



## An Examination of Substitute heirs in Islamic Civil Law in Indonesia: An Interpretative Analysis of Legal Verses

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### Abstract

In Islamic inheritance law, inheritance occurs because of the relationship between sababiyah and nasabiyah. From these two relationships, the dzawil faraid', 'Asabah and dzawil Arham groups were born. Dzawil Arham is a group that is often overlooked in inheritance, because there are no absolute provisions, especially for grandchildren whose parents died before their grandfather or successor heir. Even though there is inheritance law to realize justice and benefit in the family. Thus, in this study we will examine in more depth related to replacement heirs from the perspective of the Al-Qur'an, with the aim of realizing replacement heirs in the Al-Qur'an. The method used by liberal research is an analytical descriptive approach. The results of this study are that basically in Islamic inheritance law the term substitute heir is not found in the Koran as a source of Islamic law. However, Hazairin through his ijtihad interpreted the lafaz mawali in the Qur'an 4:7 as a substitute heir. This meaning was then formulated in KHI article 185 paragraphs 1 and 2. As a contribution to this study, realizing justice and benefit is a necessity. Grandchildren as substitute heirs for their parents should be a provision in Islamic inheritance.

**Keywords:** Substitute heirs, Islamic inheritance, Legal Verses

### Abstrak

Dalam hukum kewarisan Islam, terjadinya saling mewarisi karena hubungan sababiyah dan nasabiyah. Dari kedua hubungan tersebut lahirlah golongan dzawil faraid', 'Asabah dan dzawil Arham. Dzawil Arham golongan yang sering terabaikan dalam kewarisan, karena tidak ada ketentuan secara mutlak, terlebih bagi cucu yang orangtuanya lebih dulu meninggal daripada kakeknya atau ahli waris pengganti. Padahal adanya hukum kewarisan untuk mewujudkan keadilan dan kemaslahatan dalam keluarga. Dengan demikian, dalam kajian ini akan mengkaji lebih dalam terkait ahli waris pengganti dalam perspektif Al-Qur'an, dengan tujuan merealisasikan ahli waris pengganti dalam Al-Qur'an. Adapun metode yang digunakan library resech dengan pendekatan diskriptif analitis. Hasil dari kajian ini, bahwa pada dasarnya dalam hukum kewarisan Islam istilah ahli waris pengganti tidak ditemukan Al-Qur'an sebagai sumber hukum Islam. Akan tetapi, Hazairin melalui ijtihadnya memaknai lafaz mawali dalam Qur'an 4:7 dengan ahli waris pengganti. Makna

tersebut kemudian dirumuskan dalam KHI pasal 185 ayat 1 dan 2. Sebagai kontribusi dari kajian ini, mewujudkan keadilan dan kemaslahatan sebuah keniscayaan. Cucu sebagai ahli waris pengganti bagi orangtuanya hendaknya menjadi sebuah ketetapan dalam kewarisan Islam.

**Kata Kunci:** Ahli waris pengganti, Waris Islam, Ayat Hukum

## Introduction

Inheritance law is the law that regulates inheritance left by someone who has died. In inheritance law there are three interrelated elements, namely heirs, inheritance and heirs.<sup>1</sup> The heir is the person who receives inheritance from the heir who has died, the inheritance is the legacy of the heir who has died and the heir is the person who has the inheritance of the heir who has died.<sup>2</sup>

The requirement to become an heir in Islamic inheritance law is the existence of a Nasabiyah and Sababiyah relationship. This relationship gave birth to three groups of heirs, namely dzawil faraid, 'asabah, and dzawil Arham.<sup>3</sup> Dzawil faraid, groups that have determined provisions such as  $\frac{1}{2}$ ,  $\frac{1}{3}$ ,  $\frac{2}{3}$ ,  $\frac{1}{4}$ ,  $\frac{1}{6}$  and also  $\frac{1}{8}$ . 'Asabah is a group whose provisions are to receive the remainder of the dzawil faraid. Meanwhile dzawil Arham is a group that has no absolute provisions, because it is covered by dzawil faraid and 'Asabah.<sup>4</sup>

In light of this, dzawil Arham is a group of heirs who are marginalized in inheritance law, because they cannot immediately inherit.<sup>5</sup> On the other hand, dzawil Arham are the descendants of their own female heirs who are not included in the hijab law, such as murderers, apostates, people of different religions and so on. Apart from that, there are also grandchildren whose parents died before their grandfather became the heir. The position of grandchildren is at the second level after children.<sup>6</sup> In this case, grandchildren also cannot inherit because they are veiled by their father's siblings. Things like this cannot be fully accepted by some heirs sincerely, because they give the impression that there are forgotten values of justice and welfare among fellow family members. Such conditions require a

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<sup>1</sup> Harnides Harnides, Syahrizal Abbas, and Khairuddin Hasballah, "Gender Justice in Inheritance Distribution Practices in South Aceh, Indonesia," *Samarah: Jurnal Hukum Keluarga Dan Hukum Islam* 7, no. 2 (June 20, 2023): 1293–1316, <https://doi.org/10.22373/sjhk.v7i2.16688>.

