

Substitute Heirs in Islamic Inheritance Law: A Comparative Analysis of Shafi'i Faraid and the Compilation of Islamic Law (KHI)

Surya Insani Kamil^{1*}, Kaharuddin²

¹E-mail: 2210611281@mahasiswa.upnvj.ac.id

²E-mail: kaharuddin@upnvj.ac.id

^{1,2}Universitas Pembangunan Nasional "Veteran" Jakarta, Indonesia

*corresponding author

Article history:

Received in revised form: 18 July 2026

Acceptance date: 31 July 2026

Available online: 24 August 2026

Keywords:

Substitute Heirs; Grandchildren; Islamic Inheritance Law; Shafi'i School; Compilation of Islamic Law.

How to Cite:

Kamil, S. I., & Kaharuddin. (2026). Substitute Heirs in Islamic Inheritance Law: A Comparative Analysis of Shafi'i Faraid and the Compilation of Islamic Law (KHI). *Al-Risalah Jurnal Ilmu Syariah Dan Hukum*, 26(2). <https://doi.org/10.24252/al-risalah.v26i2.71303>

License:

Copyright (c) The authors (2026)



This work is licensed under a [Creative Commons Attribution 4.0 International License](https://creativecommons.org/licenses/by/4.0/).

Abstract

Scholarship on substitute heirs in Indonesia has developed along three largely separate tracks: doctrinal studies of Article 185 of the Compilation of Islamic Law (KHI), studies of hijab in classical Islamic inheritance jurisprudence, and studies of judicial disparity in Religious Court practice. What has not yet been examined is how these three strata interact within a single adjudicative event. This study addresses that gap by reconstructing Sungai Raya Religious Court Decision No. 262/Pdt.G/2025/PA.Sry, a decision in which Shafi'i faraid doctrine, Article 185 KHI, and Supreme Court Circular No. 3 of 2015 are simultaneously mobilised. The study employs normative legal research with comparative, statutory, and case approaches. The findings show that Shafi'i faraid does not so much reject substitute heirs as lack representational construction that Article 185 KHI introduces, entitlement in the school is determined by qualification through furud and 'asabah, so that a son's son is totally excluded by surviving son while children of a daughter fall outside the class of legal heirs altogether. Article 185 KHI, transmits the position of predeceased parent to child, which alters base denominator from eight to nine and proportionally reduces shares of the primary heirs. Theoretical contribution of comparison lies in locating divergence between the two systems on the subject side of the norm. On that basis the authors advance, as a normative recommendation and not as a conclusion compelled by the findings, the argument that the limitation currently carried by the Circular should be codified in Article 185 KHI itself.

INTRODUCTION

Inheritance law is an essential part of family law that regulates the transfer of a person's rights and obligations to their heirs after death. In Islamic law, this is known as *faraid*, which constitutes a set of provisions based on the Qur'an and Hadith regulating the parties entitled to receive an inheritance along with their respective shares. Thus, its application plays a strategic role in establishing legal certainty, preventing disputes among heirs, and ensuring the achievement of justice and balance in the distribution of the estate in accordance with Islamic legal principles (*sharia*).¹ However, social developments within society have engendered various inheritance issues that are not explicitly regulated under the *faraid* law of the Shafi'i School of Thought (*Mazhab Syafi'i*). One such issue concerns the legal standing of grandchildren as beneficiaries when their parents predecease the decedent. This gives rise to differing interpretations because the concept of substitute heirs (*ahli waris pengganti*) is not explicitly recognized within the said school of thought, thereby creating a need for legal protection that can guarantee the rights of grandchildren as well as realize justice and public interest (*maslahah*) in the distribution of inheritance.² From the perspective of Islamic inheritance law, the Shafi'i School places the proximity of lineage (*nasab*) as the primary basis for determining inheritance rights. Consequently, grandchildren whose parents predeceased the decedent may lose their right to inherit because they are deemed excluded (*mahjub*) by the presence of heirs who possess a closer kinship relation to the decedent, such as sons, in accordance with the hierarchically structured inheritance law construction found in classical jurisprudence (*fiqh*) literature.

Differing from the inheritance construction of the Shafi'i School, positive law in Indonesia through the Compilation of Islamic Law (*Kompilasi Hukum Islam / KHI*) recognizes the concept of substitute heirs (*ahli waris pengganti*). This entails granting the right to the child of a predeceased heir to step into their parent's legal position to receive an inheritance, as a form of legal reform responsive to the evolving needs of society, and as a normative foundation and practical solution in resolving inheritance disputes within the Religious Courts jurisdiction.³

¹ Imam Jauhari and Muhammad Ali Bahar, *Hukum Waris Islam* (Sleman: Deepublish Publisher, 2021).

² Mohamad Mirzalino Safryan Dilapanga, Desti Astati, and Eva Nurjannah, "Kedudukan Ahli Waris Pengganti (Plaatsvervulling) Dalam Memperoleh Harta Waris Menurut Hukum Islam," *Jurnal Komunikasi Hukum* 7, no. 1 (2021), <https://doi.org/10.23887/jkh.v7i1.31460>.

³ Faisal, Fathul Mu'in, and Miswanto, "Dinamika Penerapan Hukum Ahli Waris Pengganti (Analisis Disparitas Putusan Hakim Di Indonesia)," *El-Izdiwaj: Indonesian Journal of Civil and Islamic Family Law* 2, no. 2 (2021), <https://doi.org/10.24042/el-izdiwaj.v2i2.11434>.

To date, the existence of the substitute heir concept within the KHI remains a subject of debate among academics, legal practitioners, and Islamic scholars (*ulama*). Some parties view this regulation as a form of legal reform relevant to the needs of Indonesian society, whereas others argue that the concept is not fully aligned with the principle of *hijab* (exclusion) recognized in classical *faraid* law. These differing perspectives illustrate the dynamic discourse regarding the boundaries of legal reasoning (*ijtihad*) in the reform process of Islamic inheritance law, particularly in efforts to adapt Islamic legal values to social developments and the demand for justice in Indonesia.⁴

The debate regarding the concept of substitute heirs takes place not only on a theoretical level but also in judicial practice, marked by disparities in court decisions resulting from judges' differing interpretations of KHI provisions and *faraid* principles. Some judges apply the KHI textually to guarantee legal certainty, while others consider customary law (*hukum adat*) and classical jurisprudence (*fiqh*), thereby reflecting the complexity of Indonesia's inheritance law system situated at the intersection of Islamic law, customary law, and national law.

Inheritance issues become increasingly complex when determining the proportion of rights accorded to grandchildren as substitute heirs. Although the KHI stipulates that the share received by a substitute heir must not exceed the share of the heir being replaced, its execution remains contingent upon the structure and composition of the other surviving heirs, thereby frequently generating various difficulties in the practical distribution of estates.⁵

Overall dynamics of academic debate and judicial practice in inheritance law reveal a dualism in the reference sources of Islamic inheritance law in Indonesia. This dualism is reflected in the discrepancies between the *Faraid* Law of the Shafi'i School and the KHI in determining the legal status of grandchildren as beneficiaries. Consequently, these differences in concepts, normative foundations, and legal ramifications not only impact legal certainty but also present challenges for justice-seeking citizens, thereby necessitating a comprehensive understanding among practitioners, academics, and law

⁴ M Yogi Galih Pratama, Muhammad Ilyas, and Mudlafi'ah Lil Fudhona, "Rekonstruksi Pasal 185 {KHI} Tentang Ahli Waris Pengganti," *Al-Usariyah: Jurnal Hukum Keluarga Islam* 2, no. 2 (2024), <https://doi.org/10.37397/al-usariyah.v2i2>.

