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The Application of Substitute Heirs in Indonesian Islamic Inheritance Law: The Interplay of Fiqh, Customary Law, and Civil Law

Nur Saniah*[1], Titi Martini Harahap[2]
[1,2]*Sekolah Tinggi Agama Islam Negeri Mandailing Natal, Indonesia*
**Emal: saniah040488@gmail.com*

**Corresponding Author*

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Abstract

The implementation of the concept of substitute heirs in the Indonesian Compilation of Islamic Law (KHI) has sparked significant debate, as this concept is not found in classical fiqh texts. Article 185 of the Compilation of Islamic Law stipulates that grandchildren, whose parents have passed away, can replace their parents' position and inherit from their grandparents. While this concept is recognized in customary law and civil law, its application in religious courts is still influenced by varying interpretations. This study aims to analyze the implementation of Article 185 of the Compilation of Islamic Law regarding substitute heirs in legal practice in Indonesia, and to explore the juridical and philosophical foundations underlying it from the perspectives of fiqh, customary law, and civil law. The research method used is a normative legal approach with doctrinal analysis, examining relevant articles in the Compilation of Islamic Law and literature related to fiqh and civil law. Additionally, the study analyzes religious court rulings related to inheritance disputes involving substitute heirs. The findings of this study indicate that, while the provision regarding substitute heirs is recognized in the Compilation of Islamic Law, its application in religious courts is often debated, primarily due to differing interpretations and the influence of local traditions. Although the concept of substitute heirs is innovative, further clarification is needed to ensure greater justice. The implications of this research suggest the need for reform in the application of inheritance law regarding substitute heirs in Indonesia, so that it better aligns with the principles of social justice, family welfare, and the social realities of Indonesian society. Furthermore, integrating fiqh, customary law, and civil law principles more effectively in religious court practices could provide better protection for the inheritance rights of children who are left without parents.

Keywords: Compilation of Islamic Law, Inheritance Law, Religious courts, Substitute Heir

Abstrak

Penerapan konsep ahli waris pengganti dalam Kompilasi Hukum Islam (KHI) di Indonesia telah memicu perdebatan yang cukup signifikan, karena konsep ini tidak ditemukan dalam literatur fikih klasik. Pasal 185 KHI menetapkan bahwa cucu yang orang tuanya telah meninggal dunia dapat menggantikan kedudukan orang tuanya untuk mewarisi harta dari kakek atau neneknya. Meskipun konsep ini dikenal dalam hukum adat dan hukum perdata,

penerapannya di lingkungan peradilan agama masih dipengaruhi oleh beragam penafsiran. Penelitian ini bertujuan untuk menganalisis implementasi Pasal 185 KHI mengenai ahli waris pengganti dalam praktik hukum di Indonesia, serta menelaah landasan yuridis dan filosofis yang mendasarinya dari perspektif fikih, hukum adat, dan hukum perdata. Metode penelitian yang digunakan adalah pendekatan hukum normatif dengan analisis doktrinal, melalui pengkajian terhadap pasal-pasal terkait dalam KHI serta literatur yang relevan dalam fikih dan hukum perdata. Selain itu, penelitian ini juga menganalisis putusan-putusan pengadilan agama yang berkaitan dengan sengketa kewarisan yang melibatkan ahli waris pengganti. Hasil penelitian menunjukkan bahwa meskipun ketentuan mengenai ahli waris pengganti telah diakui dalam KHI, penerapannya di peradilan agama masih sering diperdebatkan, terutama akibat perbedaan penafsiran dan pengaruh tradisi lokal. Walaupun konsep ahli waris pengganti bersifat inovatif, diperlukan penegasan dan penjelasan lebih lanjut agar dapat menjamin keadilan yang lebih optimal. Implikasi dari penelitian ini menunjukkan perlunya reformasi dalam penerapan hukum kewarisan terkait ahli waris pengganti di Indonesia agar lebih selaras dengan prinsip keadilan sosial, kesejahteraan keluarga, serta realitas sosial masyarakat Indonesia. Lebih lanjut, integrasi yang lebih efektif antara prinsip-prinsip fikih, hukum adat, dan hukum perdata dalam praktik peradilan agama diharapkan dapat memberikan perlindungan yang lebih baik terhadap hak waris anak-anak yang ditinggalkan oleh orang tuanya.

Kata Kunci: Kompilasi Hukum Islam, Hukum Waris, Pengadilan Agama, Ahli Waris Pengganti

Introduction

Terminologically, a substitute heir is understood as an heir entitled to receive an inheritance by replacing the position of a direct heir who died first.[1] In other words, a substitute occurs when the relationship between the testator and the direct heir is severed due to death, so that the heir's position is taken over by his descendants.[2] For example, in a situation where a grandfather dies and his child has already died, the grandson can serve as the substitute heir. However, if the testator's child is still alive, the grandson does not receive this position.[3]

The existence of substitute heirs in the Compilation of Islamic Law (KHI) represents a new concept previously unknown in classical Islamic inheritance law.[4] This provision is normatively regulated in Article 185 of the KHI, which states that: (1) an heir who dies before the testator may be replaced by his child, except for those listed in Article 173; and (2) the substitute heir's share may not exceed the share of an heir of equal standing with the party being replaced. Based on this provision, grandchildren can receive an inheritance in place of

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1 Diana Zuhroh, "Konsep Ahli Waris Dan Ahli Waris Pengganti: Studi Putusan Hakim Pengadilan Agama," *Al-Ahkam* 27, no. 1 (2017): 43, https://doi.org/10.21580/ahkam.2017.27.1.1051.

2 Habibah Fiteriana, "Konsep Ahli Waris Pengganti Dalam Perspektif Mashlahah Jasser Auda (Telaan Pengaturan Di Indonesia Dan Dunia Islam)," *Ahwaluna| Jurnal Hukum Keluarga Islam* 3, no. 1 (2023): 224–33; Ahmad Saidi Hasibuan and Ridho Syahputra Manurung, "Analisis Hukum Mutlak Ahli Waris Ditinjau Dari KUH Perdara Dan Hukum Islam," *Yustisi Jurnal Hukum Dan Hukum Islam* 10, no. 3 (2023): 393–416.

3 Suarni Suarni and Syukrinur Syukrinur, "An Examination of Substitute Heirs in Islamic Civil Law in Indonesia: An Interpretative Analysis of Legal Verses," *Al-Qadha: Jurnal Hukum Islam Dan Perundang-Undangan* 11, no. 2 (2024): 388–402, https://doi.org/10.32505/qadha.v11i2.9396.

4 Syahrizal, *Hukum Adat Dan Hukum Islam Di Indonesia* (Nadiya Foundation, 2004). p. 78

a parent who died first, even if the testator still has sons or daughters.[5] Thus, the position of grandchildren is understood as succeeding their father or mother in receiving a share of the inheritance.[6]

The existence of substitute heirs in the Compilation of Islamic Law (KHI) represents an innovation not found in classical Islamic inheritance law. This concept has sparked debate among legal experts in Indonesia, from the perspectives of Islamic jurisprudence, customary law, and civil law.[7] In the KHI, provisions regarding substitute heirs are regulated in Article 185, which essentially grants grandchildren the right to inherit in the place of their deceased parents, except for those exempted in Article 173. However, the share received by substitute heirs cannot exceed the share of the heirs of equal standing.