<sup>2</sup> Oemar Moechthar, *Perkembangan Hukum Waris Praktik Penyelesaian Sengketa Kewarisan di Indonesia* (Jakarta: Prenada Media, 2019).14-15

<sup>3</sup> Yusuf Somawinata and Hafidz Taqiyuddin, "Hak Waris Anak Perempuan di Cimanuk (Antara Kompilasi Hukum Islam dan Penetapan Pengadilan Agama Nomor 69/Pdt.P/2013/Pdlg)," *Al-Istinbath: Jurnal Hukum Islam* 5, no. 2 November (November 30, 2020): 229–52, <https://doi.org/10.29240/jhi.v5i2.1839>.

<sup>4</sup> Sayuti Thalib, *Hukum Kewarisan Islam di Indonesia* (Jakarta: Sinar Grafika, 2022). 104-109

<sup>5</sup> Syabbul Bachri, "Rekonstruksi Kewarisan Islam: Studi Hermeneutika Ibn Abbas atas Ayat-ayat Waris," *Al-Istinbath: Jurnal Hukum Islam* 5, no. 1 May (May 9, 2020): 21–50, <https://doi.org/10.29240/jhi.v5i1.1197>.

<sup>6</sup> Muhammad Ibnul Hasan and Rosyidatul Khoiriyah, "Gugatan Harta Waris Terhadap Anak Angkat Analisis Yuridis Terhadap Putusan PA Situbondo No. 0371/Pdt.G/2017/PA.Sit," *Al-Istinbath: Jurnal Hukum Islam* 4, no. 2 November (November 30, 2019): 231–52, <https://doi.org/10.29240/jhi.v4i2.949>.

solution or resolution to the problems that arise.<sup>7</sup> Therefore, the principle of justice has a very important role in regulating the inheritance distribution process.

In Islamic law, justice is a theoretical concept in law enforcement. This theory is closely related to the existence of legal certainty.<sup>8</sup> Legal certainty is also a theory that explains that the position of the successor heir in the inheritance system must have definite legal force with all consequences and can be accounted for according to the law. Ensuring legal certainty is the duty of legal rule.<sup>9</sup> Murtadha Muthahhari explained that the concept of justice is known to consist of four things, namely: justice means balance, justice means equal interpretation of any differences, justice means maintaining individual rights and giving rights to everyone who has the right to receive them and justice means maintaining the right to continued existence.<sup>10</sup> From this statement, it is a necessity in Islamic inheritance law to realize justice and benefit in the distribution of inheritance assets to heirs. That's why Rasulullah SAW recommended to his people to learn the science of faraid and teach it to others. Because the first knowledge that was marginalized in the attention of Muslims was the science of faraid.

The concept of substitute heirs as a reference in settling inheritance in Indonesia, especially the inheritance of grandchildren.<sup>11</sup> This concept of substitute heirs is strongly suspected to be an adoption of the thoughts of one of the Islamic law experts in Indonesia, namely Hazairin. In his work "Bilateral Inheritance Law according to the Al-Qur'an and Hadith" Hazairin proposed a concept regarding the inheritance of grandchildren, known as substitute heirs.

Discussion Substitute heirs are not new in the study of inheritance law, but many studies have been carried out by previous researchers, including, a study conducted by Fauzi Shaleh<sup>12</sup> with the title "The Concept of Patah Titi: The Problem of Inheritance and Its Solution in Central Aceh", in the study, researchers found that there were three types of heirs, namely heirs did not inherit anything because of the law of broken titi, heirs received inheritance because they were considered badl (substitution) heirs who have died and the heirs receive a gift (gift). In different studies it is also explained that replacement heirs are limited to heirs based on blood relations in straight line descent down to the level of grandchildren and male

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<sup>7</sup> E. Elfia, Surwati Surwati, and Yan Fajri, "Kewarisan Beda Agama Di Nagari Persiapan Bancah Kariang Kecamatan Kinali Kabupaten Pasaman Barat," *Al-Istinbath: Jurnal Hukum Islam* 6, no. 2 November (November 11, 2021): 341–66, <https://doi.org/10.29240/jhi.v6i2.3479>.

<sup>8</sup> Maizuddin Maizuddin et al., "The Typology of Hadith as the Bayān of the Qur'an and Its Implications for the Reform of Islamic Inheritance Law," *Samarah: Jurnal Hukum Keluarga Dan Hukum Islam* 7, no. 2 (May 9, 2023): 760–80, <https://doi.org/10.22373/sjhk.v7i2.17467>.

<sup>9</sup> Syaikhu Syaikhu et al., "Legal Harmonization in the Distribution of Inheritance in the Dayak Ngaju Community in Central Kalimantan, Indonesia," *Samarah: Jurnal Hukum Keluarga Dan Hukum Islam* 7, no. 1 (March 31, 2023): 195–215, <https://doi.org/10.22373/sjhk.v7i1.12410>.

<sup>10</sup> Murtadha Muthahhari, *Keadilan Ilahi: Asas Pandangan-Dunia Islam* (Bandung: Mizan Pustaka, 2009).58

<sup>11</sup> Ulfiani Rahman et al., "Men and Women in The Distribution of Inheritance in Mandar, West Sulawesi, Indonesia," *Samarah: Jurnal Hukum Keluarga Dan Hukum Islam* 6, no. 1 (June 27, 2022): 156–75, <https://doi.org/10.22373/sjhk.v6i1.9094>.

