

Juridical Review on the Support of Inheritance Rights in the Perspective of Compilation of Islamic Law

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Abstract

The inheritance system applies to Indonesian citizens. In addition to the legal system of Islamic inheritance, there is also a civil and customary legal system. The problem of inheritance in particular concerning the substitute heir becomes a subject of interesting discussion when viewed from a normative point of view. this study tries to study how the position of substitute inheritors in the compilation of Islamic law. as well as how the legal protection for the replacement heir in accordance with Islamic compilations of law. Normative jurisprudential research method in this penalty prioritizes library materials, court decisions that have been incrachted, or documents called secondary data. Primary, secondary and tertiary laws consist of primary, secondary, and tertiair materials, and these methods are used to conduct this research. Rules in Islamic inheritance law and rulings of the courts that have already incracht used as the basis for this method. research results show that: The legal position concerning a substitute inheritor in the Islamic heritage in Indonesia. The inheritance acquired by the substitute heir is not always the same as that replaced, i.e. it is not permitted to add from the acquisition of the equivalent heir to the replaced but may reduce it. The substitution referred to in Article 185 covers the replacement of place, degrees, and unlimited rights between men and women as heirs, i.e. regulating the substitution of place when a nephew or grandson takes the role of a parent as a brother-in-law or otherwise. According to the provisions of the article, an heir who died before the heir is considered to be a replaced heir, and also must not exceed the share of the inheritance rights of the sederajad so that the compilation of Islamic law in article 185 (2) gives a maximum limit of one-third for the replacement heir..

I. Introduction

Indonesia recognizes a pluralistic inheritance law system, reflecting the country's socio-legal diversity and historical development. Three principal inheritance law regimes coexist and are applied to Indonesian citizens: Islamic inheritance law, Western civil inheritance law, and customary inheritance law (*adat law*). Each system possesses its own philosophical foundations, legal sources, and mechanisms of application, resulting in a distinctive legal landscape in which individuals may be subject to different inheritance rules depending on their legal status, religious affiliation, and cultural background.

The Western civil inheritance system derives its authority from the *Burgerlijk Wetboek* (BW), commonly referred to as the Civil Code. Historically, the application of the BW was governed by Article 131 of the *Indische Staatsregeling* (IS), which classified the population into legal categories. Under this provision, the BW applied to: (a) Europeans and those legally equated with Europeans, (b) Foreign Orientals, particularly the Chinese, and (c) indigenous Indonesians who voluntarily subjected themselves to European law. This classification illustrates the colonial origins of Indonesia's civil law structure and its continuing influence within the national legal system, especially in matters of private law, including inheritance.

Alongside the civil law regime, Indonesia's customary inheritance law reflects indigenous legal traditions that predate both Islamic and Western legal influences. Customary inheritance systems vary significantly across regions and ethnic groups. For instance, the Minangkabau community is widely recognized for its matrilineal inheritance system, in which lineage and property succession are traced through the female line. Conversely, the Batak community adheres predominantly to a patrilineal system, emphasizing male lineage in inheritance rights. These variations demonstrate that customary inheritance law is deeply embedded in social structures, kinship patterns, and communal values, thereby resisting uniform codification.

Islamic inheritance law, meanwhile, represents a normative system grounded in religious doctrine, primarily derived from the Qur'an, Hadith, and classical Islamic jurisprudence (*fiqh*). In Indonesia, the dominant doctrinal orientation of Islamic inheritance law follows the *Ahl al-Sunnah wa al-Jama'ah*, particularly the Shafi'i school of thought. The introduction and development of Islamic inheritance principles in Indonesia are historically linked to the arrival of Muslim traders and scholars, whose influence gradually shaped legal consciousness within Muslim communities. Over time, Islamic inheritance law became institutionalized within the Indonesian legal framework, especially through the establishment of Religious Courts.

The coexistence of these three inheritance systems is not merely historical but reflects Indonesia's broader legal philosophy, which accommodates legal pluralism. However, unlike marriage law, which has been unified under Law No. 1 of 1974, Indonesia has yet to enact a comprehensive national inheritance law applicable to all citizens. Consequently, inheritance disputes may be resolved under different legal regimes, depending on the parties involved. This legal pluralism allows individuals to rely on customary law, the Civil Code, or Islamic law, provided that jurisdictional and legal requirements are satisfied.

Inheritance law occupies a central position within family law, as it regulates the legal consequences arising from death—an inevitable reality for all individuals. Hazairin famously asserted that among all branches of law, marriage and inheritance law are the most decisive in shaping the structure of family systems within society.

This observation underscores the profound social and legal significance of inheritance rules, which determine the distribution of property, the recognition of heirs, and the continuity of familial rights and obligations.

Within Islamic legal doctrine, inheritance (*fara'id*) is regarded not merely as a legal mechanism but as a divinely ordained system. The Qur'an and Hadith provide detailed provisions governing inheritance shares, heir classifications, and distribution principles. Qur'anic verses, particularly in Surah An-Nisa, articulate fundamental rules concerning lineage, justice, and the allocation of inheritance rights. For example, Surah An-Nisa verse 7 affirms the entitlement of both men and women to inheritance, while verse 11 establishes specific proportional shares. These provisions are considered among the most precise normative regulations within Islamic law, emphasizing certainty and equity.

The implementation of Islamic inheritance law requires systematic analysis and procedural accuracy. Errors in identifying heirs or determining inheritance shares may produce significant legal consequences, potentially depriving rightful heirs of their entitlements. In inheritance disputes, three essential elements must be established: (1) the determination of lawful heirs, (2) the identification of the inheritance estate, and (3) the calculation of each heir's share. This structured approach reflects the doctrinal rigor inherent in Islamic inheritance law.

