

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

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Submission date: 10-Sep-2023 05:40AM (UTC+0700)

Submission ID: 2161613669

File name: nce_Rights_In_The_Perspective_Of_Compilation_Of_Islamic_Law-.pdf (491.1K)

Word count: 6950

Character count: 35255

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Juridical Review on the Support of Inheritance Rights in the
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Article Info

Received:2021-08-12

Revised:2021-09-21

Accepted:2021-12-30

Keywords:

Position, Deputy Heir,
Compilation of Islamic
Law.

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 tertair 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 is formulated provisionally in article 105 paragraph 1, that is, the heir who died before the heirs and can be replaced by his 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 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

Today, there are various inheritance systems that apply to Indonesian citizens. In addition to the legal system of Islamic inheritance, there is also a civil and customary legal system. It has a basis to use. First, the legal system of the Western Heritage is regulated in the Burgelijk

wet Book, or the Book of Heritage Law. According to section 131 IS, BW applies to: a). Europeans and those considered equal to Europeans; b). Foreign Eastern Chinese; and c). Indonesians are subject to European law. Second, indigenous inheritance legal systems can be found in different regions. This includes matrilineal systems in the Minangkabau tribe and patrilineals in the Batak tribe, among others. Mazhab Ahlussunnah Wal Jama'ah is the most popular Islamic inheritance legal system in Indonesia. These three legal systems developed in Indonesia at different times and have unique characteristics. Indonesian law has existed since ancient times and is the oldest law in the country. Since the Islamic merchants came and lived in Indonesia, the new Islamic law was known. Meanwhile, the VOC government has begun to enforce Western law in Indonesia.

Part of family law is the law of inheritance and marriage. "Of all the laws, the laws of marriage and inheritance are the ones that determine the family system in society," Hazairin said. The reason for this is that death is a certain fate for all living beings. The legal consequence of a person's death is how the rights and duties of the deceased person are cared for. The law of Faraidz, which comes from the Qur'an and Hadith, regulates this. This is clearly stated in the Qur'an. It is one of the most perfect laws of Nash. The Prophet Muhammad saw was the perfect individual to solve the legal problem of heirs. After his death, the Hadith became the statement, practice, and takrir because the Prophet interpreted and explained the law based on the verses of the Qur'an and made the law inheritance beyond the Verses. Until now, the Indonesian government has not had a national inheritance law similar to the Marriage Act No. 1 of 1974.

As a result, Indonesia can choose to resolve its inheritance problems using indigenous law, BW law, or Islamic law. However, the law of Islamic inheritance has been established by the Indonesian government as a legitimate legal norm and established a special body for its implementation, namely the religious court. The compilation of Islamic law is the official material law on Islamic heritage law. When the law of Islamic inheritance is applied, it shows the value of a Muslim who follows his religious teachings. In the Qur'an, verse 65 of Surah An-Nisa says: "By your Lord, they will not believe until they have made you judge over what they are disputing." According to the law, it is obligatory for a Muslim, whether he is a man or a woman, to study the law of Islam's inheritance, and for others to study it.

According to Imam Mazhab Shafi'i, there are three types of heirs, namely: 1. Dzawil Furudh is the one who gives the Qur'an. 2). Ashabah, the inheritors who have the remainder of Jzawil Furudh, but when there is no inheritor of Jsawil Furud at all, they receive all the wealth. 3). Dzawil Arham, The inheritors of the inheritance are those who have a family relationship with their heirs but do not include the heirs of Dzawil Furudh and Ashabah. The inheritor of Dzawil Arham only got an inheritance after the inheritors of Jzawil Furudh and Ashabah did not exist, or could get the legacy through a will.

by Ahmad An Nasai and Ad Daruquthni, "Learn the Quran and teach the people, and learn the knowledge of Pharaoh and teach people. Because I am the one who will be taken away (dead)." In the Qur'an, there are a number of verses that regulate the distribution of inheritance, such as in QS An-Nisa verses 1, which indicate strong affinity due to blood ties. In QS An Anfaal 75 also, it is stated that the rights of relatives due to blood ties are preferred to the right of others. The An-Nisa verse 7 states that all persons are equal and the An-Nisa verse 10 reminds people to be careful when guarding the inheritance given to orphans. QS

An Nisa verse 11: indicates that the part of the boy is equal to that of the two daughters. When we want to divide inheritance according to Islamic law, it is important to know that it must be done systematically and through its stages correctly. If the first process, determining the heir, is wrong, it will have a fatal impact as it gives a share to the unworthy, and the entitled person will lose his rights. Repeated mistakes in the next step will come from this initial mistake. In an inheritance claim, there are three objects of matters: 1) Who becomes an heir; 2) What becomes a legacy; and 3). How many inheritors each has? The inheritance in Islam is the worship of Allah, and it is the commandment to follow the c²¹ mandments of Allah and His Messenger. The Qur'an in Surah An-Anfal verse 20 says: "O you who believe, obey Allah and His Messenger, and do not turn away from Him while you hear Him." This statement inspires everyone to not only pay attention to their own personal interests, but also because of the matter of treasures to be acquired honestly and fairly, the division of inheritance according to Islamic law includes acts of morality towards fellow human beings..¹