<sup>12</sup> Fauzi Fauzi, "The Concept of Patah Titi: The Problem of Inheritance and Its Solution in Aceh Tengah," *Studia Islamika* 26, no. 1 (April 10, 2019): 33–73, <https://doi.org/10.15408/sdi.v26i1.6529>.

heirs can be occupied by both sons and daughters.<sup>13</sup> The explanation of the two studies above only describes successor heirs in general and does not explore how the verses of the Qur'an are interconnected, have a common basis, and can give rise to legal provisions.

The concept of substitute heirs is a reference in settling inheritance in Indonesia, especially the inheritance of grandchildren. This concept of substitute heirs is strongly suspected to be an adoption of the thoughts of one of the Islamic law experts in Indonesia, namely Hazairin. In his work "Bilateral Inheritance Law according to the Al-Qur'an and Hadith" Hazairin proposed a concept regarding the inheritance of grandchildren, known as substitute heirs.

Referring to the problem above, a replacement heir is something that is not found in the Koran. However, in current developments, replacement heirs are part of the heirs who can inherit. Therefore, the problem of substitute heirs is a concept that requires in-depth study, with a focus on studying the concept of substitute heirs from the perspective of the Qur'an.

In studying this problem, the author uses the library research method with a descriptive analytical approach. This research was conducted by reviewing library literature as written source material. Data collection techniques carry out a review of references that are relevant and related to the problem being studied. Then, these references are grouped into primary materials, secondary materials and tertiary materials. The primary material is Hazairin's work related to Waris. Then, these materials require explanations in the form of the Koran, interpretations, theories and thoughts of experts which are called secondary materials. Meanwhile, the broadcast materials take the form of dictionaries and encyclopedias, among others.<sup>14</sup> This study aims to realize the concept of substitute heirs from the perspective of the Qur'an.

### **Islam and State: The Concept of Substitute Heirs**

Substitute heirs are heirs who initially did not receive inheritance rights from the testator. However, he then received inheritance rights because he replaced the rights of his parents who had died first. The term substitute heir simply consists of waris (ورث) and substitute (الواكلة). The word warasa (ورث) is the first inheritance word used in the Qur'an.

In the Qur'an, the word inheritance is found with several forms of meaning, including changing position, in Surah an-Naml verse 16, namely وورث سليمان داود<sup>15</sup> (and Solomon inherited David), gave or bestowed him, in Surah Az-Zumar verse 74, namely وقالوا الحمد لله الذي صدقنا وعده وأورثنا الأرض نتبوا من الجنة حيث نشاء فنعم أجر العاملين (And they said "all Praise be to Allah who has fulfilled His promise to us and has (given) us this place while we are (allowed) to occupy a place in heaven wherever we wish). Meanwhile, the meaning of inheriting or receiving an inheritance can be found in Surah al-Maryam verse 6 is يرثني ويرث (

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<sup>13</sup> Sarah Humaira, "Kedudukan Ahli Waris Pengganti Dalam Hukum Waris Islam," *Jurnal Hukum Al-Hikmah: Media Komunikasi Dan Informasi Hukum Dan Masyarakat* 2, no. 3 (September 21, 2021): 557-68, <https://doi.org/10.30743/jhah.v2i3.4361>.

<sup>14</sup> Soerjono Soekanto and Sri Mamudji, *Penelitian hukum normatif: suatu tinjauan singkat* (Jakarta: Penerbit CV. Rajawali, 1986).14-15

<sup>15</sup> Ahmad Rofiq, *Hukum Islam Di Indonesia* (Jakarta: PT Gramedia, 2020).

من آل يعقوب واجعله رب رضى (who will inherit me and inherit part of Jacob's family; and make him, O my Lord, a blessed person) apart from that, it is also found in a hadith of the Prophet, namely العلماء ورثة الأنبياء<sup>16</sup>.

In Indonesian legal literature, this term is often used as a law that explains the transfer of assets of someone who has died to someone who is still alive. In the Compilation of Islamic Law, article 171 letter a, it is stated that Islamic inheritance law is the law that regulates the transfer of ownership rights to inherited property (*tirkah*), heirs, determining who has the right to be an heir and how much each person will share.<sup>17</sup>

In Islamic inheritance law, a person can have the right to inherit if there are 3 things, namely

1. Kinship or hereditary relationships, such as parents, children and grandchildren, brothers and so on.
2. Marriage is the occurrence of a sharia marriage contract between a man and a woman.
3. Al-wala, namely kinship due to legal reasons.

Apart from the existence of reasons for inheriting, there are also conditions for being able to inherit, namely the death of a person, both in essence and legally, the existence of living heirs when the testator dies, and all heirs knowing the exact line of kinship between the testator and the heirs. Of course, these requirements do not necessarily translate into inheritance rights. This will also affect the attitude of the heirs. The heir's rights will be effective if the heir does not have one of the things that could invalidate his inheritance rights, namely: someone who has the status of a slave, a murderer, and is of a different religion or an apostate.

Meanwhile, the word substitute (*الواكلة*) is simply interpreted as replacing something. This means that when something does not exist, it is replaced by something that exists. In inheritance law, the term replacement is not found in Islamic inheritance. However, this substitute can be found in customary and civil law. Thus, the meaning of the term substitute in inheritance is someone who can appear to replace an heir who has died before the distribution of inheritance. In Hazairin's view, the term successor is interpreted as *mawali*, meaning people who become heirs because there is no longer any connection between them and the heir.<sup>18</sup> *Mawali* or substitute heir means the person who should have received the inheritance if he was still alive, but he died before the testator. In this case, the inheritance rights are replaced by the descendants.