The debate regarding the legal basis for substitute heirs can be divided into three main perspectives. First, some experts argue that this concept stems from customary law, which has long been practiced in Indonesian society and is recognized through court jurisprudence.[8] Second, some argue that the concept of substitute heirs was adopted from Western civil law (BW), where the term plaatsvervulling, or replacement of heirs, is well-known and regulated in Articles 841 and 842 of the BW.[9] Third, according to Hazairin, this concept has a basis in the Qur'an, specifically Surah an-Nisa' verse 33, although some scholars and judges believe that the application of Article 185 of the Compilation of Islamic Law (KHI) is based more on considerations of public interest (maqasid sharia) than textual evidence.[10]

Nevertheless, the implementation of substitute heirs in practice continues to generate pros and cons. Some members of the public and religious judges reject this concept because they believe it lacks a strong basis in the Qur'an and Hadith. Consequently, the rights of grandchildren whose parents have predeceased them are often granted through gifts or wills, rather than through substitute heir mechanisms. This debate demonstrates the need for further study to ensure that the provisions on substitute heirs are widely accepted and avoid multiple interpretations within the community.[11]

Facts that happened sound Article 185 of the KHI concerning expert inheritance replacement Still often debated and considered multi-interpretable even by the judges in the

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5 Yuliatin Yuliatin et al., "Tradisi Hitung Waris dalam Walimatul â€˜Ursy Masyarakat Melayu," *Al-Istinbath: Jurnal Hukum Islam* 10, no. 1 (2025): 154–71, https://doi.org/10.29240/jhi.v10i1.11127.

6 Elfia Elfia et al., "The Struggle of Custom and Sharia: Classic Dilemma of Inheritance Settlement in Javanese and Minangkabau Ethnic Communities in Indonesia," *Al-Istinbath: Jurnal Hukum Islam* 8, no. 1 May (2023): 75–94, https://doi.org/10.29240/jhi.v8i1.5480.

7 Naskur Bilalu et al., "Reevaluating Inheritance Distribution in Indonesia: The Role of Hibah as a Preventive Measure," *Al-Istinbath: Jurnal Hukum Islam* 10, no. 1 (2025): 378–406, https://doi.org/10.29240/jhi.v10i1.12530.

8 Rafiq Ahmad, *Pembaharuan Hukum Islam Di Indonesia* (Gama Media, 2001). 103

9 Mohammad Fauzi, "Legislasi Hukum Kewarisan Di Indonesia," *Ijtimaiyya* 9, no. 2 (2016): 53–76.

10 Nina Ismaya and Andi Safriani, "Tinjauan Yuridis Terhadap Ahli Waris Pengganti Dalam Hukum Kewarisan Islam Dan Hukum Kewarisan Perdata di Indonesia," *Alauddin Law Development Journal* 4, no. 3 (2022), https://doi.org/10.24252/aldev.v4i3.20141; 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.

11 Muhammad Hidayat, "Islam, State, and Local Wisdom: An Examination of Widowhood Inheritance Law in Indonesia," *Al-Qadha: Jurnal Hukum Islam Dan Perundang-Undangan* 11, no. 2 (2024): 312–27, https://doi.org/10.32505/qadha.v11i2.9518.

neighborhood religious courts. Likewise, not all legal experts in Indonesia agree with their concept substitute; even there are those who refuse at all, as stated by one of the Chief Justices of the Supreme Court of the Republic of Indonesia, Habiburrahman in the book, whose results his dissertation states:[12]

> "Draft expert inheritance existing substitute in KHI is conflicting concepts with the Qur'an and the Hadith. According to his draft expert inheritance, the replacement initiated by Hazairin in Indonesia is only based on observation of the condition of Indonesian society, which is individual bilateral. On the other hand, it ignores the provision for the heir that should be as regulated in the Koran and Sunnah. Besides that, although Hazairin changed the interpretation of previous scholars, which according to him interpretation of previous scholars was only suitable for Arab society and not in accordance with applied to Indonesian society, reconstruction law Islamic inheritance, according to Hazairin, became blurry from must ideally that is stand on to maslahah, but objective general from welfare that became weak because contradictory with argument *qath'i* (al-Qur'an and hadith)."

The reality that occurs in the midst of society also cannot be denied, such as results research obtained by Mukhtar Alamsyah, one of the Court Judges in Aceh, stated that that practice outside Bireuen Sharia Court existence expert inheritance replacement Not yet can accepted by most big society. They are to argue that system inheritance replacement No, there is a source; the law is clear in the Qur'an and hadith.[13] Naturally, to realize rights for grandchildren whose parents leave, moreover, first, then part-publicly give it to him through grant media or testament.

Several previous studies have examined this topic. Yuhani Irwansyah and colleagues stated in their study that the provisions regarding substitute heirs in the Indonesian Civil Code (KUHPerdata) are more secure and clear compared to the Compilation of Islamic Law (KHI), whose application is still case-specific and tentative. This suggests that although the KHI regulates substitute heirs, there is still room for improvement to better align with the legal and justice needs of society.[14] Furthermore, Iklil Hasbiyallah and Yayat Dimyati emphasized that the establishment of substitute heir laws in the KHI is motivated by a spirit of justice and welfare, which aims to protect family welfare, especially for heirs left behind by their parents.[15] Muhammad Arief Budhi Widjayanto et al. also studied the status of substitute heirs in Islamic inheritance law, focusing on analyzing the status of grandchildren and heirs not explicitly regulated in the Qur'an and Sunnah. This research demonstrates the importance of a dynamic interpretation of Islamic inheritance law that takes into account the principles of justice and social developments, ultimately leading to the need for adjustments

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[12] Habiburrahman, *Rekonstruksi Hukum Kewarisan Islam Di Indonesia* (Kencana, 2011). 97.

[13] Mukhtar Alamsyah, *Kedudukan Ahli WarisPenggantidalamPewarisan (StudiPada Wilayah HukumMahkamahSyariahBireuen)* (Cita Pustaka Media Printis, 2008). 129

[14] Yuhani Irwansyah et al., "Tinjauan Yuridis Hak Waris Anak Sebagai Ahli Waris Pengganti Orang Tua Ditinjau Dari Kompilasi Hukum Islam Dan Kuhperdata," *Unizar Recht Journal* 3, no. 4 (2024).32

[15] Iklil Hasbiyallah et al., "Waris Pengganti Perspektif Kompilasi Hukum Islam," *Al-Mawaddah: Jurnal Studi Islam Dan Hukum Keluarga (Ahwal al-Syakhsiyyah)* 1, no. 1 (2024): 48–53.

to the KHI regulations to better align with the legal realities in Indonesia.[16] Furthermore, Muhammad Aini also criticized the ambiguity and unfairness in the application of the law on substitute heirs in the KHI. He suggested a reconstruction of Article 185 of the KHI to provide greater clarity in its application and ensure the protection of inheritance rights for all entitled parties.[17]

Wahidah Ideham and Hazar Kusmayanti state that Article 185 of the KHI expressly recognizes the existence of substitute heirs, particularly grandchildren whose parents predeceased the testator. This recognition represents a breakthrough not explicitly found in classical fiqh texts, but rather the result of scholarly ijtihad and Islamic legal policy (farāidh) that considers the benefit of the family and the principles of maqāshid al-shari'ah, including gender justice and the protection of lineage. The full legality of these substitute heirs is also reinforced by Supreme Court jurisprudence, which emphasizes the principles of justice, equality, and family harmony.[18] Hasan M, (2023) in his research at the Pontianak Religious Court highlighted that the construction of inheritance law by judges is more influenced by jurisprudence and socio-cultural reasoning. Judges use legal discovery methods and expand the boundaries of substitute heirs not only to second-degree descendants, but to all descendants. Local traditions also play an important role in shaping judges' perspectives on substitute heirs.[19]

Most existing research focuses on theoretical considerations, while lacking in-depth discussion of the practical challenges faced in implementing this law, both in religious courts and in everyday life. Although several studies have addressed Surah an-Nisa' verse 33 regarding substitute heirs, this understanding remains limited in the context of Indonesian law, with few studies linking Hazairin's thinking to the application of inheritance law in a pluralistic society. This creates a gap in existing legal scholarship, where research has not yet thoroughly explored the relationship between customary law, civil law, and Islamic jurisprudence (fiqh) in the practice of substitute heir law in Indonesia.

