



Substitute Heirs in Article 185 Compilation of Islamic Law

Maqashid Shariah Jaser Audah Perspective

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Abstract

Article 185 KHI was established as a reaction to the unequal distribution of inheritance by giving grandchildren the right of replacement for children. In the context of Islamic law reform in Indonesia, the Compilation of Islamic Law (KHI) proposal has sparked endless debate between pros and cons. As far as the researcher observes, the debates expressed in various discussions and research have not been able to resolve this issue, including attempts to interpret Hazairin through theory of *mawali*. This research aims to describe and analyze *maqasid sharia* Jaser Audah perspective on the provisions of successor heirs and relevance *maqasid sharia* Jaser Audah against the benefits found in Article 185 KHI. This research uses a qualitative type that is oriented on *purpose*. The results of this study show that the view *maqasid sharia* Jaser Audah regarding the meaning of successor heir can be seen through the following six features: 1) cognitive character: positioning the results of Zayd's *ijtihad* as a product of *ijtihad*; 2) universal features: replacement of heirs applies to all parties with consideration of egalitarian principles, distributive justice and empowerment of heirs; 3) characteristics of openness: making internal factors (customary law, family structure) and external (comparative studies and equality) in the genealogy of Article 185 as *tradition*; 4) hierarchical structure features: the right of succession given to grandchildren philosophically contains benefits that are oriented towards *maqasid* (goal) which runs simultaneously; 5) include the element of justice as a philosophical value in mediating the hadith narrated by Bukhari and the results of Zayd's *ijtihad*; 6) the aim of the Islamic law system: granting grandchildren rights over children is an effort to realize them *purpose* justice, empowerment and protection of human rights.

Keywords: *Substitute Heirs, Justice, Maqashid Shariah*

Abstrak

Pasal 185 KHI lahir sebagai reaksi dari ketimpangan pendistribusian harta waris tersebut dengan memberikan hak penggantian kepada cucu atas anak.

Dalam konteks pembaharuan hukum Islam di Indonesia, usulan KHI tersebut menuai perdebatan tak berujung di antara pendukung dan penolaknya. Sepanjang pengamatan penulis, perdebatan yang diejawentahkan dalam berbagai diskusi maupun penelitian, belum dapat menyelesaikan persoalan tersebut, termasuk upaya penafsiran Hazairin melalui teori *mawali*. Penelitian ini bertujuan untuk mendeskripsikan dan menganalisa pandangan *maqasid syariah* Jaser Audah terhadap ketentuan ahli waris pengganti dan relevansi *maqasid syariah* Jaser Audah terhadap kemaslahatan yang terdapat dalam Pasal 185 KHI. Penelitian ini menggunakan jenis kualitatif yang berorientasi pada *maqasid*. Hasil penelitian ini menunjukkan bahwa pandangan *maqasid syariah* Jaser Audah terhadap pemaknaan ahli waris pengganti dapat dilihat melalui enam fitur sebagai berikut: 1) watak kognitif: memosisikan hasil ijtihad Zayd sebagai produk ijtihad; 2) fitur universal: penggantian ahli waris berlaku bagi segala pancar dengan pertimbangan prinsip egaliter, keadilan distributif, dan pemberdayaan ahli waris; 3) karakteristik keterbukaan: menjadikan faktor internal (hukum adat, struktur keluarga) dan eksternal (studi banding dan kesetaraan) dalam genealogi Pasal 185 sebagai *urf*; 4) fitur struktur hierarki: hak penggantian yang diberikan kepada cucu secara filosofis mengandung kemaslahatan yang berorientasi pada *maqasid* yang berjalan secara simultan; 5) memasukkan unsur keadilan sebagai nilai filosofis dalam menengahi hadith riwayat Bukhari dan hasil ijtihad Zayd; 6) tujuan sistem penetapan hukum Islam: pemberian hak cucu atas anak merupakan upaya merealisasikan *maqasid* keadilan, pemberdayaan, dan perlindungan HAM.

Kata kunci: Ahli Waris Pengganti, Keadilan, dan Maqashid Syariah.

Introduction

The division of inheritance based on its share in Islam can actually be grouped into three categories: *dhu al-fara'id*, *'ashabah*, and *dhu al-arham*. *Dhu al-fara'id* is a group that occupies the first position in the distribution of inheritance, and each share has been expressly stated through revelation. *'Ashabah* is a group of heirs who occupy the second position after *dhu al-fara'id*. This group receives the inheritance by taking the remaining inheritance after being distributed to the first group. The third group of *dzu al-arham* is the most distant group that can only receive inheritance if there are no previous two groups (Al-Khin et al., 2012).

The pattern of distribution of assets based on these three groups in turn creates problems in its implementation. One issue that has received great attention is the case of *dhu al-arham* (grandchildren whose parents have died). Children (*grandchildren*) from the female bloodline are forced to not get inheritance and grandchildren whose parents have died must be hindered by their position by children (Muhammad Daud & Azahari, 2019). They should get a share from their parents who died first (Muhibbussabry, 2020; Nawawi, 2016). It is felt that this provision does not meet the elements of justice and benefit which are the goals of *maqashid syariah* (Islamic law) (Mujuzi, 2021). The problem of inequality in the distribution of wealth

to grandchildren has become a problem on an international scale. This is proven by the many breakthroughs taken by Muslim countries to protect the rights of grandchildren. Egypt for example, this issue is expressly accommodated in Qanun al-Washiyat No. 7 of 1946. Children (*grandchildren*) who do not receive an inheritance because their position is obstructed are entitled to a share of the *tirkah* with the obligatory will procedure (Muhajir, 2021), the level of which is not more than one third (Abu Zahra, 2014; Muhammad Barraaj, 2012; Nasir Farid Muhammad Wasil, 2010).

