

Reconceptualizing Inheritance Law in Indonesia's Islamic Compilation (KHI): A Normative Reassessment Through the Lens of Ibn Mas'ud's Jurisprudence

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Abstract:

The Compilation of Islamic Law (Kompilasi Hukum Islam, KHI) in Indonesia, particularly in its inheritance provisions, continues to exhibit normative gaps that may result in inequities in the distribution of estates. This study seeks to reconceptualize key aspects of inheritance law in the KHI by drawing on the jurisprudential perspectives of the Prophet's companion, Ibn Mas'ud. Using a juridical-normative methodology, enriched with conceptual and comparative approaches, the article examines eight core areas of Islamic inheritance law: the inheritance rights of grandchildren as *ashab*, the legal position of granddaughters in the presence of daughters or great-grandchildren, the status of consanguine and uterine siblings, inheritance rights of cousins, the application of the *radd* principle, and the *hijab* (exclusion) mechanism involving grandfathers. The findings reveal that Ibn Mas'ud's reasoning prioritizes substantive justice and *maslahah* (public interest), diverging from the *jumhur ulama* who typically adhere strictly to classical doctrines of *furudh* and *qiyas*. His approach demonstrates greater adaptability to contemporary socio-legal realities, especially in protecting the rights of heirs who may otherwise be marginalized under a rigid framework. Based on these insights, the article proposes a reinterpretation of several KHI provisions, particularly those concerning heir eligibility, the rights of siblings and cousins, and the standing of grandfathers and granddaughters. This reconceptualization aims to foster an Islamic inheritance law framework in Indonesia that is both doctrinally grounded and socially responsive.

Keywords: Testator; Heirs; Ibnu Mas'ud; Islamic Inheritance; Islamic Compilation Law.



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Introduction

In the Islamic inheritance legal system, the concepts of *hijāb* (exclusion) and *mahjūb* (the excluded) govern the conditions that may prevent an individual who otherwise meets the legal requirements to be an heir from receiving a share of the estate. Such exclusions may arise, for example, when another individual has a closer familial relationship to the deceased. Additionally, Islamic inheritance law stipulates certain causes that nullify inheritance rights, including the intentional killing of the decedent, differences in religion, and the status of being a slave.¹ The regulation of inheritance in Islam aims to ensure the equitable distribution of wealth among heirs in accordance with Sharia provisions. These regulations are explicitly outlined in the Qur'an, particularly in Surah An-Nisa (verses 11, 12, and 176). However, not all inheritance cases are elaborated in detail within the Qur'an and Sunnah, thereby necessitating scholarly *ijtihād* to address contemporary issues.²

One of the Prophet's companions who made a significant contribution to the development of Islamic inheritance law was 'Abdullāh ibn Mas'ūd. His legal thought, preserved in various classical Islamic sources, offers interpretations of the Qur'anic inheritance verses, particularly in cases that require further clarification. His contributions were instrumental in shaping the foundational principles of Islamic jurisprudence, especially in matters of inheritance.³ Based on these considerations, this study aims to systematically examine the thoughts of Ibn Mas'ud regarding inheritance law, particularly his interpretation of the Qur'anic verses on inheritance. This inquiry is also expected to contribute to the development of inheritance law in Indonesia, especially within the framework of Islamic Compilation Law (KHI), and to foster dialogue between classical Islamic legal thought and contemporary legal needs.

This study aims to examine two main issues: first, the comparison between the views of Ibn Mas'ud and the *Jumhur Ulama* on inheritance; and second, the concept of reconceptualizing the KHI in the field of inheritance based on the thought of Ibn Mas'ud.

Several previous studies have addressed themes similar to those discussed in this article, particularly regarding the reconceptualization of the KHI using the thoughts of Ibn Mas'ud. For instance, Dianita examined the concept of *hijab* within the inheritance system of the Shi'a school and KHI,⁴ while Ma'mun explored inheritance distribution across religious boundaries based on *Bidayatul Mujtahid*, demonstrating the diverse approaches to understanding Islamic inheritance law.⁵ In addition, Syabbul Bachri's study on Ibn 'Abbas's hermeneutics of inheritance verses⁶ and Imam Muhardinata's comparative analysis of inheritance perspectives among Sunni, Shi'a, and Hazairin

¹ Dianita Shabha Fitriana, "Studi Komparasi Konsep Hijab Dalam Sistem Kewarisan Madzhab Syiah Dan Kompilasi Hukum Islam," *Sakina: Journal of Family Studies* 8, no. 1 (2024): 29–47, <https://doi.org/10.18860/jfs.v8i1.6675>.

² Ustadz Ahmad Muntaha AM, "Tafsir Surat An-Nisa' Ayat 12," nuonline, n.d., <https://islam.nu.or.id/tafsir/tafsir-surat-an-nisa-ayat-12-own2m>.

³ Muhammad ibn Sa'ad ibn Mani' Abu Abdullah al Bashri Al-Zuhri, "Thabaqat Al-Kubra Li Ibn Sa'ad" (1968).

⁴ Fitriana, "Studi Komparasi Konsep Hijab Dalam Sistem Kewarisan Madzhab Syiah Dan Kompilasi Hukum Islam."

⁵ Mohamad Ma'mun, "Waris Beda Agama Dalam Kitab *Bidayatul Mujtahid*" 8, no. 1 (2024): 1–22, <https://doi.org/10.30762/mahakim.v8i1.424>.

⁶ Syabbul Bachri, "Rekonstruksi Kewarisan Islam: Studi Hermeneutika Ibn Abbas Atas Ayat-Ayat Waris," *Al-Istinbath: Jurnal Hukum Islam* 5, no. 1 (2020): 21–50, <https://doi.org/10.29240/jhi.v5i1.1197>.

traditions underscore the complexity and plurality of interpretations in this field.⁷ Specifically, Yassir's research, which investigates the hadith of Ibn Mas'ud on 'ashabah ma'a al-ghayr, highlights the importance of the Companions' sources in comprehending inheritance law an approach that aligns with the focus of this study, which aims to reconceptualize the KHI through the lens of Ibn Mas'ud's thought as a primary reference.⁸ However, unlike previous studies that predominantly examine inheritance in the KHI from the perspective of the majority Jumhur of scholars or through a normative approach, this article specifically re-evaluates the concept of inheritance in the KHI from the perspective of Ibn Mas'ud, one of the Prophet's companions. This approach has rarely been the focal point in earlier studies, thereby leaving a significant research gap. By highlighting the thoughts of Ibn Mas'ud, this study seeks to formulate a reconceptualized model of inheritance law that is more responsive to contemporary social and intellectual dynamics, while also contributing to the diversification of Islamic legal thought, which has thus far tended to center around majority views.

On this basis, it becomes particularly compelling to further examine how the issue of inheritance in Islam has emerged as a significant topic widely discussed in various classical fiqh literatures. One prominent figure who made substantial contributions to Islamic inheritance law is Ibn Mas'ud. Although there is no dedicated book or treatise authored directly by Ibn Mas'ud on the subject of inheritance, his thoughts are scattered across numerous classical texts. This presents a valuable opportunity for deeper investigation to uncover Ibn Mas'ud's perspectives in greater detail, especially regarding the Qur'anic verses on inheritance. This study aims not only to identify and systematize Ibn Mas'ud's dispersed views within the classical literature but also to explore their implications for inheritance law in Indonesia particularly in the context of the KHI, which serves as the prevailing positive legal framework. As the KHI lacks comprehensive elaboration on inheritance matters, Ibn Mas'ud's views may help address these gaps. Accordingly, this research is expected to contribute to the development of Islamic inheritance law, both in the present and future, and serve as a reference for the unification of Ibn Mas'ud's legal thought within the broader scope of Islamic jurisprudence.

Method

This research constitutes a normative legal study employing a library research methodology, aimed at critically analyzing the reconceptualization of inheritance law within the KHI from the perspective of Ibn Mas'ud, while incorporating the views of the Jumhur Ulama.⁹ The study applies a conceptual approach by systematically examining relevant legal doctrines, authoritative opinions, and foundational legal principles as enshrined in legislation and judicial precedents.¹⁰ Furthermore, a comparative method is employed to elucidate the distinctions and convergences between inheritance provisions in the KHI and the inheritance doctrines attributed to Ibn Mas'ud as well as other

⁷ Imam Muhardinata, "Perbedaan Pandangan Dalam Pengembangan Ahli Waris Menurut Sunni, Syi'ah Dan Hazairin," *El-Ahli : Jurnal Hukum Keluarga Islam* 1, no. 1 (2020): 68–87, <https://doi.org/10.56874/el-ahli.v1i1.89>.