This research presents a novel approach by offering a more in-depth perspective on the application of Article 185 of the Compilation of Islamic Law (KHI) on substitute heirs, a principle that has not been comprehensively analyzed. It also presents jurisprudential arguments relevant to the local Indonesian context, combining customary law, civil law, and Islamic jurisprudence within a comprehensive analytical framework. This research is

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[16] Muhammad Arief Budhi Widjayanto et al., "Perbandingan Ahli Waris Pengganti Ditinjau Dari Perspektif Hukum Islam Dan Hukum Perdata," *Indonesian Journal of Social Sciences and Humanities* 4, no. 2 (2024): 56–64.

[17] Muhammad Aini, "Problematika Penerapan Hukum Ahli Waris Pengganti Yang Belum Berkeadilan Dalam Kompilasi Hukim Islam Di Indonesia," *Jurnal Penegakan Hukum Indonesia (JPHI)* 4, no. 2 (2023): 211–234.

[18] W Ideham, "Substitute Heirs in the Compilation of Islamic Law: An Overview from Gender Equality Perspective Case Study of the Religious Courts in Banjarmasin," *Samarah: Jurnal Hukum Keluarga Dan Hukum Islam* 6, no. 2 (2022), https://doi.org/10.22373/sjhk.v6i2.12466; H Kusmayanti and L. Krisnayanti, "Hak Dan Kedudukan Cucu Sebagai Ahli Waris Pengganti Dalam Sistem Pembagian Waris Ditinjau Dari Hukum Waris Islam Dan Kompilasi Hukum Islam," *Jurnal Ilmiah Islam Futura* 19, no. 1 (2019): 68–85, https://doi.org/10.22373/jiif.v19i1.3506.

[19] M Hasan, "Construction of Modern Islamic Inheritance Law Based on Ijtihad of the Judges at the Religious Court of Pontianak, West Kalimantan," *Samarah: Jurnal Hukum Keluarga Dan Hukum Islam* 7, no. 2 (2023), https://doi.org/10.22373/sjhk.v7i2.8852.

significant because it fills the gap in research on substitute heirs in Indonesian law, particularly regarding the application of inheritance law in religious courts. By referring to the principles of fiqh and contemporary interpretations, the results of this study have the potential to provide more applicable recommendations in improving the provisions in the KHI, so that they are more in line with the principles of justice and the welfare of Indonesian society.

This research uses a normative legal method with a doctrinal approach, focusing on literature review and analysis of existing legal regulations, particularly the Compilation of Islamic Law (KHI). This approach aims to explore and interpret legal texts and relevant fiqh principles to understand the legal construction of substitute inheritance in the Indonesian context.[20] This research design is descriptive and analytical, examining in depth the provisions of Article 185 of the Compilation of Islamic Law (KHI) concerning substitute heirs. This study aims to analyze the application of substitute inheritance law in Indonesian court practice and society, as well as to explore its legal basis and underlying principles within the context of Islamic jurisprudence and civil law. This study also explores the relationship between Islamic jurisprudence concepts and their application in Indonesian inheritance law.[21]

The primary data used in this study are laws and regulations, particularly the Compilation of Islamic Law, which includes articles related to inheritance. Secondary data, including legal literature, fiqh books, academic studies, and articles related to Islamic inheritance law and relevant schools of jurisprudence, were also used to enrich the analysis. These sources help understand the theoretical background and practical application of substitute inheritance law in Indonesia.[22]

The data collection technique used was a literature and document review. The first step was a literature review to understand the latest law in the compilation of Islamic law in the field of inheritance specifically for inheritance substitution experts, then a review of each article. Next, a study was conducted on the philosophical and methodological basis of jurisprudence, such as the basis for inheritance substitution experts in the Compilation of Islamic Law (KHI). Furthermore, this study also collected data from court decisions related to inheritance substitution disputes in Indonesia to analyze the implementation of the provisions of Article 185 of the Compilation of Islamic Law in legal practice. After the data was collected, analysis was conducted using a qualitative approach. The analytical technique used was descriptive-analytical analysis, which aimed to interpret legal texts and fiqh literature, and explore the meaning, context, and application of the principles of vicarious inheritance law in legal practice in Indonesia.

This study employed a combined methodological approach of ideductive inductive, which combines drawing conclusions from legal texts and jurisprudential interpretation to build a solid legal argument. In analyzing the legal texts, this study utilized jurisprudential

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[20] Amiruddin and Zainal Asikin, *Pengantar Metode Penelitian Hukum* (Raja Grapindo Persada, 2008). 20

[21] Kornelius Benuf and Muhamad Azhar, "Metodologi Penelitian Hukum sebagai Instrumen Mengurai Permasalahan Hukum Kontemporer," *Gema Keadilan* 7, no. 1 (2020): 20–33, https://doi.org/10.14710/gk.2020.7504.

[22] Muhammad Syahrun, *Pengantar Metodologi Penelitian Hukum: Kajian Penelitian Normatif, Empiris, Penulisan Proposal, Laporan Skripsi Dan Tesis* (CV. Dotplus Publisher, 2022). 52

principles to assess the relevance and consistency of Article 185 of the Compilation of Islamic Law (KHI) with the values of justice in the Indonesian legal system.[23] This analysis process refers to Islamic legal methodology that integrates *qawā'id fiqhiyyah* (rules of fiqh) with the need for justice in the application of inheritance law. This study prioritizes a doctrinal approach, which focuses on the study of written legal regulations and the interpretation of relevant legal texts. In this context, this research not only discusses the legal norms written in the KHI but also examines the basis of fiqh and the thoughts that form the basis for the formation of these legal rules, especially those related to substitute heirs.

Inheritance of Heirs Replacement in Compilation of Islamic Law

The concept of heirs by substitution, as recognized in the Compilation of Islamic Law (Kompilasi Hukum Islam/KHI), is not a new phenomenon in Indonesia.[24] Long before the codification of the KHI, the concept of substitution had already been known through the Dutch legal term plaatsvervulling, which literally means "replacement of position." In inheritance law, substitution refers to the replacement of an heir, namely when a person dies leaving grandchildren whose parent has predeceased the testator, thereby allowing the grandchildren to inherit in place of their deceased parent. In such cases, the substitution replaces the position of the parent who has died earlier in inheriting from the grandfather or grandmother. The maximum share that a grandchild may receive is equal to the share that his or her parent would have received if still alive. [25]

In Western law, *plaatsvervulling* is regulated under Articles 841 to 848, Article 852, Articles 854 to 857, Article 860, and Article 866 of the Civil Code (Burgerlijk Wetboek). These provisions clearly demonstrate that the Civil Code comprehensively regulates substitution in inheritance law. For example, Article 841 stipulates that substitution grants a person the right to replace another and to assume, in degree and in entirety, all the rights of the person being replaced. Furthermore, Article 842 provides that substitution in a direct descending line continues indefinitely and does not cease. [26]

In customary law, the existence of inheritance substitution or plaatsvervulling in civil law has been identified in various regions of Indonesia. In Central Java, this concept was found by Djojodigoeno and Tirtawinata, as mentioned in the book Customary Law of Central Java. Gondokoesoemo and Emanuals also identified substitute heirs in the Magelang area, as written in the magazine Indies Law Enforcement Act, Part 149, page 141. Similarly, in East Java, the institution of substitution was discovered by Wirjono Prodjodikoro during his in-depth research conducted in 1938.[27]

A substitute heir, as referred to in customary law with the term broken titi, is a person whose relationship with the testator is interrupted by an intermediary heir who has

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[23] I. Gusti Ketut Ariawan, "Metode Penelitian Hukum Normatif," *Kertha Widya* 1, no. 1 (2013): 21–30, https://doi.org/10.37637/kw.v1i1.419.

