

## Firm on the Male Line, Tentative on the Female: The Surrogate Heir between Article 185 KHI and al-Nawawi's Shāfi'ī Doctrine

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Received: 25 May 2026 | Accepted: 01 June 2026 | Published: 25 June 2026

**Abstract:** The codification of Islamic inheritance in Indonesia has produced a rule with no counterpart in the classical schools, and its standing within the Shafi'i tradition remains unsettled. Article 185 of the Compilation of Islamic Law (Kompilasi Hukum Islam, KHI) allows a grandchild whose parent died before the propositus to take that parent's place. In contrast, the received doctrine, and Imam al-Nawawi in particular, would often exclude the grandchild altogether. This article asks whether the provision is a faithful development of the school or a departure from it, a question earlier scholarship has raised but not resolved. The study reads Article 185 directly against al-Nawawi's treatment of the grandchild in *Rawdat al-Talibin* and *al-Majmu' Sharh al-Muhadhdhab*. Using doctrinal-normative legal research, it compares the two frameworks along four declared axes: legal basis, conditions, mechanism, and share size. It tests them on a single gender-specified estate worked through to exact fractions. The Compilation confers an entitlement through a mechanism informed by the obligatory bequest (*wasiat wajibah*), capped at one third and at the share of an heir of the same degree. At the same time, al-Nawawi admits the grandchild only through the fixed categories of 'asabah and Qur'anic sharer. In the estate tested, the surviving son takes the whole property under al-Nawawi, but two-fifths under the Compilation. Read through the objectives of Shafi'i succession, Article 185 emerges as development rather than deviation, though unevenly: the alignment is firm on the male line and more tentative on the female line, where the daughter's child is reclassified rather than repositioned. The article's contribution is to locate this asymmetry, largely overlooked in the existing literature, and to recast the reform debate as a question of which line the provision can textually secure.

**Keywords:** Surrogate Heir, Imam al-Nawawi, Obligatory Bequest, Maqasid al-Shari'ah, Islamic Inheritance Law (Fara'id).



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## Introduction

The law of inheritance occupies a central place in the Islamic legal tradition, for it governs the orderly transfer of a deceased person's estate to those entitled to it and gives concrete effect to the Qur'anic concern with justice among kin. Its rules are drawn

in the first instance from the Qur'an and the Sunnah. They are elaborated in extraordinary detail by the jurists of the several schools, who developed the science of *fara'id*, the calculus of fixed shares, into one of the most technically refined branches of *fiqh* (Auda, 2019; Coulson, 1971). In the modern Muslim world, these rules have repeatedly been codified, and the codifications have rarely been mere restatements; they have selected, harmonised, and at times reformed the inherited doctrine (Anderson, 1959; Husnul Khitam et al., 2025). Indonesia followed this path through the Compilation of Islamic Law, promulgated by Presidential Instruction Number 1 of 1991, which the religious courts treat as the principal reference for questions of marriage, inheritance, and endowment (Bowen, 2003; Nurlaelawati, 2010).

Among the provisions of the Compilation that have most engaged scholars and practitioners is Article 185, which establishes the grandchild as a surrogate heir. The article itself provides, in its first paragraph, that an heir who dies before the *propositus* may have his or her position taken by his or her own children, save those barred under Article 173; the second paragraph adds that the share of such a substitute must not exceed the share of an heir of the same degree as the person replaced (Presidential Instruction No. 1 of 1991, art. 185). The text of the law, rather than its commentators, is therefore the first authority for the rule, although subsequent scholarship has clarified its operation (Azni et al., 2023; Budiono et al., 2023). The provision answers a situation of distributive disadvantage: a grandchild whose parent has died before the grandparent would, under a strict application of the classical exclusion rules, often receive nothing from the estate, displaced by a surviving uncle or aunt. Article 185 intervenes to prevent that outcome, and in doing so, it has become emblematic of the reformist character of the Compilation (Apriany Hernida et al., 2026).

The provision becomes analytically delicate the moment it is set beside the classical Shafi'i school, and in particular beside Imam al-Nawawi, whose standing in Indonesian religious life is not merely asserted here but is visible in concrete forms: his works anchor the *fiqh* curriculum of the *pesantren*, his rulings are routinely invoked in *fatwa* and in the reasoning of the religious courts, and the Shafi'i affiliation he represents is shared by the great majority of Indonesian Muslims (Amir, 2023; Bowen, 2003). Of his two relevant works, *Rawdat al-Talibin wa 'Umdat al-Muftin* is the more authoritative for positive rulings on succession, since it states the relied-upon (*mu'tamad*) position of the school, while *al-Majmu' Sharh al-Muhadhdhab* supplies the fuller argumentation; the two do not differ in substance on the grandchild, and the present study draws its statements of doctrine from the *Kitab al-Fara'id* of each. In neither work does al-Nawawi frame the grandchild's entitlement as a substitution for a deceased parent. The grandchild enters the estate, if at all, through the established categories: the son's son inherits as *'asabah bi al-nafs* where no son survives, and the son's daughter inherits as a Qur'anic sharer or, joined by a grandson, as *'asabah bi al-ghayr* (Nawawi, n.d.-a, *Kitab al-Fara'id*). The contrast is sharp enough that some Indonesian scholars have read Article 185 as a departure from Shafi'i orthodoxy (Anggraeni, 2023; Hasballah et al., 2021).