⁸ Muhammad Yassir, "Hak Waris 'Ashabah Ma'a Al Ghair (Studi Komparasi Antara Ayat Al Quran Tentang Warisan Dengan Hadis Ibnu Mas'ud) Menjelaskan Hukumnya Dan Hikmah Di Dalamnya" (Masters Thesis, Universitas Islam Negeri Kiai Haji Achmad Siddiq Jember, 2018), <http://digilib.uinkhas.ac.id/28910/>.

⁹ Zainuddin Ali, *Metode Penelitian Hukum* (Jakarta: Sinar Grafika, 2022), 106.

¹⁰ Peter Mahmud Marzuki, *Penelitian Hukum* (Jakarta: Sinar Grafika, 2022), 137.

prevailing Islamic jurisprudential schools.¹¹ To ensure methodological rigor and transparency, the study delineates the specific procedures for data selection and legal reasoning. The selection of legal sources and cases is predicated on their pertinence to interpretative disputes and normative developments in inheritance law. Legal reasoning is articulated through a meticulous hermeneutic analysis of classical fiqh literature, integrating doctrinal exegesis with contemporary juridical formulations. The research utilizes secondary data comprising primary legal sources (the KHI), secondary legal sources (including tafsir, hadith compilations, classical and modern fiqh treatises on inheritance, and scholarly commentaries), and tertiary references (such as legal dictionaries and encyclopedic works).¹² Data collection was conducted through an exhaustive literature review. The subsequent data analysis was performed via a descriptive-analytical framework encompassing stages of data editing, classification, verification, critical interpretation, and synthesis, culminating in the reconstruction of Ibn Mas'ud's inheritance jurisprudence within the context of Islamic inheritance law and its potential implications for the KHI framework.¹³

Discussion

Islamic Inheritance Law

Inheritance law is a set of rules governing the transfer of ownership rights from a deceased individual to the rightful heirs. This process ensures the lawful distribution of the estate based on familial relationships and applicable legal provisions.¹⁴ The legal basis for inheritance in Islam is found in Surah An-Nisa, verse 11, which outlines the distribution of inheritance according to Sharia. In this verse, male children receive twice the share of female children, and parents also hold specific rights over the estate. This demonstrates that the division of inheritance is obligatory and must comply with Islamic Sharia.¹⁵

The pillars of inheritance consist of three main elements: the testator as the individual who has passed away and is entitled to bequeath assets; the heirs, who are legally entitled to receive a share of the inheritance; and the heritage itself, which includes both movable and immovable assets as well as attached rights and obligations. The distribution of assets must be conducted according to inheritance law to ensure justice for all entitled parties.¹⁶ The conditions for inheritance include the death of the testator, whether physically or legally, and the existence of heirs who are still alive physically and legally recognized in order to receive inheritance fairly.¹⁷

The reasons for acquiring inheritance are divided into three kinship groups. First, blood relatives based on lineage, such as parents and children. Second, marital ties connecting husband and wife and their extended families. Third, al-wala, which refers to relationships established by specific legal or contractual bonds, such as between a former slave and their master in Islamic tradition.¹⁸ Meanwhile, several causes may disqualify a

¹¹ Marzuki, 138.

¹² Soerjono Soekanto dan Sri Mamuji, *Penelitian Hukum Normatif* (Jakarta: Raja Grafindo Persada, 2006), 41.

¹³ Ali, *Metode Penelitian Hukum*, 107.

¹⁴ Saebani, *Fiqh Mawaris*, 13

¹⁵ Ahmad Muntaha, "Tafsir Surat An-Nisa Ayat 11," nuonline, Sabtu, 13 Januari 2021, diakses 6 Desember 2024, <https://islam.nu.or.id/tafsir/tafsir-surat-an-nisa-ayat-11-v7FUG>.

¹⁶ Asshoubuni, 39.

¹⁷ Saebani, 129.

¹⁸ Saebani, 109.

person from inheritance rights, including the status of slavery which results in loss of personal freedom, intentional killing of the testator, and religious differences that may obstruct inheritance rights.¹⁹

In inheritance distribution according to Islam, there are the concepts of hijab and mahjub, which act as barriers to inheritance rights. Hijab is divided into two types: hijab hirmân, which completely prevents an heirs from receiving a share, for example, a grandson who does not inherit if there is still a son of the testator. Second, hijab nuqshân, where the heirs receives a share but not in full, such as a husband who is entitled to half but only receives a quarter if the testator leaves behind children or grandchildren. These two forms of hijab regulate the priority in asset distribution to comply with the principle of justice in Islam.²⁰

The Thought of Jumhur Ulama

Jumhur Ulama refers to the majority of scholars from various madhhabs who share a common view or opinion on a particular fiqh issue. The opinions of Jumhur Ulama are often regarded as primary references in Islamic legal rulings due to their strong legitimacy, supported by numerous scholars from diverse academic and madhhab backgrounds. Therefore, the concept of Jumhur Ulama holds a significant role in the formulation of Islamic law and its continuity within the Muslim community.²¹ Historically, the legal methodology employed by Jumhur Ulama relies on principles agreed upon in *usul al-fiqh*, such as the Qur'an, *Hadith*, *Ijma'*, and *Qiyas*. In this context, *ijma'* (consensus of scholars) is a crucial element frequently cited as the foundational basis legitimizing the opinions of Jumhur Ulama. This process reflects an intellectual dynamic involving dialogue, discussion, and in-depth interpretation of the primary sources of Islamic law.²²

Moreover, the existence of Jumhur Ulama functions as a reinforcing factor in maintaining the harmony between religious texts and social realities. When confronted with differences of opinion, the views of Jumhur Ulama often serve as a common ground that harmonizes various perspectives. Within the Islamic tradition, the status of Jumhur Ulama is often perceived as embodying caution in decision-making, thus making their opinions more widely accepted by the public.²³ Nevertheless, the opinions of Jumhur Ulama are not absolute. In certain cases, minority views provide solutions that are more relevant to specific circumstances. Therefore, the study of Jumhur Ulama's opinions is not only aimed at understanding Islamic law but also at exploring the flexibility and dynamism of Islamic jurisprudence in responding to contemporary changes.²⁴ Thus, the concept of Jumhur Ulama functions not only as a representation of scholarly consensus but also as a reflection of an ongoing collective *ijtihad* process. Analyzing the perspectives of Jumhur Ulama on particular legal issues can offer profound insights into how Islamic law is applied contextually within society.²⁵

¹⁹ Asshoubuni, *Almirats Fi Syari'atis Islamiyyah Fi Dhow'il Kitab Wa Sunah*, 42.

²⁰ Yazid Muttaqin, "Hijab dalam Ilmu Waris: Definisi, Jenis, dan Contohnya," nuonline, 18 Juli 2018, diakses 6 Desember 2024, <https://nu.or.id/warisan/hijab-dalam-ilmu-waris-definisi-jenis-dan-contohnya-czrcW>.

²¹ Muhammad Na'im HaniSa'i, *Mausu'ah Masail Jumhur Fîl Fiqhil Islami* (Mesir: Darussalam Littabā'ah Wannanshar Wattauzi' Wattarjamah, 2007), 7.

²² HaniSa'i, 7.

²³ HaniSa'i, 8.

²⁴ HaniSa'i, 8.

²⁵ HaniSa'i, 8.