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<sup>16</sup> Imam Jalaluddin 'Abdurrahman bin Abi Bakar bin Muhammad bin Sabiquddin al-Suyuti, *Al-Jami'u al-Sagir Min Hadits al-Basyir al-Nazir*, Juz 2, (Beirut: Dar al Fikr, 1994 ). 11

<sup>17</sup> Cik Hasan Bisri, *Kompilasi Hukum Islam Dan Peradilan Agama Dalam Sistem Hukum Nasional* (Jakarta: Logos, 1999).; Lihat juga. Dwi Putra Jaya, *Hukum Kewarisan Di Indonesia*, (Kota Bengkulu: Zara Abadi, 2020).

<sup>18</sup> Hazairin, *Hukum Kewarisan Bilateral Menurut Qur'an Dan Hadits*, Cet. 5 (Jakarta: Tintamas, 1982). In Arabic, the term *mawali* is the singular form of *al-mawla* (المولى) which is the plural form of *al-mawali* (الموالي) which means *al-maliku wa as-sayyidu* (الملك والسيد) (meaning king or master, neighbor friend, sons) and so on. louis ma'luf, *Al-Munjid Fi al-Luqati Wa al'alam al-Maktabah al-Syarkiyah* (Beirut: Dar al Fikr, 1986).

In Dutch, the term replacement heir is called *plaatsvervulling*. A substitute in inheritance law is called a substitute heir. Change of heir is defined as someone appearing as a replacement for their parents as heir. In conventional Fiqh law, this system of changing heirs is not known. However, this system appears in discussions of inheritance law in the Civil Code.

The replacement heir system is a new breakthrough to protect the deceased grandchildren of the deceased person whose parents have died, according to this rule, the grandchildren can inherit. In Islamic countries, protection for grandchildren is carried out by providing a mandatory will for the grandchildren. This law is updated by implementing mandatory wills for grandchildren whose parents have died. The first mandatory will was implemented by Egyptian inheritance law in 1946. Later, this was followed by other countries such as Morocco, Syria and Tunisia. After Kuwait implemented this law, Algeria, Iraq and Jordan also did the same.

In the Civil Code, changing heirs is done by positioning the replacement heir to be the same as the person being replaced in accordance with the provisions of articles 841-848 of the Civil Code. Change of heirs is one of two forms of inheritance based on law. Another form is the direct acquisition of heirs *Uit Eigen Hoofde*, namely based on article 852 paragraph 2 of the Civil Code which states that; "They inherit head by head, if with the deceased they are related in the first degree and each has rights except for themselves..."<sup>19</sup>

Thus, what is meant by substitute heir is a substitute in the distribution of inheritance. If the heir dies before the heir, then the inheritance can be received by the children of the deceased heir<sup>20</sup> In other words, replacement heirs are heirs who initially did not have the right to inherit. Because he replaced the rights of his parents who had died, he was able to inherit.

Raihan A. Rasyid gives two meanings related to changing heirs, namely replacement heirs and substitute heirs. According to Raihan A. Rasyid,<sup>21</sup> A successor heir is a person who was not an heir from the beginning, but due to certain circumstances, he became an heir and received his inheritance in the status of an heir. For example, an heir dies and leaves a grandson and a granddaughter from the son. These grandchildren act as heirs. This case is called a successor heir. Meanwhile, the successor of the heir is a person from the beginning who was not an heir but due to certain circumstances and certain considerations he received the inheritance. However, it remains in non-heir status. For example, an heir dies and leaves a child with a grandchild whose parents died before their grandfather. The grandchild's position here is as a successor to the heir.

In the Compilation of Islamic Law, the previous heirs have become living law in the life of the community. This is based on the policy of the Dutch East Indies government, including Christian Snouk Hurgronje. The Dutch tried to unite the Indonesian nation both by

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<sup>19</sup> Ishlachuddin Almubarrok, "Ahli Waris Pengganti," *An-Nawa: Jurnal Studi Islam* 2, no. 2 (2020): 34–44, <https://doi.org/10.37758/annawa.v2i2.118>.

<sup>20</sup> Yan Pramadya Puspa, *Kamus Hukum Edisi Lengkap Bahasa Belanda-Indonesia-Inggris* (Jakarta: CV Aneka Ilmu, 1997). 320

<sup>21</sup> A. Rasyid, Raihan, *Kompilasi Hukum Islam Dalam Sistem Hukum Nasional* (Jakarta: Logos Wacana Ilmu, 1999). 81

association and assimilation. Both of them aim so that the Indonesian nation can unite with the Netherlands, especially in the unification of law. Snouk repeatedly said that the foundation of the Dutch kingdom was strengthened by the association of Indonesians with Dutch culture.<sup>22</sup>

The concept of substitute heirs developed by the Dutch East Indies government in Indonesia is strongly suspected to have originated from Dutch law and gradually became customary law in the lives of Indonesian society. This is evident from research by Ter Haar BZn and Soepomo that in West Java customary law of inheritance the term replacement heir is known as "change of position".<sup>23</sup>

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According to the Civil Code / BW, a person becomes an heir due to the existence of a marriage and blood relationship, whether legal or illegal. This is regulated in article 832 paragraph 1 Burgerlijk Wetboek. People who are closely related by blood are entitled to receive inheritance rights.