The inquiry sits within Indonesia's plurality of family-law orders, in which *fiqh*, state codification, and customary practice operate side by side; the term is used here as a description of that institutional setting rather than as a free-standing analytical

theory, and the analysis proceeds by doctrinal comparison rather than by socio-legal mapping of the plural field (Bowen, 2003; Harnides et al., 2023; Ilyas et al., 2023). Within that setting, prior scholarship has approached the grandchild's position from several directions without resolving it. Comparative studies have set the surrogate heir of the Compilation against the representation of the Civil Code and concluded that the substitute's share must not exceed that of an heir of equivalent degree (Azni et al., 2023; Budiono et al., 2023). Others have read Article 185 as standing in tension with the structural principles of the classical scheme, chiefly the rule of exclusion (Anggraeni, 2023; Hasballah et al., 2021). A further strand has traced the provision to the obligatory bequest of the modern reforms and asked how far the Egyptian model was carried into the Indonesian text (Bustomi & Setyawan, 2025; Nugroho, 2020).

What these contributions share, and what limited them, is the angle from which the classical background was viewed. Studies that invoke the Shafi'i school tend to treat it in general terms, without anchoring the comparison in al-Nawawi's own formulations. In contrast, studies that read Article 185 closely tend to treat the classical doctrine as a foil rather than as an interlocutor. The reason is partly evidentiary: a point-by-point comparison requires reading the codified rule and the classical manuals on the same four questions and at the same level of detail, and much of the Indonesian literature has drawn on secondary summaries rather than the Kitab al-Fara'id itself. The gap is therefore not a bibliographic accident but a methodological one, and it matters because, without a precise mapping of where the two frameworks converge and where they genuinely diverge, the recurring charge that Article 185 deviates from Shafi'i doctrine can neither be substantiated nor dismissed. Recent Indonesian scholarship has returned to these questions from the angles of legal pluralism, gender justice, and the *maqasid*, yet largely without the manual-by-manual comparison attempted here (Fahimah et al., 2024; Fitriyati et al., 2025; Hamdani et al., 2022; Heriandita et al., 2025; Rasyid et al., 2024).

The stakes of that mapping become clearer when one recalls what kind of law the *fara'id* is. The Islamic law of succession is, more than almost any other branch of *fiqh*, a law of fixed and calculable shares, in which the Qur'an itself names fractions and assigns them to specified relatives, leaving the residue to the agnatic residuaries. Because so much of the structure is textually fixed, the jurists came to treat the *fara'id* as a field in which the scope for *ijtihād* is comparatively narrow (al-Shatibi, n.d.). That description should not be overstated, however. The schools were never monolithic: the Maliki and Hanbali traditions admitted the *dhawu al-arham* to inheritance in the absence of nearer heirs, where the early Shafi'i view assigned the residue to the public treasury, so that the treatment of distant kindred was already contested within classical *fiqh*. The historiography of *ijtihād* has likewise been revised, and the once-standard claim that its gate closed early is no longer accepted without qualification (Hallaq, 1984). It is against this more textured background, rather than against a frozen orthodoxy, that a provision introducing a category unknown to the manuals must be assessed: the question is not only whether the rule is wise but whether a codifier may introduce it without trespassing on ground the texts have already occupied.

The codification of Islamic family law in Indonesia adds a further layer. The Compilation was not enacted as ordinary legislation but introduced through a

Presidential Instruction and disseminated as the authoritative reference for the religious courts. This form has provoked sustained debate about the source and force of its authority: whether an instrument below statute can bind, whether its content is best described as state law or as a systematisation of fiqh, and how far its drafting amounted to a collective exercise of juristic reasoning (Bowen, 2003; Cammack et al., 1996; Nurlaelawati, 2010). Whatever the resolution of those debates, the practical reality is that the religious courts decide inheritance disputes by reference to the Compilation, so that the relationship between Article 185 and the classical doctrine bears directly on the legitimacy of actual judgments.