Jumhur Ulama consist of scholars predominantly from various madhhabs who hold uniform views in Islamic law. They adhere firmly to the principles of *usul al-fiqh*, including the Qur'an, Hadith, *Ijma'*, and *Qiyas*, and play a role in balancing religious texts with social realities. As part of the Sunni tradition, they uphold moderation, avoid extremism, and prioritize harmony in differences of opinion. Their thought developed from the era of the Companions until the 10th century CE, with contributions from figures such as Abu Hasan al-Asy'ari and Abu al-Mansur al-Maturidi, who integrated reason and revelation as well as incorporated Sufism and philosophy into Islamic thought.²⁶

Inheritance According to the KHI

Chapter I (General Provisions) Inheritance law constitutes a set of legal rules governing the process of transferring ownership rights over the estate or *tirkah* of a deceased person (the testator) to his or her heirs. This law regulates who is entitled to be an heir and the allocation of shares each heir receives. The testator refers to an individual who, at the time of death or declared deceased by a court decision, adheres to Islam, leaving behind heirs and an estate. The objective of inheritance law is to ensure the fair distribution of the estate in accordance with the provisions established by Islamic law.²⁷

Within the KHI, inheritance provisions are comprehensively regulated in the Second Book, encompassing Articles 171 through 214. According to Article 171(a) KHI, inheritance law is defined as the rules governing the transfer of ownership rights over the estate (*tirkah*) from the testator to the heirs. Moreover, this law determines who qualifies as heirs and the respective proportions of the shares to be received by each heir. This definition is based on the principles of Islamic *syariah* derived from the Qur'an and Hadith, while taking into account the social context and needs of the Muslim community in Indonesia.²⁸ Article 171(c) defines heirs as individuals who, at the time of the testator's death, have a blood relationship (*nasabiyah*) or marital relationship (*sababiyah*) with the testator, are Muslim, and are legally unimpeded from inheriting. Meanwhile, the estate encompasses all assets left by the testator, including personal belongings and rights held at the time of death.²⁹ Regarding the distribution of inheritance, Article 171(e) clarifies that the estate subject to inheritance consists of the testator's own property plus the share derived from joint assets, after deducting the costs incurred during the testator's illness until death, funeral expenses (*tajhiz*), debt settlements, and specific grants to relatives. Furthermore, an adopted child is defined as one whose daily living expenses, educational costs, and other needs have been legally transferred from the biological parents to the adoptive parents pursuant to a court ruling. Lastly, Baitul Mal is described as an institution functioning as the Religious Property Office responsible for managing assets under Islamic law.³⁰

Chapter II (Heirs) Article 172 states that an individual is recognized as a Muslim heir if this can be demonstrated by Identity Card, personal acknowledgment, religious

²⁶ Nourouzzaman Shiddiqi, "Sunni Dalam Perspektif Sejarah," *Al-Jami'ah: Journal of Islamic Studies* 32, no. 57 (1994): 1–12, <https://doi.org/10.14421/ajis.1994.3257.1-12>.

²⁷ Perpustakaan Nasional RI, "Himpunan Peraturan Perundang-Undangan Yang Berkaitan Dengan Kompilasi Hukum Islam Serta Pengertian Dalam Pembahasannya," Mahkamah Agung RI (2011), 107.

²⁸ Vinna Lusiana, "Hukum Kewarisan di Indonesia (Studi Komparatif antara Kompilasi Hukum Islam dengan Kitab Undang-Undang Hukum Perdata)," *Jurnal Alwatzikhoebillah: Kajian Islam, Pendidikan, Ekonomi, Humaniora* 8, no. 2 (2022): 294, <https://doi.org/10.37567/alwatzikhoebillah.v8i2.2022>.

²⁹ RI, Himpunan Peraturan Perundang-Undangan Yang Berkaitan Dengan Kompilasi Hukum Islam Serta Pengertian Dalam Pembahasannya, 107.

³⁰ RI, 107.

practice, or testimony from others.³¹ In this regard, a newborn or minor child is deemed Muslim if the father or the child's environment adheres to Islam.³² Article 173 elaborates on heirs and stipulates reasons that may disqualify an individual from inheritance.³³ Article 173(a) specifies that a person is barred from inheritance if, based on a final and binding court decision, it is proven that the individual committed a grave offense against the testator, such as murder, attempted murder, or severe abuse. Similarly, Article 173(b) excludes individuals proven to have slandered the testator by filing false accusations of criminal acts punishable by imprisonment of five years or more.³⁴ Article 174 categorizes heirs by blood and marital relationships.³⁵ Article 174(a) lists male heirs as father, son, brother, paternal uncle, and grandfather, while female heirs include mother, daughter, sister, and grandmother. Article 174(b) designates widowers or widows as heirs by marriage. If all such heirs are present, only children, father, mother, and widows or widowers are entitled to inherit.³⁶ Article 175 outlines heirs' obligations to the testator, including managing the funeral until burial, settling all debts including medical and third-party obligations, executing the testator's will, and distributing the estate to rightful heirs.³⁷ However, heirs' liability for debts or obligations of the testator is limited to the value of the estate, preventing personal liability beyond the inherited assets.³⁸

CHAPTER III (Portion of Inheritance) Provisions regarding the proportion of inheritance shares are detailed across several articles in the KHI. Article 176 states that if the testator has one daughter, she is entitled to half of the inheritance. If there are two or more daughters, they collectively receive two-thirds of the estate. When daughters inherit alongside sons, sons receive twice the share of daughters.³⁹ Article 177 regulates the share for the father,⁴⁰ born out of the need for clear and certain Islamic law for religious courts in Indonesia. It stipulates that the father receives one-third of the estate if the testator leaves no children but survives a spouse and mother. Though this rule is not explicitly detailed in the Qur'an, it results from Indonesian scholars' *ijtihad* referencing the *gharrawain* (*'Umariyyātayn*) case, aiming to balance justice and familial responsibilities. Here, the father's share is not less than the mother's, reflecting his greater familial obligations. Hence, Article 177 exemplifies adaptation of Islamic inheritance law to Indonesian social context, ensuring legal certainty in practice.⁴¹ Article 178(1) states the

³¹ Lusiana, "Hukum Kewarisan di Indonesia (Studi Komparatif antara Kompilasi Hukum Islam dengan Kitab Undang-Undang Hukum Perdata)," 296.

³² RI, Himpunan Peraturan Perundang-Undangan Yang Berkaitan Dengan Kompilasi Hukum Islam Serta Pengertian Dalam Pembahasannya, 108.

³³ Lusiana, "Hukum Kewarisan di Indonesia (Studi Komparatif antara Kompilasi Hukum Islam dengan Kitab Undang-Undang Hukum Perdata)," 296.

³⁴ RI, Himpunan Peraturan Perundang-Undangan Yang Berkaitan Dengan Kompilasi Hukum Islam Serta Pengertian Dalam Pembahasannya, 108.

³⁵ Lusiana, "Hukum Kewarisan di Indonesia (Studi Komparatif antara Kompilasi Hukum Islam dengan Kitab Undang-Undang Hukum Perdata)," 295.

³⁶ RI, Himpunan Peraturan Perundang-Undangan Yang Berkaitan Dengan Kompilasi Hukum Islam Serta Pengertian Dalam Pembahasannya, 108.

³⁷ RI, 108-109.

³⁸ Lusiana, "Hukum Kewarisan di Indonesia (Studi Komparatif antara Kompilasi Hukum Islam dengan Kitab Undang-Undang Hukum Perdata)," 296.

³⁹ RI, Himpunan Peraturan Perundang-Undangan Yang Berkaitan Dengan Kompilasi Hukum Islam Serta Pengertian Dalam Pembahasannya, 109.

⁴⁰ RI, 109.

⁴¹ Yusron Hamdi, "Bagian Waris Sepertiga Bagi Ayah (Studi Analisis Pasal 177 Kompilasi Hukum Islam)" (Undergraduate Thesis, Universitas Islam Negeri Maulana Malik Ibrahim, 2011), <http://etheses.uin-malang.ac.id/1613/1/07210070/>.

mother receives one-sixth of the inheritance if the testator leaves children or two or more full sibling. If the testator leaves no children or fewer than two full siblings, the mother's share increases to one-third. Article 178(2) further provides that if the mother inherits alongside the father, her share is one-third of the estate remaining after the widow(er)'s portion is deducted.⁴²

Article 179 grants a widower half the inheritance if the testator leaves no children; otherwise, the widower receives one-quarter. The Supreme Court Circular Letter (SEMA) No. 2/1994 reiterates that the father receives one-third if the testator has no children but leaves a spouse and mother; with children, the father's share reduces to one-sixth. Article 180 entitles a widow to one-quarter of the estate if there are no children; with children, her share reduces to one-eighth.⁴³ Article 181 governs the *kalalah* case, where the testator dies without children or father. Uterin brother or sister each receive one-sixth; collectively, if more than one, they share one-third.⁴⁴ Article 182 similarly addresses inheritance involving one full or sister consanguine, who receives half the estate; if more than one, they share two-thirds. Where both full or consanguine brothers and sisters, brothers receive twice the share of sisters, consistent with Islamic inheritance principles.⁴⁵