Central to contemporary discussions of Islamic inheritance law in Indonesia is the doctrine of substitute heirs (*ahli waris pengganti*), as regulated in Article 185 of the Compilation of Islamic Law (Kompilasi Hukum Islam / KHI). The KHI, promulgated through Presidential Instruction No. 1 of 1991, serves as the principal material law reference for Religious Courts. Article 185 introduces the principle that descendants may replace a predeceased heir, thereby modifying classical inheritance doctrines that might otherwise exclude certain family members, particularly grandchildren.

The doctrine of substitute heirs has generated sustained scholarly debate. Some legal scholars question its doctrinal legitimacy, arguing that classical Islamic jurisprudence does not universally recognize substitution mechanisms analogous to civil law concepts. Others defend the provision as a necessary adaptation aligned with contemporary notions of justice and the objectives of Islamic law (*maqasid al-shari'ah*). The debate gained particular prominence during the 2009 National Working Meeting of the Supreme Court, where divergent interpretations concerning the obligatory or discretionary nature of substitute heirs were articulated.

The intellectual foundations of substitute heirs in Indonesia are frequently associated with Hazairin's bilateral inheritance theory, which emphasizes equality of lineage through both paternal and maternal lines. Although the KHI does not explicitly adopt Hazairin's theoretical framework, parallels are often identified, particularly in its inclusive orientation toward descendants. Critics, however, caution against conflating statutory provisions with specific jurisprudential theories, emphasizing the need for careful doctrinal analysis.

The absence of explicit regulation regarding certain substitution mechanisms, such as the obligatory will (*wasiat wajibah*) within classical *fiqh*, further complicates the discourse. This normative ambiguity invites interpretative challenges and underscores the dynamic character of Islamic inheritance law within Indonesia's legal system.

In light of these considerations, the position and legal implications of substitute heirs remain a significant subject of normative legal inquiry. The central questions

concern how Article 185 KHI conceptualizes substitute heirs and how inheritance rights are allocated within this framework. These issues form the core of the present research, which seeks to analyze the juridical foundations, doctrinal coherence, and practical implications of substitute heirs in Indonesian Islamic inheritance law.

The doctrine of substitute heirs in Indonesian Islamic inheritance law cannot be adequately understood without situating it within broader theoretical and jurisprudential frameworks. In classical Islamic jurisprudence (*fiqh al-mawarith*), inheritance rights are strictly governed by principles derived from the Qur'an, Hadith, consensus (*ijma'*), and analogical reasoning (*qiyas*). The fundamental structure of Islamic inheritance law emphasizes certainty, proportional justice, and the preservation of lineage. Heirs are categorized into well-defined classes, and their shares are determined by normative texts regarded as definitive (*qat'i*).

Within this classical structure, inheritance rights arise only upon the death of the decedent, and eligibility is determined by the existence of heirs at that precise moment. Consequently, a descendant whose parent predeceased the decedent is generally excluded from inheriting directly, unless specific doctrinal mechanisms apply. This principle reflects the legal maxim that inheritance is contingent upon survival (*al-irth yuthbat bi al-hayah*). Therefore, the concept of substitution as recognized in modern statutory law represents a departure from traditional formulations, raising important doctrinal questions.

However, legal systems evolve in response to changing social realities. The introduction of substitute heirs under Article 185 of the Compilation of Islamic Law reflects a normative adaptation designed to reconcile classical doctrine with contemporary perceptions of justice. Modern family structures, increased life expectancy disparities, and shifting social expectations have intensified concerns regarding the exclusion of grandchildren solely due to the prior death of their parents. Such outcomes are frequently perceived as inequitable, particularly when grandchildren maintain close familial and economic ties to the decedent.

From a theoretical standpoint, the recognition of substitute heirs may be justified through the objectives of Islamic law (*maqasid al-shari'ah*), which prioritize the protection of religion, life, intellect, lineage, and property. The preservation of lineage (*hifz al-nasab*) and protection of property rights (*hifz al-mal*) are particularly relevant. Allowing descendants to replace predeceased heirs can be viewed as promoting substantive justice while maintaining continuity within the family line. This perspective frames substitute heirs not as a contradiction of Islamic principles but as an interpretative development consistent with the spirit of the law.

Furthermore, the doctrine reflects the dynamic nature of Islamic legal reasoning. Islamic jurisprudence has historically accommodated diversity of interpretation across schools of thought (*madhahib*), demonstrating that legal doctrines are not monolithic. While classical jurists did not universally endorse substitution mechanisms, contemporary scholars argue that statutory reforms may legitimately address normative gaps, provided they do not contravene explicit textual prohibitions.

The practical application of substitute heirs presents complex juridical challenges. Courts must determine not only the existence of substitute heirs but also the precise legal consequences of substitution. Article 185 KHI establishes that descendants may replace a predeceased heir, yet its implementation requires careful interpretation regarding scope, hierarchy, and distribution methodology.

One critical issue concerns the extent of substitution. Does the substitute heir inherit the exact share that would have been allocated to the replaced heir, or is the share subject to adjustment based on the presence of other heirs? Judicial practice generally interprets substitution as positional replacement rather than independent entitlement. Thus, the substitute heir's rights are derivative, reflecting the legal status of the replaced heir. This interpretation preserves doctrinal coherence within the inheritance structure, preventing distortions in share allocation.