⁵ Sekar Dita Utari, Diangsa Wagian, and Fatria Hikmatiar Al Qindy, "Ahli Waris Pengganti Di Tinjau Dari {KUHPerduta} Dan Kompilasi Hukum Islam," *Jurnal Private Law Fakultas Hukum Universitas Mataram* 3, no. 2 (2024), <https://doi.org/10.29303/prlw.v3i2.2605>.

enforcement officials to harmonize the prevailing provisions in resolving inheritance disputes.⁶

In the context of inheritance law in Indonesia, the coexistence of customary law, Islamic law, and Western civil law demonstrates legal pluralism that shapes the characteristics of the national legal system. These three legal systems exist and evolve concurrently while mutually influencing one another in the practice of inheritance dispute resolution, thereby yielding a legal construction that does not rely on a single source of law, but rather on the interaction of diverse norms operating within society.⁷

The presence of legal pluralism affords opportunities for creating dispute resolution mechanisms that are more responsive to societal needs; conversely, it also harbors the potential to cause conflicting interpretations and norm collisions. Therefore, judges are required to be capable of harmonizing various applicable legal provisions to render judgments that secure legal certainty, justice, and legal utility (*kemanfaatan*). In the context of Islamic inheritance, the regulation governing substitute heirs in the KHI is perceived as a legal reform effort seeking to accommodate social dynamics while simultaneously preserving the values of justice and public welfare (*maslahah*) within society.⁸

Although the regulation of substitute heirs in the KHI is intended as a form of Islamic legal reform to address evolving societal needs, its existence continues to spark debate as it is not explicitly recognized within the inheritance system of the Shafi'i School. This condition reflects an underlying tension between normative Islamic law derived from classical jurisprudence (*fiqh*) and positive law codifying such rules in the KHI. In judicial practice, this discrepancy is often reconciled through judicial interpretation, taking into account aspects of legal certainty, justice, and legal utility in resolving inheritance disputes.⁹

The implementation of the substitute heir concept in Religious Court judicial practice in Indonesia can be analyzed comprehensively through the Sungai Raya Religious Court Decision Number 262/Pdt.G/2025/PA.Sry. This decision presents a compelling subject for examination as it encapsulates legal issues regarding the determination of substitute

⁶ Dela Kartika Musa, Nur Mohamad Kasim, and Dolot Alhasni Bakung, "Tinjauan Komparasi Kedudukan Hukum Ahli Waris Pengganti Dalam Perspektif Hukum Perdata Dan Kompilasi Hukum Islam," *Journal Of Comprehensive Science* 2, no. 6 (2023), <https://doi.org/10.59188/jcs.v2i6.373>.

⁷ Franz von Benda-Beckmann and Keebet von Benda-Beckmann, "Comparative Law In A Global Context: The Legal Systems Of Asia And Africa" (Cambridge: Cambridge University Press, 2013), 380-420, <https://journal.publication-center.com/index.php/ijssh/article/view/1732>.

⁸ Abdul Ghafur Anshori, "Reformulasi Hukum Keluarga Islam Di Indonesia," *Ahkam: Jurnal Ilmu Syariah* 21, no. 2 (2021), <https://doi.org/10.15408/ajis.v21i2.XXXX>.

⁹ Ahmad Haikal Rahman, "Dinamika Putusan Pengadilan Dalam Penyelesaian Sengketa Kewarisan," *Ahkam: Jurnal Hukum Islam Dan Humaniora* 1, no. 1 (2023), <https://doi.org/10.58578/ahkam.v2i1.986>.

heir status within the Islamic inheritance system codified under the KHI. The dispute submitted to the court not only concerns the distribution of estate assets comprising a land parcel measuring 8,720 m² located on Jalan Adi Sucipto, Kampung Arang Limbung, but also raises debate concerning which parties are legally entitled to step into the legal standing of an heir who predeceased the decedent.¹⁰

The lawsuit was fundamentally initiated by Aida binti H. Basri M. Amin, standing as one of the biological children of the decedent. The claim was filed because the estate of the late H. Basri M. Amin and the late Hj. Asyiah binti Muhammad Nafis had not been clearly partitioned, creating conflicting interests among family members. In her petition (*gugatan*), the Plaintiff prayed that the court establish the parties legally entitled as heirs and identify the estate assets eligible for division under the law. This petition essentially aimed to secure legal certainty regarding the subject and object of the inheritance so that the estate distribution could be conducted equitably without inciting prolonged family conflict.¹¹

The court proceedings of this case revealed a fairly complex family structure. In addition to involving the biological children of the decedent as direct heirs, the case also involved the descendants of Hj. Jauyah binti H. Basri, who turned out to have predeceased the decedent, leaving behind five children, namely: Agus bin A Rajak, Yuniarti binti A Rajak, Herlina binti A Rajak, Indra Pradesa bin A Rajak, and Hermawan bin A Rajak. This factual circumstance holds significant legal weight as it serves as the essential prerequisite for applying the substitute heir concept as governed under Article 185 paragraph (1) of the KHI. The said provision stipulates that if an heir predeceases the decedent, their legal standing may be substituted by their child.

The matter became further complicated because one of Hj. Jauyah's children, namely Agus bin A Rajak, had also passed away, leaving behind a surviving wife, Yusherli binti Lehan, and three children, namely Meisy Nurazizah, Zikri Ilyasan Ramadhan, and Luthfi Fauzi Yusendar. Consequently, the discourse of a "second-degree substitute heir" (*ahli waris pengganti tingkat dua*) emerged within one of the prayers for relief (*petitum*). This required the Panel of Judges to adopt a more comprehensive analytical approach, without ruling out potential limitations on the legal standing of substitute heirs in order to preserve equity and balance within the family.

¹⁰ Mahkamah Agung Republik Indonesia, "Direktori Putusan Mahkamah Agung Nomor Zaf0a037254fe9aac0dd313535383335," n.d., <https://putusan3.mahkamahagung.go.id/direktori/putusan/zaf0a037254fe9aac0dd313535383335.html>.

¹¹ Kaharuddin, *Ilmu Perancangan Perundang-Undangan* (Kencana, 2025).

Based on the facts presented during the trial, the Panel of Judges designated Yuniarti, Herlina, Indra Pradesa, and Hermawan as legitimate substitute heirs, as they were proven to hold direct blood relations with Hj. Jauyah, who had predeceased the decedent. Meanwhile, the claims of Yusherli binti Lehan together with Meisy Nurazizah, Zikri Ilyasan Ramadhan, and Luthfi Fauzi Yusendar as her children were dismissed for failing to meet statutory requirements. Yusherli possessed a relationship based solely on marriage rather than blood ties with the decedent, whereas the children held the legal status of great-grandchildren (*cicit*) to the decedent. This rejection was grounded on Supreme Court Circular Letter (SEMA) No. 3 of 2015, which restricts substitute heirs exclusively down to the degree of grandchildren, aligned with Article 185 paragraph (2) of the KHI.

As can be analyzed from the judgment, the Panel of Judges designated the grandchildren as substitute heirs while rejecting the grandchild-in-law and the great-grandchildren as substitute heirs based on various legal considerations. The Panel of Judges invoked Surah An-Nisa Verse 11 as the foundational consideration under *faraid* law, Article 185 paragraph (2) of the KHI to establish substitute inheritance, and SEMA No. 3 of 2015 to impose degree limitations on substitute heirs.¹² This reflects that the Panel considered legal determinations across various paradigms of inheritance law to achieve justice and familial balance.¹³

Analyzed through the paradigm of the *Faraid* Law of the Shafi'i School, the determination of heirs would strictly extend to the surviving children of H. Basri, namely Fatimah binti H. Basri, H. Drs Zulkifli bin H. Basri, H. Nazarudin bin H. Basri, Aida binti H. Basri, and Mawardiansyah bin H. Basri. Meanwhile, the legal status of H. Basri's grandchildren and great-grandchildren through Hj. Jauyah would be barred by exclusion (*hijab*), wherein their status as heirs is disqualified due to the presence of heirs occupying a closer familial degree. In said decision, this outcome technically departs from classical *faraid* rules because substitute inheritance is not recognized under *faraid*, which instead emphasizes the principle of total exclusion (*hijab hirman*) to prioritize closer kin or direct lineal descendants.¹⁴

¹² Mahkamah Agung Republik Indonesia, "Surat Edaran Mahkamah Agung ((SEMA)) Nomor 3 Tahun 2015," n.d., https://kepaniteraan.mahkamahagung.go.id/images/peraturan/sema/SEMA_3_TAHUN2015.pdf.

¹³ Kaharuddin, *Nilai-Nilai Filosofis Hukum Perkawinan* (Jakarta: Mitra Wacana Media, 2015).