In contrast to the majority of Islamic countries which apply obligatory wills, Indonesia chooses to apply the replacement of heirs. The dictum is contained in Article 185 of the Compilation of Islamic Law (KHI) which is disseminated through Presidential Instruction (Inpres) No. 1 of 1991. The Compilation of Islamic Law in Article 185 expressly positions the child as a substitute for the father who died earlier and has the right to inherit the inheritance, even someone who has died earlier than the heir can occupy the position of heir (Article 171 c). In the Indonesian context, the issue of replacement heirs is synonymous with the opinion of replacement heirs initiated by Hazairin in his book *Bilateral Inheritance Law according to the Qur'an and Hadith* (Saija & Taufik, 2016; Lisa Krisnayanti, 2019). This idea originates from Hazairin's interpretation of verse 33 in sura al-Nisa:

"I think that the meaning of holding a *mawali* for so-and-so is that the share of so-and-so, which he would have obtained, if he were alive, from the legacy property, is distributed to his *mawali*, not as a member -his heir but as an heir for his mother or father who left the property" (Aniroh, 2020).

The emergence of efforts to legitimize Article 185 KHI based on the theory of *mawali* Hazairin did not necessarily cause. This is because Hazairin's theory also received rejection from some Islamic jurisprudence (Musafaah et al., 2023). For example Habiburrahman in his book that stating emphatically that the provisions in Article 185 of the Compilation of Islamic Law strictly contradict the principle of *ijbari* and are contrary to the rules of Islamic law. According to him, in this case KHI is adopting the customary inheritance system (receptie theory) and BW (Habiburrahman, 2011). This group also rejects Hazairin's version of *mawali* interpretation because it is considered not in accordance with linguistic rules and social context which are the main tools in interpreting texts.

The debate between pros and cons of efforts to save the rights of grandchildren as stipulated in Article 185 KHI stems from the demands of the text and justice at the empirical level. The proponents of the substitution pattern use the philosophical value of justice while those who oppose it use the absence of *nash* texts that accommodate the replacement system (Munir, 2023). However, according to the author's opinion, the replacement pattern has actually occurred in Islamic tradition, it's just that the meaning related

to the text on inheritance rights for grandchildren tends to be gender biased. In addition, the pattern of replacement in the Indonesian context is a legal norm (living law) that has been widely practiced and is considered to fulfill a sense of justice (Asshiddiqie, 2022; Sahyana, 2020). Of course, this cannot be simply ignored because law and reality are two things that cannot be separated.

In an effort to discuss the three matters above, in this study the author uses Maqasid Shari'ah Jaser Audah as a perspective. This selection is based on the consideration of six maqashid features. Jaser Audah can solve the problem of substitute heirs, both at the textual and reality levels (Solikin & Wasik, 2023). This indicator, for example, can be obtained from a *kullyah* (holistic approach model) which looks at texts comprehensively and does not rely solely on textual implications and avoids biased meanings. *Simah al-infithah* (characteristic of openness) which can accommodate social sciences to look at problems empirically and integrate them into the process of formulating laws.

Through this research, it is expected that various problems and challenges faced in the practice of inheritance distribution can be identified, especially in the context of replacement inheritance. With a holistic approach, it is hoped that the results of this research can provide deeper insight into how *maqashid sharia* can be integrated into inheritance practices, as well as provide recommendations for improving the inheritance distribution system to make it more fair and in line with Islamic values.

Research Method

This research aims to explore the concept of substitute heirs in Article 185 of the Compilation of Islamic Law (KHI) and analyze it from the perspective of Maqashid Sharia Jaser Audah. With a qualitative approach, this research allows researchers to dig deeper into the context and meaning of the phenomenon under study, as well as gain a comprehensive understanding of the successor heirs at KHI. The research locations will be carried out in Religious Courts, notary offices, and communities related to Islamic inheritance law for six months. The research subjects consisted of judges at the Religious Courts, legal practitioners such as notaries and lawyers, Islamic law experts, as well as people involved in inheritance cases. Data will be collected through in-depth interviews, participant observation, and document study. Semi-structured interviews will be conducted to obtain participants' views and experiences regarding Article 185 KHI and Maqashid Syariah. Observation of the proceedings will provide a direct understanding of the application of the law, while document analysis will complement the data obtained. The data obtained will be analyzed using a thematic analysis approach, which includes coding to identify main themes,

grouping relevant themes, and interpreting the data in the context of maqashid sharia. Data validity will be maintained through source triangulation and member checking to ensure accuracy of interpretation. Through this method, it is hoped that research can provide in-depth insight into substitute heirs in Article 185 KHI and its impact in the context of Maqashid Syariah, as well as contribute ideas to the development of Islamic inheritance law in Indonesia and provide relevant recommendations in legal practice and society.

Result and Discussion

Unfair treatment in the Succession Pattern of Heirs

The term replacement of heirs from conventional Islamic scientific traditions is almost never found, the basic principle of Islamic inheritance in the form of *ijbar* forces the transfer of the heir's assets to the heirs who are still alive without compromise (Rajab et al., 2022). Almost all definitions related to inheritance say this, the transfer of assets in inheritance does not provide space for including new norms or rules in the system. This results in the absence of a replacement process that is based on human will, heirs who are entitled to inherit will receive inheritance, while heirs who do not meet the requirements for their position are immediately replaced by heirs after them.