Another important consideration involves the interaction between substitute heirs and other categories of heirs, particularly *dhawi al-furud* and *'asabah*. The presence of substitute heirs may alter the distribution of residual shares, necessitating recalculations to maintain proportional fairness. Judges must therefore exercise doctrinal precision, ensuring that substitution does not produce outcomes inconsistent with established inheritance principles.

Legal certainty constitutes an additional concern. Normative provisions that lack detailed procedural guidance may generate divergent interpretations, undermining predictability in legal outcomes. While the KHI provides a general framework, judicial decisions play a crucial role in clarifying ambiguities. Decisions that have obtained permanent legal force (*inkracht*) serve as persuasive authority, shaping interpretative consistency across Religious Courts.

The doctrine of substitute heirs has generated sustained debate among legal scholars and Islamic jurists. Critics often emphasize the rigidity of classical inheritance rules, arguing that inheritance shares are divinely ordained and therefore resistant to modification. From this viewpoint, substitution mechanisms risk introducing principles foreign to traditional Islamic jurisprudence, particularly those derived from civil law concepts such as *plaatsvervulling*.

Proponents, however, contend that Islamic law possesses inherent flexibility. They argue that statutory recognition of substitute heirs reflects contextualized legal reasoning responsive to societal needs. Rather than undermining classical doctrine, substitute heirs may be understood as reinforcing fundamental Islamic values of justice, compassion, and family protection. This perspective highlights the distinction between immutable principles and adaptable legal applications.

Hazairin's bilateral inheritance theory remains influential within this discourse. His theory challenges strictly patrilineal interpretations, advocating equal recognition of lineage through both paternal and maternal lines. Although the KHI does not explicitly adopt Hazairin's theoretical model, similarities in its inclusive orientation toward descendants have invited comparative analysis. Nevertheless, equating statutory provisions with specific jurisprudential theories requires caution, as legislative texts may embody broader policy considerations.

The coexistence of classical doctrine, statutory regulation, and judicial interpretation inevitably produces normative tensions. Legal pluralism in Indonesia further complicates harmonization efforts, as Islamic inheritance law operates alongside civil and customary regimes. Substitute heirs, as a statutory construct, must therefore be evaluated within this multi-layered legal environment.

Harmonization requires balancing doctrinal fidelity with social justice considerations. Overly rigid adherence to classical formulations may generate perceived inequities, while excessive modification risks diluting normative integrity. The Compilation of Islamic Law represents an attempt to mediate these competing concerns, offering a structured yet adaptable framework.

Ultimately, the doctrine of substitute heirs illustrates the evolving character of Islamic law within Indonesia's legal system. It reflects ongoing efforts to integrate religious principles, statutory norms, and judicial practice into a coherent jurisprudential order. Continued scholarly analysis and judicial refinement remain essential to ensuring that substitute heirs function as instruments of justice, legal certainty, and social harmony.

2. Research Method

This study employs normative juridical research, a method that emphasizes the examination of legal norms, principles, and doctrines through library-based sources. Normative juridical research, often referred to as doctrinal legal research, focuses on the analysis of legal materials rather than empirical field data. The primary orientation of this research lies in the systematic study of legislation, legal doctrines, scholarly opinions, and judicial decisions that have obtained permanent legal force (*inkracht van gewijsde*). Consequently, the research relies predominantly on secondary data derived from authoritative legal sources.

In normative juridical research, legal materials constitute the central object of analysis. These materials are commonly classified into three categories: primary legal materials, secondary legal materials, and tertiary legal materials. Primary legal materials include binding sources of law such as statutes, regulations, and court decisions. Within the context of this study, particular emphasis is placed on regulations governing Islamic inheritance law and judicial decisions that have achieved *inkracht* status, as these represent definitive legal interpretations and applications. The use of judicial decisions is especially relevant, as they reflect how legal norms are implemented and interpreted in practice by competent judicial authorities.

Secondary legal materials consist of legal literature that provides explanations, commentaries, and analyses of primary legal sources. These include textbooks, academic journals, legal commentaries, research reports, and opinions of legal scholars. Secondary materials serve a critical role in normative research by offering theoretical perspectives, doctrinal clarifications, and interpretative frameworks that assist in understanding the structure and substance of legal norms. In this research,

secondary materials are utilized to examine the conceptual foundations of Islamic inheritance law, the doctrine of substitute heirs, and broader jurisprudential principles relevant to the study.

Tertiary legal materials, meanwhile, function as supporting references that facilitate comprehension and navigation of legal concepts. These may include legal dictionaries, encyclopedias, indexes, and other reference works. Although tertiary materials do not possess binding authority, they contribute to methodological precision by ensuring conceptual consistency and terminological accuracy throughout the analysis.

The selection of normative juridical research is justified by the nature of the legal issues examined in this study. The research problem centers on legal norms, doctrinal interpretations, and statutory regulations concerning Islamic inheritance law. Such issues are inherently normative, requiring analytical approaches grounded in legal reasoning rather than empirical measurement. Normative juridical research is therefore considered the most appropriate method, as it allows for a comprehensive evaluation of legal principles, statutory provisions, and jurisprudential developments.

As articulated by Zainuddin Ali, qualitative normative juridical research refers to legal research that examines legal norms embodied in statutory regulations, judicial decisions, and the norms that live and develop within society. This perspective underscores the qualitative dimension of normative research, which prioritizes interpretative, conceptual, and analytical methods over quantitative techniques. The qualitative approach enables the researcher to explore the meaning, coherence, and implications of legal norms, as well as their alignment with broader principles of justice, legal certainty, and social values.