[24] Zuhroh, "Konsep Ahli Waris Dan Ahli Waris Pengganti: Studi Putusan Hakim Pengadilan Agama." 40

[25] 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.

[26] Musa Musa, "Ahli Waris Pengganti Dalam Tinjauan Kompilasi Hukum Islam Dan Hukum Perdata," *Isti`dal: Jurnal Studi Hukum Islam* 7, no. 1 (2021), https://doi.org/10.34001/istidal.v7i1.2154.

[27] Hajar, "Asal Usul Dan Implementasi Ahli Waris Pengganti Perspektif Hukum Islam."29

died earlier. If the direct heir is still alive, there is no need for a substitute heir. For example, the relationship between a grandfather and a grandchild is mediated by the child; the grandchild becomes a substitute heir only if the child has died earlier than the grandfather. If the child is still alive, the grandchild does not become an heir. Descendants are therefore considered substitute heirs only when they replace their deceased parents.[28]

Based on various studies, the institution of inheritance substitution has been widely recognized throughout West Java, including in areas such as Leuwiliang, Cileungsi, Banjar, Ciamis, Kawali, Cianjur, Bandung, Pandeglang, Karawang, Indramayu, and Bekasi. Furthermore, the National Inheritance Law Symposium held on February 10–12, 1983 concluded that the institution of inheritance should be based on natural principles, namely that property belongs to relatives and descendants as a means of sustaining life.[29] Accordingly, if a child dies earlier, the children of the deceased collectively replace their father as heirs to the property of the grandfather or grandmother.[30]

Even before the enactment of the Compilation of Islamic Law (KHI) in 1991, Religious Courts had adjudicated cases concerning substitute heirs, such as case number 274/Rev.V./1990/PA Palu dated August 16, 1990. The existence of the institution of substitute heirs is rooted in customary law and reinforced by the views of Yahya Harahap, one of the formulators of the KHI. He emphasized that the determination of substitute heirs cannot be separated from customary law, as social realities show that when a person dies earlier than his heirs, a legal relationship continues through his descendants. In this context, substitute heirs are entitled to receive the inheritance share of their deceased parents. [31]

Yahya Harahap further stated that inheritance substitution is also regulated in the Civil Code (BW), particularly in Articles 854 to 857, demonstrating that the concept originates from both European law and customary law.[32] However, he noted that inheritance substitution does not follow the concept of wasiat wajibah applied in some Islamic countries.[33] Although Islamic jurisprudence does not explicitly recognize substitute heirs as understood in customary law, classical fiqh literature such as "*Khulasah Ilm al-Faraid and Nihayat al-Muhtaj*" acknowledges principles that are substantively similar,[34] particularly

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[28] Heri Firmansyah and Zulkifli Nas, "Islamic Inheritance Law Reform in Indonesia from the Perspective of Islamic Legal Politics: Strategies and Implications," *Al-Qadha: Jurnal Hukum Islam Dan Perundang-Undangan* 11, no. 2 (2024): 403–29, https://doi.org/10.32505/qadha.v11i2.10267.

[29] Eman Suparman, *Hukum Waris Indonesia: Dalam Perspektif Islam, Adat Dan BW* (Refika Aditama, 2007); Eman Suparman, *Eman Suparman, Hukum Waris Indonesia Dalam Perspektif Islam, Adat, Dan BW, (Bandung: Refika Aditama, 2005), 14. 63 34*, 2005, 34–44.

[30] T Kusnanto, *Kedudukan Cucu Sebagai Ahli Waris Pengganti Berdasarkan Ketentuan Kompilasi Hukum Islam*, 2007.50

[31] Khairuddin Hasballah et al., *P Atah T Iti and Substitute Heirs: A Study of Legal Pluralism on the Inheritance System in Aceh Community*, 21, no. 2 (n.d.): 299–324.

[32] Aziz, "Analisis Kritis Hukum Terhadap Kedudukan Ahli Waris Pengganti Dalam Hukum Keluarga Islam di Indonesia." 34

[33] Aziz, "Analisis Kritis Hukum Terhadap Kedudukan Ahli Waris Pengganti Dalam Hukum Keluarga Islam di Indonesia."35

[34] Vieka Oktanie Liastikha, "Kedudukan Ahli Waris Pengganti Dalam Sengketa Waris Berdasarkan KUH Perdata," *Sang Pencerah: Jurnal Ilmiah Universitas Muhammadiyah Buton* 10, no. 1 (2024): 309–20; Brayen Yunzo Punuh, "Ahli Waris Pengganti Dalam Hukum Waris Dan Penerapannya Dalam Putusan Mahkamah Agung Nomor: 2870K/PDT/2012," *Lex Privatum* 13, no. 1 (2024): 32.

regarding the position of grandchildren when the intermediary heir has predeceased the testator.[35]

In two of the works above, if analyzed in a thorough way, it will be found that expert inheritance replacement is in the books above No. 1, with the intention of compiling Islamic Law, the Civil Code, and also customary law. With thus can be concluded that expert inheritance, the so-ccalled substitute in KHI, is not the same as what is there in jurisprudence classic, while draft expert inheritance replacement in KHI has proximity meaning and implementation with draft *platform* or changeover place in BW or term deep broken titi law custom.[36]

The only opinion that recognizes the existence of inheritance substitution in Islamic law is that of Hazairin, as expressed in his book Bilateral Inheritance Law According to the Qur'an and Hadith. His opinion can be regarded merely as an effort to motivate legal scholars, both Islamic law scholars and other legal experts, to further study and conduct research on inheritance substitution. This opinion is not based on strong arguments, nor is it supported by the views of earlier mujtahids.[37] Hazairin's interpretation regarding the existence of inheritance substitution in Islamic law is a new interpretation and has never previously been adopted by classical *mufassirūn* or Islamic law scholars, either domestically or internationally. The argument used by Hazairin to support the existence of inheritance substitution in Islam is based on Sūrat al-Nisā' verse 33. Hazairin explains that Surah an-Nisa verse 33 indicates that Allah has appointed mawali for individuals from the inheritance left by parents and close relatives (*alladhīna 'aqadat aymānukum*), and that these mawali are entitled to receive their respective shares.[38]

According to Hazairin, the term *mawālī* refers to heirs who are associated with the terms *al-wālidayn* (parents) and *al-aqrabūn* (close relatives), who are recognized as heirs. In situations where the heir is a parent (father or mother), Hazairin argues that the heirs are the children (*al-awlād*) or the children's mawālī. If the children are still alive, they themselves become the heirs and directly receive the inheritance in accordance with Sūrat al-Nisā' verse 11. However, verse 33 also recognizes the mawālī of children as heirs, which, according to Hazairin, can only be understood as referring to the descendants of a child who has died earlier.[39] Thus, when the heirs are the father or mother, their heirs are the children, and there is no other reasonable interpretation of *mawālī* except as descendants of a child who has predeceased the testator, provided that the parent's position as heir has been replaced.

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[35] Yusfriadi Abda B, *Konstruksi Hukum Waris Islam: Studi Perbandingan Fikih Islam Dan Kompilasi Hukum Islam*, 1961 (2022): 207–219.

[36] Akhmad Sukris Sarmadi, "Ahli Waris Pengganti Pasal 185 KHI Dalam Perspektif Maqasid Al-Syari'ah," in *Al-Manahij: Jurnal Kajian Hukum Islam*, vol. 7, no. 1, preprint, 1970, https://doi.org/10.24090/mnh.v7i1.577.

