



## Grandchildren as Substitute Heirs in Indonesia's Islamic Inheritance Law: Formulation and Implementation of the Compilation of Islamic Law

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### Abstract

This study examines in depth the role and position of grandchildren in Islamic inheritance law in Indonesia, particularly in relation to Article 185 of the Compilation of Islamic Law (KHI), which regulates substitute heirs. Although the debate regarding this article has been widely discussed in previous research, most studies do not identify in detail the theoretical and practical gaps that arise in the application of Article 185 of the KHI, especially related to the influence of Hazairin's thinking and differences in interpretation in the field. This study aims to fill this gap by analyzing the history, formulation, and implementation of the provisions regarding substitute heirs in the KHI, as well as the contribution of Hazairin's theory to changes in the inheritance system in Indonesia. The method used is library research with a descriptive qualitative approach, which analyzes primary legal sources in the form of relevant legal texts, as well as secondary literature including books, scientific articles, and related journals, with technique content analysis to explore the meaning and implications of the provisions of Article 185 of the KHI and Hazairin's theory, as well as a comparative analysis to assess the suitability between theory, practice, and classical Islamic inheritance law. The results of the study indicate that Article 185 of the KHI which regulates substitute heirs has three main views, namely rejecting, accepting, and accepting with conditions for revision. This study contributes to understanding the theoretical and practical dimensions of the provisions of substitute heirs, as well as their implications for the formation of a more inclusive and equitable inheritance system in Indonesia. The practical implication is the need to revise the wording of Article 185 of the KHI to ensure consistency and fairness in its implementation, thereby providing better legal protection for heirs, especially grandchildren who have lost their parents.

**Keywords:** The Compilation of Islamic Law, Inheritance Law, Legal Reform, Substitute Heirs

### Abstrak

Penelitian ini mengkaji secara mendalam peran dan kedudukan cucu dalam hukum waris Islam di Indonesia, khususnya terkait Pasal 185 Kompilasi Hukum Islam (KHI) yang



mengatur ahli waris pengganti. Meskipun perdebatan mengenai pasal ini telah banyak dibahas dalam penelitian sebelumnya, sebagian besar studi belum mengidentifikasi secara rinci kesenjangan teoritis dan praktis yang muncul dalam penerapannya, terutama terkait pengaruh pemikiran Hazairin dan perbedaan penafsiran di lapangan. Penelitian ini bertujuan untuk menutup kesenjangan tersebut dengan menganalisis sejarah, perumusan, dan implementasi ketentuan mengenai ahli waris pengganti dalam KHI, serta kontribusi teori Hazairin terhadap perubahan sistem waris di Indonesia. Metode yang digunakan adalah penelitian kepustakaan dengan pendekatan deskriptif kualitatif, yang menganalisis sumber hukum primer berupa teks-teks hukum terkait, serta literatur sekunder termasuk buku, artikel ilmiah, dan jurnal terkait. Teknik analisis konten digunakan untuk mengeksplorasi makna dan implikasi ketentuan Pasal 185 KHI dan teori Hazairin, serta analisis komparatif untuk menilai kesesuaian antara teori, praktik, dan hukum waris Islam klasik. Hasil penelitian menunjukkan bahwa Pasal 185 KHI yang mengatur ahli waris pengganti memiliki tiga pandangan utama, yaitu menolak, menerima, dan menerima dengan syarat revisi. Penelitian ini berkontribusi pada pemahaman dimensi teoritis dan praktis ketentuan ahli waris pengganti, serta implikasinya terhadap pembentukan sistem waris yang lebih inklusif dan adil di Indonesia. Implikasi praktisnya adalah perlunya merevisi redaksi Pasal 185 KHI agar konsisten dan adil dalam pelaksanaannya, sehingga memberikan perlindungan hukum yang lebih baik bagi para ahli waris, terutama cucu yang telah kehilangan orang tua.

**Kata kunci:** Kompilasi Hukum Islam, Hukum Waris, Reformasi Hukum, Ahli Waris Pengganti

## **Introduction**

In the Compilation of Islamic Law (KHI), one example is found in the inheritance law provisions regulated in Book II. One of the rules in it regulates the position of grandchildren as heirs, both those from the male and female lineage.<sup>1</sup> In relation to the position of grandchildren who do not receive a share, because they are prevented by their parents' siblings. Various scholars then put forward ideas to find a solution so that grandchildren can receive a share of the inheritance from their grandfather's estate. The issue of the position of grandchildren as heirs has actually been the subject of discussion in a number of scientific forums long before the birth of the Compilation of Islamic Law (KHI). Several academic forums have addressed the issue of inheritance in Islam. These include the National Seminar held from March 12–16, 1963; the Inheritance Law Seminar for Muslims from May 22–26, 1978; the Islamic Law Study Team of the National Development Planning Agency (BPHN)'s discussion on inheritance on December 20, 1981; the Inheritance Law Symposium in National Civil Law Reform from December 21–23, 1981; the Inheritance Law Seminar for Muslims from April 5–8, 1982; and the National Inheritance Law Symposium from February 10–12, 1983.<sup>2</sup>

However, one provision that has sparked debate is Article 185 of the Compilation of Islamic Law (KHI), which regulates substitute heirs. This article addresses the position of

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<sup>1</sup> M. Hajar, "Asal Usul Dan Implementasi Ahli Waris Pengganti Perspektif Hukum Islam," *Asy-Syir'ah Jurnal Ilmu Syari'ah Dan Hukum* Vol.50, no. No.1 (2016): 1–31.