Although the term replacement of heirs is almost never found, in practice Islam recognizes the model of replacing heirs, such as if the father dies then his position is replaced by his father (*grandfather*), if the child dies he is replaced by his son (*grandson*). We can find the juridical basis for this pattern of replacing heirs in the history of Bukhari regarding the inheritance of grandchildren when there are no children as follows (Ali, 2022:

وَقَالَ زَيْدٌ: وَلَدُ الْأَبْنَاءِ بِمَنْزِلَةِ الْوَالِدِ، إِذَا لَمْ يَكُنْ دُوهُنَّمْ وَوَلَدٌ، ذَكَرَهُمْ كَذَكَرِهِمْ، وَأَنْتَاهُمْ كَأَنْتَاهُمْ، يَرِثُونَ كَمَا يَرِثُونَ، وَيَجِبُونَ كَمَا يَجِبُونَ، وَلَا يَرِثُ وَلَدُ الْإِبْنِ مَعَ الْإِبْنِ.

Zayd said: children of sons occupy the position of children, if there is no other than them (sons), their sons (grandsons) are like their men (fathers), and their daughters (grandchildren-women) like their women (their mothers), they inherit as they inherit, they prevent inheriting as they prevent them from inheriting, and a grandson cannot inherit with the sons (Al-Bukhari, 2002; Albani, 2003).

The history of Bukhari above shows that there is a pattern of replacing heirs hierarchically in the Islamic inheritance system. A child automatically occupies the father's position as heir when his father dies, and so on. The hierarchy in the composition of the heirs has an impact on the acquisition of heirs whose position is below them (Adjie, 2020; Alidar, 2023). The four madzhab and even the *Shia Imamimiyah* group both believe that the

existence of children causes the position of grandchildren to be shifted from the ranks of heirs. But the Shia reject the interpretation of 'son' which can prevent grandchildren from obtaining certain inheritance only for sons. Because, the word *awlad* can include both meanings; boys and girls (M. Jawad Al-Mughniyah, 2000).

The difference in the interpretation of the word '*awlad*' also affects the distribution model of inheritance by the two. In the case of an heir leaving two daughters and a son's grandson, according to the Sunni group, the daughter has the right to become 'asabah along with her grandson as a substitute for the son's position with the provisions of two to one (2:1). Meanwhile, in the Shi'a inheritance system, daughters are entitled to all the inheritance, while grandsons do not get anything (M. Jawad Al-Mughniyah, 2000). Nevertheless, both of them have the same opinion regarding the replacement of the position of heirs from children to grandchildren.

The results of Zayd's *ijtihad* above are then strengthened by the history of Bukhari as follows:

حدثنا آدم: حدثنا شعبة: حدثنا ابو قيس: سمعتُ هُرَيْلَ بنَ شَرْحَبِيلَ، قَالَ: سَأَلَ أَبُو مُوسَى عَنِ ابْنَةِ ابْنِ وَأُخْتٍ، فَقَالَ: لِلْإِبْنَةِ النِّصْفُ، وَلِلْأُخْتِ النِّصْفُ، وَأَتَى ابْنَ مَسْعُودٍ فَسَأَلَهُ، فَسَأَلَ ابْنَ مَسْعُودٍ، وَأُخْبِرَ يَقُولُ أَبِي مُوسَى فَقَالَ: لَقَدْ ضَلَلْتُ إِذَا وَمَا أَنَا مِنَ الْمُهْتَدِينَ، أَقْضَى فِيهَا بِمَا قَضَى النَّبِيُّ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ: لِلْإِبْنَةِ النِّصْفُ، لِلْإِبْنَةِ ابْنِ السُّدُسِ تَكْمِلَةَ الثَّلَاثِينَ، وَمَا بَقِيَ فَلِلْأُخْتِ، فَأْتَيْنَا أَبَا مُوسَى فَأَخْبَرَنَا يَقُولُ ابْنَ مَسْعُودٍ، فَقَالَ: لَا تَسْأَلُونِي مَا دَامَ هَذَا الْخَبْرُ فِيكُمْ.

Has told us Adam, has told us Shu'bah, has told us Abu Qays: I heard Huzayl bin Shurahbil, said: a question has been asked to Abu Musa regarding the inheritance of daughters, and granddaughters of pancar brother, and sister. Abu Musa answered: half for daughters, and half for sisters. Come to Ibn Mas'ud he will follow me. Then a question was asked of Ibn Mas'ud, and he was told Abi Musa's opinion, he replied: indeed I have gone astray then and I am not one of those who are guided, I decided in this matter with the decision of the Messenger of Allah: half for daughters, granddaughter radiates one-sixth for completing two-thirds, and the rest for sisters. Then we went to Abu Musa and told him the opinion of Ibn Mas'ud, he replied: don't ask me all this information to you (Al-Bukhari, 2009).

The results of the combination of the results of Zayd's *ijtihad* and the hadith narrated by Bukhari above then produce the concept that grandchildren can inherit as long as there are no sons (Sapruddin, 2017), while if there are daughters, grandchildren can inherit with them. Furthermore, this is used as legitimacy that the grandson of four daughters does not have the right to be the heir simply because there is a textual implication "daughters inherit together with the male grandson". This

decision-making, according to the author, shows that there is a bias and is contrary to the principles of equality and justice that want to be implemented in the distribution of assets regardless of gender. The principles of equality and justice can be read in surah al-Nisa' verses 7 and 11.

Genealogy of Substitute Heirs: Article 185 Compilation of Islamic Law

Article 185 of the Compilation of Islamic Law (KHI) regulates the genealogy of successor heirs which is an important part of the division of inheritance in the Islamic legal system. In this article, it is stipulated that a replacement heir is someone who replaces the position of an heir who has died before the person who inherited it (testator). This genealogy of replacement heirs is important because it ensures that inheritance distribution continues to be carried out in accordance with the legal lineage, even though there are heirs who can no longer receive their rights because they have died.