This article addresses that gap. It pursues two questions: first, whether the provisions of Article 185 concerning the grandchild as surrogate heir deviate from the inheritance doctrine of al-Nawawi; and second, how large a share the grandchild who replaces a predeceased parent actually receives under each framework. Rather than defending a conclusion settled in advance, the study advances a proposition to be tested against the comparison: that the difference between the Compilation and al-Nawawi's writings lies at the level of positive rules and not of underlying purpose, and that the objectives of Shafi'i succession can furnish a juridical warrant for the provision in Indonesian positive law. The objective is doctrinal and practical at once, and the practical dimension is pursued in a dedicated treatment of judicial implications rather than left as an aspiration. The article proceeds from this introduction to the method, then to a combined presentation and discussion of results, and finally to a conclusion that returns to the two guiding questions.

A further reason to undertake this mapping with care is that the surrogate heir has become a focal point for a broader reorientation of Indonesian inheritance scholarship toward the objectives of the law. A growing body of work reads the reforms of the Compilation, and the obligatory bequest in particular, through the lens of the *maqasid al-shari'ah*, treating justice and benefit as the criteria by which a codified departure from the manuals is to be judged (Ahyani et al., 2023; Fitriyati et al., 2025; Heriandita et al., 2025; Mahmudi et al., 2024). That literature has done much to articulate why a provision such as Article 185 might be defensible, yet it has tended to argue from purpose downward rather than from text upward, asserting the equity of the rule without first establishing, manual in hand, exactly where the rule stands in relation to the doctrine it is said to develop. The present study reverses that order. It fixes the classical position from al-Nawawi's own pages before it asks whether the objectives can carry the reform, so that the *maqasid* argument, when it comes, rests on a precise account of what the texts do and do not settle rather than on a general impression of the school.

The question also carries a comparative weight that the Indonesian debate sometimes understates. The surrogate heir did not arise in a vacuum but belongs to a wider twentieth-century movement in which Muslim legislatures, faced with the orphaned grandchild displaced by an uncle, reached for the device of the obligatory bequest to soften the agnatic exclusion (Anderson, 1959; Coulson, 1971; Husnul Khitam et al., 2025). To ask whether Indonesia's version of that device is faithful to the Shafi'i school is therefore to ask a question that other jurisdictions answered, in their own idiom, against the background of their own dominant madhhab. Reading Article 185

against al-Nawawi is one national instance of a problem that the modern reforms posed everywhere, and the precision of the comparison attempted here is meant to make the Indonesian answer legible within that larger conversation (Bustomi & Setyawan, 2025; Fatahullah et al., 2025).

## Method

This study is doctrinal-normative legal research. Research of this kind examines authoritative legal materials, texts of revelation, statutes and regulations, doctrinal writings, and the considered opinions of jurists to identify legal principles, systematise them, and compare distinct normative frameworks (Anggraeni, 2023; Bustomi & Setyawan, 2025). It is interpretive by nature, so the older label of a separate descriptive-qualitative method is not added here; the description and interpretation of texts are internal to the doctrinal exercise itself. The approach suits the object of study, the relationship between Article 185 of the Compilation and the inheritance doctrine of al-Nawawi, because that object is doctrinal: it concerns what the rules are and how they relate, not how often a given outcome occurs in practice.

The materials are arranged in three tiers, and the hierarchy is applied consistently rather than announced and then ignored. Primary materials are the Qur'an with its exegesis, the canonical hadith on inheritance, the Compilation as promulgated by Presidential Instruction Number 1 of 1991, and the works of al-Nawawi, principally the *Kitab al-Fara'id* of Rawdat al-Talibin and of al-Majmu' Sharh al-Muhadhdhab; classical reference works of *usul al-fiqh* and *maqasid*, including al-Ghazali's *al-Mustasfa*, al-Shatibi's *al-Muwafaqat*, and Ibn Ashur's treatise, are used where the legitimacy of legal change is at issue. Secondary materials are indexed scholarship, both international and Indonesian. They are treated as support for the argument and not as the argument itself: where a claim about the positive law or about al-Nawawi's doctrine appears in this study, it is grounded in the primary text, and the secondary literature is cited to corroborate or to register a contrary reading rather than to carry the doctrinal weight alone. Tertiary materials, chiefly legal dictionaries and verified official sources, are used to confirm terminology.

Data were gathered by documentary study and assessed not by triangulation in the social-scientific sense, which does not transfer cleanly to juristic texts, but by cross-referencing across primary and secondary juristic sources, so that each statement of doctrine can be traced to its warrant in the manuals and each statement of positive law to the text of the regulation. Where al-Nawawi's positions are reported, they are drawn from his own works rather than from later summaries. Because editions of the manuals differ in pagination, references to al-Nawawi are given by work and by the named chapter, *Kitab al-Fara'id*, which is stable across editions, rather than by a page number that would not be reproducible.

Analysis proceeds comparatively along four declared axes, and the same four axes govern the comparative table in the results, so that what is announced here is what the reader later finds tabulated: legal basis, conditions, mechanism, and the size of the share. The quantitative axis is not left at the level of description. A single estate is specified with the sex of every heir fixed, and it is worked through to exact fractions



under each regime, because the practical stakes of the comparison are visible only in an actual division and because the second research question is precisely about magnitude.