The problem of inheritance-particularly about the successor is an interesting topic of discussion when viewed from a normative point of view. This was demonstrated by the special session that discussed this issue at the 2009 National Working Meeting of the Supreme Court in Palembang. Whether the appointment of a substitute h¹⁰ is mandatory or optional is one of the debates that has arisen over the years. Because, the Compilation of Islamic Law (KHI), made by scholars and colleges based on Inpres No. 1/1991, gave the order to the Minister of Religion to spread the KHI rather than establish it as a law applied to the Religious Court. Twenty years later, KHI became the Second Book of the Law of Inheritance, in particular the 185th section of the KHI which regulates the substitute heirs, but concerning the theory of substitute inheritors many contained Hazairin's thoughts. ²

Some participants in the event opposed the idea of a substitute heir who was always associated with Hazairin, who was the advocate of the bilateral heritage theory that later became Indonesian Islamic law. The provisions of a substitute heir, such as an obligatory will, are not regulated in a fiduciary, which leads to this debate. Based on the explanation above, the researcher can determine the formula of this resear¹⁰ problem. The root of the problem is as foll¹ws: What is the position of the substitute heir in the compilation of Islamic law? How does the compilation of Islamic law apply the division of the rights of substitute heirs?

2. Research Method

This normative jurisprudence research prioritizes library materials, court decisions that have already incrachted, or documents called secondary data. Primary, secondary and tertiary laws consist of primary, secondary, and tertaiir materials, and these methods are used to conduct this research. Rules in Islamic inheritance law and judgments that have already incrachted are used as the basis for this method. Zainuddin Ali stated that "qualitative normative jurisprudence is research that refers to the legal norms contained in the

¹ Humaira, S. (2021). Kedudukan Ahli Waris Pengganti Dalam Hukum Waris Islam. Jurnal Hukum Al-⁹ikmah: Media Komunikasi dan Informasi Hukum dan Masyarakat, 2(3), 557-568.

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.

regulations of laws and judgments as well as the norms that live and develop in society.”³

3. Results and Discussion

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

Raihan A. Rasyid defines a substitute heir as a “expert in substitute inheritance” and a “substitute of heir.” According to him, substitute heirs are those who from the outset are not heirs but become heirs in a particular situation and receive inheritance in the status of heirs. For example, a person who inherits has no children but leaves a male or female grandson from a boy.⁴ Substitute heirs are those who may receive an inheritance but remain not an heir for a certain reason. For example, a heir leaves behind a male or female grandson whose parents died before the heir. Presence of grandchildren as inheritors

Article 185 of the Compilation of Islamic Law by Raihan A. Rasyid, the terms “plaats vervulling” and “wasiat obligah” in Egyptian law are referred to as the substitute of the heir. In article 185 of the Compilation of Islamic Law, the concept of an inheritor replacement or change of the position of an heir is described as “place vervulling”. in article 185 :

- 1) The heir who died before the heir may be replaced by his son, except for those mentioned in Article 173.
- 2) The share of substitute heirs shall not exceed the share of equal heirs to that of the substitute.⁵

According to Article 185, a grandson may occupy the position of his parents as a substitute heir; for example, if his parents are dhawi al-furud, his grandson will be dhawi el-furod and if his parent is ashobah, his greatson will receive the 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 cause 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

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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, 15 Liwa, PA. Blambangan Umpu) di Pengadilan Agama Krui, tanggal 19 April 2011

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 12 five-year prison sentence or a heavier sentence.

⁶ Ismuha, H. (1978). Penggantian ⁶ Zainuddin Ali, , 2016, *Metode Penelitian Hukum*, Jakarta, Sinar Grafika, Hal. 105

⁶ Shobirin, Hakim Pengadilan Agama Kotabumi. *Ahli Waris Pengganti Dalam Kewarisan Islam Perspektif Madzhab Nasional*, Makalah ini dipresentasikan dalam acara diskusi Wilayah III (PA. Kotabumi, 15 Liwa, PA. Blambangan Umpu) di Pengadilan Agama Krui, tanggal 19 April 2011

⁶ Article 173 of the Compilation of the Islamic Law states, “A person is prevented from becoming an inheritor when by a judge who 28s had a fixed legal force, is punished because; a. Accused of killing or attempting to kill or harass tempat dalam hukum waris menurut KUH perdata, hukum adat dan hukum Islam. Bulan Bintang.

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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 "plaats 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.

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

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).

⁸ Mustofa, M. (2017). Ahli Waris Pengganti dalam Kompilasi Hukum Islam. Inklusif (Jurnal Pengkajian Penelitian Ekonomi dan Hukum Islam), 2(2), 33-52.

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 *ijtihad* 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, *ijtihad* 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. 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

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 kajian mashlahah (Doctoral dissertation, Universitas Islam Negeri Maulana Malik Ibrahim).

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

¹¹ Zahirin,(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.

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. 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

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 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. 20 is the commandment of God. Surely Allah is All-Knowing, All-Wise. Department of Religion RI, (2005), Mushaf Al-Quran translated, (Jakarta : al-Ida,), 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.

boys and the rest for the gift¹⁴"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).

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.

1 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

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

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 ijtihad 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

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*. 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.

³⁹ 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

⁸ 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 Asas 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.

⁶ ²² Sudaryanto, A. (2010). *Aspek Ontologi Pembagian Waris dalam Hukum Islam dan Hukum Adat Jawa*.

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 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

- a. 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.
- b. 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.

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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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