The concept of successor heirs applies if an heir dies before the heir and does not have time to receive a share of the inheritance. In this case, the deceased heir will be replaced by his child or descendant who is entitled to receive a share of the inheritance according to the position or position of the deceased heir. For example, if a child who should inherit the heir's property dies before the heir, then the child of that child (grandchild) has the right to replace his parents' position in receiving a share of the inheritance. Thus, Article 185 of KHI aims to protect the inheritance rights of the deceased family, ensuring that the inheritance still falls to the legitimate lineage in accordance with the principles of justice in Islamic inheritance law. The application of this article also reflects the principle of inheritance in Islam which prioritizes the continuity of inheritance rights in one line of descent, even if the original heir is no longer there.

The institution of substitute heirs in the Indonesian context is contained in Article 185 of the Compilation of Islamic Law which was socialized through Presidential Instruction (Inpres) No. 1 of 1991, concerning the Compilation of Islamic Law (KHI) was published as an important step in compiling and regulating Islamic law in Indonesia (Siah Khosyí'ah, 2022), especially those relating to civil matters. This Presidential Instruction provides directions for the preparation of a legal work that regulates family law, inheritance and other civil matters originating from Islamic law. The main objective of this Presidential Instruction is to develop an integrated and practical legal system to be used by Muslims in Indonesia in resolving civil issues relating to inheritance, marriage, divorce and other matters regulated in Islamic law (*Kompilasi Hukum Islam*, n.d.). Heirs who die earlier than the heirs can be replaced by their children, except for those

mentioned in Article 173 (Aisyah, 2022; Listyawati & Dazriani, 2015). The dictum in the Article above emphasizes the existence of inheritance rights from children who died earlier than the heir, their position is not hindered by the heir who is still alive as in the pattern of dividing inheritance hierarchically in conventional fiqh (Nofitasari, 2021). The dictum in article 185 above also has other renewal consequences in the inheritance system. The word "heirs who died first" expressly negates the requirement in conventional *fiqh* that heirs must be alive when the heir dies (Masykuri & Sriani, 2022). Therefore KHI only provides conditions that there are no obstacles to inheritance (Article. 173) and also that there is a kinship relationship as a way of inheritance (Article. 171 b).

It should be emphasized here that the word 'substitute heir' still creates multiple interpretations regarding the limitation of heirs who can be replaced: is it limited to a child heir or heirs in a lateral line can also be replaced? While the word "can be replaced by their children" gives equal status to granddaughters and sons, this provision clearly breaks patriarchal traditions in Arab culture. In the KHI inheritance system, men and women are equal in inheriting, rejecting grandchildren from the female line as *dzu al-arham*, although still maintaining the *li al-dhakari mithl hadz al-unthayayn* system (the male share is twice the female share). which clearly cannot be separated from patriarchal traditions (Mehmood et al., 2022). Presumably in this case KHI maintains local wisdom in the distribution of inheritance which tends to use conventional distribution patterns.

Subsequent provisions regarding substitute heirs in the Compilation of Islamic Law are related to the portion received, this is expressly stated in paragraph (2) which reads: "The share of the replacement heirs may not exceed the share of the heirs who are equal to those being replaced" (*Kompilasi Hukum Islam*, n.d.).

The dictum in the Article above, in addition to confirming the position of the substitute heir, also emphasizes the portion he receives. The share of the heir by binding his position basically follows the share of the heir who is replaced by his position, if he replaces the position of a man then he gets a portion of two and if he replaces the position of a woman then gets a share of one. However, in this case the Compilation of Islamic Law limits the portion of the substitute heirs not to exceed the heirs who are equal to those replaced (Listyawati & Dazriani, 2015). For example, equal heirs are children, so the share of the grandson who occupies the position of the child may not exceed the share of the child. Thus, it is possible that the heir who replaces the position of a son gets a smaller share than the heir of a daughter who is still alive.

The position of substitute heirs as a rule certainly has consequences in its implementation, therefore according to Raihan, the replacement of heirs in its implementation needs to be based on 3 considerations which are

partly covered in the dictum of casuistic problem. In other words, the application of Article 185 regarding the provision of substitute heirs is not absolute and mandatory, this has been covered in the dictum 'can' which means alternative. Second, the replacement of heirs only applies between children and grandchildren (down line) and does not apply sideways, this has been covered in the dictum paragraph (2). Third, if the existence of substitute heirs will have an impact on reducing the share of other heirs, then their position depends on their permission (H Syaikh, 2018).

Theory of Maqashid Shariah: Six Features of Maqashid

In an effort to reform the methodology of Islamic law Jaser Audah offers a construction with system philosophy by optimizing six features in system philosophy. According to Amin Abdullah, the methodological construction built by Jaser Audah is actually an attempt to embody maqashid shari'ah as the basis of *ijtihad* in the modern era: how can the features of the systems approach be implemented in Islamic legal theory? How is maqashid able to make up for the shortcomings of traditionalist, modern and post-modern approaches? (Abdullah, 2012) This is important to show the realization of benefits, because one of the factors for the large number of socio-economic inequalities is a misunderstanding that results from a reductionist and binary methodology.

a. Cognitive character of the system (*al-thabi'ah al-idrakiyah li al-manzumah*)