In inheritance law, the principle also applies that if a person dies, at that moment all his rights and obligations are transferred to his heirs, as regulated in article 833 Burgerlijk Wetboek. This means that the family member who dies replaces the position of the heir in the field of wealth law because of the death of the testator. The heir occupies the position of the deceased in matters involving the assets of "Saisine" article 833 (1) Burgerlijk Wetboek.<sup>25</sup>

In Hazairin's view, successor heirs in the perspective of the Koran have been arranged in such a way that there are three pillars of inheritance, namely al-mawarris, al-Waris, and al-Maurus.<sup>26</sup> Hazairin explained, according to the main line of succession as applied in Indonesia, what is meant by heir is every person in a group of priorities provided that between him and the heir there is no link or there is no longer a link that is still alive, namely the link that no longer exists. In the individual system, the heir must die before the distribution of assets and in the collective system the heir must die before the inheritance.<sup>27</sup>

### **Legal Basis for Substitute Heirs**

In Islamic inheritance law, the source of law can be seen from two sources, namely the source of sharia and the source of fiqh. The sources of sharia consist of the Al-Qur'an and hadith and the sources of fiqh consist of ijma' and ijtihad. In this study, the source presented

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<sup>22</sup> Aqib Suminto, *Politik Islam Hindia Belanda* (Jakarta: pustaka LP3ES indonesia, 1985).39

<sup>23</sup> R. Otje Salman S. Mustafa Haffas, *Kesadaran Hukum Masyarakat Terhadap Hukum Waris*, Cet. 2 (Bandung: Alumni, 2007). 61; Eman Suparman, *Hukum Waris Indonesia*, Cet. 2, (Bandung: PT Refika, 2007). 64

<sup>24</sup> R. Subekti, *Pokok-Pokok Hukum Perdata* (Jakarta: Intermasa, 1995). 100-101

<sup>25</sup> Effendi Perangin, *Hukum Waris* (Jakarta: RajaGrafindo Persada, 2018). 8

<sup>26</sup> Zulfan Efendi Hasibuan, " , Menelaah Hukum Ahli Waris Dalam Ilmu Faraid," *Dalam Jurnal Al-Maqashid*. Vol. 4. No (2018): 50

<sup>27</sup> Habiburrahman, *Rekonstruksi Hukum Kewarisan Islam Di Indonesia* (Jakarta: Kencana, 2011). 138

is the Koran. In the Al-Qur'an, inheritance issues are explained a lot in Surah An-Nisa' starting from verses 7, 8, 9, 10, 11, 12, 13, 14, 33, 176, and Surah al-Anfal verse 75. Verses-These verses are interrelated, interrelated or complementary, so that from the interrelationship of these verses, a law can be created that can be used as a guide in community life, such as the law of successor heirs in Islamic heritage.

In Hazairin's view, the Islamic inheritance system is a "bilateral individual system". The Al-Qur'an mentions in Surah An-Nisa' verses 7, 8, 11, 12, 33 and 176. This is a characteristic or specification of the Islamic inheritance law system according to the Al-Qur'an. In the bilateral teachings put forward by Hazairin, it is known that there are three groups of heirs, namely dzul fara'id heirs, dzul qarabah<sup>28</sup> heirs and mawali heirs.<sup>29</sup> This mawali group replaced the position of their father who died earlier than the heir.

Tracing the verses mentioned above, in essence, Surah An-Nisa', starting from verse 1, discusses inheritance, and these verses are interconnected with each other. Verse 1 contains the message that kinship relationships are strong because of blood ties. Meanwhile, paragraphs 2, 3, 5, 6, 9 and 10 contain messages warning guardians to ensure the best possible safety of inheritance belonging to heirs who are immature or imbecile. Apart from that, paragraph 7 contains an explanation that there is no difference between men and women in inheritance law, men and women equally have the rights inherited from their parents and relatives. Verse 8 contains a message to give enough to families who are not involved in inheritance who are present in the distribution of inheritance, such as orphans and relatives. Paragraphs 11, 12 and 176 contain an explanation of the details of shares for each heir. As for verse 32, there is a command not to be jealous of the gains obtained by each family member. In paragraph 33 there are provisions regarding heirs due to replacement. This verse is used by Hazairi as the basis for the existence of heirs because they replace or substitute heirs.<sup>30</sup>

Investigating in the context of munasabah verses, if the meaning of a verse is difficult to understand in its entirety, then according to the munasabah method the understanding of the verse can be found in other verses or letters which have similarities and similarities. According to Fazlurrahman, if someone wants to gain a complete appreciation of the Al-Qur'an, then it must be understood in a related way. On the other hand, if the Qur'an is not understood in a related way, the Qur'an will lose its relevance for the present and the future, until the Qur'an cannot fulfill human needs.<sup>31</sup> Thus, the main basis for successor heirs in the Qur'an is Qur'an 4:33. From this new verse it is linked to other verses.

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<sup>28</sup> Dzul karabah is an heir who gets an unspecified amount of inheritance or is also called acquiring an open portion or residual portion, or is also called ashabah. Sayuti Thalib, *Hukum Kewarisan Islam Di Indonesia* (Jakarta: Sinar Grafika, 2016).101

<sup>29</sup> Mawali is a substitute heir, that is, an heir who replaces another heir to obtain the part of the inheritance that the person being replaced would have previously obtained.