[37] Iwannudin Iwannudin, "Ahli Waris Pengganti Menurut Hazairin," *Mahkamah* 1, no. 2 (2016): 302–310.

[38] Krismono 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/10.46339/ijsj.v4i1.107.

[39] Muhammad Wildan Fatoni and Syabbul Bachri Bachri, "Perspectives on Inheritance and Bequest for Heirs' Descendants: A Comparative Analysis of Muhammad Shahrur and Hazairin," *AL-FATTĀH* 1, no. 02 (2024), https://journal.stai-almujtama.ac.id/index.php/al-fattah/article/view/111.

Thus, it is said that Hazairin interprets the word "*mawālī*" with a grandson whose father died while grandpa or her grandmother is still alive.[40] Grandson This occupies (replaces) a position his father inherited from his grandfather or grandmother. However, if you, his deceased father, still live in the book of fiqh, grandchildren will not get a legacy because he hijab with his uncle, who is still alive as ashabah, for treasure inheritance from his or her grandparents. Interpretation This reinforced again with the fact that Allah in Surah an-Nisa's verse 33 uses the word *ja'ala,* which is meaningful with the word *khalaqa,* to determine the *mawālī*, namely create from No There is to There is (*kun fayakun).*[41] The implementation of heir replacement, as described above, can of course only be realized within kinship relationships, because birth and legal establishment cannot occur through other means, such as appointment.

وَلِكُلٍّ جَعَلْنَا مَوَالِيَ مِمَّا تَرَكَ الْوَالِدٰنِ وَالْاَقْرَبُوْنَۗ وَالَّذِيْنَ عَقَدَتْ اَيْمَانُكُمْ فَاٰتُوْهُمْ نَصِيْبَهُمْۗ اِنَّ اللّٰهَ كَانَ عَلٰى كُلِّ شَيْءٍ شَهِيْدًا ﴿٣٣﴾

Meaning: And We have appointed heirs to what has been left by parents and next of kin. As for those you have made a pledge to, give them their share. Surely Allah is a Witness over all things.

Based on his interpretation of Surah an-Nisā' verse 33, Hazairin also applies the concept to other heirs. If the heir is a brother (*aqrabūn*), then the rightful heirs are the brother's *mawālī*, namely his descendants.[42] Meanwhile, in the case of the father and the mother, the *mawālī* are those in the ascending line, namely the parents of the father and the parents of the mother, that is, the grandparents in the first degree. Hazairin does not treat the children as heirs through the father or mother by way of gift, because the Qur'an has already determined parents as direct heirs within the primary group, whose priority is above that of the children.[43] Therefore, if the parents have predeceased the testator, the children inherit in their place as substitute heirs.

Hazairin's interpretation, as explained above, differs from the views of classical Qur'anic commentators, including al-Qurṭubī. In his exegetical work *al-Jāmiʿ li Aḥkām al-Qurʾān*, al-Qurṭubī interprets the term *mawālī* in Surah an-Nisā' verse 33 as referring to the recipients of the remainder of an estate after the distribution of inheritance. This interpretation is based on a prophetic tradition stating that the remaining portion of the inheritance is allocated to the closest male agnatic heirs (*ʿaṣabah*).[44] Hazairin rejects this argument on the grounds that the distribution of inheritance to grandchildren as substitute

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[40] Muhammad Nur et al., "From Text to Context: The Role of Kyai in Shaping Modern Islamic Inheritance Law," *Al-Manāhij: Jurnal Kajian Hukum Islam* 19, no. 1 (2025): 31–50, https://doi.org/10.24090/mnh.v19i1.9762.

[41] Haslinda Sabdah and Supardin Supardin, "Analisis Hukum Islam Terhadap Teori Hazairin Tentang Penetapan Ahli Waris Pengganti Dalam Sistem Hukum Kewarisan Islam," *Shautuna: Jurnal Ilmiah Mahasiswa Perbandingan Mazhab Dan Hukum*, ahead of print, 2021, https://doi.org/10.24252/shautuna.v2i1.17434.

[42] Muhammad Darwis, "Analisa Pemikiran Hazairin Tentang Mawali," *Hukum Islam* 14, no. 1 (2014): 82–89, https://doi.org/10.24014/hi.v14i1.991.

[43] Rosidi Jamil, "Hukum Waris Dan Wasiat (Sebuah Perbandingan Antara Pemikiran Hazairin Dan Munawwir Sjadzali)," *Al-Ahwal: Jurnal Hukum Keluarga Islam* 10, no. 1 (2017): 99–114, https://doi.org/10.14421/ahwal.2017.10108.

[44] Davina Dewi Aulyanti and Taupiqqurrahman, "The Position of Substitute Heirs as Perpetrators of The Murder of Direct Heirs Based on Civil Inheritance Law," *JURNAL MERCATORIA* 17, no. 2 (2024): 122–32, https://doi.org/10.31289/mercatoria.v17i2.13186.

heirs through the principle of substitution or testament is more consistent with the ethical ideals of Islam, which emphasize limiting inheritance rights to the closest degree of kinship. According to Hazairin, the reform of inheritance law concerning the rights of grandchildren can only be achieved through the principle of substitution or through a testamentary mechanism. The fundamental difference between substitution and testament lies in the limitation imposed on testamentary bequests, which may not exceed one-third of the total estate. The institutionalization of inheritance substitution as a means of ensuring justice for orphaned grandchildren thus represents a legal breakthrough and a significant reform reflecting the socio-legal realities of the twentieth-century Islamic world.[45]

Hazairin's reasoning regarding the basis for determining inheritance substitution, as stated in his book Bilateral Inheritance Law According to the Qurʾan and Ḥadīth, published in 1982, has also been supported by several Indonesian scholars, each advancing their own arguments. For example, Sayuti Thalib explains that the *mawālī* referred to by Hazairin should be understood as grandchildren, based on the legal construction of Surat al-Nisāʾ (4):33. He refers to the verse which states that Allah has appointed for every person *mawālī* who replace him in receiving a share of inheritance from the estate left by his parents. According to Sayuti Thalib, in the interest of justice, both grandsons through sons and grandsons through daughters should, in principle, be able to inherit through the mechanism of substitution. Such a legal provision, in his view, reflects a sense of justice in inheritance law, as it avoids privileging one group while marginalizing another solely on the basis of gender. [46] A similar view is expressed by Amir Syarifudin, who argues that the use of the institution of inheritance substitution (al-irtith bi al-ḥulūl) is fairer and more appropriate than earlier *ijtihād* in classical jurisprudence. According to him, the institution of inheritance substitution does not differentiate the position of grandchildren, whether they descend from sons or daughters. Both are equally entitled to occupy the position of substitute heirs.

Based on the foregoing discussion, the author concludes that the formulation of inheritance substitution as regulated in Article 185 of the Compilation of Islamic Law does not depart from three main aspects. First, it is grounded in customary law (al-ʿurf) that has long been practiced by many Indonesian communities, particularly in Sundanese and Javanese regions. Second, it draws upon civil law (the Civil Code/BW), which formulates a concept of inheritance substitution largely similar to the notion of *plaatsvervulling*, albeit with certain differences. Third, it reflects Hazairin's distinctive interpretation of Surat al-Nisāʾ (4):33, which differs from that of earlier *mufassirūn* who did not interpret the term *mawālī* as referring to substitute heirs. This interpretation cannot be separated from the influence of existing customary and civil law practices that had already been implemented within society.[47]

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[45] Krismono Krismono, "Pemikiran Hazairin Tentang Ahli Waris Pengganti Dalam Kompilasi Hukum Islam," *Indonesian Journal of Shariah and Justice* 4, no. 1 (2024): 1–22.