<sup>2</sup> Iim Fahimah, "Sejarah Perkembangan Hukum Waris Di Indonesia," *Nuansa: Jurnal Studi Islam Dan Kemasyarakatan* 11, no. 2 (2018): 32–46.

grandchildren in obtaining inheritance rights from their grandparents upon the death of their parents.<sup>3</sup> Although this article is stipulated in the KHI, its application in practice often gives rise to differing opinions, primarily because the concept of substitute heirs is not recognized in classical Islamic jurisprudence.<sup>4</sup> This opinion has also been expressed by some scholars.<sup>5</sup> Some of the causes of polemics in differences of opinion among Islamic law practitioners are due to the contradiction of the article with *the text* understood by classical Islamic jurisprudence scholars, such as in the following issues: 1) Relationship with *the dzawi al-furud group*. 2) Its relationship with the *asabah group*. 3) Acceptance of *dzawi al-arhm* can be greater than *dzawi al furud*. 4) Whether the substitute heir hinders other heirs. 5) Whether the gift that has been given by the testator to the substitute heir is taken into account or not. 6) The relationship between article 185 with articles 173 and 171. 7) The word "can" in the wording of article 185.

In contrast to previous studies that have examined substitute heirs in the Compilation of Islamic Law from various perspectives, this study offers novelty in several respects. Studies such as "Substitute Heirs in Article 185 of the Compilation of Islamic Law: Maqasid Shariah Jaser Audah Perspective" emphasize the analysis of maqāṣid al-sharī'ah in viewing the position of substitute heirs.<sup>6</sup> Meanwhile, the study "Substitute Heirs in the Compilation of Islamic Law: An Overview from Gender Equality Perspective" focuses more on the perspective of gender equality, and "The Construction of Islamic Inheritance Law: A Comparative Study of the Islamic Jurisprudence and the Compilation of Islamic Law" examines the comparison between classical fiqh and the Compilation of Islamic Law comparatively.<sup>7</sup> Other studies such as "An Examination of Substitute Heirs in Islamic Civil Law in Indonesia: An Interpretative Analysis of Legal Verses" conducts an interpretive analysis of legal verses, while "Comparative Analysis on the Regulation of Substitute Heir's Position in the Civil and Islamic Inheritance Law Perspective" provides a comparative perspective between civil law and Islamic inheritance law.<sup>8</sup>

While all of these studies make important contributions to the understanding of the position of substitute heirs in Indonesian law, this study offers novelty in terms of a more in-depth historical and theoretical analysis. This study focuses on the debates that occurred

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<sup>3</sup> Muhammad Aini, "Problematika Penerapan Hukum Ahli Waris Pengganti Yang Belum Berkeadilan Dalam Kompilasi Hukum Islam Di Indonesia," *Jurnal Penegakan Hukum Indonesia (JPHI)* 4, no. 2 (2023): 211–34.

<sup>4</sup> Al-Yasa Abu-Bakar, *Heirs of Blood Consanguinity: Comparative Study of Hazairin Reasoning and School of Fiqh Reasoning* (Jakarta: INIS, 1998). 162.

<sup>5</sup> Hasbi Ashiddieqy, *Fikihul Mawaris* (Jakarta: Bulan Bintang, 1973); Wahab Afif, *Principles of Islamic Inheritance Law*, (Bandung: Religious Judge Training Center, 1978). 114.

<sup>6</sup> Sofyan Mei Utama, "Kedudukan Ahli Waris Pengganti Dan Prinsip Keadilan Dalam Hukum Waris Islam," *Jurnal Wawasan Yuridika* 34, no. 1 (2016): 68–86, <https://doi.org/https://doi.org/10.25072/jwy.v34i1.109>.

<sup>7</sup> Moch Aufal Hadliq Khaiyyul Millati Waddin, "Rekonstruksi Konseptual Pengelompokan Ahli Waris Dalam Hukum Islam: Pendekatan Normatif, Historis, Dan Maqāsid Al-Syarī'ah Untuk Mewujudkan Keadilan Di Era Kontemporer," *Mabahits: Jurnal Hukum Keluarga Islam* 6, no. 2 (2025): 162–75, <https://doi.org/https://doi.org/10.62097/mabahits.v6i02.2519>.