<sup>30</sup> Hazairin, *Hukum Kewarisan Bilateral Menurut Al-Qur'an dan Hadits*, (Jakarta: Tintamas, 1982), 27

<sup>31</sup> Fazlurrahman, *Major Times Of The Al-Qur'an*, Terj. Anas Mahyudin, Cet. III, (Bandung: Pustaka, 1996), x-xi

### **Substitute heirs from the perspective of the Qur'an and the views of Tafsir scholars**

Tracing the verses of the Qur'an mentioned above, there are 25 people who can become heirs, consisting of 10 women and 15 men. All of these heirs are a result of the existence of nasabiyah and sababiyah relationships.<sup>32</sup> The class of heirs from nasabiyah relations are heirs who are blood related to the testator. This relationship can be differentiated into three types, namely a straight line downwards (*furu' al-manyit*) such as children, grandchildren, a straight line upwards (*ushul al-manyit*) such as fathers, grandfathers, and a straight line sideways (*al-hawasyi*) such as brothers, uncles, and its derivative children.<sup>33</sup> A sababiyah relationship is an inheritance that occurs because of a marriage relationship. This relationship means that husband and wife can inherit property from both of them. Apart from that, there is also a service relationship (freeing slaves). However, in the current context, this relationship no longer exists as in the time of the Prophet SAW, so this right is no longer enforced.

Regarding nasabiyah relationships, the straight line down is children and grandchildren. Children in the Qur'an are called *al-walad* (الولد) which means children are general, that is, they apply to both men and women. Meanwhile, for special meaning, men use the word *ibn* and women use the word *bint*. The word *al-walad* (الولد) is found in the Qur'an 33 times and 23 times in the plural form, namely *awlad*. In the inheritance verses, the word *al-walad* (الولد) is mentioned eight times and once with *awlad*.<sup>34</sup>

In Surah *al-Nisa'* verses 11 and 12 the mention of the word *al-walad* (الولد), the scholars agree on the meaning of child which applies to boys and girls.<sup>35</sup> However, the word *al-walad* (الولد) contained in Surah *Al-Nisa'* verse 176, the scholars do not agree on the meaning of boys and girls. According to him, the word *al-walad* (الولد) in this verse relates to the requirements for an heir to become a *kalalah*.

Meanwhile, grandchildren are not specifically mentioned in the Koran. The term grandson emerged through an understanding of the expansion of the word *al-walad* (الولد) which in Nasabiyah relations is second in line after children in *furu' al-manyit* relations. Thus, it is not surprising that the distribution of inheritance among grandchildren is often ignored, especially towards grandchildren whose parents have died before their grandfather as heir. This is because in Islamic inheritance law the conditions for being able to receive inheritance from an heir are being alive when the testator dies, not being veiled by the closest heir, and legally there are no obstacles<sup>36</sup> between heir. Referring to these provisions, children

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<sup>32</sup> Ahmad Rofiq, *Hukum Perdata Islam Di Indonesia, Edisi Revisi*, (Jakarta: Rajawali Pers, 2015).303

<sup>33</sup> Amin Husein Nasution, *Hukum Kewarisan Suatu Analisis Komparatif Pemikiran Mujtahid Dan Kopilasi Hukum Islam* (Jakarta: Rajawali Pers, 2014). 72

<sup>34</sup> Amir Syarifuddin, *Hukum Kewarisan Islam, Edisi Kedua* (Jakarta: Kencana Prenada Media Group, 2004).58

<sup>35</sup> The children who are entitled to receive inheritance from *simanyit* consist of sons and daughters with the provision that sons get two shares and daughters get one share. The basis of the provision is explained in Surat *Al-Nisa'* verse 7 and also 11. Muhammad Thaha Abul Ela Khalifah, *Hukum Waris Pembagian Warisan Berdasarkan Syari'at Islam No Title* (Solo: Tiga Serangkai, 2017).57-94

<sup>36</sup> As for the reasons why he is prevented from receiving inheritance, it is reviewed in terms of his nature, which is called the term *mammu'*, which consists of three qualities, namely murderer, different religion and *sahaya* servant (slave). Killing is a reprehensible behavior that is not allowed

and grandchildren have no obstacles in receiving inheritance, but rather whether they are close to the heir or not.

On the other hand, grandchildren are the heirs who are veiled by their children (uncles). However, in the current context, in upholding the values of justice, grandchildren are given the right to inherit as a replacement for the heir who has died before the testator. This breakthrough was carried out by Hazairin based on Surah Al-Nisa': 33. Exploring this verse, the key words in tracing this verse are the words mawali and the expression wa allazina 'qadat aimanukum, while the words al walidan and al-aqrabun tend not to be discussed.