In terms of this feature Jaser Audah offers a separation between revelation and *idrak* (cognition). In the view of systems theory, *fiqh* as a product of *ijtihad* is regarded as a law based on *fakih* human cognition of divine knowledge which is considered closest to the truth. Therefore, differences of opinion in *fiqh* are considered as a necessity and are considered correct as a whole (Audah, 2012). This feature in its implementation confronts the efforts of the *mujtahid* in understanding *nash* as an effort of 'searching for knowledge' through predetermined methods. The results of this search for knowledge are then understood as laws that are cognitive in nature and apart from the revealed shari'a space. Likewise, in the context of this study, the existing conception of inheritance provisions must be understood as the result of *mujtahid* knowledge of inheritance texts, and usually as knowledge, these results cannot be constant and accept changes due to new knowledge.

b. Universality (*Al-Kulliyah*)

In this feature, after asserting the uncertainty of individual proofs (*zanniyah al adillah al fardiyah*) following their weaknesses, Jaser Audah offers a holistic approach as done by Ibn Ashurr by prioritizing *maqashid ijtimaiyah* over *maqashid fardiyeah*. Then Jaser Audah suggested that this holistic approach is more comprehensive emphasizing the use of *tafsir*

ma'wdu'i method (thematic interpretation) or *tawhid*y interpretation (Audah, 2012).

In its implementation, the feature emphasizes the holistic reading of *nash* texts (Al-Mashhadany et al., 2022). This holistic reading in determining legal conclusions cannot only rely on individual *nash* which are based on certainty in *dalalah* or *wurud*, other texts of *nash* must be read and used as consideration in the final execution. The reading of several *nash* texts also intends to synergize law, morality, and spirituality. Likewise in this study, heritage texts must be read holistically in order to obtain the values, goals, and messages to be achieved in the context of inheritance in general .

c. Characteristics of openness (*sura al-infitar*)

In this feature Jaser Audah shows the urgency of the *faqih's* position in formulating *fiqh* laws that are compatible with world conditions and developments (Muzdalifah, 2019). *Faqih* in this case is considered not competent or competent enough in formulating *fiqh* law if it only departs from the text and is unable to dialogue with the world based on supporting science. In determining a person's death or aborting a fetus for the sake of the mother's safety, for example, the *faqih* must have a dialogue with a doctor, in determining the poor in the category of zakat recipients, the *faqih* needs to have a dialogue with an economist.

In its implementation, this feature proposes *urf* both on a small and large scale to be an integrated part of the formulation of laws. *Urf* in a narrow sense emphasizes appreciation of local traditions, while *urf* in a broad scale is a *mujtahid* view of a world view based on knowledge. Likewise in this study, the pattern of distribution of inheritance is not only read in the text of *nash*, but also includes other knowledge in its reading, for example by including the family system in social science in reading inheritance provisions.

d. Hierarchical structure (*al-tarkibiyah al-haramiyah*)

In a system view, *maqashid* is seen as an interrelated system (integrative-interconnective) not based on priority, this means that it is possible to position *daruriyat* as the foundation, *hajiyat* in the middle, and *tahsiniyat* at the top (Audah, n.d.). Thus the hierarchical structure of the benefit is considered equally important, so it is not good that prayer (*daruriyat*), sports (*hajiyat*), and recreation (*tahsiniyat*) have the same level of urgency (Abdullah, 2012).

In its implementation, this feature sees the benefits contained as a unit that has continuity with one another. Benefit is not seen as a hierarchical arrangement arranged based on priority, but something that is integrated and has the same level of urgency. In this study, the reading of benefit in

the inheritance distribution system is read as an integrated provision and influences each other in the process.

e. Multidimensional (*da'sud al-tab'ad*)

In this case, Jaser Audah criticizes the pattern of binary dichotomy (*qat'i* and *dzanni*) which is the pattern of the textual approach in the majority of *fiqh madhabs*. Priorities based on certainty and uncertainty tend to limit legal flexibility and ignore the context in which the text was derived. In this characteristic, to avoid a reductionist and binary approach, Jaser Audah offers a multi-dimensional approach with a combination of *maqashid*. For example, in the case of conflicts between arguments (*ta'arrud al-adillah*) *maqasid* is the solution to solving it.

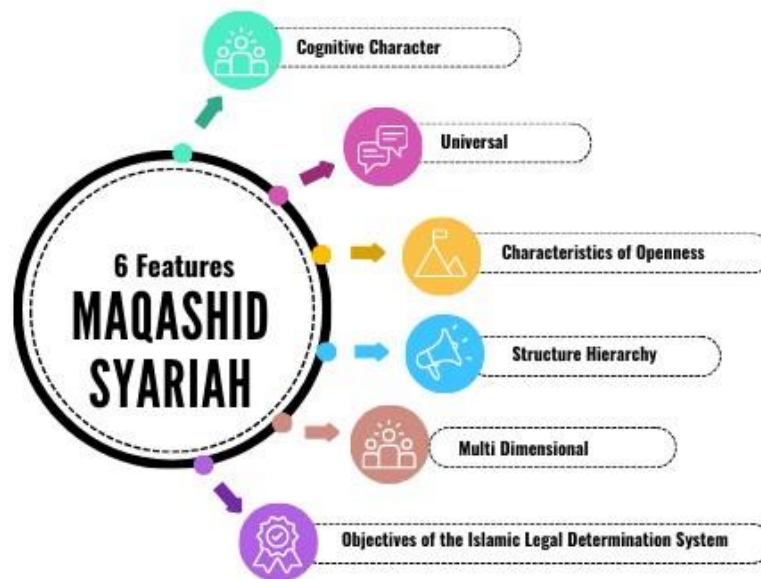
In its implementation, this feature tries to take a holistic approach that is *maqshad* oriented, this is done by synergizing various arguments as a comparison of the method of certainty of propositions and also solving various arguments that seem contradictory. This can be achieved by taking inventory of arguments, interpreting arguments, contextualizing arguments, and considering adat. Likewise in this research, the reading of the provisions of inheritance texts is carried out by taking inventory of the text, meaning, contextualization, and making tradition a consideration.