<sup>8</sup> Tauratiya Tauratiya and Lailasari Eka Ningsih, "Plaatsvervulling Dalam Hukum Waris Indonesia: Mengungkap Kedudukan Ahli Waris Pengganti," *Islamitsch Familierecht Journal* 5, no. 2 (2024): 105–26, <https://doi.org/https://doi.org/10.32923/ifj.v5i2.5035>.

during the formulation of Article 185 of the Compilation of Islamic Law (KHI) and the implementation of the concept of substitute heirs, highlighting the influence of Hazairin's thinking and the acceptance of this article among Islamic scholars and legal practitioners in Indonesia. Furthermore, this study also discusses the implications of this provision for the Indonesian inheritance system more broadly, taking into account the contextualization of Islamic law in Indonesia and efforts to create a more inclusive inheritance system, in accordance with the social and cultural conditions of Indonesian society. Therefore, this study seeks to fill a gap that has not been widely explored by previous studies, by providing a more comprehensive picture of the dynamics, formulation, and impact of the implementation of Article 185 of the KHI in the context of Indonesian inheritance law.

With Thus, this study aims to analyze the dynamics of the debate surrounding Article 185 of the KHI concerning substitute heirs, identify the influence of Hazairin's thinking in the formulation of the article, and evaluate the implementation of this provision in practice in Indonesian Religious Courts. This study also aims to examine the scientific contribution of Article 185 of the KHI to the formation of a more inclusive inheritance system, which reflects the legal and social needs of Indonesian society.

This study uses a library research approach with descriptive qualitative methods to analyze the provisions regarding substitute heirs in Article 185 of the Compilation of Islamic Law (KHI). This approach was chosen because the research objective was to explore in-depth the historical, theoretical, and practical context of these provisions and to identify gaps in their implementation in Indonesia. Library research is well-suited to examining legal texts, secondary literature such as books and journals, and related documents that discuss this topic from various perspectives.

In data analysis, content analysis techniques were used to explore the meaning and implications of the provisions of Article 185 of the KHI regarding substitute heirs. This technique allows the author to assess how Article 185 of the KHI has been understood and applied in Islamic inheritance law practice in Indonesia. The content analysis focused on understanding the legal texts and relevant literature and examining how this article compares to classical Islamic inheritance law systems. Furthermore, a comparative analysis was applied to compare the provisions of Article 185 of the KHI with classical Islamic legal views and the concept of substitute heirs in Islamic jurisprudence. By using comparative analysis, this study can identify the differences and similarities between the provisions in the KHI and the principles of classical Islamic law, as well as evaluate the fairness and consistency of the application of these laws in Indonesia.

In addition, interviews with Islamic legal experts were conducted to gain deeper insight into the application of Article 185 of the Compilation of Islamic Law (KHI) in practice in Indonesian religious courts. To analyze the collected legal materials, content analysis was used to explore the meaning and implications of Article 185 of the KHI and related debates, and comparative analysis was used to compare the views on substitute heirs in the KHI with classical Islamic jurisprudence.

## Dynamics of Provisions on Heirs in the Compilation of Islamic Law in Indonesia

In the study of Islamic law Classical until before the issuance of the Presidential Instruction in 1991 as the basis for the enactment of the KHI, practitioners and ulama in Indonesia did not know the term successor heir.<sup>9</sup> This opinion was also expressed by some scholars.<sup>10</sup> According to Habiburrahman in his research, he explained that from 1961 to 1990, the idea of substitute heirs did not develop, and moreover, among Indonesian scholars, they could not accept or were not even aware of the provision of substitute heirs because it was not found in the concept of classical fiqh. The term substitute heir in the KHI is suspected to be adopted from the inheritance law of the Dutch colonial legacy (BW), known as *Plaatsvoervulling*. The inclusion of this article further reveals that its existence is an extension of colonial legal policy to Islamic law.<sup>11</sup>

In the conclusion of his dissertation, Habiburrahman stated that the formulation of the KHI was considered to be "innately flawed." The KHI drafting team, appointed by the Decree of the Chief Justice and the Minister of Religious Affairs of the Republic of Indonesia in 1985, needed to prove the truth of this allegation to avoid future friction. Furthermore, the formulation of inheritance law contained in the KHI, which had been given the framework of the Presidential Instruction in 1991, turned out to have a number of fundamental differences with the formulation of inheritance law produced in the taggaal workshop on February 2-5, 1988.

A similar point that can strengthen Habiburrahman's conclusion above is the signal from the statements the author understood from the statements of several informants involved in the drafting of the KHI.<sup>12</sup> Among them is Amir Syarifuddin, although he did not directly state that the article on substitute heirs was an infiltrated article and fabricated by several legal practitioners in the Supreme Court. Amir Syarifuddin explained that when he was a living witness attending the official invitation to the National KHI workshop in 1988, he explained that from the beginning to the end of the event, there was not much debate or in-depth discussion regarding the inheritance material to be included in the KHI, including the proposed article on substitute heirs, except for the most heated debate when it concerned the portion of inheritance for children. According to Amir Syarifuddin, the involvement of Muslim scholars/scholars was limited to being respondents and participants in the workshop discussing the draft KHI that had been prepared in advance by the Drafting Team. When the workshop was attended by more than one hundred scholars, the scholars were satisfied with the draft KHI that had been prepared by the Drafting Team, because there

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<sup>9</sup> Sapriadi et al., "Kedudukan Ahli Waris Pengganti (Dzawu Al-Furudh) Dalam Peralihan Kewarisan Di Indonesia," *Jurnal Al-Ahkam: Jurnal Hukum Pidana Islam* 6, no. 2 (2024): 244-55, <https://doi.org/https://doi.org/10.47435/al-ahkam.v6i2.3127>.