¹⁴ Raja Ritonga, Dedisyah Putra, and Asrul Hamid, "Teori Dan Praktek Hijab-Mahjub Dalam Kewarisan Islam Menurut Konsep Syajarotul Mirats," *Tahkim: Jurnal Peradaban Dan Hukum Islam* 5, no. 1 (2022), <https://doi.org/10.29313/tahkim.v5i1.9437>.

However, examining the application of substitute heirs itself, Article 185 paragraph (2) of the KHI does not explicitly regulate the downward limit of substitute inheritance along the line of descent. Consequently, the Supreme Court issued SEMA No. 3 of 2015 concerning guidelines for the performance of judicial duties, which *inter alia* contains provisions limiting the standing of substitute heirs down to grandchildren. This led the Panel of Judges not to designate the grandchildren of Hj. Jauyah through Agus bin A Rajak as substitute heirs, given that their status reaches the degree of great-grandchildren when traced back to H. Basri bin Muhammad Amin.

When analyzed from the perspective of legal pluralism, this judgment reflects a harmonization among the various applicable sources of law in Indonesia.¹⁵ In deciding the case, the Panel of Judges relied not only on the normative provisions of the KHI as substantive law, but also incorporated Supreme Court guidance via SEMA No. 3 of 2015, *faraid* law, and aspects of civil law into its legal reasoning (*ratio decidendi*). This approach demonstrates that Religious Court practice in Indonesia does not operate in a rigid or formalistic manner; rather, it integrates complementary legal instruments to attain substantive justice. In other words, this decision illustrates how Islamic law, national law, and judicial practice interact in resolving inheritance disputes.¹⁶

This study will comparative-analyze the legal framework between the KHI and the *Faraid* Law of the Shafi'i School to analyze the differences between the regulation of substitute heirs in Article 185 of the KHI and the principle of *hijab* in the Shafi'i School, thereby offering recommendations that are more equitable and aligned with Islamic legal authorities (*dalil shar'i*) in resolving inheritance disputes in Indonesia. Therefore, through this research, it is expected to acquire a comprehensive understanding regarding the implementation of substitute heir provisions and the factors influencing judges' legal reasoning in deciding inheritance cases. Furthermore, this study aims to analyze the extent to which legal pluralism contributes to the formulation of judges' judicial considerations, particularly in resolving inheritance disputes involving discrepancies between normative Islamic law and positive law in force in Indonesia.

Research questions of this research are: 1) How are the provisions and distribution mechanisms of inherited property for grandchildren as substitute heirs structured from the perspective of the *Faraid* Law of the Shafi'i School; 2) How are the provisions and distribution mechanisms of inherited property for grandchildren as substitute heirs

¹⁵ Werner Menski, *Comparative Law In A Global Context: The Legal Systems of Asia and Africa* (Cambridge: Cambridge University Press, 2006).

¹⁶ Adriaan Bedner and Jacqueline Vel, "Legal Education In Indonesia," *The Indonesian Journal of Socio-Legal Studies* 1, no. 1 (2021), <https://doi.org/10.54828/ijsls.2021v1n1.6>.

structured under the Compilation of Islamic Law (KHI); and 3) What are the similarities, differences, and legal implications of applying the *Faraid* Law of the Shafi'i School and the KHI regarding the legal standing of grandchildren as substitute heirs in the Sungai Raya Religious Court Decision No. 262/Pdt.G/2025/PA.Sry.

METHODS

This study employs a normative legal research methodology (*juridis normatif*), which designates written legal norms as the primary object of study, encompassing provisions within the Compilation of Islamic Law (KHI) and the *Faraid* Law of the Shafi'i School. The study is conducted through library research and an in-depth examination of relevant court decisions, without involving field observations or empirical data collection, as its objective is to examine prevailing legal rules textually and conceptually.¹⁷ The legal approaches utilized comprise a combination of the comparative approach, the statute approach, and the case approach. The comparative approach is applied to compare the inheritance system in the KHI with the *Faraid* Law of the Shafi'i School. The statute approach is used to examine inheritance provisions, including Articles 174 and 185 of the KHI, Supreme Court Circular Letter (SEMA) No. 3 of 2015, Qur'anic verses, and Hadiths serving as references for Islamic inheritance law. Meanwhile, the case approach is employed to analyze the practical application of legal norms through the Sungai Raya Religious Court Decision No. 262/Pdt.G/2025/PA.Sry, thereby enriching theoretical normative analysis with the context of judicial application.¹⁸

The comparison undertaken in this study is doctrinal-functional in character. The unit of comparison (*comparatum*) is the normative treatment of one determinate legal problem: the entitlement of a grandchild whose parent predeceased the decedent. The two comparanda are, first, the *faraid* doctrine of the Shafi'i school as articulated in its authoritative fiqh literature, and second, Indonesian positive Islamic law as codified in Article 185 KHI and qualified in practice by SEMA No. 3 of 2015. The *tertium comparationis* – the common reference point that renders the two systems comparable notwithstanding their different sources of authority – is the social problem each system must resolve, namely the allocation of the portion that would have devolved upon an heir who did not survive the decedent. The comparison proceeds along six dimensions: the source and hierarchy of the governing norm; the criterion by which a person qualifies as an entitled subject; the mechanism by which entitlement is denied or displaced; the

¹⁷ Dian Susiani, *Metode Penelitian Hukum* (Surabaya: Tahta Media Group, 2024).

¹⁸ Nur Solikin, *Pengantar Metodologi Hukum* (Pasuruan: Penerbit Qiara Media, 2021).

construction and rectification of the base denominator (*ashl al-mas'alah* and *tashih*); the outer limit of entitlement along the descending line; and the underlying philosophical orientation. Each dimension is assessed against three criteria: internal doctrinal consistency within the premises of the system itself, determinacy of outcome, and capacity to yield an enforceable operative verdict. The historical dimension is employed only ancillary, to trace the provenance of the representational construction adopted in Article 185 KHI, and no functional equivalence between the two systems is presumed in advance.

Tabel 1. Comparative Matrix Framework

Analytical Dimension	Shafi'i School Faraid Jurisprudence	Article 185 KHI + Supreme Court Circular (SEMA) No. 3/2015
Source and Normative Hierarchy	The Qur'an and Sunnah as primary sources; classical jurisprudence texts (<i>kutub al-fiqh</i>) as doctrinal formulations of the school.	Presidential Instruction (<i>Inpres</i>) No. 1 of 1991 (KHI); SEMA as an internal regulatory and interpretive instrument of the Supreme Court.
Heir Qualification Criteria	Independent qualification via designated Quranic shares (<i>aṣḥāb al-furūd</i>) and residuary rights (<i>'aṣabah</i>) according to one's own generational degree.	Legal representation / substitution (<i>ahli waris pengganti</i>) standing in the place of a predeceased parent.
Mechanism of Disqualification / Exclusion	Total exclusion (<i>ḥijāb ḥirmān</i>) and partial reduction (<i>ḥijāb nuqṣān</i>); non-qualifying blood relatives are categorized as distant kin (<i>dhaṭwū al-arḥām</i>).	No doctrinal exclusion (<i>ḥijāb</i>); rather, a restriction on the permissible genealogical degree imposed via SEMA.
Construction of the Base Denominator (<i>Aṣl al-Mas'alah</i>)	Eight (derived from the heads of residuary heirs / <i>ru'ūs al-'aṣabah</i> : $3 \times 2 + 2 \times 1$).	Nine, subsequently adjusted through rectification/correction (<i>taṣḥīḥ</i>) to 54.
Downward Descendant Limit (<i>Descensus</i>)	Inapplicable, as the doctrine of representation is not recognized; limits are governed strictly by individual heir qualification.	Restricted down to the degree of grandchildren; derived from judicial interpretation under SEMA rather than the statutory text of the article itself.

