



## Book Review

# How are the articles in compilation of Islamic law contrary to sharia in the books of fiqh? A Book Review Ahli Waris Pengganti, Pasal Waris Bermasalah dalam Kompilasi Hukum Islam (KHI), Ahmad Zarkasih, Rumah Fiqih Publishing, 79 Pages, ISBN XXX-XXXXXXX-XXX

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### DATA of BOOK

Title : Ahli Waris Pengganti, Pasal Waris Pengganti dalam Kompilasi Hukum Islam (KHI)  
Author(s) : Ahmad Zarkasih  
Language : Indonesia  
Pages : 79 pages  
Publisher : Rumah Fiqih Publishing  
City of Publisher : Jakarta  
ISBN : XXX-XXXXXXX-XXX



It is a book review of a book entitled “*Ahli Waris Pengganti, Pasal Waris Bermasalah dalam Kompilasi Hukum Islam*” that is written by Ahmad Zarkasih, Lc. It consists of 5 chapters and contains problematic inheritance articles in. It is published by Rumah Fiqih Publishing, which is located in Kuningan, South Jakarta. This book is the first print that was printed on August 22, 2019 yesterday.

The purpose of the author regarding this writing is to give information about articles of troubled inheritance. As the main discussion, this writing discusses Article 185 in Compilation of Inheritance Law that contains materials of substitute heirs. It explains Article 173 and Article 194 (1) as a complement in examining that Article. It also gives arguments and criticisms of thought of experts, especially Prof. Hazairin who triggered Article of troubled inheritance regarding this book entitled “Hukum Waris Bilateral Menurut al-Qur’an”.

In this chapter, the author explains about several articles that have problems with the aim to review the articles of inheritance in the Compilation of Islamic Law. Especially, the articles that do not have reference arguments from what has been explained by classical scholars. As a result, these articles have a double meaning and cause too many disputes of opinion among some experts.

For example, the article to be discussed is inappropriate or at odds with what has been agreed upon by the four schools of law in the inheritance. The article did indeed invite problems and was questioned by many groups, especially Shariah-educated circles such as santri and pesantren. That is what the author refers to as problematic articles. However, some academics refer to the new opinion in this matter as a national school, that is, a school that was promoted by a group of Indonesian scholars to be used as a legal reference for religious judges in Indonesia which were later embedded in the Compilation of Islamic Law.

In 2006, two people from the Sharia Faculty of IAIN STS Jambi released a study of the materials in the Compilation of Islamic Law and the responses of Islamic boarding school kiai regarding these materials. Then, both of them explained several articles which were considered at the same time viewed negatively by the *pesantren kiai*, including the articles of successor heirs.

They also saw that this Compilation of Islamic Law was more elite in nature. In its formulation, the dominance of opinions and ideas is taken from

modern scholars, namely thinkers, academics, and judges of the religious court. Meanwhile, the Islamic scholars who are sources of reference for Muslims are mostly less visible in the formulation of the Compilation of Islamic Law itself.

Some of the articles assessed and responded negatively are as follows.

1. Article 173 concerning Obstruction of Inheritance

The scholars agree that there are three things that can hinder the right to inherit, namely: to be a slave, different religion, and kill the testator. The factor of killing becomes a barrier to inherit if indeed has actually carried out the murder of the testator. Jurisprudence does not determine whether the person carrying out attempted murder and severe maltreatment of the testator also impedes one's inheritance.

2. Article 185 concerning Substitute Heirs

In the fiqh books, fiqh scholars determine a person's position as an heir cannot be replaced by his child if he dies earlier than the heir. Therefore, it is not known as a substitute heir.

3. Article 194 (1) concerning Limitation on the age of dying exhortation

The minimum age limit requirement is not found in the books of fiqh. Some schools of jurisprudence only require that the heir must be mature or mature enough. The scholars stated that the age of adulthood has been fulfilled if a person is fifteen years old and / or sperm has come out for men and is 9 years old or has menstruated for women. While the age is quite mature under adulthood. Therefore, if there is a provision that a will must be 21 years old, then the article is not in accordance with the books of fiqh.

In this chapter, the author describes the origins of the Compilation of Islamic Law or abbreviated as KHI. The history begins with a dispute that is on the table of the religious court in deciding a matter. Because the people who sat on the bench at that time did not come from the same educational background, they had a different tendency in choosing reference books.