<sup>10</sup> Ashiddieqy, *Fikihul Mawaris*; Afif, *Principles of Islamic Inheritance Law*, 117.

<sup>11</sup> Habiburrahman, *Reconstruction of Islamic Inheritance Law in Indonesia* (Jakarta: Prenada Media Group, 2011). 129.

<sup>12</sup> Gani Wahyu Widyana et al., "Direct Interview with Fiqh Experts Mawaris Wahyu Widyana, Gani Abdullah, Asmuni Abdurrahman, Ali Yasa Abu Bakar, Ali Yafie, Huzaimah Yanggo, Atho Mudzar, Amir Syarifuddin" (Interview, 2018).

were no *qat'i matters* that were violated and the few differences were only minor issues and only falls into the *khilafiyah category*.<sup>13</sup>

Based on the conclusions stated by Habibirrahman and Amir Syarifuddin and the results of several interviews with several KHI formulators, the author concludes that there were no differences of opinion regarding the process of formulating the provisions of the article on substitute heirs in the KHI, either in the discussion process at several universities, the 1988 national workshop in Jakarta or in the initial draft compiled by a large team that was approved in the Joint Decision Consideration of the Chief Justice of the Supreme Court and the Minister of Religious Affairs dated March 21, 1985 No. 07/KMA/1985 and No. 25 of 1985.<sup>14</sup>

It seems necessary to analyze by asking an important question regarding who first issued the term substitute heir. In an opportunity to interview al Yasa' Abu Bakar in Padang regarding the article on substitute heirs, at the beginning of the draft of the KHI, it was only completed around 1989. Before the issuance of the Presidential Instruction in 1991, doubts arose among the KHI drafting team regarding the implementation of this substitute heir article because it was seen as not having a strong legal basis. However, this problem was answered after al-Yasa'Abubakar was invited to present the results of his dissertation before several KHI drafting teams at the Supreme Court.<sup>15</sup>

The author believes the creation of this article on substitute heirs represents an actualization of Islamic thought, initiated by several figures in Islamic legal reform, who proposed the use of a new terminology, namely "Indonesian Fiqh." Among these figures in Islamic legal reform in Indonesia are Hazairin (1906-1975), Hasbi ash-Shiddieqi (1904-1975), Munawir Sjadzali (1925-2004), and others. Hazairin introduced a view to popularize the term "Mazhab Fiqh Indonesia."<sup>16</sup>

One of Hazairin's students, Professor Daud Ali, a professor of Islamic law at the University of Indonesia, stated that the term "alumni of successor heir" in discussions of Islamic inheritance law originated with Hazairin, as he was the first to use it. This term originates from Indonesian customary law. He then discovered and adopted it from there, incorporating it into Islamic inheritance law, and later used it in the Compilation of Islamic Law (KHI).<sup>17</sup>

Imran AM conveyed a different point, that in fact Indonesia in this case follows the steps of Pakistan, which has expressly included in the 1961 law on 'substitution of place'. Based on Section 4 of the Pakistani Family Law Ordinance, it is stipulated that if a grandchild

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<sup>13</sup> Amir Syarifuddin, "Interview with Mawaris Islamic Jurisprudence Expert with Prof. Dr. Amir Syarifuddin, at his residence in Lubuk Lintah," 2018.

<sup>14</sup> "Decision of the Supreme Court and the Minister of Religion dated March 21, 1985 No. 07/KMA/1985 and No. 25 of 1985 concerning the Appointment of the Implementer of the Islamic Law Development Project Through Jurisprudence or Better Known as the Project" (nd).

<sup>15</sup> Al-Yasa'Abubakar, "Heirs of Blood Consanguinity: Comparative Study of Hazairin's Reasoning and School of Fiqh Reasoning" (IAIN Yogyakarta, 1989). 162.

<sup>16</sup> Iwannudin, "Substitute Heirs According to Hazairin," *Court* 1, no. 2 (2016). 103.

<sup>17</sup> Muhammad Daud Ali, *Hukum Islam Pengantar Ilmu Hukum Dan Tata Hukum Islam* (Jakarta: Raja Grafindo Persada, 2011); Neneng Desi Susanti, "Analisis Pemikiran Prof. Hazairin Terhadap Ahli Waris Pengganti," *Nahdatul Ilmi: Jurnal Hukum Keluarga Islam* 11, no. 1 (2023): 22-32.

is with a son, then his position replaces his parents' position as a *substitute heir* and is entitled to receive the same share as the share that his parents should have received. This shows that Pakistan has officially used the concept of *substitute heirs* in its legal system.<sup>18</sup>