Philosophical Orientation	Formal certainty through a rigid, immutable hierarchy of genealogical proximity (<i>aqrabiyyah</i>).	Distributive justice and socioeconomic/civil legal protection for the lineage of predeceased heirs.
---------------------------	--	---

Because this study operates across two normative universes, the classification of legal materials is disaggregated rather than unified. Within the register of Islamic law, the sources of law (*mashadir al-ahkam*) are the Qur'an and the Sunnah, with consensus and analogical reasoning as derivative sources; the works of Shafi'i jurists are not themselves sources of law but authoritative doctrinal formulations of the school, and they function in this study as primary materials only in the school-internal sense that they constitute the object of doctrinal reconstruction. *Ijtihad* is accordingly treated as a method of legal reasoning rather than as a category of legal material. Within the register of state law, the primary materials are the Compilation of Islamic Law disseminated through Presidential Instruction No. 1 of 1991 — an instrument whose precise position within the hierarchy established by Law No. 12 of 2011 remains a matter of scholarly debate — together with Sungai Raya Religious Court Decision No. 262/Pdt.G/2025/PA.Sry as the object of the case approach. SEMA No. 3 of 2015 occupies a distinct third position: it is an internal instrument of the Supreme Court addressed to judicial officials and derives its force from the Court's supervisory authority, and it is therefore treated here as a policy instrument with internal binding force for judges rather than as a norm of general application. Maintaining these three registers analytically separate is methodologically necessary, because collapsing them into a single undifferentiated category would obscure precisely the difference in normative authority that this article sets out to examine.

RESULTS AND DISCUSSION

1. Provisions and Distribution Mechanisms of Inherited Property for Grandchildren as Substitute Heirs from the Perspective of the Faraid Law of the Shafi'i School

The *Faraid* Law of the Shafi'i School is an Islamic inheritance system that bases the distribution of the estate on the provisions of the Qur'an, Hadith, and the scholarly consensus (*ijtihadh*) of the scholars of the Shafi'i School.¹⁹ The determination of who is entitled to be an heir is conducted on the basis of the proximity of lineage (*nasab*) to the decedent, thus recognizing the principle of *hijab* or inheritance exclusion. Said principle determines that an heir may forfeit their rights if there is another heir possessing a closer kinship relation to the decedent. Therefore, in classical *faraid* legal construction, the

¹⁹ Khairuddin, *Fikih Faraidh* (Banda Aceh: Sahifah, 2020).

concept of substitute heirs (*plaatsvervulling*) is not recognized because inheritance rights do not devolve upon the descendants of an heir who predeceased the decedent.²⁰

Precision requires that the category of "grandchildren" be disaggregated, because the Shafi'i school does not treat it as a single class. The children of a son (*awlad al-ibn*) and the children of a daughter (*awlad al-bint*) occupy fundamentally different positions, and within the former group the male and female lines are governed by different rules. A son's son (*ibn al-ibn*) is a residuary in his own right (*'asabah bi nafsih*) and inherits where no son of the decedent survives; where a son does survive, he is totally excluded (*mahjub hirman*) by that son. A son's daughter (*bint al-ibn*) is a Qur'anic sharer who may take one-sixth as the completion of the two-thirds (*takmilat al-thuluthayn*) alongside a single daughter of the decedent, and who may be converted into a residuary through the presence of a male at her own level (*'asabah bi al-ghayr*).²¹ The children of a daughter (*awlad al-bint*), by contrast, are neither Qur'anic sharers nor residuaries: they fall within the category of uterine relatives (*dhawu al-arham*), whose entitlement is denied under the position generally regarded as authoritative within the school, subject to the later view permitting their inheritance where the public treasury (*bayt al-mal*) is not properly administered.²²

It is likewise necessary to distinguish the two modes of exclusion. Hijab hirman operates to remove a person from the class of takers altogether by reason of the presence of an heir standing nearer to the decedent, as in the exclusion of the son's son by the son. Hijab nuqsan operates differently: it does not remove entitlement but reduces its quantum, as where the presence of a descendant reduces the husband's share from one-half to one-quarter, the wife's from one-quarter to one-eighth, and the mother's from one-third to one-sixth. Only the first of these mechanisms is engaged in the present case, and conflating the two obscures the fact that the classical system responds to competing claims by two distinct techniques rather than one.²³

²⁰ Muhammad Yusuf, Akhmad Haries, and Moh Mahrus, "Interpretasi Hakim Terhadap Pasal 99 Huruf A Kompilasi Hukum Islam Dalam Perkara Penetapan Ahli Waris Untuk Memenuhi Hak-Hak Anak," *Jurnal Tana Mana* 4, no. 2 (2023): 90-106.

²¹ Ritonga, Putra, and Hamid, "Teori Dan Praktek Hijab-Mahjub Dalam Kewarisan Islam Menurut Konsep Syajarotul Mirats."

²² Aminah Tanjung and Mariadi Mariadi, "Implications of Postponing the Distribution of Inheritance from an Islamic Legal Perspective," *Al-Qadha: Jurnal Hukum Islam Dan Perundang-Undangan* 10, no. 2 (2023): 233-46.

²³ Muhammad Haula Fiqri and Sabilul Muhtadin, "Ahli Waris Pengganti Dalam {KHI} Pasal 185: Inovasi Hukum Yang Bertentangan Dengan Prinsip Hijab Dan Hukum Islam," *Usrah: Jurnal Hukum Keluarga Islam* 6, no. 4 (2025), <https://doi.org/10.46773/usrah.v6i4.2366>.

This distinction is decisive for the case at hand. The four claimants who trace their relationship to the decedent through the late Hj. Jauyah binti H. Basri — a daughter of the decedent — are children of a daughter. Under Shafi'i faraid they are therefore not excluded heirs but persons falling outside the class of legal heirs: the operative doctrinal category is *dhawu al-arham*, not *mahjub hirman*. Describing them as excluded by *hijab* conflates two different legal results, since exclusion presupposes a qualification that is subsequently displaced by a nearer heir, whereas the present case involves the absence of that qualification in the first place. Had the predeceased parent been a son of the decedent rather than a daughter, the analysis would have run differently: her children would then have been *awlad al-ibn*, qualified in principle as residuaries and excluded only by reason of the surviving sons — and it is precisely that contrast which shows why the category, and not merely the outcome, must be stated accurately.

Before the distribution can be reconstructed, three factual-legal premises must be settled, since each of them determines the base on which the calculation rests. First, the decision concerns the estates of two decedents, the late H. Basri M. Amin and the late Hj. Asyiah binti Muhammad Nafis, who were husband and wife. Second, the land measuring 8,720 m² on Jalan Adi Sucipto must be characterised either as joint marital property (*harta bersama*) or as separately acquired property (*harta bawaan*), because in the former case only one half of the parcel forms part of the estate of the first decedent, the other half belonging to the surviving spouse in his or her own right and not by way of inheritance. Third, the reconstruction below proceeds on the premise that at the time of the death of the decedent whose estate is being divided no surviving spouse, and neither parent, survived, so that no Qur'anic share (*fard*) fell due and the entire estate devolved as residue (*'asabah*).

The calculation proceeds in four steps. First, the class of entitled subjects is determined. On the premises stated above, the only surviving heirs are the five children of the decedent: three sons and two daughters. Second, the qualification of each is identified. The sons take as residuaries in their own right (*'asabah bi nafsih*); the daughters, who would otherwise take as Qur'anic sharers, are converted into residuaries through their brothers (*'asabah bi al-ghayr*) and accordingly take with them rather than by a fixed fraction. Since no Qur'anic sharer takes a fixed portion, the whole estate devolves as residue and the base of the problem is derived entirely from the count of shares. Third, the shares are counted on the principle that the male takes the portion of two females: three sons yield six shares and two daughters yield two, so that the total is eight and the base of the problem (*ashl al-mas'alah*) is likewise eight. No rectification (*tashih*) is required, because eight is divisible by the share allotted to each taker without remainder. Fourth,

the shares are allocated: each son receives two of eight, or 25 per cent, and each daughter one of eight, or 12.5 per cent, the whole amounting to eight of eight.