In conducting this research, several analytical methods are employed. First, the statute approach (*statute approach*) is used to analyze relevant legislative instruments governing Islamic inheritance law. This approach involves a detailed examination of statutory texts to identify legal principles, regulatory frameworks, and normative structures. Second, the conceptual approach (*conceptual approach*) is applied to explore legal doctrines and theoretical constructs associated with inheritance law, including the concept of substitute heirs. Third, the case approach (*case approach*) is utilized to assess judicial decisions that have obtained permanent legal force, enabling the researcher to understand how legal norms are interpreted and applied in concrete disputes.

The integration of these approaches ensures methodological rigor and doctrinal depth. By combining statutory analysis, conceptual examination, and case evaluation, the research is able to present a holistic understanding of the legal issues under study. Moreover, this framework supports the identification of normative consistency, interpretative trends, and potential doctrinal tensions within Islamic inheritance law.

Ultimately, normative juridical research provides a structured and coherent methodology for addressing legal questions that are doctrinal and regulatory in

nature. Through the systematic analysis of legal materials, this study seeks to elucidate the normative foundations, legal interpretations, and jurisprudential implications of Islamic inheritance law within the Indonesian legal system.³

3. Results and Discussion

Regulations Juridic Analysis of the Position of Inheritors in the Compilation of Islamic Law

The concept of substitute heirs (*ahli waris pengganti*) constitutes an important development within Indonesian Islamic inheritance law, particularly as regulated under the Compilation of Islamic Law (Kompilasi Hukum Islam / KHI). Raihan A. Rasyid defines a substitute heir as an individual who, in principle, does not originally qualify as an heir but may acquire heir status under certain legal circumstances. In this context, the substitute heir is granted inheritance rights by replacing the position of an heir who is legally prevented from inheriting, most commonly due to prior death.

The rationale underlying substitute heirs is closely related to the principle of justice and the protection of lineage (*nasab*) within Islamic inheritance law. Classical Islamic jurisprudence generally adheres to the principle that inheritance rights are determined strictly by the existence of eligible heirs at the time of the decedent's death. Consequently, descendants whose parents predeceased the decedent are traditionally excluded from inheritance. However, modern legal systems, including Indonesia's KHI, have introduced modifications to mitigate potential inequities arising from this rule.

A typical case illustrating the relevance of substitute heirs involves a grandchild whose parent (the decedent's child) died prior to the decedent. Under classical doctrine, the grandchild may be excluded if other heirs of closer degree exist. The KHI, however, adopts a more inclusive approach by recognizing the grandchild's right to inherit through substitution. This mechanism allows the grandchild to assume the legal position of the deceased parent, thereby preserving the continuity of inheritance within the direct bloodline.

Article 185 of the Compilation of Islamic Law serves as the principal legal basis for this doctrine. The article provides that an heir who dies before the decedent may be replaced by their descendants. This provision reflects an adaptation of the civil law concept of *plaatsvervulling* (representation or substitution), while also bearing conceptual similarities to the doctrine of *wasiat wajibah* recognized in several Muslim-majority jurisdictions, such as Egypt. Despite differences in doctrinal origins, both mechanisms aim to ensure equitable treatment for descendants who might otherwise be disadvantaged.

From a juridical perspective, the substitution mechanism under Article 185 KHI is not merely procedural but substantively significant. The substitute heir's legal status mirrors that of the replaced heir. Accordingly, the classification of inheritance rights depends on the original position of the deceased parent within the inheritance structure. If the replaced heir belonged to the category of *dhawi al-furud* (heirs with fixed Qur'anic shares), the substitute heir is entitled to receive a fixed portion corresponding to that status. Conversely, if the replaced heir was an *'asabah* (residuary heir), the substitute heir inherits under the rules governing residuary succession.

This legal construction reflects a systematic effort to harmonize Islamic inheritance principles with contemporary notions of justice, family protection, and

social realities. It acknowledges that the strict exclusion of grandchildren due to the prior death of a parent may generate outcomes perceived as inequitable, particularly in modern familial structures. By introducing substitute heirs, the KHI provides a corrective mechanism without fundamentally altering the core framework of Islamic inheritance law.

Nevertheless, the doctrine of substitute heirs also raises important theoretical and practical questions. Debates persist regarding its compatibility with classical Islamic jurisprudence, especially among scholars who emphasize the fixed and divinely ordained nature of inheritance shares (*fara'id*). Others, however, argue that such legal adaptations are justified within the broader objectives of Islamic law (*maqasid al-shari'ah*), particularly the protection of lineage and property rights.

In conclusion, the recognition of substitute heirs under the Compilation of Islamic Law represents a significant juridical innovation within Indonesian Islamic law. It demonstrates the dynamic interaction between classical Islamic legal concepts, comparative legal influences, and the evolving demands of social justice. The doctrine thus occupies a crucial position in bridging doctrinal tradition and contemporary legal needs.

In practical application, the doctrine of substitute heirs has significant implications for judicial interpretation and inheritance dispute resolution. Courts are often required to carefully determine whether the conditions for substitution have been fulfilled, particularly regarding proof of lineage, the prior death of the replaced heir, and the absence of legal impediments to inheritance. The presence of substitute heirs may also affect the proportional distribution of the estate, especially when combined with other categories of heirs. Consequently, judges must balance textual provisions of the Compilation of Islamic Law with broader principles of fairness, legal certainty, and societal expectations. This demonstrates that the doctrine is not purely theoretical but plays a decisive role in real inheritance cases.