It is commonplace that any proposal of Islamic thought that differs from the established understanding of society often generates controversy. Some parties support it, others reject it, and some even accept it with revisions. A similar polemic arose in the wording of Article 185 of the KHI, which was considered contrary to classical Islamic jurisprudence. These issues include its position with the *dzawil furud* group, its relationship with the *asabah* group, the possibility that the *dzawil arham* portion is greater than the *dzawil furud*, whether a substitute heir can hinder another heir, the calculation of gifts received by the substitute heir from the testator, and the relationship of Article 185 with Articles 173 and 17, including the debate over the use of the word 'can' in the wording of Article 185. For more clarity, the author explains the thought patterns of each group:

*The group that Reject the Provisions of the Waris Expert 's Articles Replacement*

There are some traditional fiqh groups that still hold the opinion that the provisions of Article 185 of the KHI regarding substitute heirs have not been fully accepted, as they adhere firmly to classical jurisprudence, particularly the fiqh of the Shafi'i school. Example representative opinion Nahdhatul Scholars obtained in NU Online<sup>19</sup> website, in rubric ask answer law based on question from Wrong a about How position law Article 185 of the KHI, whether Can A grandchild receives his grandfather's inheritance, while the deceased grandfather still has other children besides the children who are the parents of the grandchild. From the answers given, it appears that they still do not accept the provisions of Article 185 of the KHI. This is based on the view that the KHI is not yet complete enough to resolve the distribution of inheritance according to Islamic law, while previous Islamic scholars have discussed it in detail.<sup>20</sup> Concluding the habb, quoting Imam Nawawi in *his book Raudlatut Thalibîn wa 'Umdatul Muftîn*, he explains the meaning of the text in determining the inheritance of a grandchild as follows:

“If the testator leaves biological children along with grandchildren from the male line, then the following provisions apply. If among the biological children there is a son, then the grandson of the son does not receive an inheritance. However, if the biological children left behind are not sons, then if there is only one daughter, she is entitled to half the inheritance. Furthermore, if there is a grandson of the son, then the entire remainder of the inheritance is his right. If the grandson of the son consists of several people, whether all sons or a combination of sons and daughters, then the property is distributed with the provision that a son gets twice the share of a woman. If the grandson of the son is only a daughter, then she gets a share of one-sixth. If there is more than one daughter, then the one-sixth share is divided equally among them. Meanwhile, if the testator's biological children

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<sup>18</sup> AM Imran, *Islamic Law and Religious Courts* (Jakarta: Raja Grafindo, 2001). 160.

<sup>19</sup> Abdurrahman, *Compilation of Islamic Law in Indonesia*. 123.

<sup>20</sup> Muhammad Mustofa, “*Substitute Heirs in the Compilation of Islamic Law*” (Thesis, Postgraduate Program, IAIN Syekh Nurjati Cirebon).90.

consist of two or more daughters, then they are entitled to two-thirds of the inheritance, so that the grandson of the son does not receive any share.<sup>21</sup>

Habiburrahman concluded his opinion based on a thorough analysis of Hazairin's thoughts regarding substitute heirs, identifying several errors. First, according to Hazairin, the transfer of inheritance rights through a bilateral-individual family substitution system is clearly not recognized in Islamic inheritance law. Second, Hazairin viewed the concept of substitute heirs as purely a product of customary law, which has not been acknowledged by Islamic law. Third, when analyzed through the theory of creed and the theory of God's sovereignty, the legal provisions regulated in Article 185 of the KHI appear to lack a basis in the textual sources of Islamic law and do not stem from customary law that has been formally accepted in Islamic jurisprudence through the theory of *receptie a contrario*.

#### *Group that Receives Replacement Heirs ' Terms and Conditions*

The group that accepted the provisions of the Substitute Heirs article after the completion of the KHI was legalized as a regulation applicable in Religious Courts was the group that adhered to the "Indonesian Islamic jurisprudence school" initiated by Hazairin. This group argued that granting rights to substitute heirs was an excellent policy and in accordance with the culture that developed in Indonesia. Falam gave birth to injustice that occurred in society because grandchildren did not receive a share of their grandparents' inheritance.

Hazairin's thoughts were passed on to his students and followers, who during the formulation process of the KHI held a strategic position in incorporating the provisions of Article 185 of the KHI.<sup>22</sup> In Hazairin's view, heirs are divided according to the Qur'an into three types, namely: *dzaw a 'il fara'id*, *dzawu al-Aqrabat* and *mawali*. This opinion differs from that of Islamic jurisprudence scholars. According to Islamic jurisprudence scholars, heirs are divided into: *dzu al-fara'id*, *'ashabah*, and *dzu al-arham*. Hazairin's opinion on *dzawu al- aqrabat* is taken from Shia opinion. He believes that the Islamic inheritance system created by Ahlu as-Sunnah is individual, patrilineal, and is considered flawed.<sup>23</sup> Therefore, he wanted to create a national inheritance system that suits the conditions of society in Indonesia, namely the individual bilateral system. Based on the individual, Hazairin divides heirs into two types: *first*, according to the main line of priority and *second*, according to the line of succession.<sup>24</sup>

Same thing delivered by figure Other Islamic laws like Amir Syarifuddin argued that the heir replacement system is considered fairer and therefore superior to the *ijtihad* of previous mujtahids in Islamic jurisprudence. However, in broader practice, the application of this system does not always reflect justice. This is particularly evident when the

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<sup>21</sup> Yahya bin Syaraf An-Nawawi, *Raudlatut Thâlibîn Wa 'umdatul Muftî*, Juz 4 (Beirut: Al-Maktab Al-Islami, 1991). 172.