Table 2

No	Heir	Relation	Qualification	Ru'us	Fraction	%
1	Drs. H. Zulkifli bin H. Basri	Son	'Asabah bi nafsih	2	2/8	25.00
2	H. Nazarudin bin H. Basri	Son	'Asabah bi nafsih	2	2/8	25.00
3	Mawardiansyah bin H. Basri	Son	'Asabah bi nafsih	2	2/8	25.00
4	Hj. Fatimah binti H. Basri	Daughter	'Asabah bi al-ghayr	1	1/8	12.50
5	Aida binti H. Basri	Daughter	'Asabah bi al-ghayr	1	1/8	12.50
—	Yuniarti, Herlina, Indra Pradesa, Hermawan	Children of a daughter	Dzawu al-arham (outside the class of heirs)	—	—	0.00
Ashl al-mas'alah = 8				8	8/8	100.00

This contrasts with the legal standing of the children of the late Hj. Jauyah binti H. Basri, namely Yuniarti, Herlina, Indra Pradesa, and Hermawan. As reflected in Table 1, these four grandchildren receive no share of the inheritance, or 0%. The non-allocation of a share to them is not attributable to a severance of blood relation with the decedent, but rather because the presence of the decedent's surviving biological children causes the standing of the grandchildren to be totally excluded (*mahjub hirman*). From the perspective of the *Faraid* Law of the Shafi'i School, the death of a decedent's child prior to the decedent's death does not cause their inheritance rights to devolve upon their children. Consequently, the inheritance rights of Hj. Jauyah are deemed extinguished and cannot be re-inherited by her descendants.²⁴

The application of said principle of *hijab* demonstrates that the inheritance system of the Shafi'i School prioritizes legal certainty through a hierarchically structured inheritance arrangement based on the degree of proximity of blood relationship to the decedent. As long as surviving biological children of the decedent exist, grandchildren along that line of descent hold no legal standing as heirs. Consequently, the entire estate

²⁴ Hazar Kusmayanti et al., "Contradiction Implications of the Receptie a Contrario Theory in Minangkabau Inheritance," *Justicia Islamica* 21, no. 2 (2024): 247–66, <https://doi.org/10.21154/justicia.v21i2.8859>.

is distributed exclusively among the decedent's biological children without any transfer of standing to the subsequent generation. This mechanism simultaneously serves as a fundamental distinction from the inheritance system regulated under the Compilation of Islamic Law, which recognizes the existence of substitute heirs pursuant to Article 185.

Accordingly, the results of the analysis in Table 1 indicate that if the Sungai Raya Religious Court Decision Number 262/Pdt.G/2025/PA.Sry were resolved entirely based on the *Faraid* Law of the Shafi'i School, the legal standing of grandchildren as substitute heirs would receive no legal recognition. The entire estate would remain distributed among the decedent's surviving biological children in accordance with *faraid* provisions, whereas grandchildren whose parent predeceased the decedent would be deemed barred from receiving an inheritance due to the operation of the principle of *hijab*. These results illustrate that the inheritance system of the Shafi'i School places greater emphasis on consistency with the normative provisions of classical Islamic law rather than expanding legal protection for descendants of predeceased heirs.

For the same reason, the proposition that the Shafi'i school "does not recognise substitute heirs" requires reformulation. What the school lacks is not a functional response to the death of an intermediate ascendant — the son's son does take the inheritance where the son is absent — but the specific legal construction by which the position of the deceased parent is transmitted to the child as such. In Shafi'i *faraid* the grandson inherits by virtue of his own qualification as a residuary, in his own right and in his own degree; under Article 185 KHI the grandchild inherits by virtue of the position of the parent, which is a representational construction of civil-law provenance. The difference lies in the ground of entitlement rather than merely in the outcome, and it explains why the two systems can share an identical ratio between male and female recipients while producing different sets of recipients altogether. It also explains why the KHI was able to adopt a representational construction without disturbing the Qur'anic proportion: the borrowing operates on the subject side of the norm, not on the share side.

2. Provisions and Mechanisms of Estate Distribution for Grandchildren as Substitute Heirs from the Perspective of the KHI

In contrast to the *Faraid* Law of the Shafi'i School, which does not recognize the concept of substitute heirs, the Compilation of Islamic Law (*Kompilasi Hukum Islam*/KHI) provides specific regulations governing substitute heirs under Article 185.²⁵ Said provision stipulates that if an heir predeceases the decedent, their standing may be substituted by their child, provided that the share received by the substitute heir does not

²⁵ "Inpres Nomor 1 Tahun 1991" (1991).

exceed the share that would have been received by the heir being substituted. This regulation represents a form of reform in Indonesian Islamic inheritance law aimed at providing legal protection to descendants of heirs who forfeit their inheritance rights due to the death of their parent prior to the decedent.²⁶ Thus, the inheritance system within the KHI is not solely oriented toward the principle of proximity of lineage (*nasab*) as in classical *faraid* law, but also takes into consideration aspects of justice, utility, and protection for the decedent's family.

The application of said provision in the Sungai Raya Religious Court Decision Number 262/Pdt.G/2025/PA.Sry demonstrates that the Panel of Judges recognized the standing of the children of the late Hj. Jauyah binti H. Basri as substitute heirs because their mother had predeceased the decedent. Said determination complies with Article 185 paragraph (1) of the KHI, which grants the right to a child to step into their parent's legal standing as an heir, provided that applicable legal requirements are satisfied.

The calculation under Article 185 KHI proceeds in six steps. First, the class of entitled subjects is enlarged. Alongside the five surviving children of the decedent, the children of the predeceased daughter Hj. Jauyah binti H. Basri enter the distribution under Article 185(1), which permits a child to step into the position of a parent who predeceased the decedent. Second, the position occupied by that branch is identified. The branch does not enter in its own degree but in the degree of the person it replaces; since Hj. Jauyah was a daughter of the decedent, the branch occupies the position of a daughter and therefore counts as one share, not as four. Third, the shares are counted: three sons yield six shares, two daughters yield two shares, and the substituting branch yields one share, so that the total is nine and the base of the problem becomes nine rather than eight. Fourth, the primary allocation is made: each son takes two of nine, or approximately 22.22 per cent; each surviving daughter takes one of nine, or approximately 11.11 per cent; and the substituting branch takes one of nine collectively. Fifth, the collective share of the branch is distributed internally among the four children of Hj. Jauyah on the same two-to-one principle: two sons yield four shares and two daughters yield two, so that the internal base is six, each son taking two-sixths and each daughter one-sixth of the one-ninth. Sixth, the problem is rectified (*tashih*) to a common denominator of fifty-four, being the product of the external base of nine and the internal base of six, so that every entitlement can be expressed on a single scale and the total verified as fifty-four of fifty-four.

²⁶ Dilapanga, Astaty, and Nurjannah, "Kedudukan Ahli Waris Pengganti (Plaatsvervulling) Dalam Memperoleh Harta Waris Menurut Hukum Islam."

Table 3

<i>Heir</i>	<i>Position</i>	<i>External shares (base 9)</i>	<i>Internal shares (base 6)</i>	<i>Rectified (base 54)</i>	<i>%</i>
Drs. H. Zulkifli	Son of decedent	2	—	12	22.2222
H. Nazarudin	Son of decedent	2	—	12	22.2222
Mawardiansyah	Son of decedent	2	—	12	22.2222
Hj. Fatimah	Daughter of decedent	1	—	6	11.1111
Aida	Daughter of decedent	1	—	6	11.1111
[Branch of Hj. Jauyah]	<i>Substituted position of a daughter</i>	1	6	6	11.1111
Indra Pradesa	Son of Hj. Jauyah	—	2	2	3.7037
Hermawan	Son of Hj. Jauyah	—	2	2	3.7037
Yuniarti	Daughter of Hj. Jauyah	—	1	1	1.8519
Herlina	Daughter of Hj. Jauyah	—	1	1	1.8519
Total		9	6	54	100.0000

The rectified figures also permit the ceiling imposed by Article 185(2) to be verified rather than merely asserted. That provision requires that the portion taken by a substitute heir not exceed the portion of heirs standing in the same degree as the person replaced. On the scale of fifty-four, each surviving daughter of the decedent takes six shares, and the branch substituting the predeceased daughter takes six shares in aggregate — four to her two sons at two shares each, and two to her two daughters at one share each. The aggregate is therefore exactly equal to, and does not exceed, the portion of a daughter of the decedent. The ceiling is thus satisfied at the level of the branch rather than at the level of each individual substitute, which is the construction that makes the provision workable where the number of substituting children differs from one branch to another. Had the branch been treated as entering in its own degree — that is, had each of the four grandchildren been counted as a separate share alongside the decedent's own children — the branch would have taken six of fourteen shares and the ceiling would have been

breached, which indicates that the ceiling in Article 185(2) is not merely a limitation on quantum but a directive as to the level at which the substituting group is to be counted.