Furthermore, the recognition of substitute heirs reflects the adaptive capacity of Islamic law within a modern legal system. Rather than being viewed as a departure from Islamic legal tradition, the doctrine may be understood as a contextual reinterpretation aimed at preserving substantive justice. By accommodating contemporary family structures and addressing potential gaps in classical inheritance rules, the Compilation of Islamic Law illustrates how Islamic legal principles can evolve through statutory regulation. This dynamic development reinforces the idea that Islamic law, while rooted in divine sources, remains responsive to changing social conditions and legal needs.

² Hajar, M. (2016). Asal Usul dan Implementasi Ahli Waris Pengganti Perspektif Hukum Islam. *Asy-Syir'ah Jurnal Ilmu Syari'ah dan Hukum*, 50(1), 49-79.

³ Zainuddin Ali, , 2016, *Metode Penelitian Hukum*, Jakarta, Sinar Grafika, Hal. 105

⁴ Shobirin, Hakim Pengadilan Agama Kotabumi. **Ahli Waris Pengganti Dalam Kewarisan Islam Perspektif Madzhab Nasional**, Makalah ini dipresentasikan dalam acara diskusi Wilayah III (PA. Kotabumi, PA. Liwa, PA. Blambangan Umpu) di Pengadilan Agama Krui, tanggal 19 April 2011

share of inheritance equal to the share received by his parents if they were still alive. A substitute heir is basically an inheritor by substitution, i.e. a person who becomes an heir because his parents died earlier than his heirs, so that he replaces his parents. In the case of inheritance provisions according to Islamic law, only the grandson of the son can replace his father, while the grandchild of the daughter can not replace the mother to receive inheriting. In addition, there are rules that apply to the grandchildren of the boy. If the heir dies without leaving a son, the grandson of the deceased son cannot inherit his grandfather's estate.⁶

Thus, the compilation of the Law of Islam gives the sense of justice to the people of Islam in matters of inheritance, according to the bilateral basis as desired by the Qur'an. Although Article 185, paragraph 2, does not specify how many shares may be accepted by the grandson who replaces his or her parents in the inheritance, the judge reserves the right to determine how much shares such grandson may accept, as long as this is acceptable to all heirs.⁷ As is well known, the power structure of the Islamic Law Compilation is bilateral, which means there are no gender differences in any line of law. Therefore, if this discrimination is completely eliminated by the Islamic Law Compilation, then the scope of this heir replacement should cover the entire line of law.

The compilation of the Islamic Law should also consider the injustice felt by the granddaughter of the boy because he was hijacked by the boy or the daughter-in-law of a boy who, according to jumhur, did not receive a portion because of the status of dhawial-arham. In this case, the Compilation of Islamic Law should also consider the injustice felt by a cousin (daughter of a uncle) who could not receive a portion because of the presence of a son of an uncle. They were not as fortunate as they were born as women. In fact, the possession of Article 185 has accommodated the range of this heir replacement.

Based on this section, the position of a substitute heir, also known as "place vervulling", is recognized. This article can be considered as *ijtihad* because it was not previously recognized in Fikih books. By reading the article, you can get a better understanding of the words "expert heir" and "his son". In English, "heir" is a lafal of "passion" which includes all the heirs, not limited to a particular member. Therefore, all the heirs from line down and side down understand the words of his son.⁸

If the generality is not limited by a legal provision, that generality shall be enforced. Taking into account the generality of such falsehood, cousins and grandchildren can become substitute heirs

⁵ Article 173 of the Compilation of the Islamic Law states, "A person is prevented from becoming an inheritor when by a judge who has had a fixed legal force, is punished because; a. Accused of killing or attempting to kill or harass the heirs. The defendant has filed a complaint that the heir had committed a crime threatened with a five-year prison sentence or a heavier sentence.

⁶ Ismuha, H. (1978). Penggantian tempat dalam hukum waris menurut KUH perdata, hukum adat dan hukum Islam. Bulan Bintang.

⁷ Rohmah, R. M. M. (2014). Kedudukan ahli waris pengganti (plaatsvervulling): Studi perbandingan Pasal 841 KUH Perdata dengan Pasal 185 KHI (Doctoral dissertation, Universitas Islam Negeri Maulana Malik Ibrahim).

This conclusion is supported by the fact that the dawials are not known in the Islamic Law Compilation, which indicates that any family member can act as an heir through the replacement of an inheritor, as long as they are not blocked by a more primary heir. As a result, brothers and sisters can become substitute heirs.

Philosophical Reasons Why Inheritance Should Be Given to a Substitute Heir

Although the Qur'an does not explicitly discuss the right of an inheritor, it can be justified if it brings justice and mischief. This is in accordance with the purpose of Islam's law, which is to crime and prevent harm. Consequently, it is very important to use the interest method as a source of legal determination of the inheritance rights of grandchildren. The provisions of the Mursalah interest method relate to the problem of the substitute heir. Nash did not explicitly determine the existence of substitute heirs, but the content of interests wanted their existence. In the concept of a substitute heir, the value of property is related to the right and justice of the substitute inheritor to receive the inheritance from his heir. That is to say, the substitute heir shall have the same status as the heir appointed by him and shall be entitled to receive the inheritance in the same manner as his appointed heir. However, the intended justice is related to the share received by the substitute heir.

Basically, the concept of a substitute heir differs from previous and current mujtahid opinions, as well as the opinions of judges based on the provisions of the Compilation of Islamic Law, with the aim of ensuring the right to inherit the grandchild as the substitute of his parents. In these cases, the concept of a substitute heir is based on the idea that family property has historically been given as the material basis for its descendants. Therefore, there will be complications and difficulties in determining the right to inherit grandchildren if there is no substitute heir.