<sup>22</sup> Habiburrahman, "Reconstruction of Islamic Inheritance Law in Indonesia." 207.

<sup>23</sup> Ahmad Faishal Rasyid, "Kontribusi Pemikiran Hazairin Tentang Ahli Waris Pengganti Dalam Kompilasi Hukum Islam: Kajian Aspek Hukum Dan Implementasinya" (Universitas Islam Indonesia, 2024), 80, <https://doi.org/dspace.uui.ac.id/123456789/51367>.

<sup>24</sup> Iwannudin, "Substitute Heirs According to Hazairin." 126.

replacement system recognized in the Burgerlijk Wetboek (BW) is only relevant within the BW inheritance framework, which does not differentiate between sons and daughters. Conversely, if the replacement system were implemented while maintaining the Islamic inheritance principle of differentiating sons and daughters, it would appear odd and lead to injustice.<sup>25</sup>

Strengthening Hazairin's opinion, Sayuti Thalib explained in detail what Hazairin meant by *mawalli* as follows:<sup>26</sup>

" Grandchildren, based on the Al-Qur'an, Surah An-Nissa, verse 33, the first line of law is used which reads: "And for every person we make a *mawali* from what his mother and father left behind, translated with just a precise explanation in brackets: "And for every person we (Allah) make a *mawali* (substitute heir who will replace him to receive a share of the inheritance) from the inheritance of his mother and father."

Ali Yasa Abu Bakar, in his analysis, also noted that the main issue attracting the attention of commentators has been *al-mawalli* and the phrase "wa allayina 'aqadat aimanukum". However, the expression "*al-walidan and al-aqrabun*" has tended to receive less discussion. Regarding *walli*, the focus has often been on the position of *asobah* and heirs in cases of substitution, specifically on the phrase "wa allayina 'aqadat aimanukum". Parents and relatives who become heirs serve as the referents of the pronoun in *kullun*. In other words, the phrase can be interpreted as: "Allah appoints for each person an heir who will inherit the property left by his parents and relatives", as also concluded by Hazairin.<sup>27</sup> The provisions of the article on substitute heirs were ultimately well received, as evidenced by the issuance of the Presidential Instruction in 1991. Damrah Khair Also expressed his view regarding substitute heirs that in understanding Hazairin's thoughts regarding inheritance verses there are four priority groups, namely children (and their descendants), parents, siblings (and their descendants), and *mawali* (substitute heirs) for parents of parents.<sup>28</sup>

In the contemporary Islamic jurisprudence, the provisions regarding substitute heirs also receive support from scholars.<sup>29</sup> This can be found in Sayyid Sabiq's work, *Fiqh al-Sunnah*, which provides an explanation regarding the concept of substitute heirs. "If someone dies (grandparents) and leaves descendants (grandchildren) from their children, at the time of death the grandfather died without children, while the descendants (grandchildren) are still alive or died (the child) at the same time as the grandfather/grandmother), then the

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<sup>25</sup> Amir Syarifuddin, *Islamic Inheritance Law*, 2nd Edition (Jakarta: Jakarta: Prenada Media, 2005).

<sup>26</sup> Thalib, *Islamic Inheritance Law in Indonesia*. 132.

<sup>27</sup> Abu-Bakar, *Ahli Waris Sepertalian Darah: Kajian Perbandingan Terhadap Penalaran Hazairin Dan Penalaran Fikih Mazhab*; Krismono, "Pemikiran Hazairin Tentang Ahli Waris Pengganti Dalam Kompilasi Hukum Islam," *Indonesian Journal of Shariah and Justice* 4, no. 1 (2024): 1-22, <https://doi.org/https://doi.org/10.46339/ijjs.v4i1.107>.

<sup>28</sup> Abu-Bakar, *Ahli Waris Sepertalian Darah: Kajian Perbandingan Terhadap Penalaran Hazairin Dan Penalaran Fikih Mazhab*. 127

<sup>29</sup> Aang Abdul Aziz, "Analisis Kritis Hukum Terhadap Kedudukan Ahli Waris Pengganti Dalam Hukum Keluarga Islam Di Indonesia," *Asy-Syari'ah* 19, no. 1 (2019): 1-14, <https://doi.org/10.15575/as.v19i1.3506>; Diana Zuhroh, "Konsep Ahli Waris Dan Ahli Waris Pengganti: Studi Putusan Hakim Pengadilan Agama," *Al-Ahkam* 27, no. 1 (2017): 43, <https://doi.org/https://doi.org/10.21580/ahkam.2017.27.1.1051>.

