The latter two models of inheritance distribution, *fiqh* and *adat*, do not recognize the term substitute heirs even though the *adat* practice still recognizes the concept of *"patah titi"*.

In *fiqh*, there is no concept of substitute heirs, but it recognizes the replacement of heirs' position, such as grandfather who replaces the father or grandmother who replaces the mother. This arrangement is called heir's substitution of the *ubuwah* line (of *nasab* origin). Another arrangement is called heir's substitution of the *bunuwah* line (of descendants) in which grandchildren replace children. This concept is different from that stipulated in the KHI, wherein the substitute heirs intended by the KHI are descendants who replace the position of the father or mother who predeceases the testator (grandparents of those who replace the position of their parents).

In reality, however, there is some dynamics in the customary practice of dividing inheritance in the community as expressed by the *ulamas* and traditional leaders. There is a mixed practice of *patah titi* and substitute heirs based on the KHI. Despite *patah titi* bears a similarity with that of *fiqh*, as both do not recognize a substitute heir, the current community is still faced with a choice of law, whether resolving the issue of inheritance in *fiqh* that has become customary or submitting it to the Sharia Court in accordance with the KHI.

The issue surrounding *patah titi* involves an inheritance case in which an heir predeceases the testator, causing the predeceased's descendants have no inheritance rights. However, an orphaned grandson will usually get another property with consideration for the benefit purpose. This can be done by way of will provided that the will does not exceed one third of inheritance (Zamzami, 2018). This statement is in line with

(Hazairin, 1982) who mentions that orphaned grandchildren can inherit in two ways, by being a substitute for an heir or by getting a will from a grandfather to the grandchildren.

Moreover, according to (Syahrizal, 2004), on the basis of Acehnese customary rules under mutual deliberation, a stepchild who is not included in the twenty-five heirs according to *fiqh*, can obtain a share of the inheritance from his/her stepfather if his/her mother is still alive. The reason is that this stepchild will be the guardian of the widow of the deceased. Likewise, on the basis of customary law, the youngest daughter will get a fraction of the inheritance (excess of the round up shares) after all assets are divided based on *fiqh* or *farāiḍ*. Similarly, daughters may get a *peunulang*, in the form of land, houses, or business capital (Daud & Akbar, 2020). Nevertheless, the provision of *peunulang* property is also not found in the *fiqh* and the KHI; yet, this share of inheritance is divided based on mutual deliberation and consensus. The same goes to the division of *harto pusako* (heirloom) given to female lineages in Minangkabau society which adheres to a matrilineal kinship system (Sabri & Hanifuddin, 2012). The giving of assets by means of inheritance, will, and *peunulang* is an attempt to seek a sense of justice and appreciation, in regards to *adat, fiqh*, and Islamic law.

Substitute heirs as accommodated in the KHI is a consequence of the formalization of Islamic law in Indonesia. It is also the influence of reform and renewal of Islamic law in the Muslim world as occurred in Egypt, Syria, Morocco, and Pakistan, all of which had already included substitute heirs and *waṣiyyat wājibah* in the formal law of their countries (Wahib, 2014). The division of substitute heirs and *waṣiyyat wājibah* is part of the form of justice and benefit for humanity in Islamic law.

Judging from the context of legal pluralism, it can be emphasized that the people of Aceh understand and practice legal pluralism or the diversity of legal systems, which include the KHI, *fiqh*, and *adat*. These three legal systems are already recognized and practiced in Acehnese society. If analyzed further, the three legal systems also become the material in the development of the national legal system in Indonesia.

Conclusion

Indonesia recognizes the national legal system, *fiqh* and *adat* as a consequence of legal pluralism. Legal pluralism emphasizes the concept of harmonization and integration of laws rather than conflict. For this reason, various practices are found in the distribution of inheritance in Acehnese society, such as the term "*patah titi*" and "substitute heirs" which can be traced to the state legal system (the KHI), *fiqh* and *adat*. The practice of *patah titi* in customary law refers to an inheritance case in which the heirs predeceases the testator, and therefore, the heirs' descendants are not given inheritance rights. Although *patah titi* in the customary practice has something in common with *fiqh*, which is the unavailability of substitute heirs, in *fiqh,* however, there is the replacement for inheritance rights. Giving inheritance to people in the case of *patah titi* has caused varied opinions among *ulamas* and traditional leaders, with some agree and some do not. Those who disagree are more likely to use the term "will", suggesting that even though grandchildren do not get an inheritance, sometimes they get property by way of a will. Furthermore, substitute heirs as confirmed in the KHI, although unavailable in *fiqh* and customary law literature, are recognized as they are in accordance with the objectives of Islamic law, which aims for justice and benefit. The diversity of legal practices in the context of legal pluralism is a natural phenomenon because diversity is evidence of negotiations and integration between customary law, *fiqh*, and the KHI as the state law in a homogeneous society.

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Khairuddin Hasballah[1], Ridwan Nurdin[2], Muslim Zainuddin[3], and Mutiara Fahmi[4]
[1,2,3,4]Universitas Islam Negeri Ar-Raniry, Banda Aceh, Indonesia
E-mail: [1]khairuddin@ar-raniry.ac.id, [2]ridwannurdin@gmail.com, [3]muslimzamha@gmail.com
[4]mutiarafahmi@gmail.com

Patah Titi and Substitute Heirs: A Study of Legal Pluralism on the Inheritance System in Aceh Community

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