As a doctrinal study, the approach carries limits that should be acknowledged here and revisited once the analysis is complete. It does not measure how religious courts in fact decide surrogate-heir cases, and the gap between doctrinal prescription and judicial practice in Indonesia is real and documented, so the conclusions speak to the coherence of the rules rather than to the behaviour of judges (Bilalu et al., 2022; Roslina et al., 2025). The treatment of the Shafi'i position is centred on al-Nawawi. It does not claim to exhaust the internal diversity of the school, still less the positions of the Hanafi, Maliki, and Hanbali schools, which are noted only where they illuminate the comparison. These limits define the contribution as a focused doctrinal mapping rather than an empirical or fully cross-school study.

A word is in order about the analytic register in which the central question is posed, since the labels of development and deviation are not self-applying. To decide whether Article 185 develops or departs from al-Nawawi's doctrine, the study borrows the vocabulary of *usul al-fiqh*, which distinguishes a ruling fixed by a definite text from one reached through interpretive effort, and the vocabulary of the *maqasid*, which names the purposes a rule is taken to serve. These are used here as instruments of comparison rather than as independent sources of authority. The *usul* distinction supplies the test by which a change can be classified as touching the settled core of the *fara'id* or as filling a space the texts leave open, while the *maqasid* supply the criterion by which a gap-filling rule can be judged faithful to the law's ends. Neither is treated as a licence to set aside an explicit allocation, and the limits the classical theorists placed on purposive reasoning are observed throughout (al-Ghazali, n.d.; Ibn Ashur, 2006; al-Shatibi, n.d.). Stating the register openly matters because much of the disagreement over the surrogate heir turns less on the rules themselves than on the standard against which they are measured, and a study that leaves its standard implicit cannot expect its verdict to persuade a reader who begins from a different one (Fauzan & Imawan, 2023).

## **Result And Discussion**

The findings are presented in the order set out in the method. The analysis reconstructs the regulation of the grandchild as surrogate heir in the Compilation, traces its intellectual genealogy, shows its mechanism in operation through a worked numerical example, and notes its safeguard, before turning to al-Nawawi's treatment and then to the four-axis comparison and its quantitative consequences. Because results and discussion are combined, the presentation moves from description toward interpretation, and the boundary between the two is signalled where it falls.

### **The Grandchild as Surrogate Heir in the Compilation of Islamic Law**

The text of Article 185 is the starting point. In its first paragraph the article provides that an heir who dies before the *propositus* may have his or her position replaced by his or her children, save those barred under Article 173; in its second it imposes a ceiling, that the share of the substitute must not exceed the share of an heir of the same degree as the person replaced (Presidential Instruction No. 1 of 1991, art. 185). Two features of the text deserve emphasis at once. The provision speaks of an

heir's children without restricting them to the male line, and it ties the substitute's entitlement to a comparison with an heir of equivalent degree rather than to a fixed Qur'anic fraction. Neither construction is found as such in the classical manuals, and the Compilation adopts both as a reform of the inherited law (Azni et al., 2023; Budiono et al., 2023).

The mechanism did not originate in Indonesia. It draws on the obligatory bequest, the *wasiat wajibah*, developed in the modern reforms to compel a notional bequest in favour of the orphaned grandchild. The pivotal instrument was Egypt's Law No. 71 of 1946 on testamentary dispositions, which directed that a grandchild whose parent predeceased the *propositus* should receive, by compulsory bequest, what that parent would have taken, within the limit of one third of the estate; the device spread from Egypt to other jurisdictions and was studied closely by comparative scholars of the period (Anderson, 1959; Coulson, 1971; Nugroho, 2020). The Indonesian drafters did not transplant the Egyptian form. They recast its underlying intuition as a more general concept of the surrogate heir, tying the resulting share to that of the predeceased parent and capping it by reference to an heir of equivalent degree, so that Article 185 is best read as a local systematisation of a wider movement of reform rather than as an isolated departure (Fatahullah et al., 2025; Husnul Khitam et al., 2025). The Compilation elsewhere retains the obligatory bequest in its Egyptian-derived form, in Article 209 for adopted children and adoptive parents, which shows that the drafters knew the device and chose to generalise rather than to copy it (Aziz et al., 2023; Fauzi, 2020; Mohamad Yamin et al., 2026; Mursyid Djawas et al., 2022).