[46] Wahidah Ideham, "Substitute Heirs in the Compilation of Islamic Law: An Overview from Gender Equality Perspective Case Study of the Religious Courts in Banjarmasin," *Samarah* 6, no. 2 (2022), https://doi.org/10.22373/sjhk.v6i2.12466.

[47] Wahidah Ideham, "Substitute Heirs in the Compilation of Islamic Law: An Overview from Gender Equality Perspective Case Study of the Religious Courts in Banjarmasin," *Samarah: Jurnal Hukum Keluarga Dan Hukum Islam* 6, no. 2 (2022): 1046, https://doi.org/10.22373/sjhk.v6i2.12466.

The emergence of *ijtihād* concerning inheritance substitution is closely related to the reality of injustice experienced by orphaned grandchildren, both male and female. Under earlier interpretations, such grandchildren were not entitled to inherit from their grandparents even though their parents had predeceased the testator. The institution of inheritance substitution therefore represents an effort to address this gap and to realize a more equitable distribution of inheritance. [48]

The provisions on the replacement of heirs in the Compilation of Islamic Law (Kompilasi Hukum Islam), as stipulated in Article 185, represent a significant development in the Islamic inheritance system in Indonesia. This provision allows grandchildren to replace their deceased parents and to receive a share of the inheritance from their grandparents. Historically, such a replacement mechanism was unknown in classical Islamic jurisprudence, as grandchildren were generally excluded from inheritance by the presence of the testator's sons. However, the legislative formulation of the KHI demonstrates that this concept emerged in response to the demand for social justice within Indonesian Muslim society, particularly to protect orphaned grandchildren who lose their primary source of support following the death of their parents.[49]

From a normative standpoint, the application of heir substitution under the KHI reflects a synthesis of three legal traditions.[50] *First*, it draws upon customary law, which has long recognized the principle of heir replacement. *Second*, it incorporates elements of the Burgerlijk Wetboek (BW), particularly the doctrine of *plaatsvervulling*. *Third*, it is influenced by Hazairin's contextual interpretation of the Qur'anic text, which understands the term *mawālī* in Surah al-Nisa' verse 33 as legitimizing the inheritance rights of grandchildren. Despite ongoing scholarly debate, the inclusion of this provision demonstrates the progressive character of the KHI in prioritizing the interests of the nuclear family within the inheritance framework.[51]

Analytically, the mechanism of heir substitution may be understood as a legal instrument designed to maintain economic balance within the family. If the principles of classical Islamic jurisprudence are applied strictly and textually, orphaned grandchildren may lose their economic rights despite their direct lineal relationship to the deceased. Article 185 of the KHI therefore substantively affirms the principle of distributive justice, ensuring that the inheritance rights of grandchildren correspond to the rights of the parents whom they replace. From the perspective of *maqāṣid al-sharīʿah*, this legal policy is consistent with the objectives of safeguarding lineage (*ḥifẓ al-nasl*) and protecting property (*ḥifẓ al-māl*), as it

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48 Amir Syarifuddin, *Pelaksanaan Hukum Kewarisan Islam Dalam Lingkungan Adat Minangkabau* (Gunung Agung, 1984).67

49 Wani Wani et al., "Yurisprudensi Hukum Penentuan Pembagian Ahli Waris Pengganti (Studi Putusan Nomor 128/Pdt.P/2024/Pa.Sry)," *Innovative: Journal of Social Science Research* 5, no. 4 (2025): 11–30, https://doi.org/10.31004/innovative.v5i4.20071.

50 Anzalika putri Ramadani et al., "Analysis of the Distribution of Inheritance to Heirs Based on Legal Status and Replacement in the Civil Code," *ISNU Nine-Star Multidisciplinary Journal* 2, no. 1 (2025): 16–21, https://doi.org/10.70826/ins9mj.v2i1.757.

51 Sukran Jamil and Ahmad Bardi, "Analisis Pengaturan Ahli Waris Pengganti Dalam Hukum Waris di Indonesia," *EKOMA: Jurnal Ekonomi, Manajemen, Akuntansi* 3, no. 2 (2024): 1108–16, https://doi.org/10.56799/ekoma.v3i2.2964.

seeks to shield the most vulnerable family members from economic insecurity following the death of a close relative.

Furthermore, from a broader legal perspective, the recognition of substitute heirs illustrates that Islamic inheritance law in Indonesia is not static, but continues to evolve through institutional *ijtihād* in response to social realities not fully addressed by classical jurisprudential methodologies.[52] Accordingly, Article 185 of the KHI should not be regarded as a doctrinal deviation, but rather as a constructive reinterpretation of inheritance law aimed at preserving its relevance in contemporary Muslim society. In this sense, the concept of substitute heirs functions not only as a technical mechanism for allocating inheritance rights, but also as a manifestation of the state's commitment to social protection for orphans and the nuclear family.

Thus, the existence of this provision does not contradict the foundational principles of Islamic inheritance law; instead, it extends the reach of sharia-based justice to social circumstances that were not envisaged within classical fiqh frameworks. Within the context of Indonesia's legal pluralism, the regulation of heir substitution in Article 185 of the Compilation of Islamic Law represents a creative synergy between Islamic jurisprudence, customary law, and modern legal principles, all directed toward achieving substantive justice for orphans as one of the most vulnerable groups in inheritance disputes.

Construction Principles Jurisprudence to the Concept of Heirs Replacement in KHI

Based on the foregoing discussion, it can be concluded that the concept of inheritance substitution is grounded in three principal sources within the Indonesian legal system: customary law, civil law as embodied in the Burgerlijk Wetboek (BW), and Islamic jurisprudence (*fiqh*) as developed through Hazairin's *ijtihād*. The legal provisions governing inheritance substitution therefore require support from multiple perspectives, particularly through analysis based on the principles of Islamic jurisprudence. As demonstrated above, the regulation of inheritance substitution in the Compilation of Islamic Law (KHI) is not explicitly stated in the Qur'an. Nevertheless, the provision granting inheritance rights to grandchildren whose parents have predeceased the testator can be justified when the underlying objective is the realization of welfare and justice.[53]

In examining the textual foundations supporting inheritance substitution, this study employs a combined method of *istinbāṭī* and *istiqrāʾī* reasoning. This approach involves drawing general legal conclusions from specific empirical and textual findings commonly used by jurists in *uṣūl al-fiqh* and *qawāʿid al-fiqh*. Imam al-Shāṭibī explains that the *istiqrāʾ* method consists of examining particular textual meanings (*juzʾiyyāt*) in order to formulate general legal principles that may be either definitive (*qaṭʿī*) or probabilistic (*ẓannī*). According to al-Shāṭibī, *istiqrāʾ* may produce legally binding conclusions if the inductive process encompasses the entirety of the relevant particulars.

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[52] Jawad Muyasar, "The Value of Justice in The Determination of Replacement Heirs from the Perspective of Maslahah Jasser Auda (Study of Decision No. 333/Pdt.P/2022/Pa.Purbalingga)," *Judge: Jurnal Hukum* 5, no. 02 (2024): 230–44, https://doi.org/10.54209/judge.v5i02.699.

[53] Nur Afni A et al., "Inheritance Transitioning to Gift in The Issuance of Land Certificates: An Islamic Legal Perspective," *NUKHBATUL 'ULUM: Jurnal Bidang Kajian Islam* 10, no. 1 (2024): 118–37, https://doi.org/10.36701/nukhbah.v10i1.1375.