The table also reveals that not all descendants of a predeceased heir can be designated as substitute heirs. In the case *a quo*, Yusherli along with Meisy Nurazizah, Zikri Ilyasan Ramadhan, and Luthfi Fauzi Yusendar receive no share of the inheritance, or 0%, due to failure to fulfill the requirements of substitute heirs. Yusherli holds a legal relation only through marriage with the decedent's family, whereas Meisy, Zikri, and Luthfi hold the legal standing of great-grandchildren to the decedent. Said rejection aligns with Supreme Court Circular Letter (*Surat Edaran Mahkamah Agung / SEMA*) Number 3 of 2015, which provides the guideline that substitute heirs are limited strictly down to the degree of grandchildren; thus, Article 185 of the KHI cannot be expanded to encompass great-grandchildren as substitute heirs.

These analytical findings demonstrate that the inheritance distribution mechanism under the KHI preserves the fundamental principle of *faraid* law regarding the share ratio between male and female children, while modifying the determination of subjects entitled to inherit through the recognition of substitute heirs. Thus, the legal reform undertaken by the KHI does not alter the scheme of share allocations, but rather expands the scope of legal protection for grandchildren whose parents predeceased the decedent. This constitutes a form of national legal reasoning (*ijtihad*) in accommodating the needs of Indonesian society, which desires a balance between legal certainty, justice, and utility in the resolution of inheritance disputes.

Based on the foregoing elaboration, the application of Article 185 of the KHI in the Sungai Raya Religious Court Decision Number 262/Pdt.G/2025/PA.Sry demonstrates that the existence of substitute heirs carries consequences for the composition of estate distribution without eliminating the foundational principles of *faraid* division. Grandchildren obtain inheritance rights not because they assume the status of biological children of the decedent, but because the law recognizes their legal standing as substitutes for their parent who predeceased the decedent. Therefore, the inheritance distribution mechanism under the KHI reflects an effort to harmonize Islamic inheritance law principles with the need for legal protection in Indonesian society.

3. Similarities and Differences between the Inheritance Methods of the Shafi'i School Faraid Law and the KHI when Applied to the Said Decision

1. Similarities between the Faraid Law of the Shafi'i School and the KHI

Methodologically, there exist several similarities between the inheritance methods under the Shafi'i School *Faraid* Law and the KHI. The first similarity lies in the fundamental nature of the criteria for determining primary heirs, which in both legal

systems is equally grounded in the strength of lineage (*nasab*) through direct blood ties (first-degree line of descent). Both classical Shafi'i jurisprudence (*fiqh*) and positive law as codified in the KHI designate the biological children of the decedent as primary heirs whose legal standing cannot be set aside. Accordingly, the legal status of Fatimah, Zulkifli, Nazarudin, Aida, and Mawardiansyah as biological children is fully recognized by both legal instruments, without conflicting interpretations that could give rise to disputes during trial proceedings. This concurrence of views demonstrates that both jurisprudential and national legal norms establish direct blood relations as the basis for the absolute and irreducible legitimacy of inheritance rights.

Second, a similarity exists in the technical formulation regarding the proportion of estate distribution between male and female heirs. The *faraid* system in the Shafi'i School establishes this ratio textually based on Qur'anic provisions, while the KHI adopts a substantially identical principle, namely a two-to-one ratio between sons and daughters. Pursuant to this principle, the shares received by Zulkifli, Nazarudin, and Mawardiansyah are set at twice the shares received by Fatimah and Aida. This alignment indicates that the KHI, despite holding the status of positive law, retains the material principles of classical *faraid* regarding the proportion of distribution among primary heirs.

Third, a similarity lies in the convergence of legal views regarding the rejection of great-grandchildren's standing as heirs in this case. The Shafi'i School grounds this rejection on the principle of proximity of kinship degree (*al-aqrab fal-aqrab*) to the decedent,²⁷ whereas the KHI limits the same through Supreme Court Circular Letter (*Surat Edaran Mahkamah Agung*) Number 3 of 2015. Both provisions consistently reject the petitions for civil rights submitted by Yusherli, Meisy Nurazizah, Zikri Ilyasan Ramadhan, and Luthfi Fauzi Yusendar. This restriction on the degree of inheritance recipients serves as a normative instrument to safeguard legal certainty and the proportionality of estate distribution.

Fourth, a similarity resides in the philosophical orientation of both legal systems, which rests upon the principles of justice (*al-'adalah*) and public interest or welfare (*al-maslahah*) in resolving family disputes.²⁸ Both the Shafi'i School and the KHI direct estate distribution as an instrument for resolving internal family conflicts while simultaneously

²⁷ Abd Ghafur, Dwi Aprilia Widyastutik, and Iftitah Firdausiyah, "Hukum Waris Islam: Kajian Komparatif Mazhab Fikih Dan Relevansinya Dengan KHI Di Indonesia," *RIGGS: Journal of Artificial Intelligence and Digital Business* 4, no. 4 (2026): 6234-43.

²⁸ Abdul Kodir Alhamdani, Mumu Fahmudin, and Saefudin Akbar, "Wasiat Wajibah Anak Angkat Perspektif Kompilasi Hukum Islam Dan Kitab Undang-Undang Hukum Perdata," *Veriof: Jurnal Kajian Ilmu Syariah Dan Hukum* 1, no. 1 (2025): 1-20.

establishing legal certainty over property rights.²⁹ Consequently, the resulting judgment precludes unilateral transfers of rights over the disputed land parcel, thereby fostering legal and economic equilibrium within the extended family structure of the late H. Basri.

2. Differences between the Faraid Law of the Shafi'i School and the KHI

Although several similarities exist between the inheritance methods of the Shafi'i School *Faraid* Law and the KHI, there are several methodological and substantive legal differences between the two. The first difference concerns the legal standing of grandchildren whose parents predeceased the decedent. The Shafi'i School explicitly dictates that such grandchildren are barred (*mahjub*) by the presence of their surviving uncles, such that the existence of the decedent's living biological sons eliminates inheritance rights for the descendants of the late Hj. Jauyah. Conversely, the KHI confers full civil rights through the legal construction of substitute heirs (*plaatsvervulling*) as governed under Article 185 of the KHI, on the basis of which Yuniarti, Herlina, Indra Pradesa, and Hermawan are lawfully recognized to step into the legal standing of their mother.

Second, a difference lies in the primary legal foundation serving as the reference for judicial considerations (*ratio decidendi*). The Shafi'i School relies on the doctrine of total exclusion (*hijab hirman*) in classical jurisprudence, which deprives distant relatives of rights when closer relatives are present, thereby rendering the share of Hj. Jauyah's grandchildren group nil (0%). Meanwhile, the KHI relies on the normative force of Article 185, which intentionally sets aside this biological impediment to afford civil protection to lines of descent whose parents predeceased the decedent.

Third, a difference is evident in the final nominal percentage and the base number of shares/base denominator (*ashlul mas'alah*) received by each biological child.³⁰ Under the Shafi'i School, sons receive 25% and daughters receive 12.50%, with a base denominator of eight shares corresponding to the primary heir structure. Under the KHI, however, the share of a son decreases to 22.22% and that of a daughter to 11.11%, as a consequence of the base denominator increasing to nine due to the inclusion of substitute heirs into the inheritance structure.

Fourth, a difference exists in the calculation method of asset shares for the grandchildren group, namely the descendants of the late Hj. Jauyah. According to the

²⁹ Uus Kusmayadi et al., "Tinjauan Yuridis Terhadap Wasiat Wajibah Anak Angkat: Analisis Pasal 209 Kompilasi Hukum Islam," *Eksekusi: Jurnal Ilmu Hukum Dan Administrasi Negara* 4, no. 1 (2026), <https://doi.org/10.55606/eksekusi.v4i1.2453>.