Article 183 provides that heirs have the right to amicably agree on distribution after acknowledging their shares. If heirs are minors or legally incapacitated, a guardian may be appointed by court decision upon family proposal, as per Article 184.⁴⁶ Article 185 explicitly states that substitution of heirs applies fully without gender discrimination. Grandchildren or nephews replace deceased parents, inheriting accordingly, reflecting justice and continuity in Islamic inheritance under KHI.⁴⁷ Article 186 specifies that children born outside marriage inherit only from their mother and maternal relatives.⁴⁸ Article 187 affirms that the death of an individual owning an estate (testator) is the absolute condition triggering inheritance, marking the legal commencement of ownership transfer from testator to rightful heirs, thereby framing inheritance as lawful asset transfer under Islamic inheritance law.⁴⁹ The executor's duties include recording movable and immovable estate assets, requiring heirs' approval and valuation if necessary. The executor must also calculate expenses for the testator's interests per applicable law. The remaining estate after such deductions constitutes the inheritance to be divided.⁵⁰

As stipulated in Article 188, heirs collectively or individually may request division of the estate from other heirs. Disputes are resolved through the Religious Court.⁵¹ Article 189 states that agricultural land under two hectares must be maintained as a single unit and jointly used by heirs. If this is impractical, e.g., if an heir requires funds, the land may be transferred to one or more heirs upon compensation to others according to their

⁴² RI, *Himpunan Peraturan Perundang-Undangan Yang Berkaitan Dengan Kompilasi Hukum Islam Serta Pengertian Dalam Pembahasannya*, 109.

⁴³ RI, 109.

⁴⁴ RI, 110.

⁴⁵ RI, 110.

⁴⁶ RI, 110.

⁴⁷ Ahmad Zahari, "Telaah Terhadap Pembatasan Lingkup Ahli Waris Pengganti Pasal 185 KHI Oleh Rakernas Mahkamah Agung RI Di Balikpapan Oktober 2010," *Jurnal Dinamika Hukum* 14, no. 2 (2014): 326, <https://doi.org/10.20884/1.jdh.2014.14.2.300>.

⁴⁸ RI, 110.

⁴⁹ Naskur Naskur, "Pembagian Harta Warisan Disaat Pewaris Masih Hidup Telaah Pasal 187 Ayat (1) Kompilasi Hukum Islam (KHI)," *Jurnal Ilmiah Al-Syir'ah* 15, no. 1 (2018): 55, <https://doi.org/10.30984/as.v15i1.473>.

⁵⁰ RI, 111.

⁵¹ RI, 111.

shares.⁵² KHI provides more specific regulation than the Qur'an on inheritance for multiple wives. Article 190 specifies each wife is entitled only to the shared marital property (*gono-gini*), not directly to the estate, differing from Qur'anic Surah An-Nisa (4:12) which allocates collectively one-eighth inheritance to wives if no children exist. When the testator has two wives, according to the Qur'an they share one-eighth jointly; under KHI, they receive only the shared property, while the estate is distributed primarily to children.⁵³ Article 190 further states that if the testator has multiple wives, each wife receives a portion of the marital property acquired during marriage. The remaining estate after distribution of shared property belongs to legitimate heirs. Article 191 declares that if no heirs exist or their whereabouts are unknown, the Religious Court may order the entire estate be handed to Baitul Mal for use in Islamic religious purposes and public welfare.⁵⁴

Chapter IV (Aul and Rad) In the distribution of inheritance among *dzawil furud* heirs, there can be imbalance between numerator and denominator fractions. Article 192 prescribes that if the sum of numerators exceeds the denominator, the denominator is increased to match the numerator. The adjusted share distribution method is called *aul*, ensuring proportional division according to each heir's share.⁵⁵ Article 193 regulates *rad*, applied when the sum of *dzawil furud* shares is less than the total estate (numerator less than denominator) and no *asabah* heirs exist.⁵⁶ In this case, the remaining undistributed estate is reallocated proportionally among *dzawil furud* heirs.⁵⁷

Biography of Abdullah bin Mas'ud

Abdullah bin Mas'ud bin Ghafil bin Habib al-Hudzali, known by the name Abu Abdurrahman, was born in Mecca into a modest family. He belonged to the Hudzail tribe, a tribe renowned for its eloquence in the Arabic language and its exquisite poetry. Since childhood, he worked as a shepherd for the goats owned by Uqbah bin Abi Mu'ayt, one of the Quraysh leaders. His childhood was spent in the pastures around Mecca, far from the hustle and bustle of city life. Although he came from an ordinary family, fate had prepared a noble path for him as one of the closest companions of the Prophet Muhammad SAW.⁵⁸ Abdullah bin Mas'ud was among the earliest converts to Islam, even before Umar bin Khattab. His conversion began when he met the Prophet Muhammad SAW and Abu Bakr in the pasture where he was tending goats. At that time, the Prophet asked him for some milk, but Abdullah refused because the goats were not his property, and he was responsible for safeguarding his employer's trust. The Prophet then requested a goat that had never been mated by a male, and after stroking its udder, milk flowed out. This extraordinary event astonished Abdullah bin Mas'ud, and he immediately asked to be

⁵² RI, 111.

⁵³ Ni Made, Ananda Puteri, dan Khairani Bakri, "Legal Aspect of the Late Samir 's Inherited according to Indonesian Islamic Inheritance Law" 5, no. 2 (2023): 455. <https://doi.org/10.25105/refor.v5i2.16276>

⁵⁴ RI, 112.

⁵⁵ Lusiana, "Hukum Kewarisan di Indonesia (Studi Komparatif antara Kompilasi Hukum Islam dengan Kitab Undang-Undang Hukum Perdata)," 296.

⁵⁶ RI, Himpunan Peraturan Perundang-Undangan Yang Berkaitan Dengan Kompilasi Hukum Islam Serta Pengertian Dalam Pembahasannya, 112.

⁵⁷ Lusiana, "Hukum Kewarisan di Indonesia (Studi Komparatif antara Kompilasi Hukum Islam dengan Kitab Undang-Undang Hukum Perdata)," 296.

⁵⁸ I'zzuddin Ibnul Athar, Abul Hasan, dan Ali Bin Muhammad Al Jazari, *Asadul Ghobah Fi Ma'rifatul Sohabah* (Beirut: Darul Kutub Al Alamiyah, 1994), 382.

taught the Qur'an. From then on, he became one of the loyal companions of the Prophet and continued to accompany him on various occasions.⁵⁹

Abdullah bin Mas'ud had an exceptional love for the Qur'an. He was the first person to openly recite the Qur'an in front of the Quraysh. One day, the companions discussed that no one had yet dared to recite the Qur'an publicly to the Quraysh. Courageously, Abdullah bin Mas'ud volunteered despite lacking protection from a large family. He went to the Ka'bah and began reciting Surat Ar-Rahman loudly. This act angered the Quraysh, who beat him until his face and body were covered with wounds. Nevertheless, he remained steadfast, stating that the enemies of Allah had never been easier for him to confront. His bravery was a testament to his firm faith and love for Islam.⁶⁰

Abdullah bin Mas'ud was one of the closest companions of the Prophet Muhammad SAW. He often assisted with the Prophet's personal needs, such as carrying sandals, clothing, and siwak (tooth-stick). He was even granted permission to enter the Prophet's house at any time without prior permission. The Prophet loved him deeply and frequently praised his knowledge, especially in understanding the Qur'an.⁶¹ . On one occasion, the Prophet said, "Whoever wishes to recite the Qur'an as it was revealed, let him recite it as Ibn Ummi Abd (Abdullah bin Mas'ud) recites it."⁶² He was also known as a companion with profound understanding of Islamic law. One day, the Prophet said to him, "O Ibn Mas'ud, recite the Qur'an for me." Abdullah bin Mas'ud was surprised and said, "O Messenger of Allah, how can I recite it to you when the Qur'an was revealed to you?" The Prophet replied, "I like to hear it from others." So Abdullah bin Mas'ud recited Surat An-Nisa until he reached the verse: "So how [will it be] when We bring from every nation a witness and We bring you as a witness against them?" (Qur'an, An-Nisa: 41). The Prophet wept until tears flowed abundantly.⁶³