f. The purpose of the system of establishing Islamic law (*gaiyah manzumah al-tashri' al-islami*)

In this feature, Jaser Audah offers *maqashid* integration in every methodological tool of Islamic law, both related to *lughawiyah* and *tashri'iyah* principles in order to realize *maqashid*. In the *dalalah* rule, Jaser Audah offers the existence of *dilalah maqsad* (objective implications) (Audah, 2012) as a comparison of the textual implications of *nas*. Tafsir *al-maqashidi* with the thematic method is applied to get the positions, principles and objectives of the *nash* text (Audah, 2012). In understanding the *sunnah* of the Prophet, Jaser Audah offers a categorization of *sunnah* based on the *maqashid* version of Ibn 'Ashur which is a refinement of the concept of differentiating the behavior of the Prophet's version of Al-Qarafi (Audah, 2012). Efforts to integrate *maqashid* are also carried out on methodological tools such as *qiyas* with the path of *maqashid*, *maslahah* which is in line with *maqashid*, *sadz al-dhari'ah* as an effort to realize *maqashid* and *mashlahah*, *'urf* and universal goals, and *istishhab*.

In its implementation, this *gaiyah manzumah* feature makes *maqashid* a consideration in determining law through the existing *ushul fiqh* methodological tools. Efforts to find law through methodology must be read as a process of realizing the goal of determining law. Likewise in this study, the reading of the conception of the inheritance system in *nas* texts, especially those relating to the inheritance rights of grandchildren, must be read as an effort to realize *maqshad* in the distribution of inheritance.

Figure 1



Implementation Substitute Heirs Based on Maqashid Syariah Jaser Audah

In this case the author will analyze the provisions for substitute heirs using the maqashid shari'ah Jaser Audah approach. The analysis procedure is carried out systematically based on the six maqashid features as follows:

The first is the feature of cognitive character (*al-thabi'ah al-idrakiyah*), in this feature all fiqh provisions must be considered as a rational human understanding of God's texts which are cognitive in nature, and not God's laws (Audah, 2012). In this study, this feature functions to see all inheritance systems in general or the inheritance of grandchildren in particular as a result of human understanding of God's texts.

In fact, the inheritance rights of grandchildren are never found in the Qur'an or Al-Sunnah. It can be said that the inheritance rights of grandchildren are the result of mobilizing human abilities to understand the sacred texts of Nas. Al-Shafi'i, for example, in explaining the verse on *awladikum* (inheritance of children) in surah al-Nisa' verse 4 states that in essence the textual implication only leads to *awlad al-sulb*, while the position of grandchildren can only be included in the meaning of *awlad* through *majaz*. This meaning also has the effect that a person who has grandchildren is not considered to have violated his oath if he swears that he does not have children (Al-Qutubi, 2014). This is because the actual use of the verse above is limited to *awlad al-sulb*, while the text must be interpreted in an essential way as long as there are no indicators that divert from its true meaning.

Al-Shafi'i's opinion above shows that the inheritance rights of grandchildren are the result of *mujtahid* reasoning on the *awlad* text which

is essentially only limited to children. Al-Shabuni stated that the *majaz* meaning was then agreed upon as *ijma'* (a consensus) of the scholars, this then gave birth to the stipulation that an *awlad al-ibn* (grandson) has the right to occupy the position of a child if the child is not present (Al-Sabuni, 2017). Thus, actually there is a pattern of replacing heirs in the Islamic inheritance system as a product of *ijtihad* which later becomes an agreement among Islamic *fiqh* experts.

As for the results of Zayd's *ijtihad* and the hadith narrated by Bukhari which explains that there are daughters who inherit together with their male grandsons, legal breakthroughs can be made to enforce a pattern of replacing heirs even though there are children or not to enforcing replacement of heirs even though there are children. In this case, you can consider the hadith narrated by Bukhari about the inheritance of the granddaughter of the male pancar with the daughter. Even though it contains a gender bias in it, there is a message to be achieved (*maqshad*) that the pattern of inheritance replacement for grandchildren over children can still be achieved even if there are children (equal heirs). By setting aside 'gender bias' in the hadith, there is an opportunity to include a pattern of replacing heirs to grandchildren whose fathers have died, as efforts have been made by Islamic jurists in KHI.

Second, the universal feature (*kulliyah*), this feature actually demands a universal and holistic understanding and avoids formulating laws based on the certainty of propositions alone (Audah, 2012). As the author has explained above, there has been a pattern of replacing heirs in the inheritance system: grandchildren have the right to replace the position of children who have died. It's just that, Islamic jurists tend to be biased in interpreting the pattern of replacement of the heirs, the permissibility of this replacement can only be applied to male grandchildren. The gender bias in interpreting the *mawarith* text above can basically be compromised by considering several verses related to inheritance and the *maqsad* contained therein.

First verse:

لِّلرِّجَالِ نَصِيبٌ مِّمَّا تَرَكَ الْوَالِدَانِ وَالْأَقْرَبُونَ وَلِلنِّسَاءِ نَصِيبٌ مِّمَّا تَرَكَ الْوَالِدَانِ

In the verse above it is explicitly emphasized that both men and women there is no difference between men. There is an egalitarian principle (*musawah*) between men and women, both of whom have the right to inherit the inheritance of their parents and relatives.