grandchildren are entitled to receive the portion obtained by the child as an inheritance from the grandfather's inheritance. And if the child is alive at the time of death (grandparents), then it is obligatory for the descendants (grandchildren) to receive *a wajibah will* from the inheritance amounting to the child's share within a maximum of one-third of the share."<sup>30</sup>

*Third Group Who Received the Replacement Heirs of the KHI with Condition Revision*

Among the groups that accept the provisions of substitute heirs is the Muhammadiyah Tarjih Council. This is evident in one of the answers to public questions in Suara Muhammadiyah magazine No. 13 published in 1997. This is reinforced by the results of an interview with Mr. Supriyatna.<sup>31</sup> He stated that basically Muhammadiyah recognizes the article on substitute heirs, but its practice in several cases differs from the KHI. For example, the Tarjih ruling still provides a share for a sibling's child to replace a parent who died first, while the KHI does not provide a share for a sibling's child if there are grandchildren. Muhammadiyah considers that sometimes the KHI is inconsistent, such as the opinion that children or grandchildren can block female siblings and that substitute heirs can be lower or lower.<sup>32</sup>

Muhammadiyah understands that although the understanding of substitute heirs in the KHI differs from the majority opinion of scholars regarding the interpretation of the phrase "*walad*," which is limited to children and sons (grandchildren of sons). Meanwhile, the KHI does not differentiate between grandchildren of sons or grandchildren of daughters. Muhammadiyah agrees with the KHI, because the Quran does not clearly and specifically define *walad*, therefore, *ijtihad* is permissible.<sup>33</sup>

Roihan A. Rasyid wrote a similar statement in his book, *Mimbar Hukum*. He differentiates between *substitute heirs* and *substitute heirs*. Substitute heirs are those who were not originally heirs, but due to certain circumstances and considerations may receive an inheritance but remain non-heirs. Meanwhile, substitute heirs are those who do not leave children but do leave behind grandchildren from their sons. In its current application, the article on substitute heirs is acceptable provided that the wording is first refined or clarified, so that everyone who reads it will have the same perception and will not give rise to different understandings or interpretations.<sup>34</sup>

The National Working Meeting of the Supreme Court of the Republic of Indonesia together with the Bandung High Court staff from four judicial districts throughout Indonesia, which took place in Balikpapan on October 10-14, 2010 with the theme "*With the Spirit of Change Strengthening the Foundation Towards a Supreme Court*", produced a number of conclusions, one of which was regarding the limitation of substitute heirs. In the results of the National Working Meeting, specifically in point 5 letter B, it was emphasized that the

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<sup>30</sup> Sayyid Sabiq, *Fiqh Sunnah* (Jakarta: PT. Pena Pundi Aksara, 2009). 172.

<sup>31</sup> Supriyatna, "Direct Interview with Inheritance Jurisprudence Expert Supriyatna, Inheritance Lecturer at UIN Kalijaga and Member of the Central MTT," 2018. 76.

<sup>32</sup> Supriyatna. 78.

<sup>33</sup> Muhammadiyah Tarjih Council PP Team, "Religious Fatwa, Voice of Muhammadiyah No. 13, 82nd Year 1997," 1997. 163.

<sup>34</sup> A. Roihan Rasyid, *Pulpit of Law: Actualization of Islamic Law, Number 23 Year VI (November-December 1995)* (Jakarta: Al-Hikmah & Directorate of Development of Islamic Religious Courts, 1995). 120.

implementation of the provisions of substitute heirs as stated in Article 185 of the Compilation of Islamic Law only applies to descendants in the direct line down to the degree of grandchildren. Thus, only grandchildren, namely the children of the testator's children, can become substitute heirs. Meanwhile, other relatives such as great-grandchildren (children of the testator's grandchildren), nephews (children of the testator's siblings and their descendants), and cousins (children of uncles and their descendants), are no longer included in the category of substitute heirs.<sup>35</sup>

Viewed from the perspective of the form of *ijtihad*, the formulation of Article 185 of the KHI falls into the form of *insya'i* (creative) *ijtihad*. Because the law of substitute heirs is based on the principle of *istishlâh*.<sup>36</sup> Apart from using *Ijtihad Bayani* from the *Isyar Nash*, he also makes laws using the proposition of *maslahat al-murlah*. It is clear that the basis used by Hazairin and his followers in formulating the article on successor heirs is a form of accommodation of customary law and BW into Islamic law due to considerations of welfare.

### **Implications and Implementation of Substitute Heirs in the Practice of Islamic Inheritance Law in Indonesia**

The implementation of Article 185 in the Compilation of Islamic Law (KHI), which regulates substitute heirs, has generated various debates in the practice of Islamic inheritance law in Indonesia. This provision allows grandchildren to replace the position of their deceased parents and receive inheritance rights from their grandparents. Although this regulation has been formally accepted in the Indonesian legal system, its application in the field often encounters challenges, particularly due to discrepancies between classical Islamic law and the provisions of the KHI. Therefore, it is essential to evaluate how this article is implemented in practice in Religious Courts and whether its application upholds the principles of Islamic law and social justice.