According to Ath-Thabari, this verse can be traced from two angles. For the first fragment, Ath-Thabari explains that there are two narrations related to the meaning of this verse, namely the meaning of the word al-mawali which means all heirs and secondly Ath-Thabari means ashabah. Therefore, Ath-Thabari chose the first one and then interpreted it.<sup>37</sup>

ولكم أيها الناس جعلنا موالى يقول ورثة من بني عمه وإخوته وسائر عصبة يرثون به مما ترك والداه وأقربائه من ميراثهم

For each person we make a mawaliya, namely the (male) son of his uncle, brothers and other 'ashabah. Who will inherit the property left by their parents and relatives). In this case, Ath-Thabari in interpreting the verse did not elaborate on the lafaz al-walidan and al-aqrabun. Meanwhile in the fragment;

ولكل جعلنا موالى مما ترك الوالدين والأقربون and والذين عقدت أيمانكم فآتوهم نصيبهم

According to Ath-Thabari, there are some who think that the second verse has been narrated, then Ath-Thabari interprets it as "give to the people whose work you did in the era of ignorance their rights in the form of advice, views and other ordinary help."<sup>38</sup>

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in religion. Doing what is forbidden by religion means breaking God's order. In Islamic inheritance law, committing murder results in the heirs being prevented from inheriting. This is based on a hadith narrated by Abu Daud. القاتل لا يرث (From Abu Hurairah from the Prophet Muhammad SAW said: a murderer cannot inherit. Religious differences. One of the conditions for mutual inheritance is Islam. A person cannot inherit if he is not of the same religion (In a hadith it is explained that عن أسامة بن زيد رضى الله عنهما أن النبي صلى الله عليه وسلم قال: لا يرث المسلم الكافر ولا الكافر المسلم (From Usamah bin Zaid (may God be pleased with him) that the Prophet Muhammad SAW said: a Muslim does not inherit a non-Muslim and a non-Muslim does not inherit a Muslim). According to Islamic jurists, slaves cannot inherit and cannot be inherited because they are considered destitute and everything a slave has is owned by his master. Therefore, if a slave inherits, the owner of the inheritance will be the master because the one who has the right to it is the master. Thus, slaves have no right to inherit even against their own family. In addition, there are also family influences such as patrilineal, bilateral and matrilineal. However, what often occurs in the Islamic heritage is hijab hirman and hijab nuqsan. Salihima, Syamsulbahri, *Perkembangan Pemikiran Pembagian Warisan Dalam Hukum Islam Dan Implementasinya Pada Pengadilan Agama* (Jakarta: Prenadamedia Grup, 2015).76. Lihat juga. Muhammad Ali As-Sabuni, *Hukum Waris Islam* (Depok: Fathan Prima Media, 2013). h 81. Lihat juga. Wahbah Az-Zuhaili, *Fiqh Imam Syafi'i; Mengupas Masalah Fiqhiyah Berdasarkan Al-Qur'an Dan Hadits, Jilid 3, Terj. Muhammad Afifi, Abdul Hafiz* (Jakarta: Al-Mahira, 2017). 109-110. Abu Bakar Jabir Al-Jaza'iri, *Minhajul Muslim Pedoman Hidup Ideal Seorang Muslim, Terj. Andi Subarkah* (Solo: Insan Kamil, 2008).796-799.

<sup>37</sup> Ath-Thabathaba'i, *Al-Mizan Fi Tafsiril Qur'an, Jilid 5*, (Beirut: Mu'asasatul A'lami,, n.d.). 33

<sup>38</sup> Ath-Thabathaba'i. 36

Al-Jassas also expressed his views by breaking down the verse into two parts, namely the first part is explained in the title Chapter al-'Asabah while the second part is explained in the Wala' al-muwala chapter, which regulates inheritance between a Muslim who converts another person to Islam, then the second they form a kind of brotherhood to help each other and bind each other. This bond is called al-mawali al-mu'qidain. Therefore, both parties will inherit each other if the heirs of dzawil furud, dzawil 'asabah and dzawil arham do not exist.<sup>39</sup>

According to Hazairin, the lafazh al-walidani wa al-aqrabun is the fi'il of the lafaz taraka. Meanwhile, lafaz mawaliya is maf'ul for ja'alna.<sup>40</sup> Thus, Hazairin interprets the verse that "for each person, Allah has made a mawali for the inheritance of his parents and close family, and if there are people who have sworn allegiance to them, then give them their share, verily Allah witnesses everything, something".

Based on this verse, according to Hazairin, there are three important elements that must be explained, namely mawali, aqrabun and walidani. The words walidan and aqrabun are interpreted as heirs. However, this word is a family term. The word is interpreted as relationship. Relationships are always mutual, so the words walidan and aqrabun can become heirs. The word walidan is used for his children and the word aqrabun is used for his relatives.<sup>41</sup>

From the explanation above, it is clear that Hazairin interprets the word mawali in the verse as a substitute heir. Apart from that, the word substitute mewaris is also found in the interpretation of Ibn Abbas who interprets the word mawali as substitute mewaris or the person who replaces the heir.<sup>42</sup>

Meanwhile, several other scholars such as Ibnu Katsir,<sup>43</sup> Quraish Shihab,<sup>44</sup> al-Maraghi,<sup>45</sup> Sayyid Quttub,<sup>46</sup> interpret the word mawali as heir or person who inherits. According to Hazairin,<sup>47</sup> actually using the term substitute heir for the word mawali is actually not very appropriate. However, this term is also found in customary law. Therefore, Hazairin also interpreted the word mawali as a substitute heir. The meaning of the word mawali as substitute heir is Hazairin's own ijtihad. Nevertheless, Habiburrahman and Hajar M are of the view that the concept of substitute heirs is an adoption of customary law originating from the BW Civil Law.

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<sup>39</sup> Al-Jassas, *Ahkamul Qur'an, Jilid 2*, ((Beirut: Dar al-Kitab al-'Arabi, t.th, n.d.). 183-186

<sup>40</sup> Hazairin, *Hukum Kewarisan Bilateral Menurut Qur'an Dan Hadits, Cet. 5*. 49

<sup>41</sup> Hazairin. 27.