³⁰ T Saifullah, "Metode Perhitungan Pembagian Warisan Dengan Angka Asal Mas' Alah," *Socius: Jurnal Penelitian Ilmu-Ilmu Sosial* 3, no. 4 (2025): 538–44.

Shafi'i School, this group of grandchildren is entirely excluded from the estate distribution structure and receives no fractional value whatsoever. Conversely, the KHI grants a cumulative share to the grandchildren group equal to one-ninth of the total estate, which is subsequently distributed internally among Hj. Jauyah's four children based on the principle of distributive justice.

4. Legal Implications of the Application of the Shafi'i School Faraid Law and the KHI when Applied to the Said Decision

a. Legal Implications under the Faraid Law of the Shafi'i School

The first legal implication resulting from the application of the Shafi'i School *Faraid* Law is the absolute forfeiture of the grandchild generation's civil rights. Yuniarti, Herlina, Indra Pradesa, and Hermawan lose their legal capacity as subjects entitled to receive an estate, thereby lacking any legal basis to claim a share of the land on Jalan Adi Sucipto. Consequently, their names are omitted from the court's operative verdict (*amar putusan*), leaving the 8,720 m² disputed object free from ownership claims by the grandchildren.

Second, property ownership becomes concentrated among the decedent's biological children, legally simplifying the ownership structure of the disputed object. The entire estate of the late H. Basri and the late Hj. Asyiah is distributed among five parties, namely Fatimah, Zulkifli, Nazarudin, Aida, and Mawardiansyah, who acquire full legal authority over the management and ownership of the inherited land parcel. This consolidation of ownership is robust because the assets undergo no fragmentation down to the grandchild generation.

Third, the consistency of the principle of *hijab hirman* is preserved within Religious Court practice in Indonesia.³¹ The application of this principle reinforces the position of classical jurisprudence (*fiqh*) jurisprudence within the judicial system, ensuring that the conventional Islamic inheritance structure is maintained without intervention from positive regulations. Furthermore, consistency in textual interpretation of religious texts (*nass*) is guaranteed, and legal certainty based on proximity of blood relations can be fully realized in the operative verdict.

Fourth, potential economic vulnerability arises for the line of descent of the late Hj. Jauyah. Formally, the grandchildren group receives no economic protection or guarantees from their grandfather's estate, thereby forfeiting any legal basis to share in the proceeds of the high-value land asset distribution. This condition potentially prompts

³¹ Tanjung and Mariadi, "Implications of Postponing the Distribution of Inheritance from an Islamic Legal Perspective."

the family to pursue alternative mechanisms outside inheritance law, such as inter vivos gifts (*hibah*) or bequests (*wasiat*), to address the resulting economic disparity.

b. Legal Implications under the KHI

The first legal implication arising from the application of the KHI is the establishment of legal certainty regarding the status of the grandchildren. Yuniarti, Herlina, Indra Pradesa, and Hermawan are declared legitimate substitute heirs, acquiring legal standing and rights protection equal to those of other primary heirs. Consequently, the Panel of Judges is obligated to include their names in the operative dictums (*diktum amar putusan*), ensuring that the civil rights of lines of descent whose parents predeceased the decedent are completely protected by the state.

Second, a shift in asset share allocations occurs, resulting in a reduction of the primary heirs' shares. The inclusion of substitute heirs necessitates a reconstruction of the base denominator formula (*ashlul mas'alah*), such that the decedent's biological sons and daughters receive reduced percentages compared to the original calculation. This reflects the operation of the principle of distributive justice, which proportionally distributes financial burdens across all members of the extended family.

Third, legal ownership over the disputed land object undergoes fragmentation. The land parcel measuring 8,720 m² situated on Jalan Adi Sucipto will be divided among nine legal subjects, rendering real execution and field partitioning more complex and requiring a longer resolution timeframe. The Land Office (*Kantor Pertanahan*) is likewise required to list the names of the grandchildren in the issuance of new land certificates, which potentially elevates the risk of future disputes regarding land management or conveyances.

Fourth, the boundaries of substitute inheritance rights are affirmed pursuant to Supreme Court Circular Letter guidelines.³² This judgment seals the scope of substitute inheritance rights strictly down to the degree of grandchildren; thus, claims submitted by Yusherli, Meisy Nurazizah, Zikri Ilyasan Ramadhan, and Luthfi Fauzi Yusendar are dismissed by operation of law. The great-grandchildren and grandchild-in-law groups are declared to lack legal standing (*persona standi in judicio*) to step into the legal standing of the late Agus bin A Rajak, serving as a crucial restriction to prevent the indefinite expansion of the substitute heir concept.

³² Mahkamah Agung Republik Indonesia, "Surat Edaran Mahkamah Agung ((SEMA)) Nomor 3 Tahun 2015."

CONCLUSION

Three findings follow from the analysis of Decision No. 262/Pdt.G/2025/PA.Sry. First, under Shafi'i faraid the estate devolves exclusively upon the five surviving children of the decedent on a base of eight shares, the sons taking two shares each and the daughters one, the daughters entering as residuaries through their brothers. The claimants who trace their relationship through the late Hj. Jauyah are not excluded heirs but persons outside the class of legal heirs, being the children of a daughter and therefore uterine relatives (*dhawu al-arham*). Second, under Article 185 KHI the same estate devolves upon nine subjects on a base of nine shares, rectified to fifty-four, because the position of the predeceased daughter is transmitted to her children; the collective portion of the substituting branch equals precisely the portion of a daughter, so that the ceiling in Article 185(2) is satisfied at the level of the branch. Third, the two systems converge on the ratio of two to one between male and female takers and on the exclusion of the great-grandchildren, and diverge on the ground of entitlement: qualification in one's own degree in the one system, representation of the parent's position in the other.

The contribution of this study lies in locating that point of divergence. The literature has tended to present the difference between faraid and the KHI as a difference in outcome, or as a difference in the degree of protection each affords to orphaned descendants. The reconstruction offered here shows that the difference is anterior to outcome: it lies in the criterion by which a person becomes an inheriting subject at all. That reading also explains a feature which the outcome-based account leaves unexplained, namely how the KHI was able to adopt a construction of civil-law provenance without disturbing the Qur'anic proportion — the borrowing operates on the subject side of the norm and leaves the share side intact.

The analysis further shows that the limitation which proved decisive in the case was supplied not by the codified norm but by SEMA No. 3 of 2015. Article 185 KHI is silent as to how far substitution extends along the descending line; the Circular supplies that silence. The Circular, however, is addressed to judicial officials and derives its force from the supervisory authority of the Supreme Court, and it does not occupy a position within the hierarchy of legislation established by Law No. 12 of 2011. The case therefore exposes a structural feature of Indonesian Islamic inheritance law: a civil entitlement is bounded by an instrument that a litigant cannot invoke as a source of right and that is not subject to the ordinary mechanisms of legislative scrutiny.

On that basis the authors advance the following recommendation, offered as an argued normative position rather than as a conclusion compelled by the findings. Article 185 KHI should be amended to state expressly the degree to which substitution extends.

Four considerations support this. The first is one of legality: a restriction upon a civil entitlement is more appropriately founded upon a norm of general binding force than upon an instrument of internal direction, and the present arrangement places the restriction and the entitlement on different normative planes. The second is one of legal certainty: the silence of Article 185 has generated demonstrable disparity in judicial practice, and a limitation that must be sought outside the codified text does not resolve that disparity for the parties, only for the judges. The third concerns the equality of the parties: a litigant cannot found a claim upon a Circular addressed to the judiciary, so that the norm which determines the outcome is not equally available to both sides of the dispute. The fourth is one of *maslahah*: as the fragmentation of the disputed parcel in this case illustrates, an unlimited descending substitution would progressively fragment estates to the point of impairing their usable value, and a codified limit serves that interest more transparently than an administrative one.

This study is limited in two respects that should be stated plainly. It examines a single first-instance decision, so that the pattern identified here cannot be presented as representative of Religious Court practice as a whole; and it confines the comparison to the Shafi'i school, leaving open whether the other schools would characterise the children of a daughter in the same way. Further research testing the argument against appellate and cassation practice, and against the positions of the other schools, would establish how far the divergence identified here extends.