In operationalizing this combined *istinbāṭī–istiqrāʾī* methodology within the formulation of inheritance substitution, several Qur'anic provisions may be used as normative foundations;

First, Surah al-Nisa verse 7. The revelation of this verse, as narrated by Saʿīd ibn Jubayr and Qatādah, was closely connected to pre-Islamic Arab customs, in which inheritance was granted only to those deemed physically strong, namely adult males capable of participating in warfare.[54] Vulnerable groups, such as children and women, even when mature, were excluded from inheritance rights. In this context, inheritance was restricted to those able to fight and acquire war booty (*ghanīmah*). Surah al-Nisa verse 7 was revealed to correct this practice by affirming that both men and women, adults and children alike, are entitled to receive inheritance.

Al-Ṭabarī interprets Surah al-Nisa verse 7 as affirming that both men and women are entitled to predetermined shares of the property left by parents and close relatives. The verse emphasizes that these shares apply regardless of whether the portion is small or large, as long as it is in accordance with the prescribed allocation. This interpretation clearly refutes the view that inheritance is limited exclusively to *ʿaṣabah* (male agnatic heirs), as Allah explicitly assigns inheritance rights to both men and women. Furthermore, this verse may also be understood as indicating that *dhawī al-arḥām* may inherit, consisting of both male and female relatives whose kinship ties exist through deceased family members. This interpretation aligns with the legal reasoning of Imam Abū Ḥanīfah, who recognizes the inheritance rights of *dhawī al-arḥām* under certain conditions.[55]

According to al-Rāzī in *Tafsīr al-Kabīr*, both men and women are entitled to inherit property from their parents and relatives. The term "relatives" is understood broadly to include all individuals who share a blood relationship with the deceased. This encompasses descendants such as children, grandchildren, and great-grandchildren in the descending line, as well as ascendants such as grandparents, and collateral relatives including brothers and sisters, uncles and aunts, and their children, whether male or female, adults or minors. This verse is also regarded as the foundational text introducing the Islamic system of inheritance, as it abolished the pre-Islamic practice in which inheritance rights were denied to women and children. By explicitly affirming their entitlement to inheritance, the verse marked a fundamental shift toward justice and inclusivity in the distribution of wealth under Islamic law.[56]

This verse may serve as a legal basis for the argument that grandchildren, both male and female, whose parents have predeceased the testator, are entitled to receive a share of the inheritance from their grandfather or grandmother by replacing the position of their deceased parents. The verse also reflects the bilateral inheritance system intended in Islamic law, whereby inheritance rights may be transmitted through both the male and female lines.

Second, Surah al-Nisa', verse 9. According to al-Tabari's interpretation, several views exist regarding the meaning of this verse. First, the revelation of this verse is associated with

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[54] Maizuddin Maizuddin et al., "The Typology of Hadith as the Bayān of the Qur'an and Its Implications for the Reform of Islamic Inheritance Law," *Samarah: Jurnal Hukum Keluarga Dan Hukum Islam* 7, no. 2 (2023): 760–80, https://doi.org/10.22373/sjhk.v7i2.17467.

[55] Abu Ja'far Muhammad bin Jarir Ath-Thabrani, *Tafsir Ath-Thabrani* (Pustaka Azzam, 2008). 402

[56] Fakhr ad-Din Ar-Razi, *Tafsir Al-Kabir*, ed. Jilid 2 (Dar al-Fikr, n.d.). 203

an incident during the time of the Prophet, in which a person approaching death was encouraged by those around him to bequeath all of his wealth, under the claim that his children would not benefit him before God. Consequently, the individual would distribute all of his property through a will, leaving nothing for his heirs. This verse was revealed as a warning, emphasizing that a testamentary disposition should not exceed one-third of the estate.

The second opinion explains that the verse serves as a warning to guardians of orphans, urging them to fulfill their trust by caring for orphaned children in the same manner they would wish others to treat their own children after their death. This interpretation is supported by the statement of Ibn ʻAbbas: "Whoever is entrusted with the guardianship of an orphan should treat him as he would wish his own child to be treated if he were to die." This meaning is also reflected in a narration attributed to Musa ibn Jaʻfar, which states that Allah warns those who neglect the rights of orphans that one form of punishment in this world is that, after their death, others will fail to show kindness to their descendants, just as they failed to show kindness to orphaned children.[57]

Even in the interpretation of al-Mizan by Imam At-Thaba'thabai mention that paragraph This relates with verse 7 of Surah An-Nisa'for m men and for women part from treasure inheritance, especially those related to with refinement part treasure inheritance children orphans who are still small, and as a warning for guardians so that treat children orphans with good and correct treatment.

Based on the 2 interpretations above, the writer concludes that the verse above indicates that an heir must more notice welfare expert inheritance when wanting *to untangle* his wealth to others, where in the cause the descent paragraph only may bequeath his wealth, maximum 1/3 of all property. property the must utilize for looking after his family, children, and his descendants from weakness, they. Abandoned property can become a source of strength for a child and his descendants so as not to fall into poverty.

Besides that, for people who become guardians for child orphans, so that behaves well and right for people at the bottom of his guardianship with the right treasure, part child orphan, as he treats his descendants in a way that is good and right, because if No treats child orphans who are in his guardianship with Correct so he will get his punishment in his child's world, he will treat No Correct as his attitude to anat orphans who are in his guardianship, so with the apply system expert inheritance replacement This, according to the writer, is a method to realize the verse above, which is to carry out God's will and give rights to orphan children. For the right part of the property, that should be the parent section for those who died before. And the system can also look after orphan children. This from weak children is good in a way economically/financially and in general socially, and weak in knowledge/education due to not having treasure as the cost.

Thirt, Verses of the Qur'an that speak about inheritance that uses the plural word "*ulad*". from "*walad* " which means child or grandchild for example in Surah An- Nisa ' verses 11, 12 and 176. In Language Arab, the use of the word "*walad*" occurs difference opinion between expert langulanguage andionopinion. The first occurrence of the word refers exclusively to male children. Opinion second, interpret the word *walad* covers child men and child women. Opinion is the third meaning of the word *walad* with child descendants.

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[57] Al-Ṭabarānī, *Tafsīr al-Ṭabarānī*, Vol. 1 (Beirut: Dār al-Kutub al-ʿIlmiyyah, n.d.), 111–113.

In the Qur'an, there is no explicit term that directly mentions grandchildren; therefore, the inheritance rights of grandchildren are derived from interpretations of Surah al-Nisāʾ (4):11 and (4):176, as well as from a number of ḥadīths. The word *walad* appears approximately 30 times in the singular form and about 23 times in the plural form, and in inheritance-related verses it occurs eight times as *walad* and once as *awlād*, collectively denoting both male and female children.[58] One such occurrence is found in Surah al-Nisāʾ (4):11, which, according to scholarly consensus (*ijmāʿ*), encompasses all children regardless of gender or age. The verse establishes that inheritance rights apply to both sons and daughters, with a male receiving a share equal to that of two females; a single daughter is entitled to one-half of the estate, two or more daughters collectively receive two-thirds, and when sons are present, inheritance is distributed according to the prescribed ratio. Up to this point, there is no disagreement among scholars, while differences of opinion arise only when, in the absence of direct children, other heirs such as grandchildren or more distant descendants are involved.

The verse above also outlines the rules governing the distribution of inheritance. All child heirs include both male and female children. In addition, the verse explains the shares of other heirs besides children, namely the husband or wife, the mother, the father, and brothers and sisters, who under certain conditions are entitled to inherit. Furthermore, the phrase contained in the verse may be interpreted as referring not only to direct children as heirs but also to the descendants of children as heirs. This indication reflects Allah's prescription regarding inheritance rights for the descendants of children and for those relatives who have the closest kinship ties to the deceased. One of the closest relatives to the deceased is the descendant of a child, namely the grandchild as an heir.