The mechanism is best seen in operation. The Compilation links the substitute's share to Article 176, which governs the shares of children and fixes the ratio of two to one between male and female, so that the grandchild receives, in principle, the share the predeceased parent would have taken, subject to the ceiling. Consider an estate specified so that the sex of every heir is fixed. A *propositus* dies leaving one surviving son, S; a predeceased son, A, who left one son, G<sub>1</sub>; and a predeceased daughter, B, who left one daughter, G<sub>2</sub>. There is no surviving spouse or parent of the *propositus*. Treating A, B, and S as the *propositus*'s children for the notional computation, the shares follow the two-to-one ratio across two sons and one daughter, which yields five equal parts: two-fifths to A, two-fifths to S, and one-fifth to B. The surviving son S takes his two-fifths directly. The share of the predeceased son A passes to his son G<sub>1</sub>, and two-fifths does not exceed the share of S, an heir of the same degree as A, so the ceiling is not engaged and G<sub>1</sub> takes two-fifths. The share of the predeceased daughter B passes to her daughter G<sub>2</sub>, who takes one-fifth of it. The division is therefore two-fifths to S, two-fifths to G<sub>1</sub>, and one-fifth to G<sub>2</sub>, and it exhausts the estate. The result is set out in Table 2.

The reference in Article 185 to the bar of Article 173 is more than a drafting detail, and here the analysis crosses from description into interpretation. Article 173 withholds inheritance from a person convicted by final judgment of killing, attempting to kill, gravely assaulting, or seriously defaming the deceased, codifying the classical principle that the slayer does not inherit from the slain. By subjecting the substitute to this bar, the Compilation signals that substitution operates within the moral architecture of the inheritance law rather than around it: the grandchild steps into the parent's place

subject to the same conditions of worthiness, and does not enjoy a privileged channel immune from the disqualifications that bind ordinary heirs. Read this way, the cross-reference supports the interpretation, developed below, that Article 185 extends the inherited principles rather than displacing them.

The distance between the Egyptian compulsory bequest and the Indonesian surrogate heir repays a closer look, because it is in that distance that the drafters' juristic choice becomes visible. The Egyptian law of 1946 left the inherited categories of the *fara'id* intact and added to them a separate, mandatory bequest in favour of the orphaned grandchild, a device that operated alongside the law of succession rather than within it (Anderson, 1959; Nugroho, 2020). The Compilation could have copied that structure, and in Article 209 it shows that it knew how, retaining a recognisably Egyptian obligatory bequest for the adopted child and the adoptive parent who stand outside the circle of Qur'anic heirs (Aziz et al., 2023; Fauzi, 2020). For the predeceased parent's child, however, the drafters chose differently. Rather than append a bequest, they reshaped the law of succession itself, admitting the grandchild as a substitute who steps into the parent's place and takes the parent's notional share, subject to the ceiling. The choice is consequential. A bequest is discretionary in form even when compelled in substance, and it sits more easily with the manuals because it does not disturb the categories of heirship; substitution, by contrast, alters the structure of entitlement and therefore presses harder against the classical scheme. That the Indonesian drafters preferred the more structurally ambitious device, while keeping the bequest in reserve for adoption, suggests a deliberate generalisation of the reform's underlying intuition rather than an unreflective borrowing (Husnul Khitam et al., 2025; Mohamad Yamin et al., 2026; Mursyid Djawas et al., 2022).

### **Al-Nawawi's Doctrine on the Inheritance of Grandchildren**

Al-Nawawi does not employ a category of substitution and nowhere speaks of a grandchild taking the place of a predeceased parent. He treats the grandchild's entitlement through the settled categories of the *fara'id*, as the *Kitab al-Fara'id* of Rawdat al-Talibin sets them out (Nawawi, n.d.-a). The son's son (*ibn al-ibn*) inherits as '*asabah bi al-nafs*, a residuary in his own right, where no son of the deceased survives, taking what remains after the Qur'anic sharers have received their fixed portions. The son's daughter (*bint al-ibn*) inherits as a Qur'anic sharer, taking one half where she is alone, two thirds where there are two or more, or one sixth in completion of the two thirds where she coexists with a single surviving daughter of the deceased; she becomes '*asabah bi al-ghayr*, a residuary through another, when she inherits alongside a son's son, sharing with him in the ratio of two to one (Nawawi, n.d.-b, *Kitab al-Fara'id*).

Two configurations show how the doctrine works, and the second is the one most directly relevant to the comparison. Where the deceased leaves a surviving son together with a son's son, the surviving son excludes the son's son altogether by total exclusion, and the grandson takes nothing. Where, by contrast, the deceased leaves no son but a single daughter together with a son's son, the daughter takes one half as a Qur'anic sharer, and the son's son takes the residue, the remaining one half, as '*asabah bi al-nafs*; the grandson here inherits, and inherits substantially. This second case matters because the Compilation would resolve it differently. Under Article 185, the



son's son would replace his predeceased father, and the notional computation between a son and a daughter in the ratio of two to one would give the father two-thirds and the daughter one-third, so that the grandson takes two-thirds against the one-half he would take under al-Nawawi. The two frameworks, therefore, part company not only where the classical rule excludes the grandchild entirely but also, more subtly, in the magnitude of the share even where both admit him.