Abdullah bin Mas'ud participated in several major battles alongside the Prophet Muhammad SAW., including the Battles of Badr, Uhud, Khandaq, and the Pledge of Ridwan. In the Battle of Badr, he played a crucial role by killing Abu Jahal, the Quraysh leader notorious for his cruelty towards Muslims. After the battle, Abdullah found Abu Jahal severely wounded. He stepped on his neck and said, "O enemy of Allah, now Allah has humiliated you!" Despite his grave condition, Abu Jahal arrogantly replied, "Indeed, I am not inferior to this goat shepherd." Without hesitation, Abdullah bin Mas'ud killed him and brought this news to the Prophet Muhammad SAW.⁶⁴ After the Prophet's passing, Abdullah bin Mas'ud continued his da'wah and spread Islamic knowledge. Caliph Umar bin al-Khattab appointed him to Kufa to teach Islam to its inhabitants. He became a distinguished teacher there, educating many prominent scholars.⁶⁵

Abdullah bin Mas'ud passed away in 32 AH (652 CE) during the reign of Caliph Uthman bin Affan. Before his death, he met with Caliph Uthman, who offered him wealth to assist his condition, but he declined, stating he was content with what Allah had provided.⁶⁶ When nearing his death, he was asked, "What do you regret?" He replied, "I

⁵⁹ I'zzuddin Ibnul Athar, Abul Hasan, dan Ali Bin Muhammad Al Jazari, 382.

⁶⁰ I'zzuddin Ibnul Athar, Abul Hasan, dan Ali Bin Muhammad Al Jazari, 383.

⁶¹ I'zzuddin Ibnul Athar, Abul Hasan, dan Ali Bin Muhammad Al Jazari, 385.

⁶² I'zzuddin Ibnul Athar, Abul Hasan, dan Ali Bin Muhammad Al Jazari, 384.

⁶³ I'zzuddin Ibnul Athar, Abul Hasan, dan Ali Bin Muhammad Al Jazari, 384.

⁶⁴ I'zzuddin Ibnul Athar, Abul Hasan, dan Ali Bin Muhammad Al Jazari, 382.

⁶⁵ I'zzuddin Ibnul Athar, Abul Hasan, dan Ali Bin Muhammad Al Jazari, 385.

⁶⁶ I'zzuddin Ibnul Athar, Abul Hasan, dan Ali Bin Muhammad Al Jazari, 387.

only regret not having worshipped Allah enough.” He also advised his family to bury him in Al-Baqi’, the cemetery which is the resting place of many companions of the Prophet Muhammad SAW.. His funeral prayer was led by the companion Zubair bin Awwam, and he was interred in Al-Baqi’. His departure left deep sorrow among Muslims, especially the companions who knew him as a gentle, knowledgeable person with great love for the Qur’an.⁶⁷

Abdullah bin Mas’ud was one of the companions who narrated the most hadith from the Prophet Muhammad SAW. He was recognized as a scholar of the Qur’an and Islamic law. Many later scholars adopted his methods of exegesis and understanding. Imam Abu Hanifah, one of the great imams, derived much knowledge from Abdullah bin Mas’ud’s students. He left a valuable scholarly legacy for the Muslim community. To this day, his Qur’anic recitation and religious comprehension remain a reference for many scholars. His courage, steadfast faith, and love for Islam serve as a model for every Muslim seeking closeness to Allah. May Allah be pleased with him and grant him the highest place in Paradise alongside the Prophet Muhammad SAW.⁶⁸

Comparative Results Between the Thought of Ibnu Mas’ud and the Jumhur Ulama on Inheritance

Chapter on *Aşobah* concerning Grandsons (male descendants of a son) versus Granddaughters (female descendants of a son) when together with more than one daughter: According to the Jumhur Ulama, when there are more than one daughter, they receive 2/3 of the inheritance, and the remainder is given by *Aşobah* to the grandsons versus granddaughters in a ratio of 2:1. According to Ibnu Mas’ud, more than one daughter receives 2/3, but the remainder is solely given to the grandsons because Ibnu Mas’ud holds that the female lineage downward should not exceed 2/3.⁶⁹ Chapter on granddaughters (female descendants of a son) together with one daughter: According to the Jumhur Ulama, a daughter receives 1/2 while the granddaughter receives 1/6, completing the female lineage share downward to 2/3. If granddaughters are together with grandsons, the remainder is distributed by *aşobah* in a 2:1 ratio. Conversely, Ibnu Mas’ud holds that the granddaughter must receive the lesser portion between *muqosamah* (proportional share) and 1/6. If granddaughters share with grandsons, the remainder from the daughters' share is distributed by *aşobah*, and the female lineage downward does not reach 2/3.⁷⁰ This ruling also applies when the deceased leaves no children.⁷¹ Chapter on the *aşobah* right of granddaughters (female descendants of a son) together with great-grandsons: According to the Jumhur Ulama, the distribution by *aşobah* is at a ratio of 2:1. Meanwhile, Ibnu Mas’ud states that the granddaughter receives her fixed share first, and the remainder is given to the great-grandsons.⁷²

Chapter on the position of consanguine sisters alongside full sisters. The Jumhur Ulama holds that consanguine sisters occupy the position of full sisters if no full sisters exist. If they coexist with consanguine brothers and more than one full sister, consanguine

⁶⁷ I’zzuddin Ibnul Athar, Abul Hasan, dan Ali Bin Muhammad Al Jazari, 387.

⁶⁸ I’zzuddin Ibnul Athar, Abul Hasan, dan Ali Bin Muhammad Al Jazari, 387.

⁶⁹ Mouafaq Al-Din Ibn Qudamah, Al-Mughni, vol. 9 (Riyadh: Dār ‘Ālam al-Kutub lil-Ṭibā‘ah wa al-Nashr wa al-Tawzī‘, 1997), 11-13.

⁷⁰ Ibn Qudamah, 14-15.

⁷¹ HanīSa’ī, Māsu’ah Masail Jumhur Fīl Fiqhīl Islāmī, 626.

⁷² HanīSa’ī, 626.

sisters receive *aşobah* status with a ratio of 2:1 together with consanguine brothers, while more than one full sister receives 2/3. According to Ibnu Mas'ud, if consanguine sisters are together with consanguine brothers, they do not inherit.⁷³ If a full sister is together with one or more consanguine sisters, the full sister receives 1/2, and the consanguine sisters collectively receive 1/6; if with consanguine brothers, consanguine sisters and brothers are distributed by *aşobah*. According to Ibnu Mas'ud, a full sister together with one or more consanguine sisters receives the lesser portion between *muqosamah* and 1/6 if consanguine brothers are present.⁷⁴

Chapter on cousins, specifically paternal cousins (children of the paternal uncle),⁷⁵ This discussion divides cousins into two categories: First, if the deceased leaves only two cousins: According to the Jumhur Ulama, if there are two uterine cousins and consanguine cousins receives 1/6, and the remainder goes to the consanguine cousins. Similarly, if uterine cousins is together with a full cousins, uterine cousins still receives 1/6 and the remainder goes to the full cousins.⁷⁶ According to Ibnu Mas'ud, the entire estate is given to uterine cousins whether together with the consanguine cousins or full cousins.⁷⁷ Second, If the deceased leaves cousins and a daughter or granddaughter (female descendant of a son): According to the Jumhur Ulama, if two cousins include a uterine cousins together with a daughter or granddaughter, the daughter or granddaughter receives 1/2,⁷⁸ and the remainder is split between the full cousins, since the daughter can block uterine cousins.⁷⁹ However, if only the full cousins is present, the remainder is given entirely to the full cousins. The position of the uncle is to prevent the full cousins from inheriting the entire remainder.⁸⁰ According to Ibnu Mas'ud, there is no difference in these two conditions; the maternal uncle's position does not *hijab nuqshân* of the full cousins.⁸¹

Chapter on Radd (return of residue): The Jumhur Ulama argue that if the deceased's estate is not fully distributed among heirs, the remaining assets should be returned to them according to their fixed shares. Ibnu Mas'ud holds that Radd cannot be granted to daughters, uterine sisters if full sisters exist, and grandmothers if there are entitled dzawil furudh with stronger claims.⁸² Chapter on differences in inheritance distribution between grandfather and siblings: According to the Jumhur Ulama, when inheritance is shared between the grandfather and siblings, the grandfather gains an advantage somewhere between *muqosamah* and 1/3 of the total estate.⁸³ According to Ibnu Mas'ud, the grandfather's advantage lies between *muqosamah*, 1/3 of the remainder, and 1/6 of the total estate.⁸⁴

Chapter on heirs converting to Islam after the death of the deceased: According to the Jumhur Ulama, if an heir embraces Islam after the death of the deceased, they are not entitled to inherit, as their status as heir was invalid at the time of death. Meanwhile, Ibnu Mas'ud argues that if the heir converts before the estate is distributed, they remain entitled

⁷³ HanîSa'î, 627.