<sup>42</sup> Ibnu Abbas, *Tafsir Tanwirul Miqbas*, (Kairo: Dar al-Fikr, n.d.). 69

<sup>43</sup> The word mawali in Ibn Katsir's interpretation is interpreted as heir or heirs, or as stated by Ibnu Jarir, the word mawali is the son of an uncle (cousin) with the title maula as said by al-Fual Ibn Abbas in one of his good poems, namely مهلا بني عمنا مهلا موالينا لا يظهر بيننا ما كان مدفونا (Wait, O children of our uncle, our mawali, do not ever appear among us things that have long been hidden). Ibnu Katsir, *Tafsir Al-'Adhim, Juz 5, Terj. Bahrn Abu Bakar*, (Bandung: Sinar Baru Algensindo, 2006). 89-90

<sup>44</sup> Quraish shihab, *Tafsir Al-Misbah, Vol 2, Cet. VIII*, (Jakarta: Lentera Hati, 2002). 421

<sup>45</sup> Ahmad Mustafa Al-Maraghi, *Tafsir Al-Maraghi, Terj. Bahrn Abu Bakar Dan Hery Noer Ali, Jilid IV* (Semarang: CV Toha Putra, 1993).39

<sup>46</sup> Sayyid Quthub, *Tafsir Fi Zhilalil Qu'an, Jilid 2*, (Beirut: (Dar al-Syuruq, 1988). 647

<sup>47</sup> Abdul. Ghafur, *Filsafat Hukum Kewarisan Islam Konsep Kewarisan Bilateral Hazairin*, (Yogyakarta: UII Press Yogyakarta, n.d.). 79

The understanding above is very different from the understanding of the majority of faraid scholars who are of the opinion that the term mawali contained in Surah An-Nisa' verse 33 means heir. According to the majority of scholars, the heirs are the people who are still alive when the testator dies.<sup>48</sup> If when the heir dies there are no particular heirs or it can be said to have died first, then his right to inherit is terminated.

This condition becomes a problem for the descendants of heirs who have died beforehand regarding their welfare. This is because apart from the offspring (grandchildren) having lost their parents, they are also cut off from having the right to inherit the property left by their grandfather/grandmother. Thus, in line with Hazairin's thoughts above and the development of thinking among Indonesian Muslims, a replacement heir is a necessity in inheritance law. The presence of substitute heirs in Islamic inheritance law is a solution to the transfer of inheritance which is carried out in a just and beneficial manner, whether related to the existence of grandchildren or others who are classified as *zawil arham* in Islamic inheritance.

Based on the explanation above, it is a necessity in Islamic inheritance law to provide replacement heirs, especially grandchildren whose parents have died before their grandfather is the heir. This is a big struggle for KHI<sup>49</sup> in formulating a law that is not found in the Al-Qur'an and also hadith. However, the Qur'an is universal and applies throughout time. He does not forget a single law in regulating all aspects of human life. These inheritance verses are interrelated and mutually beneficial, as in Surah Annisa verse 7 explains that for men and women there is a share from their parents and relatives. This verse indicates that there is no difference between men and women in receiving inheritance rights. In verse 8 it is also explained that if there are orphans and relatives in the distribution of inheritance, then give them a little wealth. This also signifies in a meaningful way that there is a recommendation to give up some assets to those who are not included in the provisions of *dzawil faraid* and *'asabah*. These provisions are contained in the KHI and are an embodiment of upholding the values of justice and *maqashid sharia* in terms of protecting religion, souls, descendants, minds and property.

This description can be a consideration, especially for Muslims, in carrying out the process of distributing inheritance assets in a beneficial manner and without discriminating between family members. Because of the law of inheritance due to death. Inheritance law exists to regulate everything related to death

## Conclusion

Substitute heirs are heirs who exist because they replace other people who have passed away. In the Qur'an, the term successor heir is not found in pronunciation. However, meaningfully, successor heirs have been arranged in such a way in the inheritance verses. The most focused verse as an argument for successor heirs is Surat An-Nisa verse 33, based

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<sup>48</sup> Al-Jaza'iri, *Minhajul Muslim Pedoman Hidup Ideal Seorang Muslim*, Terj. Andi Subarkah. 788

<sup>49</sup> The KHI formulation method according to Yahya Harahab can be seen from several approaches, namely the Al-Qur'an and Hadith approach, prioritizing current solutions, Unity and Variety, and a compromise approach with Customary law. Harahab, Yahya, *Dalam Kompilasi Hukum Islam Dalam Sistem Hukum Nasional*, (Jakarta: Logos Wacana Ilmu, 1999). 39

on the ijthad of Hazairin in explaining the word mawali, i.e. successor heirs. The result of Hazairin's ijthad is an effort to create values of justice in the distribution of inheritance to heirs. Creating the values of justice in the law of inheritance as a manifestation of maqashid. By giving rights to heirs who replace deceased heirs, harmony and honor can be maintained between heirs and conflict can be avoided in the family. Thus, an inevitability in a life to be able to do things that bring good including in the division of inheritance to pay attention to orphans and relatives. Therefore, this study can be a reference in distributing inheritance assets to heirs without forgetting all fairness and benefits.

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