As a result, the previous mujtahid-mujtahids used ijtiḥad to define the right of the grandchild as the heir to replace his deceased father. One example is Zaid Ibn Tsabit, who stated, *"The grandchildren, male and female, from the boy (through the boy) are equal to the child if no boy is alive. Children are like boys, and grandchildren like daughters; they inherit and reap as children, and do not inherit children with boys."*⁹

The story shows that inheritance is given only to the grandchildren of male and female descendants, provided that no surviving son of the heir has survived. There is no information about male or female offspring. At that time, ijtiḥad Zaid Ibn Tsabit was justified because it was in accordance with the norms of the Arab community and helped solve the problem of misconduct for the left-back heirs. By taking this step, Zaid Ibn Tsabit made great progress in solving the problem of grandchildren's inheritance.¹⁰ Therefore, when the history of Zaid ibn Tsabit is used by the judges of the Religious Court, the values of its benefits are difficult to define

⁹ Mustofa, M. (2017). Ahli Waris Pengganti dalam Kompilasi Hukum Islam. Inklusif (Jurnal Pengkajian Penelitian Ekonomi dan Hukum Islam), 2(2), 33-52.

This is because, basically, the concept of a substitute heir in the Islamic Law compilation aims to give a sense of justice to the grandson, so that the portion of his inheritance is equal to that of his deceased father.

In Indonesia, Hazahirin performed *ijtihad* to determine the inheritance rights of grandchildren when their parents died before their grandparents—also known as heirs—so the idea of replacement emerged. The Qur'an and Hadith refers to the idea of an inheritor. He stated that the meaning of *mawali* represents a substitute heir by using a different grammatical approach to the early *mujtahid* and *mufasir*. According to Hazahirin, the concept of substitute heirs is not only inconsistent with the socio-historical foundations, but also because they misinterpret the meaning of *mawali* in the Qur'an, which should mean heirs who replace parents or relatives to receive part of their legacy.¹¹ In verse 33 of Surah al-Nisa, the word *mawali* which Hazahirin meant as a substitute heir is already known in Arab history. We have made inheritors of all the possessions of the parents and relatives. And if there are people to whom you have promised to be faithful, give them your share. God sees all things.¹²

The author argues that the concept of a substitute heir himself in the Qur'an should be seen from how close the heir to his heir is. The Quran establishes the relationship between fathers and mothers and children in particular, as Allah says in Surah an-Nisa' verse 11, based on the general principle that inheritance is based on blood relations between the heirs and their surviving family members.¹³

The terms of the inheritance part for men, women, and children are described in the above verse. Children's rights prevail because they are usually weaker than their parents. Parents' rights are then explained because they are the children's closest parents. This is in accordance with the digestion of the previous verse, "*aba'ukum wa abna'ukum la tadruna ayyuhum aqrabun lakum naf'an*," which means that the relationship between parents and children is the closest to heartache.¹⁴

Next, there are two ways to understand the verse to test Hazahirin's opinion about the meaning of the word *mawali* as a substitute heir. First, use a customary approach—combining expert interpreting opinions. Second, find out how the sentence appears and translate it with other sentences relevant to the topic. The results of research conducted using these two approaches show that many tafsirists differ in interpreting the meaning of *mawali*

⁹ Muhammad bin Isma'il al-bukhari, *Sahih al-Bukhari*, (Bairut : Dar al-Fikr, 2006), hlm 188. dalam Permadhi, F. (2011). Studi pasal 185 kompilasi hukum Islam tentang waris pengganti: Sebuah tinjauan mashlahah (Doctoral dissertation, Universitas Islam Negeri Maulana Malik Ibrahim).

¹⁰ Moh Muhibbin dan Abdul Wahid, (2009), *Hukum Kewarisan Islam Sebagai Pembaruan HukumPositif di Indonesia*, (Jakarta : Sinar Grafika), hlm, 154.

¹¹ Hazahirin, (1981), *Hukum Kewarisan Bilateral Menurut Quran dan Hadits*, (Jakarta : Tintamas), hal. 26-32.

¹² Departemen Agama RI, (2005), *Mushaf Al-Quran terjemah*, (Jakarta : al-Huda,), hal. 84.

¹³ Allah has ordained for you the portion of your children, that is to say, a son's portion is equal to the part of two daughters; and if the child is more than two women, then for them two-thirds of the property left; if the daughter is only one, then she will have half of the wealth; and for two parents, for each of them one-sixth of the estate left, if the deceased has a child; if he has no

For example, Ibn 'Abbas, Mujahid, Sa'id bin Jubair, Qatadah, Zaid bin Aslam, as-Suddi, ad-Dahhak, and Muqatil bin Hayyan stated: "For every one (the remainder of the wealth left by his parents and relatives), We have made mawali."¹⁵

The existence of a substitute heir who is not mentioned in the Qur'an is the same as that of an alternate heir in the hadith. The authors believe that the extension of the word walad, called awlad in verse 11 of the An-Nisa Letter, is related to the concept of a substitute heir in hadiths. The word walad in this verse is a shape of jama' (plural), which can mean several children in a horizontal line or several levels in a vertical line. The purpose of this expansion of the word walad is to show that in the hadiths there is a substitute heir. This can be seen from the history and hadiths that discuss the part of grandchildren: *"Children and daughters from boys (through boys) are equal to boys if no boys are alive. "Children are like boys, and grandchildren like daughters; they inherit and reap as children, and do not inherit children with boys."*¹⁶

According to Amr ibn Abbas, the Prophet (peace be upon him) said, *"A daughter and a sister of sons and sisters. The Prophet (peace be upon him) has appointed two-thirds for the daughters of the six boys and the rest for the girls."*¹⁷ Muhammad ibn Katsir said: *"A man came to the Prophet and said, 'The son of the boy has died, what am I doing with his wealth?' The Prophet said, 'You got a sixth when he went and called him back and said, 'You got another sixth, after the man went and asked him again and said that the second sixth was a gift for you.'"*¹⁸ Seeing from how close the grandson is to his heir, his position is comparable to that of the parent to his child. This is based on verse 11 of Surah al-Nisa, which says, "You do not know your parents and your children who of them is closer to your benefit." It is God's decision. Allah is All-Knowing and All-Wise.