Second verse:

يُصِيبُكُمُ اللَّهُ فِي أَوْلَادِكُمْ لِلذَّكَرِ مِثْلُ حَظِّ الْأُنثِيَيْنِ

The verse above actually wants to convey the message that there is no longer discrimination in the Islamic inheritance system, there is no

distinction based on clan, ethnicity, or so on in the distribution of inheritance. Both men and women, weak or strong, each received a share, although to a different degree. In commenting on the verse above, Ibn 'Ashur states that the determination of the part (*fard*) is definitely stated in the Qur'an and al-Sunnah, while the distribution of assets afterwards is left as it is because it contains the *maqsad* (objective) of returning its management to pre-Islamic tradition (*muta'araf qabl al-Islam*) ('Ashur, n.d.). Third verse:

وَلِيَحْشَ الْاٰذِيْنَ لَوْتَرَكُوْا مِنْ خَلْفِهِمْ ذُرِّيَّةً ضِعَافًا

The verse above is an appeal to humans in general to provide protection and empowerment for the assets of those who are weak in the previous verse: orphans, women and small children. In this verse, it begins with an order to fear Allah and then continues with compassion for offspring by positioning them as descendants who obtain rights from their father ('Ashur, n.d.). This shows that there is a transfer of rights (property) from parents to their offspring with the aim of creating a prosperous generation in their economy.

From the several verses that the author conveyed above, several *maqsad* (objectives) can be drawn in the inheritance distribution system: 1) the inheritance distribution system in Islam is based on egalitarian principles, both men and women have the right to get a share in every degree; 2) the inheritance distribution system is based on the principle of distributive justice, and provisions other than *fard* refer to local traditions with consideration of benefit; 3) the distribution of inheritance from *us}ul* to *furu'* aims to form a prosperous generation in the economy (economic empowerment).

The three characteristics of openness (*simah al-infitah*), in this feature suggest changes in *fiqh* law based on changes in the world based on the views of the *faqih*, which are supported by science (Audah, 2012).

In view of this feature, the granting of grandson rights over children who have died before the heir is not considered a textual norm. Furthermore, Article 185 KHI regarding replacement of heirs is legislation which in its formation cannot be separated from *urf* intervention. '*Urf* in this case can be interpreted narrowly, namely appreciation of local traditions (living laws) that have implemented a system of replacing heirs, also in the broad sense of *fakih*'s scientific knowledge. In this case the replacement heir seen from the side of social structure, on a small scale is the family. Restrictions on replacing heirs only apply to male grandsons must be reviewed from a sociological point of view (family structure) to avoid bias in the meaning of the text.

The four hierarchical structures (*al-tarkibiyah al-haramiyah*). The relevance of this feature to Article 185 of the Compilation of Islamic Law

can be seen from the *maqshad*-oriented benefits to be achieved in its formation. This can be explained as follows:

- a. The enactment of replacing heirs in Article 185 KHI requires equality at every degree in the distribution of inheritance. If in conventional *fiqh* it is the male grandson who has the right to jointly inherit the daughter, in this case the KHI stipulates that grandsons, either male or female, can replace the position of their parents and have the right to inherit with the heirs who are equal to those replaced. Barriers to grandchildren in inheriting only apply one downward line and do not apply sideways. That is, a grandson can only be hindered by his position if there is a child (the father), and the presence of a child cannot prevent the grandson from moving to the side (a sibling's child). This is in line with *maqsad* in sura al-Nisa' verse 11.
- b. The enactment of replacing heirs in Article 185 KHI places distributive justice by giving the portion that should have been received by children who have died before grandparents to grandchildren without distinguishing gender. This is as *maqsad* implied in surah al-Nisa' verse 7. The value of this philosophy of justice is also represented by limiting 'the share of the substitute heirs cannot be more than equal heirs', this limitation is made to guard against the possibility of having children who are in a financially weak condition so that the share does not decrease due to the presence of substitute heirs (grandchildren).

The benefits in distribution to heirs can be seen as follows: First, the distribution of inheritance to heirs is an attempt to embody the contents of texts belonging to the maintenance of religion. This benefit requires the distribution of assets based on written provisions in the text of the text. Second, the distribution of inherited assets to heirs is an effort to realize the empowerment of the heir's assets, by distributing the assets left by the heirs to avoid neglect. This benefit is oriented towards empowering heirs who are one of the *maqsad* in distributing inheritance. Third, the certainty of the distribution of inheritance to heirs is a manifestation of the protection of human rights, in the context of inheriting is the right to inherit from heirs to heirs.

Granting inheritance rights to grandchildren is actually in the third benefit, but as the author mentioned above, these three benefits are like a system that are interrelated with each other, therefore these three benefits must run simultaneously. This is what distinguishes the system *maqashid* approach from the mainstream *maqasid* approach which places more emphasis on the priority of benefit, as did its predecessors in the *maqashid* idea, al-Ghazali and Ash-Shathibi.

Likewise in the case of *maqashid*, several objectives in the distribution of inheritance must reflect the overall objectives as a system. So the three *maqashid* are egalitarian, distributive justice, and forming a prosperous generation in the economy (economic empowerment) in the distribution of inheritance must be implemented simultaneously.

Fifth, in view of this feature, the provisions for replacing heirs must be viewed from various dimensions and not rely on individual arguments.

According to the author, the limitation on replacing heirs is an effort to comply with textual implications and also the results of Zayd's *ijtihad*. The majority of Islamic jurisprudence stipulates that male granddaughters can inherit if there are no sons, this is clearly an effort to prioritize the textual implications of individual propositions, as illustrated by the hadith narrated by Bukhari regarding the inheritance of male granddaughters. Whereas the decision to annul the inheritance rights of grandchildren if there are children is obtained from the results of Zayd's *ijtihad*. Although textually there is still ambiguity, whether what Zayd means by 'no children' is children in one radiate (father of grandchildren) or children in the sense of all heirs, while Zayd also said that male grandchildren cannot inherit with sons.