In the practice of Indonesian Islamic inheritance law, the implementation of substitute heirs is influenced by various factors, including interpretations of the legal text, scholarly opinions, and social dynamics. Decisions made by Religious Courts regarding substitute heirs often differ depending on the judge's understanding of the article. For example, some judges consider substitute inheritance valid only for grandchildren of male children, while others extend it to include grandchildren of female children, reflecting differing interpretations of the text.

To provide guidance for updating the rights of substitute heirs in the modern Indonesian legal system, the *maqāṣid al-sharī'ah* (objectives of Sharia) or *maslahah* (public benefit) approach can be used as a foundational principle. The *maqāṣid al-sharī'ah* emphasizes achieving justice, promoting public welfare, and fulfilling individual rights without causing harm. In the context of substitute heirs, this approach encourages adapting the Indonesian Islamic inheritance system to contemporary social, economic, and cultural conditions. For instance, the implementation of substitute heirs can be seen as an effort to

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<sup>35</sup> Mukhsin Asyrof, *Understanding the Institution of Substitute Heirs in KHI Inheritance Law Through the Thoughts of Prof. Dr. Hazairin*, *Journal of Law and Justice Forum*. No. 70 January 2010 (Jakarta: Center for the Development of Islamic Law and Civil Society, 2010). 78.

<sup>36</sup> Wahbah Az-Zuhaili, *Al-Fiqh Al-Islami Wa Adillatuhu* (Beirut: Dar al-Fikr, 2020). 211.

protect the rights of surviving family members and to prevent marginalization, particularly for grandchildren who have lost their parents.

The *maslahah* approach, which prioritizes public benefit, can also be applied to evaluate whether the substitute inheritance system provides greater benefits than potential drawbacks, both for heirs and other beneficiaries. Accordingly, updating Islamic inheritance law is necessary to ensure that existing legal provisions can respond to social changes in Indonesia without violating the core principles of Islamic law.

The implementation of Article 185 of the KHI concerning substitute heirs must ensure justice for all parties involved, especially those affected by the loss of family members. In this context, the principles of Islamic law based on *maqāṣid al-sharī'ah* provide a foundation for developing fairer and more relevant updates to inheritance law in Indonesia. As part of this reform, clarifications in the editorial text of the article may be required to ensure consistent interpretation and implementation across the country, while maximizing the broader benefits for society.

This research has important implications for the understanding and application of Islamic inheritance law in Indonesia, particularly regarding the provisions of Article 185 of the Islamic Law Code (KHI), which regulates successor heirs. One of the main implications of this research is the need to revise the wording of Article 185 of the KHI to create uniformity and fairness in the application of Islamic inheritance law in Indonesia. This article often gives rise to differing interpretations, particularly regarding who is entitled to be a successor heir—whether only the grandchildren of sons or also the grandchildren of daughters. This discrepancy can lead to injustice in practice, given the many differing views that exist among judges and legal practitioners.

Another practical implication is the need to adapt the provisions of Article 185 of the KHI to the social and cultural conditions of Indonesian society. The *maqāṣid al-sharī'ah* (objectives of sharia) approach, which emphasizes justice and social welfare, can be used as a basis for reforming inheritance law. Thus, further revision or clarification of Article 185 of the Compilation of Islamic Law (KHI) can ensure that this legal provision is more inclusive, provides better legal protection for grandchildren, and creates a fairer inheritance system in accordance with the Indonesian social context.

Furthermore, this research shows that the implementation of Article 185 of the KHI is not only related to legal aspects but also impacts social and family dynamics. In many cases, this legal ambiguity can impact interfamily relationships, particularly when grandchildren are denied their inheritance rights. Therefore, the social implications of this research demonstrate the importance of drafting inheritance laws that are more responsive to the needs of families and society, and more in line with the principles of justice envisioned by Islamic law.

## **Conclusion**

In Indonesian Islamic inheritance law, the implementation of substitute heirs is often influenced by various factors, including interpretations of legal texts, the views of Islamic scholars, and prevailing social dynamics. Religious court decisions regarding substitute heirs often vary depending on the judge's understanding of the concept. For example, some judges

consider substitute heirs applicable only to the grandchildren of sons, while others may extend it to the grandchildren of daughters. This is closely related to differing interpretations of the wording of the article, which can affect the consistency of the law's application.

An analysis of the implementation of Article 185 of the Compilation of Islamic Law (KHI) found that there are challenges in consistently applying the substitute heir system in practice. Differences in opinion regarding who is entitled to be a substitute heir (grandson of a son vs. granddaughter of a daughter) indicate the need for further clarification in the wording of this article. Therefore, it is important to consider clearer and more comprehensive updates to ensure consistent implementation across Indonesia. Furthermore, the *maqāṣid al-sharī'ah* (objectives of sharia) and *maslaha* (benefit of the community) approach can be used as a basis for reform to create an Islamic inheritance system that is more inclusive and relevant to the socio-economic needs of Indonesian society. A more open and equitable implementation of the substitute heir system can ensure that no family member is marginalized, such as a grandchild who has lost a parent.

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