The same interpretation also applies to Surah al-Nisāʾ (4):12, in which scholars understand the term *walad* to refer to both male and female children. This verse addresses the inheritance shares of spouses: a widower is entitled to one-half of the estate if the deceased wife leaves no children, but if she leaves a child—male or female—his share is reduced to one-quarter. Likewise, a widow is entitled to one-quarter of the estate if her deceased husband leaves no children, but if he leaves a child, whether male or female, her share becomes one-eighth. However, the interpretation of the term *walad* in Surah al-Nisāʾ (4):176 has been the subject of scholarly disagreement. This verse concerns the condition of *kalālah*, referring to a person who dies leaving neither a father nor a son. According to the explicit meaning of the verse, if such a person dies without children, siblings—male or female—are entitled to inherit. Conversely, by way of *mafhum al-mukhālafah* (argument from the contrary), if the deceased leaves a child, then siblings are not entitled to inherit. Thus, the differing interpretations of *walad* in this verse significantly affect the determination of inheritance rights, particularly in cases involving collateral relatives.[59]

Opinion Umar Bin Khattab also stated the same thing: authentic history from Ibn Jarir and the others; they argue that the existing meaning of the word "*walad*". In the paragraph, it

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[58] Muhammad Nashiruddin Al Albani, *Shahih Sunan Ibnu Majah*, ed. Ahmad Taufiq and Abdurrahman (Pustaka Azzam, 2007). 42

[59] Ria Oktaviani et al., "Analisis Ushul Fikih Terhadap Dilalat Al-Mafhum Al-Mukhalafah (Hasr, Sifat, Syarat, Laqab, Gayah, Dan Adad)," *Khuluqiyya: Jurnal Kajian Hukum dan Studi Islam* 7, no. 2 (2025): 45–52, https://doi.org/10.56593/khuluqiyya.v7i1.165.

covers men and women. If someone passed away leaving child women and sisters women, then the child woman gets ½ of the property, while you the no get the same once. This is in accordance with the meaning of verse 176; with interpretation and understanding, *understand charity* as follows: "If someone died and did not have a child, good man and woman, and had a brother, then for you woman, ½ of the assets he left behind; if two people, 2/3 of the property; if it consists of men and women, then for the man, two parts, and for the woman, one part." While *mafhum al-mukhālafah,* "If somebody died while leaving a child, a good man and woman, or in a way together, then you stated, 'No, get treasure.' The same very because mahjub by *walad*.

In the context of substitute heirs, grandchildren represent a crucial category of descendants whose legal position deserves particular attention. In classical Islamic inheritance law, their status often produces limited legal consequences, as their interests are not fully accommodated when their parents predecease their grandparents. As a result, grandchildren may be excluded from inheritance despite their close blood relationship with the deceased. In contrast, *Shiʿi* jurisprudence[60] places descendants through both sons and daughters on an equal footing with their parents as heirs. Accordingly, *Shiʿi* scholars interpret the term *walad* broadly to include male and female children as well as grandchildren descended from both paternal and maternal lines.

From a substantive perspective, grandchildren may be regarded as forming a legal continuum with children who are subject to exclusion (ḥijāb). However, under the influence of patrilineal customary reasoning, which has shaped much Sunni jurisprudence, grandchildren are excluded when sons are present among the heirs, regardless of whether the grandchildren descend through male or female lines. This doctrinal position contrasts sharply with contemporary Indonesian social structures, which predominantly adopt a nuclear family model consisting of parents and children, without emphasizing extended kinship ties such as siblings. Within this model, uncles are not perceived as bearing primary responsibility for the welfare of their nephews and nieces, particularly after the death of the children's parents. This social reality reveals a significant gap between classical legal assumptions and lived familial practices.

On the basis of these considerations, and guided by principles of equity and social justice, grandchildren whose parents have died earlier should be recognized as substitute heirs. They ought to receive inheritance shares equivalent to those their parents would have received had they been alive. This approach acknowledges that reliance on collateral relatives alone is insufficient to secure the material well-being of orphaned grandchildren. Therefore, granting inheritance rights to grandchildren through substitution serves as a necessary legal mechanism to protect their interests.

Support for this interpretation can be found in the opinion of Ibn ʿAbbās, who understood the term *walad* in Surah al Nisāʾ verse 176 as encompassing both male and female children. When viewed through the lenses of welfare and justice, this interpretation allows grandchildren whose parents predeceased the decedent to be positioned as substitute heirs. A comprehensive reading of Surah al Nisāʾ verses 7, 9, 11, 12, and 33, employing a

[60] Morteza Agha Mohammadi, "Shia Jurisprudence and the Dynamics of Context: A Study in Legal Flexibility," *Islam and the Contemporary World* 2, no. 1 (2024): 47–62, https://doi.org/10.22034/icwj.2025.527382.1038.

combined *istinbāṭ* and *istiqrāʾ* methodology, reveals a consistent normative orientation toward safeguarding the inheritance rights of close blood relatives, including grandchildren. These verses collectively affirm the importance of blood proximity as a decisive factor in determining inheritance entitlements.

This emphasis on consanguinity is further highlighted in Surah al-Anfāl (8):75, which states, "*Those who are related by blood are closer to one another in the Book of Allah.*" The verse underscores that blood relationships between a deceased individual and their descendants, including grandchildren, take precedence over more distant kinship ties.

Based on these theoretical and normative foundations, it can be argued that the jurisprudential construction of substitute heirs within the Compilation of Islamic Law (KHI) transcends mere textual or historical justification for Article 185. Rather, it functions as an interpretative framework aimed at advancing substantive justice in national inheritance law. This construction represents a process of value reconstruction that integrates *maqāṣid al sharīʿah*, social realities, and institutional protection for vulnerable groups, particularly orphans. In this sense, jurisprudence operates as a mediating instrument between normative legal texts and empirical conditions, ensuring that inheritance law is applied not merely in a formalistic manner but in a way that promotes family welfare and justice. Consequently, the recognition of substitute heirs should be oriented toward preventing the marginalization of grandchildren, maintaining the economic continuity of the nuclear family, and prioritizing social benefit as a fundamental consideration in judicial decision-making.

Conclusion

This study has examined the concept of substitute heirs in the Compilation of Islamic Law, focusing on three primary sources: customary law, civil law (Burgerlijk Wetboek), and Hazairin's interpretation of Surah an-Nisāʾ, verse 33. The findings indicate that the recognition of substitute heirs within the Compilation of Islamic Law represents a significant development compared to classical Islamic inheritance law, as it introduces the principle that grandchildren may inherit in place of their deceased parents. This principle is grounded in a combination of customary practices, civil law provisions, and Islamic legal reasoning, each contributing to the formulation of Article 185 of the Compilation of Islamic Law. The analysis further reveals that, although Compilation of Islamic Law formally recognizes substitute heirs, its practical implementation in Indonesian courts remains inconsistent. The application of this provision is often shaped by local customs and varying interpretations of Islamic law across different regions. While the principle of substitute inheritance is justifiable within the framework of Islamic jurisprudence, its operationalization requires clarification and reform to ensure fairness and uniformity, particularly in light of contemporary social and cultural contexts.

Moreover, this study highlights the necessity of integrating legal theory with practical application, advocating for a more comprehensive approach to interpreting Islamic inheritance law in Indonesia. The current formulation of substitute heirs in Compilation of Islamic Law, although innovative, would benefit from further adaptation to better reflect principles of justice, equality, and family welfare, especially in cases involving children left without living parents. In conclusion, this research contributes to ongoing discussions on reforming Islamic inheritance law in Indonesia by providing a critical examination of the

legal framework governing substitute heirs and offering recommendations for future legal development. It emphasizes the importance of harmonizing Islamic legal principles, local customs, and civil law to establish a more equitable and effective inheritance system that addresses the needs of contemporary Indonesian society.

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