⁷⁴ HanîSa'î, 627.

⁷⁵ HanîSa'î, 629.

⁷⁶ HanîSa'î, 630.

⁷⁷ Ibn Qudamah, Al-Mughni, 31.

⁷⁸ Najid, I'ānatun-Nāhiđi hiya Syarđul-Manhalil-'Adzil-Fāiđi Nazmu Ađkāmîl-Farāiđi, 50.

⁷⁹ Ibn Qudamah, Al-Mughni, 31-32.

⁸⁰ Ibn Qudamah, 31.

⁸¹ Ibn Qudamah, 32.

⁸² Ibn Qudamah, 49.

⁸³ HanîSa'î, 634.

⁸⁴ Ibn Qudamah, Al-Mughni, 68.

to their inheritance.⁸⁵ Chapter on heirs disqualified from inheritance due to blocking (hijab): The Jumhur Ulama state that if an heir is disqualified due to reasons such as murder, apostasy, slavery, etc., their status is considered null, and they cannot block other heirs. However, according to Ibnu Mas'ud, even if such heirs cannot inherit, their status can still block others from inheritance.⁸⁶

An illustration of the differences of opinion can be seen in the following table:

Table 1. Comparison between the Jumhur Ulama and Ibnu Mas'ud

| No. | Subject | Jumhur Ulama | Ibnu Mas'ud |
|-----|--|--|---|
| 1 | <i>Aşobah</i> of a grandson with a granddaughter (in the presence of more than one daughter) | When there is more than one daughter, they receive 2/3 of the estate; the remainder is allocated to the grandson as <i>Aşobah</i> at a 2:1 ratio with the granddaughter. | When there is more than one daughter, they receive 2/3 of the estate; the remainder is allocated solely to the grandson, as the female line may not exceed 2/3. |
| 2 | Granddaughter through a son together with a daughter | The daughter receives 1/2, and the granddaughter receives 1/6 so that the total for the female line reaches 2/3; if there is a grandson, the remainder is divided as <i>Aşobah</i> at a 2:1 ratio. | The granddaughter receives the lesser share between <i>muqosamah</i> and 1/6. When accompanied by other granddaughters, they do not collectively reach 2/3; this rule also applies when no daughter is present. |
| 3 | <i>Aşobah</i> of a granddaughter with a great-grandson | <i>Aşobah</i> applies at a 2:1 ratio between the granddaughter and the great-grandson. | The granddaughter receives her fixed share, and the remainder is allocated to the great-grandson. |
| 4 | Half-sister through father with full sister | A half-sister through the father is entitled to inheritance only in the absence of full siblings or as <i>Aşobah</i> at a 2:1 ratio with a half-brother through the father. | When accompanied by a half-brother through the father, the half-sister through the father is not entitled to inheritance. |
| | Full sister + half-sister through father | Full sister receives 1/2, and half-sister through father receives 1/6; if there is a half- | Full and half-sisters through the father receive the lesser share |

⁸⁵ HanīSa'ī, 643.

⁸⁶ 'Abd ar-Raḥīm Aṭ-Ṭaḥḥān, *Khuṭab wa Durūs asy-Syaikh 'Abd ar-Raḥīm aṭ-Ṭaḥḥān (Mawqī' asy-Syaikh, 2010), 35.*

| | | | | |
|---|---|--|---|---|
| | | | brother through father, the half-sister becomes <i>Aşobah</i> . | between <i>muqosamah</i> and 1/6 when accompanied by a half-brother through the father. |
| 5 | Two paternal cousins | | The maternal uncle's son receives 1/6, while the remainder is given to the paternal or full uncle's son. | The entire estate is allocated to the maternal uncle's son, regardless of the presence of the paternal or full uncle's son. |
| | Cousin + daughter | | The daughter/granddaughter receives 1/2; the remainder is allocated to the full uncle's son; the maternal uncle's son is not excluded (<i>lā yahjib</i>). | Same position: the maternal uncle's son does not bar the share of the full uncle's son. |
| 6 | <i>Rad</i> (redistribution of the remainder) | | The remainder of the estate is distributed among the heirs according to their prescribed shares. | <i>Rad</i> does not apply to daughters, half-sisters through the father if full siblings are present, or grandmothers if there are other <i>dhawu al-furudh</i> . |
| 7 | Grandfather with siblings | | The grandfather may choose between <i>muqosamah</i> and 1/3 of the entire estate. | The grandfather may choose between <i>muqosamah</i> , 1/3 of the remainder, and 1/6 of the entire estate. |
| 8 | Heir embraces Islam after the death of the deceased | | Not entitled to inheritance, as they were not Muslim at the time of the deceased's death. | Still entitled to inheritance, provided they embraced Islam before the distribution of the estate. |
| 9 | Disqualified heir who excludes others | | Not entitled to inheritance and does not exclude other heirs. | Even if disqualified from inheritance, they may still exclude other heirs. |

Reconceptualization of the Islamic Compilation Law Based on the Thought of Ibnu Mas'ud in Inheritance

The Islamic Compilation Law (KHI) is one of the sources of positive law used as a guideline in resolving cases related to family law in Indonesia, including inheritance

law. Although it has been legally recognized as an authoritative reference, KHI still leaves several issues, particularly in the regulation of inheritance. There are certain shortcomings or aspects that have not been fully accommodated within KHI, both in terms of normative substance and relevance to the socio-religious dynamics of the Muslim community that continue to evolve. Based on this reality, the researcher finds it necessary to conduct a more in-depth study of the inheritance provisions within KHI. The primary objective of this study is to reconceptualize certain parts of the inheritance law in KHI by referring to the inheritance concepts developed by one of the companions of the Prophet Muhammad (peace be upon him), namely Ibnu Mas'ud. Ibnu Mas'ud is recognized as a figure who holds distinctive views on inheritance distribution, which in certain contexts is considered more adaptive to societal conditions. This study is expected to contribute scientifically in the form of ideas or alternative conceptual proposals that are not only theoretical but also applicable. The proposed concept is intended to serve as a consideration for the refinement of KHI in the future. Furthermore, the results of this study are anticipated to provide a reference for specific Muslim regions or communities that require a legal approach to inheritance better suited to their socio-cultural conditions, while still adhering to the principles of Islamic inheritance law as explained and practiced by Ibnu Mas'ud.

Addition of explanation to article 172. An heir is considered to be Muslim if this is evident through their Identity Card, acknowledgment, practices, or testimony. In the case of a newborn or a minor, their religion is determined according to that of their father or their immediate environment. A person's adherence to Islam as a prerequisite for being an heir is not only essential but must also be established prior to the occurrence of the inheritance event namely, before the estate is distributed among the heirs. If a person's Islamic status emerges only after the inheritance has been distributed, they cannot be recognized as an heir under Islamic inheritance law. Therefore, the determination of Islamic religious status for each prospective heir must be carried out carefully and based on strong evidence prior to the implementation of the inheritance distribution process.⁸⁷

Addition of explanation in Article 173. In the event that an heir is declared ineligible to inherit based on reasons stipulated by statutory regulations, the individual in question shall still be regarded as part of the legitimate lineage and, therefore, holds a legal status that may bar other heirs from subsequent lines of descent from receiving a portion of the estate.⁸⁸ As long as the individual occupies a closer degree of kinship to the decedent within the line of descent, the right to bar other heirs (*hijab*) remains valid, even if the individual does not receive any share of the inheritance. Thus, the revocation of inheritance rights from an individual does not eliminate his or her position within the familial lineage relevant to the inheritance process, unless otherwise determined by law or by a court decision with permanent legal force.⁸⁹

Changes in the explanation regarding siblings in Article 182. If a person dies leaving no children or father, and the heirs consist of consanguine sisters, then the consanguine sisters do not obtain inheritance rights or a share of the deceased's estate if there is a full sister still living, accompanied by the presence of consanguine brothers. In such a circumstance, the consanguine sister is legally classified as *mahjub* from the right to receive inheritance because there exists another heir who has a stronger and more prioritized kinship relationship according to Islamic inheritance law. The presence of the full sister as a closer heir with an explicitly determined fardh right, as stipulated by the

⁸⁷ Ibn Qudamah, *Al-Mughni*, 160.