If we want to know more about the relationship between grandchildren and their heirs, we should consider the priorities set out in the Qur'an. The Qur'an divides the treasures into three categories: In the Qur'an it is stated that the inheritance of a deceased shall be granted to his descendants. The Qur'an also covers the wealth of a dead man who leaves no offspring but leaves his father for his heirs. The Qur'an takes care of the treasures of the dead brothers. (He has no father and no children).

children and he is inherited by his parents, then his mother will have one-third. (They are divided) after the testament he has made is fulfilled or after his debt has been paid. Your parents and your children, you do not know which of them is closer to your benefit. This is the commandment of God. Surely Allah is All-Knowing, All-Wise. Department of Religion RI, (2005), Mushaf Al-Quran translated, (Jakarta : al-Huda,), hal. 84.

¹⁴ Shihab, M. Q. (2002). Tafsir al-misbah. Jakarta: lentera hati, 2. hal.11.

¹⁵ Permadhi, F. (2011). Studi pasal 185 kompilasi hukum Islam tentang waris pengganti: Sebuah tinjauan mashlahah (Doctoral dissertation, Universitas Islam Negeri Maulana Malik Ibrahim).

¹⁶ Kusmayanti, H., & Krisnayanti, L. (2019). 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(1), 68-85.

¹⁷ Djuned, M., & Nur, I. (2016). Hijab dalam Kewarisan Islam Berdasarkan Hadis. TAFSE: Journal of Qur'anic Studies, 1(1), 67-86.

Father and son inherit each other, and so do brothers and sisters. In addition, the father can only inherit his child if the child does not have a descendant, so the principle that the child or descendant as an heir has higher priorities than the father as a heir. Furthermore, the brother as an heir has a lower priority after the father, that is, after his father dies, his brother gets the turn, as stated in Surah an-Nisa' verse 176. In the Qur'an, it is said that the righteousness of their ancestors is the rule of law. However, there is an additional unresolved question, namely whether the grandchild came from any offspring who is entitled to his grandparents' property. Fuqaha now and before is still debating this second issue.

In the Compilation of Islamic Law, the replacement of the place of inheritance for Muslims can be done and does not deviate from the Nash as long as it is done for the public interest. For God says in Isaiah 8 that relatives, orphans, and poor should be present when the inheritance is divided. In this case, the grandchildren of the heirs can also enter into the heir's relatives if they come from the children of the inheritors.

Legal protection of substitute heirs in the compilation of Islamic law

The Indonesian Islamic inheritance law (KHI) has newly changed the position of heirs based on the *ijtihad* of the scholars on the provisions of the inheritors in the Qur'an and Hadith, known as *Ijma* in Ushul Fiqh.¹⁹ It would be better if Islamic law allowed children to replace the position of heirs of their deceased parents. Protecting family and relatives is the primary purpose of Islamic family law. Through the history of Islamic inheritance law, it has never been known that there has been a substitution of the role of inheritors, and *al-as-Sunnah* has never spoken about this issue. All this was done to ensure that after his father died, his grandchildren could enjoy his grandfather's legacy.

The compilation of Islamic Law is a consensus (*Ijma'*) of Indonesian scholars and various groups of the layer of elements of society who have obtained legitimacy from the state power through the Presidential Instruction No. 1 year 1991 to 10 June 1991. The instructions are given to the Minister of Religion for dissemination and use by government agencies and by the community in need. Compilation of Islamic Law is the material law of one of the positive laws that apply in Indonesia. The content comes from various sources, including thirteen fiqh books from various *mazhabs*, books of jurisprudence, interviews with various scholars, and comparative studies of other Islamic countries.

Rachmat Djatnika argues that the application of law in the life of society, both in religious courts and laws, contains *ijtihadiah* problems that are solved by Indonesian scholars using *istidlal* methods such as *al-istislah*, *al-istihsan*, *Al-'urf*, and others with the goal of *football masalih wa dar'u al-mafasid*.

¹⁸ Op. cit. Permadhi, F. *Studi pasal 185*

¹⁹ In the language, *Ijma'* (*al-Ijma*) means *al-'azm* (determinate to do something) and *al-tashrrim* (definite to make a decision), in the term, the most common definition of *Ijma* is: "The agreement of the *mujtahid* in a time after the Prophet saw about a law *syar'i* concerning a certain event." Abdul Wahab Khalaf, *Ilm Ushul al-Fiqh* 12th (Kuwait: Dar al-Qalam, 1978/1398), 45

If someone disagrees with the decision of *ijtihad*, the judge's decision cannot be revoked by another *ijtihad*. (*al-ijtihad layunshadu bil ijtihad*). The substitution referred to in Article 185 includes the replacement of places, degrees, and unlimited rights between men and women as heirs.²⁰ The compilation of Islamic law regulates the replacement of places when nephews or grandchildren take the role of parents as brothers and sisters of heirs or otherwise.²¹

The compilation of the Islamic Law, Article 185, meets the requirements of a substitute heir. According to the provisions of this article, an heir who died before the heir is considered to be a replaced heir. Article 185 of the Compilation of Islamic Law speaks about how to appoint a substitute heir. In Article 185 paragraph 1, the phrase "can be replaced" is used to raise uncertainty about the appearance of the heir. The term "can" can be interpreted as meaning that there are heirs who may be replaced and there are inheritors who cannot be substituted due to the condition of the heir himself.