From the different referrals different decision products are formed. The product is not in line with the principle of legal certainty required in law

enforcement. Therefore, the Ministry of Religion formulated and made a standard reference book for religious judges in determining their problem decisions in court. Finally, the Ministry of Religion took the Supreme Court as the court's main court to make the Joint Decree (SKB) No. 07 / KMA / 1985 in the framework of producing a book containing Islamic legal rules in the language of the Law.

The Ministry of Religion only limits 13 books of jurisprudence as a reference in the hope of minimizing the diversity of decisions. And finally on June 10, 1991, the President issued Instruction (Inpres) No. 1 of 1991. The instruction was addressed to the Ministry of Religion to disseminate KHI to use it in the government environment in matters of Islamic law and distribute it to the community if it is needed in terms of Islamic Law.

In this third chapter, the author explains about the causes and conditions of inheritance. Because inheritance is because someone gets an inheritance allotment. Because the inheritance is a relative / nasab, marriage, liberation (slaves, and the Islamic party. Islam is the party that gets the inheritance if the deceased has the property left behind and does not leave the heirs of the 3 previous causes. So, the inheritance is given to baitul-mall for the benefit of Muslims, as Muslims also bear the diyat.

Regarding the inheritance requirements, a great scholar from Al-Hanafiyah explained about the inheritance requirements:

1. The death of an heir essentially or legally, such as a missing person or sentenced to death by a judge;
2. The life of an heir when the heir's death is intrinsically or allegedly strong like a fetus in the womb; and
3. Knowledge of inheritance

In this chapter, the author describes the arguments of successor heirs by Professor Hazardain. Hazardain Processor gave an explanation related to An-Nisa 'verse 33 by asserting that the *mawali* was a successor who would receive an inheritance from the portion of the heirs above him who had died first.

According to Hazairin, in the case of the heir is his parents, the heirs will be his child or his beginner (his successor). If the child is still alive, of course they are the heirs and receive the inheritance. It is also mentioned in An-Nisa 'verse 11, which is also the classical inheritance agreement agreed upon in the books of fiqh.

Hazairi outlines the wisdom of God holding *mawali* for everyone. If the fulan lives, the assets obtained from the heir will also eventually be given to his mawali. Because the mawali will also be his heir too. There is no possibility other than interpreting that *mawali* is a descendant of a child who has died.

The author discusses the error regarding the successor's heirs in this last chapter. It is well known that the heirs of the heirs are the heirs, the heirs of the deceased, and the heirs. It cannot be said to be a legitimate religion if it does not meet its precepts, either one or the other. It can be concluded that there is no inheritance if it does not meet the heirs.

The author states that section 185 paragraph 1 does not comply with the above description and violates the heir's condition (the life of the heir at the time of the death of the rightful heir or the presumption of the fetus). If the heir had passed away before the heir, there would be no transfer of ownership from corpse to corpse. Since the heir is a living person, it is difficult to say that the deceased is the heir.

In this book, the author presents his opinion through this book so that it can be used as an evaluation for KHI going forward. Although a little more passionate in writing it, the author still appreciates the opinions of some experts who are very different from him. Because the articles of this inheritance have to do with religion or belief.

This book that is not too thick is very fitting to read as a reference to see the extent of the development of inheritance articles for the development of inheritance law in Indonesia. The author writes and packages it in a book that is easy enough to understand, although there are some things that are difficult to understand.

This book is suitable for people who are interested in civil and family law in Indonesia. Simply put, this book provides reading as well as a new perspective on inheritance matters in Indonesia. However, if you do not have an interest in this topic, this book is still worth reading because surely, we will all be someone's heirs or will be heirs to our heirs.

The last, in my opinion, I agree with the view of the author which states that some of the articles of heirs in the KHI are problematic and do not comply with the provisions of sharia in the books of fiqh. However, if we look from the side of justice to eliminate the jealousy among family members, the existence of a substitute heir in accordance with that contained in KHI is a virtue. Why is that? Therefore, in terms of blood relations, the name of the child (whether still alive or died when the heir dies) is still entitled to inheritance.

Talk about life and destiny. Everyone's life and destiny are different. For example, there is a situation and condition of the heir's family (died before the testator died) who really need financial assistance. If the inheritance does not flow to the successor, it will be very unfair for the family.