⁸⁸ *Hanī Sa'ī*, 644.

⁸⁹ *Aṭ-Ṭahhān*, *Khuṭab wa Durūs asy-Syaikh 'Abd ar-Rahīm aṭ-Ṭahhān*. 35.

textual sources, is considered sufficient in the division of the inheritance. Consequently, no portion remains to be inherited by the consanguine sister within the heirship structure.⁹⁰ Furthermore, if the deceased leaves behind heirs consisting of one full sister, one or more consanguine sisters, and one or more consanguine brothers, then the inheritance share entitled to the consanguine sister is determined based on an approach that considers the lesser share between two possibilities: first, division by *muqāsamah* principle between the consanguine sisters and consanguine brothers, with the provision that the share of a brother is twice that of a sister; or second, a share equal to one-sixth (1/6) of the remaining estate after the fardh portion for the full sister has been allocated first.⁹¹

Addition of Article regarding cousins after Article 182 Cousins, defined as the children of the full brothers of the deceased's father, are classified under *dzawil arham*, who are entitled to inheritance only if there are no closer heirs by nasab relationship. In this context, the position of cousins is considered to have no inheritance rights if there are heirs with a closer nasab relationship to the deceased present. If there are full cousins, consanguine cousins, and uterine cousins, only the uterine cousins are entitled to inherit.⁹² In cases where the deceased leaves a daughter or a granddaughter through a son alongside two cousins one full cousin and one uterine cousin the fardh portion is first given to the daughter or granddaughter according to Shariah provisions. After that, the remaining estate is entirely allocated to the full cousin, while the uterine cousin receives no portion due to being blocked by the presence of the daughter or granddaughter.⁹³

Addition of Article regarding the division between grandfather and siblings after Article 182 In inheritance distribution cases, a grandfather as an heir has the right to receive a portion of the estate left by the deceased. This right is determined by Islamic inheritance law provisions that regulate the mechanism and method of calculating each heir's entitled share. The calculation methods that can be applied to determine the grandfather's share include several approaches: the *muqāsamah* method, whereby the inheritance is divided so that the grandfather receives an equal portion adjusted to the number and status of siblings; a fixed portion of one-third (1/3) of the residue, which grants the grandfather the right to receive one-third of the remaining estate after deducting the shares of other heirs with prior entitlement, such as children, grandchildren, or other heirs holding a superior lineage position; and a fixed portion of one-sixth (1/6), which, under certain conditions, grants the grandfather the right to receive one-sixth of the entire estate independently of the number of other heirs.⁹⁴

Addition of Article concerning granddaughters after Article 182. In this case, the testator leaves behind several daughters, as well as grandsons and granddaughters from a son. Referring to the provisions in the KHI and the science faraid in Islamic inheritance law, multiple daughters are entitled to two-thirds of the entire inheritance estate. This is in accordance with Article 176 of the KHI, which states that if there is more than one daughter and no sons, they collectively receive two-thirds of the inheritance.⁹⁵ In this context, the grandson from the son acts as an *aşobah* heir. This means he is entitled to the remainder of the estate after the shares for the two daughters have been distributed first.

⁹⁰ HaniSa'i, 647.

⁹¹ HaniSa'i, 627.

⁹² Ibn Qudamah, Al-Mughni, 31.

⁹³ Ibn Qudamah, 31-32.

⁹⁴ Ibn Qudamah, 68.

⁹⁵ RI, Himpunan Peraturan Perundang-Undangan Yang Berkaitan Dengan Kompilasi Hukum Islam Serta Pengertian Dalam Pembahasannya, 109.

Conversely, the granddaughter from the son does not receive any inheritance share because she is *mahjub* by the existence of more than one daughter. Considering that the daughters have received two-thirds of the estate, there is no room for the granddaughter from the paternal line to receive a share, as this would exceed the maximum limit allowed for female heirs from the descending lineage. Thus, legally, the inheritance rights of this granddaughter are considered forfeited or obstructed.⁹⁶

If the testator leaves one daughter and a granddaughter from the son, the daughter receives a half (1/2) share, whereas the granddaughter from the son receives one-sixth (1/6) to complete the total two-thirds share for the female descendants. In the event there are daughters, granddaughters from the son, and grandsons from the son, the granddaughter from the son obtains the smaller share between *muqāsamah* and one-sixth (1/6), while the remainder is given to the grandson from the son. If the daughters' share leaves remaining estate and there are granddaughters from the son, then she becomes an *aşobah* alongside the grandson, and in this condition, the female descendants' share no longer totals two-thirds.⁹⁷ Furthermore, if the testator has no direct children but leaves grandsons and granddaughters from the son, the granddaughter from the paternal line does not inherit as *aşobah* alongside the grandson from the same line. In this circumstance, the granddaughter's share is determined by two possibilities: applying the *muqāsamah* method or receiving a fixed share of one-sixth (1/6) of the remaining estate, whichever yields the smaller portion.⁹⁸ The granddaughter from the son obtains her inheritance share in accordance with the stipulations established in Islamic inheritance law. After her share is allocated, the remainder of the estate is then distributed to the great-grandsons, according to their status and rights within the applicable inheritance system. Therefore, the division provisions must observe the principles of justice in asset distribution as well as the hierarchy of kinship proximity to the testator, as regulated in Islamic inheritance law.⁹⁹

Addition of explanation on Article 193 concerning *rad* In cases where there is an excess of inheritance assets after distribution to the heirs according to the predetermined shares, such excess shall be returned to the heirs based on the principle of *rad*. However, according to the opinion of Ibnu Mas'ud, the principle of *rad* cannot be applied to daughters, conanguine sisters if there are full sisters, and grandmothers if there exist *dzawil furudh* who have a stronger right to inherit.¹⁰⁰

Table 2. Recommendations for the Reconceptualization of Inheritance in the Compilation of Islamic Law (KHI) Based on the Thought of Ibn Mas'ud

| No. | Article in KHI | Provision in KHI | Ibn Mas'ud's View Reconceptualization Recommendation |
|-----|----------------|--|--|
| 1 | Article 172 | The Islam of an heir is determined based on ID card, | Islam must exist before the inheritance occurs. Evidence must be strong and precise. Add a time requirement: the |

⁹⁶ Ibn Qudamah, *Al-Mughni*, 11-13.

⁹⁷ Ibn Qudamah, 14-15.

⁹⁸ *HanīSa'ī*, 626.

⁹⁹ *HanīSa'ī*, 626.

¹⁰⁰ Ibn Qudamah, *Al-Mughni*, 49.

| | | | |
|---|--|---|--|
| | | confession, practice, or testimony. | heir's Islam must predate the death of the deceased. |
| 2 | Article 173 | Murder or severe slander against the deceased disqualifies inheritance. | Still considered part of the lineage and can bar (hijab) other heirs. Stipulate that the disqualified heir can still bar more distant heirs. |
| 3 | Article 182 | Distribution to siblings (same father/mother/full siblings). | Half-sisters (same father) are barred by full brothers and same-father brothers. Add a clause stating that half-sisters do not inherit if full siblings or same-father brothers exist. Use muqāsamah or 1/6 method, depending on context. |
| 4 | Additional after Article 182 (regarding cousins) | Not regulated in KHI. | Cousins are dhawu al-arham. Do not inherit if closer blood relatives exist. Add an article: cousins inherit only if no closer blood heirs exist. Prioritize maternal cousins if present with others. |
| 5 | Additional after Article 182 (regarding grandfather) | Not specifically regulated. | Grandfather receives a share via muqāsamah, 1/3 remainder, or fixed 1/6, depending on context. Add explicit inheritance methods for grandfather according to classical faraid principles. |
| 6 | Additional after Article 182 (regarding granddaughter) | Only regulates daughter's portion. | Granddaughter is barred if there are two or more daughters. If with grandson, apply muqāsamah or 1/6, whichever is smaller. Add detailed inheritance provisions for granddaughters. Differentiate based on presence of daughters or grandsons. |
| 7 | Article 193 (regarding rad) | Remaining estate is redistributed to dhawu al-furudh. | Rad does not apply to daughters, half-sisters (if full sisters exist), and grandmothers (if other dhawu al-furudh exist). Add exceptions to the principle of rad according to Ibn Mas'ud's provisions. |