REFERENCES

- Alhamdani, Abdul Kodir, Mumu Fahmudin, and Saefudin Akbar. "Wasiat Wajibah Anak Angkat Perspektif Kompilasi Hukum Islam Dan Kitab Undang-Undang Hukum Perdata." *Veriof: Jurnal Kajian Ilmu Syariah Dan Hukum* 1, no. 1 (2025): 1-20.
- Anshori, Abdul Ghafur. "Reformulasi Hukum Keluarga Islam Di Indonesia." *Ahkam: Jurnal Ilmu Syariah* 21, no. 2 (2021). <https://doi.org/10.15408/ajis.v21i2.XXXX>.
- Bedner, Adriaan, and Jacqueline Vel. "Legal Education In Indonesia." *The Indonesian Journal of Socio-Legal Studies* 1, no. 1 (2021). <https://doi.org/10.54828/ijsls.2021v1n1.6>.
- Benda-Beckmann, Franz von, and Keebet von Benda-Beckmann. "Comparative Law In A Global Context: The Legal Systems Of Asia And Africa," 380-420. Cambridge: Cambridge University Press, 2013. <https://journal.publication-center.com/index.php/ijssh/article/view/1732>.
- Dilapanga, Mohamad Mirzalino Safryan, Desti Astati, and Eva Nurjannah. "Kedudukan Ahli Waris Pengganti (Plaatsvervulling) Dalam Memperoleh Harta Waris

- Menurut Hukum Islam." *Jurnal Komunikasi Hukum* 7, no. 1 (2021). <https://doi.org/10.23887/jkh.v7i1.31460>.
- Faisal, Fathul Mu'in, and Miswanto. "Dinamika Penerapan Hukum Ahli Waris Pengganti (Analisis Disparitas Putusan Hakim Di Indonesia)." *El-Izdiwaj: Indonesian Journal of Civil and Islamic Family Law* 2, no. 2 (2021). <https://doi.org/10.24042/el-izdiwaj.v2i2.11434>.
- Fauzi, Muhammad Ihsan. "Penanganan Perkara Permohonan Itsbat Nikah Poligami Secara Siri Berdasarkan Surat Edaran Mahkamah Agung Nomor 3 Tahun 2018." *Mutawasith: Jurnal Hukum Islam* 4, no. 2 (2021): 75–88.
- Fiqri, Muhammad Haula, and Sabilul Muhtadin. "Ahli Waris Pengganti Dalam {KHI} Pasal 185: Inovasi Hukum Yang Bertentangan Dengan Prinsip Hijab Dan Hukum Islam." *Usrah: Jurnal Hukum Keluarga Islam* 6, no. 4 (2025). <https://doi.org/10.46773/usrah.v6i4.2366>.
- Ghafur, Abd, Dwi Aprilia Widyastutik, and Iftitah Firdausiyah. "Hukum Waris Islam: Kajian Komparatif Mazhab Fikih Dan Relevansinya Dengan KHI Di Indonesia." *RIGGS: Journal of Artificial Intelligence and Digital Business* 4, no. 4 (2026): 6234–43.
- Inpres Nomor 1 Tahun 1991 (1991).
- Jauhari, Imam, and Muhammad Ali Bahar. *Hukum Waris Islam*. Sleman: Deepublish Publisher, 2021.
- Kaharuddin. *Ilmu Perancangan Perundang-Undangan*. Kencana, 2025.
- — —. *Nilai-Nilai Filosofis Hukum Perkawinan*. Jakarta: Mitra Wacana Media, 2015.
- Khairuddin. *Fikih Faraidh*. Banda Aceh: Sahifah, 2020.
- Kusmayadi, Uus, Mumu Fahmudin, Abdul Kodir Alhamdani, Yudi Wahyudin, and Halmi Abdul Halim. "Tinjauan Yuridis Terhadap Wasiat Wajibah Anak Angkat: Analisis Pasal 209 Kompilasi Hukum Islam." *Eksekusi: Jurnal Ilmu Hukum Dan Administrasi Negara* 4, no. 1 (2026). <https://doi.org/10.55606/eksekusi.v4i1.2453>.
- Kusmayanti, Hazar, Dede Mulyanto, Deviana Yuanitasari, and Muhammadafeefee Assalihee. "Contradiction Implications of the Receptie a Contrario Theory in Minangkabau Inheritance." *Justicia Islamica* 21, no. 2 (2024): 247–66. <https://doi.org/10.21154/justicia.v21i2.8859>.
- Mahkamah Agung Republik Indonesia. "Direktori Putusan Mahkamah Agung Nomor Zaf0a037254fe9aac0dd313535383335," n.d. <https://putusan3.mahkamahagung.go.id/direktori/putusan/zaf0a037254fe9aac0dd313535383335.html>.
- — —. "Surat Edaran Mahkamah Agung ({SEMA}) Nomor 3 Tahun 2015," n.d. https://kepaniteraan.mahkamahagung.go.id/images/peraturan/sema/SEMA_3_TAHUN_2015.pdf.

- Menski, Werner. *Comparative Law In A Global Context: The Legal Systems of Asia and Africa*. Cambridge: Cambridge University Press, 2006.
- Musa, Dela Kartika, Nur Mohamad Kasim, and Dolot Alhasni Bakung. "Tinjauan Komparasi Kedudukan Hukum Ahli Waris Pengganti Dalam Perspektif Hukum Perdata Dan Kompilasi Hukum Islam." *Journal Of Comprehensive Science* 2, no. 6 (2023). <https://doi.org/10.59188/jcs.v2i6.373>.
- Pratama, M Yogi Galih, Muhammad Ilyas, and Mudlafi'ah Lil Fudhona. "Rekonstruksi Pasal 185 {KHI} Tentang Ahli Waris Pengganti." *Al-Usariyah: Jurnal Hukum Keluarga Islam* 2, no. 2 (2024). <https://doi.org/10.37397/al-usariyah.v2i2>.
- Rahman, Ahmad Haikal. "Dinamika Putusan Pengadilan Dalam Penyelesaian Sengketa Kewarisan." *Ahkam: Jurnal Hukum Islam Dan Humaniora* 1, no. 1 (2023). <https://doi.org/10.58578/ahkam.v2i1.986>.
- Ritonga, Raja, Dedisyah Putra, and Asrul Hamid. "Teori Dan Praktek Hijab-Mahjub Dalam Kewarisan Islam Menurut Konsep Syajarotul Mirats." *Tahkim: Jurnal Peradaban Dan Hukum Islam* 5, no. 1 (2022). <https://doi.org/10.29313/tahkim.v5i1.9437>.
- Saifullah, T. "Metode Perhitungan Pembagian Warisan Dengan Angka Asal Mas' Alah." *Socius: Jurnal Penelitian Ilmu-Ilmu Sosial* 3, no. 4 (2025): 538–44.
- Solikin, Nur. *Pengantar Metodologi Hukum*. Pasuruan: Penerbit Qiara Media, 2021.
- Susiani, Dian. *Metode Penelitian Hukum*. Surabaya: Tahta Media Group, 2024.
- Tanjung, Aminah, and Mariadi Mariadi. "Implications of Postponing the Distribution of Inheritance from an Islamic Legal Perspective." *Al-Qadha: Jurnal Hukum Islam Dan Perundang-Undangan* 10, no. 2 (2023): 233–46.
- Utari, Sekar Dita, Diangsa Wagian, and Fatria Hikmatiar Al Qindy. "Ahli Waris Pengganti Di Tinjau Dari {KUHPperdata} Dan Kompilasi Hukum Islam." *Jurnal Private Law Fakultas Hukum Universitas Mataram* 3, no. 2 (2024). <https://doi.org/10.29303/prlw.v3i2.2605>.
- Yusuf, Muhammad, Akhmad Haries, and Moh Mahrus. "Interpretasi Hakim Terhadap Pasal 99 Huruf A Kompilasi Hukum Islam Dalam Perkara Penetapan Ahli Waris Untuk Memenuhi Hak-Hak Anak." *Jurnal Tana Mana* 4, no. 2 (2023): 90–106.