The grandchildren of the daughter's line, the daughter's son (ibn al-bint) and the daughter's daughter (bint al-bint), fall within the dhawu al-arham, the more distant kindred, and do not inherit in the Shafi'i school so long as a Qur'anic sharer or a residuary survives (Nawawi, n.d.-a, Kitab al-Fara'id). This raises the boundary question of what happens when neither a sharer nor a residuary remains. On the early relied-upon Shafi'i view, the residue does not pass to the dhawu al-arham at all but to the public treasury, the bayt al-mal, on the theory that the treasury stands as the residuary of the Muslims; only on the later view, adopted when the treasury is not administered justly, are the dhawu al-arham admitted to inherit. The female-line grandchild is thus excluded in the classical scheme not by a nearer heir alone but by a structural rule that ranks the daughter's descendants below even the prospect of escheat, which marks the deepest divergence from the bilateral logic of the Compilation.

The constraint that drives all of this is the rule of exclusion, *hajb*, and it is worth distinguishing its two senses. Total exclusion, *hajb hirman*, removes an heir from the estate entirely, as when a surviving son bars the son's son; partial exclusion, *hajb nuqsan*, merely reduces a share, as when the presence of children lowers a spouse's portion. The grandchild on the male line is vulnerable to total exclusion by a nearer agnate. In contrast, the grandchild on the female line is excluded by the structural consignment of the daughter's descendants to the distant kindred. The orphaned grandchild therefore faces exclusion from two directions, and it is this double vulnerability that the reformers set out to address. None of this is a criticism of al-Nawawi, whose doctrine is internally coherent and faithful to the agnatic conception of the family that he received; the point of the comparison is that the kinship assumptions against which his doctrine was framed differ from those of contemporary Indonesia, so that a faithful pursuit of the same aim of just provision may, under changed conditions, call for a different mechanism.

It is worth dwelling on the structural logic that produces these results, because the divergence from the Compilation is rooted in it rather than in any particular ruling. Al-Nawawi's system is built on a hierarchy in which the Qur'anic sharers take their fixed fractions first, the agnatic residuaries, the 'asabah, take what remains, and the more distant kindred enter only when both of the higher ranks are absent. The son's son occupies a secure place in that hierarchy as an agnate, which is why he inherits robustly when no nearer agnate displaces him; the daughter's child, by contrast, is linked to the deceased through a woman and so falls outside the agnatic line altogether, which is why the scheme consigns the daughter's descendants to the rank of distant kindred. The exclusion of the female line is therefore not an oversight to be corrected by a better reading of a single text but a consequence of the agnatic conception of the family on which the whole edifice rests. This is the deepest sense in which the two frameworks differ, and it explains why the Compilation's admission of the daughter's child cannot

be presented as a minor adjustment: it substitutes a bilateral conception of kinship for an agnatic one at the very point where the classical structure is least willing to bend. Recognising the structural character of the divergence guards against two errors at once, the error of treating the female-line difference as trivial and the error of treating the male-line difference as though it shared the same depth (Hasballah et al., 2021; Ismail et al., 2022). The same structural point also clarifies what a defence of the provision can and cannot promise. It can show that admitting the agnatic grandchild restores a result the agnatic logic itself would have reached but for the accident of the parent's early death, which is why the male-line case sits comfortably within the school. It cannot, by the same move, naturalise the female-line grandchild, whose admission asks the inherited structure to recognise a tie it was built to exclude, so that the warrant for the female line must be sought elsewhere, in the bilateral reading examined below, rather than in the internal logic of al-Nawawi's scheme.

### Comparison of Regulation and the Size of the Share

The comparison discloses both common ground and genuine divergence, and precision matters on both sides. The frameworks share more than the trivial fact that each admits grandchildren under some circumstances. They agree on the specific configuration in which the deceased leaves no son but leaves a son's son: each brings that grandson into the estate, the Compilation by substitution and al-Nawawi through the category of residuary, and where the grandson inherits alone, the resulting share is identical. They are both oriented toward proportion, the Compilation through its ceiling and al-Nawawi through the internal logic of the *fara'id*. Moreover, both apply the ratio of two to one between male and female, grounded in Qur'an 4:11, so that the Compilation does not depart from the definite, *qath'i*, allocation on this point.

They diverge on three of the four axes. The Compilation recognises grandchildren on both the male and the female line. In contrast, al-Nawawi admits only the male line to direct inheritance and consigns the daughter's children to the distant kindred. The Compilation operates by direct substitution, the grandchild stepping into the parent's position. In contrast, al-Nawawi proceeds through the independent categories of the residuary and the Qur'anic sharer, with no notion of stepping in. Moreover, the Compilation imports a ceiling associated with the obligatory bequest, holding the relevant entitlement within one third in the contexts where that cap bites. In contrast, al-Nawawi's scheme contains no such cap because it does not use the obligatory bequest construction at all. These four axes are summarised in Table 1.