In the case of changing heirs, this feature can be used to mediate the results of Zayd's *ijtihad* and Bukhari's hadith about the son's grandson inheriting with his daughter. The text which is the result of Zayd's *ijtihad* can at least draw several conclusions: 1) grandchildren can replace the position of children if there are no children; 2) grandsons and daughters like sons and daughters in inheriting and wearing the hijab; 3) male grandchildren cannot inherit with sons. In the Bukhari text, it can be concluded: 1) the granddaughter of the male family has the right to inherit with the daughter; 2) the granddaughter's share is one sixth. From the two texts above, a compromise can be made by incorporating elements of *maqashid*. The results of Zayd's *ijtihad* and Hadith narrated by Bukhari regarding the pattern of replacement of heirs can be understood by the pattern of replacement by grandchildren for children that can apply to all radians (male and female), as long as there are no children in one family (father of grandson). This compromise effort in its operations makes *maqashid* inheritance (equality, distributive justice, empowerment) a consideration.

The six objectives of the system of establishing Islamic law. In the inheritance system, there are several *maqasid*: 1) the inheritance distribution system in Islam is based on an egalitarian principle, both men and women have the right to get a share in every degree; 2) the inheritance distribution system is based on the principle of distributive justice, and provisions other than fard refer to local traditions with consideration of benefit; 3) the

distribution of inheritance from *usul* to *furu'* aims to form a prosperous generation in the economy (economic empowerment).

Some of the *maqshad* above are the goals of the realization of determination in the Islamic inheritance system, the distribution of inheritance must consider the *maqsad* in each of its provisions. In addressing the hadith which states the inheritance of granddaughters (pancar male) with daughters, by making the maq}ad of justice and egalitarianism at every degree a consideration can put forward the stipulation that grandchildren can inherit with children (boys or girls). Against the consensus of Islamic jurisprudence that *awlad al-ibn* can inherit if there is no *awlad*, taking into account the maq}ad of justice and economic empowerment can argue that the provisions of the *hajib-mahjub* system for children and grandchildren only apply in one guise. That is, the existence of children can block their own grandchildren but cannot prevent other grandchildren from being born (Taqiyuddin et al., 2023). Grandchildren from other families can still receive a share as a substitute for their father who died earlier.

Granting replacement rights to grandchildren is basically an effort to pave the way (*fath al-dhari'ah*) (Baihaqi, 2017) in realizing real benefits (protecting the rights of grandchildren). In this case, Jaser Audah suggested that in order to maintain the flexibility of Islamic law in achieving *maqasid*, facilities are needed in its implementation. In order to achieve the maq}ad of justice, economic empowerment, and egalitarianism in the distribution of inheritance, it is necessary to open up facilities in areas that are not explicitly explained by the texts (*ashhab al-fard*). It is impossible to apply the textual implications of inherited texts without paying attention to philosophical values to realize real benefits in the distribution of inherited assets, considering that benefits will always change in every condition.

The relevance of this feature to Article 185 KHI can be read through the motivation for institutionalizing substitute heirs which aims to protect the inheritance rights of grandchildren over children. The granting of replacement rights to grandchildren in Article 185 KHI is basically an effort to pave the way (*fath al-dhari'ah*) (Bayah, 2013) in realizing real benefits. In this case, Jaser Audah suggested that in order to maintain the flexibility of Islamic law in achieving *maqasid*, facilities are needed in its implementation. In order to achieve the maq}ad of justice, economic empowerment, and egalitarianism in the distribution of inheritance, it is necessary to open up facilities in areas that are not explicitly explained by the texts (*ashhab al-fard*). One of the *wasilah* in implementing efforts to open these facilities is through regulation.

Table 1
Substitute Heirs Through Six Maqashid Syariah Features

FEATURE	DESCRIPTION
Cognitive Character	Positioning the results of Zayd's <i>ijtihad</i> as a valid <i>ijtihad</i> product emphasizes the importance of the contribution of thought in the development of inheritance law.
Universal Features	Replacement of heirs applies to all situations, taking into account the principles of egalitarianism, distributive justice and empowerment of heirs.
Characteristics of Openness	Include internal (customary law, family structure) and external factors (comparative studies and equality) in the analysis of Article 185 as <i>urf</i> .
Hierarchical Structure Features	Succession rights given to grandchildren contain philosophical benefits, oriented towards <i>maqasid</i> that run simultaneously.
Elements of Justice	Including the element of justice as a philosophical value to mediate the hadith narrated by Bukhari and the results of Zayd's <i>ijtihad</i> , ensuring balance in the distribution of inheritance.
Objectives of the Islamic Legal System	Granting grandchildren rights over children is an effort to realize the goals of justice, empowerment, and protection of human rights (HAM).

Conclusion

Jaser Audah's maqasid shariah view on the meaning of successor heirs can be seen through the following six features: 1) cognitive character: positioning the result of Zayd's *ijtihad* as a product of *ijtihad*; 2) universal features: succession of heirs applies to all generations with consideration of egalitarian principles, distributive justice, and empowerment of heirs; 3) characteristics of openness: making internal factors (customary law, family structure) and external factors (comparative studies and equality) in Article 185 genealogy as *urf*; 4) hierarchical structure features: succession rights

given to grandchildren philosophically contain goal-oriented benefits that run simultaneously; 5) including the element of justice as a philosophical value in mediating the hadith of Bukhari's narration and the results of Zayd's *ijtihad*; 6) the purpose of the Islamic legal system: the granting of rights to grandchildren over children is an effort to realize the goals of justice, empowerment, and human rights protection.

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