This happens when husband and wife inherit each other; if one of them dies before the other, then his wife becomes his heir, and vice versa. Therefore, the theory of a substitute heir cannot be applied in the case of a spouse. Only blood or fate between the heirs and their parents or siblings can replace their position as heirs. The compilation of the Islamic Law, which regulates the substitution of degrees means that the substitute heir of the boy gets the same degrees as the boy and beyond. Substitution means that the substitute heir is entitled to the inheritance if the person replaced by them dies also has the right to the legacy. Unlimited replacement means that the replacement applies to the grandchildren of the heirs even if the heir has two sons or daughters. Except as referred to in Article 174 paragraph (1) letter a, the substitute heir may be an inheritor without distinction. Compilation of Islamic Law, which is regulated. The substitute heir shall receive the share equal to the share given to the replaced heir. In other words, if a substitute heir takes over the role of a boy, he will receive a share equal to a boy's share, and if he takes over a girl's role, he would receive a portion equivalent to a girl. In cases where the substitute heir consists of two or more persons, they shall share equally on the part of the heir they replace, provided that the male heir receives twice the child's part.²²

Compilation of Islamic Law, which is regulated. Article 176 and 182 differentiate between boys and girls, but the second paragraph of Article 185 says that equality is among boys. The share of the substitute heir who serves as the boy's substitute shall not exceed the boys' part of the surviving heir, but shall remain greater than the daughter's part, irrespective of the situation. Compilation of Islamic Law, which is regulated. Some jurists have argued that the share of a substitute heir may be smaller than that of a replaced heir, based on the sentence

²⁰ Firdaus Muhammad Arwan, (2011) *Silang Pendapat tentang Ahli Waris Pengganti Dalam Kompilasi Hukum Islam dan Pemecahannya*, Jurnal Mimbar Hukum dan Peradilan, No. 74,: 85.

²¹ Andi Nuzul, (2004), *Relevansi Beberapa Asas Hukum Kewarisan Menurut KUH Perdata dengan Asaa Hukum Kewarisan Islam dan Hukum Adat dalam Perspektif Pembentukan Hukum Kewarisan Nasional*, Jurnal Dua Bulanan Mimbar Hukum Aktualisasi Hukum Islam, No. 65, Tahun XIV, (Nopember-Desember): 12 & 15.

in Article 185 paragraph (2) which states that "the share of an equal heir shall not exceed that of the replaced." Although this opinion may be true, legal uncertainty will arise if followed because there is no standard that can be used to determine how many shares to be given to a substitute heir. On the contrary, based on Mawali Hazairin's theory, there are also those who argue that a substitute heir should receive an equal proportion of the wealth.²³

Yahya Harahap stands on the basis of adherence and contribution. From a coherence perspective, a substitute heir does not deserve to receive a larger portion than a direct heir. While from a contribution perspective, the direct heirs make a lot of contributions to the heirs, which are mostly inherent to the inheritance. ²⁴ Basically, the compilation of Islamic law restricts grandchildren to receive only three-quarters of the property of their deceased parents, not the whole. In Article 185 paragraph 2 of the Compilation of the Islamic Law, it is mentioned that the right of the substitute heir to receive inheritance shall not exceed the share of the equal person with the heir appointed by him, since there is a possibility that the replacement heir may exceed that of the inheritor appointed. Article 185, paragraph 2, states that the right of a substitute heir to replace a person who has died earlier shall not exceed the proportion of the person appointed by him.

4. Conclusion

The legal position of a substitute heir in Islamic inheritance in Indonesia is provisionally formulated in article 185 paragraph 1, i.e. a heir who has died before the heir and can be replaced by his or her children, except those mentioned in article 173. (melakukan tindakan penganiayaan berat). The inheritance acquired by the substitute heir is not always the same as that replaced, i.e. it is not permitted to add from the acquisition of the equivalent heir to the replaced but may reduce it.

The substitution referred to in Article 185 covers the replacement of place, degrees, and unlimited rights between men and women as heirs, i.e. regulating the substitution of place when a nephew or grandson takes the role of a parent as a brother-in-law or otherwise. According to the provisions of the article, an heir who died before the heir is considered to be a replaced heir, and also must not exceed the share of the inheritance rights of a person who is equal so that the compilation of Islamic law in article 185 (2) gives the maximum limit of one-third for the replacement heir.

²² Sudaryanto, A. (2010). Aspek Ontologi Pembagian Waris dalam Hukum Islam dan Hukum Adat Jawa. *Mimbar Hukum-Fakultas Hukum Universitas Gadjah Mada*, 22(3), 534-552.

²³ Zahari, A. (2014). Telaah Terhadap Pembatasan Lingkup Ahli Waris Pengganti Pasal 185 Khi Oleh Rakernas Mahkamah Agung RI di Balikpapan Oktober 2010. *Jurnal Dinamika Hukum*, 14(2), 324-339

²⁴ M. Yahya Harahap, Pokok-Pokok Materi Kewarisan dalam KHI, Hukum Kewarisan dalam KHI, UI Depok: Makalah Seminar, 1992, hlm. 38

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