Conclusion

This study concludes that significant differences exist between the inheritance jurisprudence of Ibn Mas'ud and the dominant views of the jumhur ulama, particularly in relation to the mechanisms of hijab, the application of ashabah, the use of the radd principle, and the legal recognition of heirs. Ibn Mas'ud's approach is characterized by a strong orientation toward justice and the protection of vulnerable individuals, such as

preferring uterine siblings over more distant male relatives like cousins, and allowing posthumous Muslim converts to inherit when the estate remains undivided. These findings underscore the capacity of Islamic legal reasoning (ijtihad) to adapt to evolving societal values without compromising its core ethical commitments. In this context, the KHI—despite its central role in regulating Islamic family law in Indonesia—remains limited in addressing modern inheritance challenges. Thus, incorporating Ibn Mas‘ud’s perspective offers a compelling alternative for reform, supporting a more just and contextually relevant application of Islamic inheritance law. The study recommends a normative reassessment of KHI provisions on the legal status of heirs, inheritance exclusions, kinship hierarchies, and the distribution to grandchildren, grounded in an integrative framework of classical jurisprudence and contemporary social realities.

References

- Ali, Zainuddin. *Metode Penelitian Hukum*. Jakarta: Sinar Grafika, 2022.
- Al-Zuhri, Muhammad ibn Sa‘ad ibn Mani‘ Abu Abdullah al Bashri. *Thabaqat al-Kubra li Ibn Sa‘ad* (1968).
- AM, Ustadz Ahmad Muntaha. “Tafsir Surat An-Nisa’ Ayat 12.” nuonline, n.d. <https://islam.nu.or.id/tafsir/tafsir-surat-an-nisa-ayat-12-owN2m>.
- Asshoubuni, Muhammad Ali. *Almirats Fi Syari‘atis Islamiyyah Fi Dhow’il Kitab Wa Sunah*. Beirut: Darul Kahfi Alami, n.d.
- Aṭ-Ṭaḥḥān, ‘Abd ar-Raḥīm. *Khuṭab Wa Durūs Asy-Syaikh ‘Abd Ar-Raḥīm Aṭ-Ṭaḥḥān*. Mawqi‘ asy-Syaikh, 2010.
- Bachri, Syabbul. “Rekonstruksi Kewarisan Islam: Studi Hermeneutika Ibn Abbas Atas Ayat-Ayat Waris.” *Al-Istinbath: Jurnal Hukum Islam* 5, no. 1 (2020): 21–50. <https://doi.org/10.29240/jhi.v5i1.1197>.
- Fitriana, Dianita Shabha. “Studi Komparasi Konsep Hijab Dalam Sistem Kewarisan Madzhab Syiah Dan Kompilasi Hukum Islam.” *Sakina: Journal of Family Studies* 8, no. 1 (2024): 29–47. <https://doi.org/10.18860/jfs.v8i1.6675>.
- Hamdi, Yusron. “Bagian Waris Sepertiga Bagi Ayah (Studi Analisis Pasal 177 Kompilasi Hukum Islam).” Undergraduate Thesis, Universitas Islam Negeri Maulana Malik Ibrahim, 2011. <http://etheses.uin-malang.ac.id/1613/1/07210070/>.
- HaniSa’i, Muhammad Na‘im. *Mausu‘ah Masail Jumhur Fīl Fiqhil Islami*. Mesir: Darussalam Liṭṭabā‘ah Wannanshar Wattauzi’ Wattarjamah, 2007.
- Ibn Qudamah, Mouafaq Al-Din. *Al-Mughni*. Vol. 9. Riyadh: Dār ‘Ālam al-Kutub lil-Ṭibā‘ah wa al-Nashr wa al-Tawzī‘, 1997.

- Imam Muhardinata. “Perbedaan Pandangan Dalam Pengembangan Ahli Waris Menurut Sunni, Syi’ah Dan Hazairin.” *El-Ahli : Jurnal Hukum Keluarga Islam* 1, no. 1 (2020): 68–87. <https://doi.org/10.56874/el-ahli.v1i1.89>.
- I’zzuddin Ibnul Athar Abul Hasan dan Ali Bin Muhammad Al Jazari. *Asadul Ghobah Fi Ma’rifatus Şohabah*. Beirut: Darul Kutub Al Alamiyah, 1994.
- Lusiana, Vinna. “Hukum Kewarisan Di Indonesia (Studi Komparatif Antara Kompilasi Hukum Islam Dengan Kitab Undang-Undang Hukum Perdata).” *Jurnal Alwatzikhoebillah: Kajian Islam, Pendidikan, Ekonomi, Humaniora* 8, no. 2 (2022): 291–306. <https://doi.org/10.37567/alwatzikhoebillah.v8i2.2022>.
- Made, Ni, Ananda Puteri, and Khairani Bakri. “Legal Aspect of the Late Samir ’ s Inherited According to Indonesian Islamic Inheritance Law” 5, no. 2 (2023): 451–59. <https://doi.org/10.25105/refor.v5i2.16276>.
- Mamuji, Soerjono Soekanto dan Sri. *Penelitian Hukum Normatif*. Jakarta: Raja Grafindo Persada, 2006.
- Ma’mun, Mohamad. “Waris Beda Agama Dalam Kitab Bidayatul Mujtahid” 8, no. 1 (2024): 1–22. <https://doi.org/10.30762/mahakim.v8i1.424>.
- Marzuki, Peter Mahmud. *Penelitian Hukum*. Jakarta: Sinar Grafika, 2022.
- Muntaha, Ahmad. “Tafsir Surat An-Nisa Ayat 11.” nuonline, n.d. <https://islam.nu.or.id/tafsir/tafsir-surat-an-nisa-ayat-11-v7FUG>.
- Muttaqin, Yazid. “Hijab Dalam Ilmu Waris: Definisi, Jenis, Dan Contohnya.” nuonline. Accessed December 6, 2024. <https://nu.or.id/warisan/hijab-dalam-ilmu-waris-definisi-jenis-dan-contohnya-czrcW>.
- Najid, Habibul Huda Bin. *I’ānatun-Nāhiḍi Hiya Syarḥul-Manhalil-’Adzil-Fāiḍi Nazmu Ahkāmīl-Farāiḍi*. Cirebon: Maktabah Fadllul Wahid, 2022.
- Naskur, Naskur. “Pembagian Harta Warisan Disaat Pewaris Masih Hidup Telaah Pasal 187 Ayat (1) Kompilasi Hukum Islam (KHI).” *Jurnal Ilmiah Al-Syir’ah* 15, no. 1 (2018): 40–55. <https://doi.org/10.30984/as.v15i1.473>.
- RI, Perpustakaan Nasional. Himpunan Peraturan Perundang-Undangan Yang Berkaitan Dengan Kompilasi Hukum Islam Serta Pengertian Dalam Pembahasannya, Mahkamah Agung RI § (2011).
- Saebani, Beni Ahmad. *Fiqh Mawaris*. Bandung: Pustaka Setia, 2019.
- Shiddiqi, Nourouzzaman. “Sunni Dalam Perspektif Sejarah.” *Al-Jami’ah: Journal of Islamic Studies* 32, no. 57 (1994): 1–12. <https://doi.org/10.14421/ajis.1994.3257.1-12>.

Yassir, Muhammad. "Hak Waris 'Ashabah Ma'a Al Ghair (Studi Komparasi Antara Ayat Al Quran Tentang Warisan Dengan Hadis Ibnu Mas'ud) Menjelaskan Hukumnya Dan Hikmah Di Dalamnya." Masters Thesis, Universitas Islam Negeri Kiai Haji Achmad Siddiq Jember, 2018. <http://digilib.uinkhas.ac.id/28910/>.

Zahari, Ahmad. "Telaah Terhadap Pembatasan Lingkup Ahli Waris Pengganti Pasal 185 Khi Oleh Rakernas Mahkamah Agung Ri Di Balikpapan Oktober 2010." *Jurnal Dinamika Hukum* 14, no. 2 (2014): 324–39. <https://doi.org/10.20884/1.jdh.2014.14.2.300>.