**Table 1.** Four-Axis Comparison of Article 185 KHI and the Inheritance Doctrine of al-Nawawi

| No. | Axis of Comparison | Article 185 KHI                                                                                                                             | Doctrine of al-Nawawi                                                                                                     |
|-----|--------------------|---------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------|
| 1   | Legal basis        | Presidential Instruction No. 1 of 1991, Art. 185, read with Art. 173 and Art. 176; intellectual source in the <i>wasiat wajibah</i> reform. | Qur'an 4:11 and the received <i>fara'id</i> ; <i>Rawdat al-Talibin</i> , <i>Kitab al-Fara'id</i> , and <i>al-Majmu'</i> . |
| 2   | Conditions         | Parent predeceases the propositus; substitute not                                                                                           | No nearer agnate intervenes; the son's son enters only where no son                                                       |

|   |                          |                                                                                                                        |                                                                                                                                    |
|---|--------------------------|------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------|
|   |                          | barred under Art. 173; share capped at that of an heir of the same degree as the person replaced.                      | survives; the daughter's descendants are <i>dhawu al-arham</i> and do not inherit while a sharer or residuary remains.             |
| 3 | <b>Mechanism</b>         | Direct substitution: the grandchild steps into the predeceased parent's position on both the male and the female line. | Independent categories: ' <i>asabah bi al-nafs</i> ', Qur'anic sharer, or ' <i>asabah bi al-ghayr</i> '; no notion of stepping in. |
| 4 | <b>Size of the share</b> | The substituted parent's notional share under Art: 176 (2:1 male to female), subject to the ceiling.                   | Whatever the fixed category yields, a surviving son reduces the son's children to nothing through <i>hajib hirman</i> .            |

The quantitative consequences appear in the estate specified above, worked to exact fractions in Table 2. Under al-Nawawi, the surviving son S takes the entire estate as '*asabah bi al-nafs*': the son's son G1 is barred by total exclusion, and the daughter's daughter G2 is excluded as *dhawu al-arham*, so each grandchild receives nothing. Under the Compilation, S takes two-fifths, G1 takes the two-fifths of his predeceased father, and G2 takes the one-fifth of her predeceased mother. The divergence in this configuration is not marginal but total: the grandchildren move from a substantial collective share, three-fifths between them, to complete exclusion, and the surviving son moves from two-fifths to the whole.

**Table 2.** Numerical Division of a Single Estate under Each Framework

| No. | Heir                                                              | Art. 185 KHI | al-Nawawi | Reason for the difference                                                                                                            |
|-----|-------------------------------------------------------------------|--------------|-----------|--------------------------------------------------------------------------------------------------------------------------------------|
| 1   | <b>Surviving son (S)</b>                                          | 2/5          | 1 (whole) | Under KHI, S takes only his own notional portion; under al-Nawawi, S takes the entire residue as ' <i>asabah bi al-nafs</i> '.       |
| 2   | <b>Son's son (G1), replacing predeceased son A</b>                | 2/5          | 0         | KHI substitutes A's notional share for G1; al-Nawawi bars G1 by total exclusion ( <i>hajib hirman</i> ) through the surviving son S. |
| 3   | <b>Daughter's daughter (G2), replacing predeceased daughter B</b> | 1/5          | 0         | KHI admits the female line by substitution; al-Nawawi treats G2 as <i>dhawu al-arham</i> , excluded while a residuary survives.      |
| 4   | <b>Total</b>                                                      | 1            | 1         | Both schemes distribute the whole estate; they differ entirely in who receives it.                                                   |

It would be misleading, even so, to present the frameworks as divergent in every case. Their results coincide across the range of configurations in which the deceased leaves no surviving son but leaves grandchildren through a son, and the grandson inherits alone, as the shared ground identified above makes clear. They part company chiefly in three situations: where a surviving son would exclude the grandchildren under the classical rule but not under Article 185; where both admit the grandson but compute

his share differently, as in the daughter-and-grandson case; and where the link to the deceased runs through a daughter rather than a son. Recognising this pattern shows that Article 185 does not overturn the classical scheme wholesale but intervenes selectively at the points where exclusion or a reduced share would defeat the provision the deceased's line was expected to receive (Amri et al., 2026; Ismail et al., 2022).

### **Development or Deviation: A Test in Usul al-Fiqh**

Whether the divergence amounts to deviation depends on a standard, and the standard is best stated in the terms of *usul al-fiqh*. Classical legal theory distinguishes between a ruling whose textual basis is definite, *qath'i*, both in its authenticity and in its meaning, and a ruling left to interpretive effort, *zanni*, where the indication of the text is open. A change to a *qath'i* ruling is categorically different from a development within the *zanni* space, and the *fara'id* is widely taken to be the *qath'i* field par excellence (Fauzan & Imawan, 2023; al-Shatibi, n.d.). The test for Article 185 is therefore exact: does it alter a *qath'i* allocation, or does it operate in the interstices that the texts leave open? The named fractions of Qur'an 4:11 and the two-to-one ratio are *qath'i*, and the Compilation touches neither; it retains the ratio and the fractions intact. What it supplies is a rule for a situation the texts do not directly govern, namely the entitlement of a grandchild whose parent has predeceased the propositus, a matter on which the manuals reasoned by the *zanni* categories of 'asabah and exclusion rather than by an explicit text. In this analysis, the provision is a development within the *zanni* space and not an alteration of the *qath'i* core, which is the sense in which it can be called a development rather than a deviation.

The objection that this reasoning smuggles *maqasid* into a field that resists it must be met directly rather than waved through. The objectives of the law, the *maqasid al-shari'ah*, can ground a rule, but the classical theorists were careful about their limits. Al-Shatibi, who did most to systematise the *maqasid*, insisted that they operate to confirm and to extend the texts and not to override a definite *nass*; *maqasid* reasoning that contradicts an explicit text is, on his account, not *maqasid* but its abuse (al-Ghazali, n.d.; al-Shatibi, n.d.). Ibn Ashur, recovering the same tradition for the modern period, treated the objectives as a disciplined supplement to the textual indicants rather than a licence to set them aside (Ibn Ashur, 2006). The *maqasidic* case for Article 185, properly stated, does not claim that the purpose of just provision overrides the fractions of Qur'an 4:11; it claims that, the fractions being untouched, the purpose legitimately fills a gap the texts leave open. That is precisely the use of *maqasid* the classical theorists permitted, and it is what separates a defensible reading of the provision from the charge that it lets objectives trump revelation (Ahyani et al., 2023; Mahmudi et al., 2024; Sadari et al., 2025).

The legitimacy of filling that gap by reference to purpose becomes clearer when one observes how Indonesian scholarship has handled other points at which inherited inheritance rules meet changed social conditions. The objectives of the law are routinely invoked to extend the *fara'id* to circumstances the classical jurists did not contemplate, not by overriding the named fractions but by reasoning from the protection of lineage and family (*hifz al-nasl*) and the protection of property (*hifz al-mal*) to a rule for the new case. The childfree choice and its bearing on the devolution

of an estate is a recent instance, in which the maqasidic question is not whether the Qur'anic shares may be altered but how the purposes those shares serve are to be realised when family formation departs from the pattern the manuals assumed (Ramadhan & Fahrani, 2024). The surrogate heir belongs to the same family of problems. The fractions of Qur'an 4:11 are not in dispute; what is in dispute is how the purpose those fractions serve, the just provision of the deceased's descending line, is to be honoured when a parent has predeceased the propositus and the inherited categories would leave that parent's child unprovided for. Read this way, Article 185 is a maqasidic completion of the text rather than a maqasidic override of it, and it occupies precisely the interpretive space the classical theorists reserved for purposive reasoning (Ahyani et al., 2023; Mahmudi et al., 2024).

The argument must not prove too much, however, and the discipline of the usual framework is what keeps it honest. If the maqasid could be used to revise the named fractions themselves, then the protection they afford specified heirs would be perpetually open to renegotiation in the name of a more perfect justice, which is exactly the outcome al-Shatibi's restriction was designed to foreclose (al-Ghazali, n.d.; al-Shatibi, n.d.). The defensibility of Article 185 depends on its staying within that restriction, and it does: it adds an heir where the texts are silent and caps that heir's share by reference to an equivalent degree, but it nowhere reduces a fraction the Qur'an has fixed. The same discipline marks the boundary of the present defence. Where a proposed reform would alter a qath'i share rather than supply a zanni rule, the analysis offered here would not support it, and the surrogate heir should not be read as a precedent for changes of that more radical kind (Fauzan & Imawan, 2023; Sadari et al., 2025).

### **The Female Line, Hazairin, and the Limits of the Continuity Thesis**

The hardest test for the continuity thesis is the female line, and it is here that the conceptual source of the Compilation's bilateralism, the bilateral kinship theory of Hazairin, must be confronted rather than mentioned in passing. Hazairin argued, in his *Hukum Kewarisan Bilateral menurut Al-Qur'an dan Hadith*, that the Qur'anic system of succession is bilateral rather than agnatic, and that the patrilineal cast of the classical *fara'id* reflects the customary assumptions of its formative environment more than the text itself (Hazairin, 1982). His reading is the intellectual route by which Article 185 admits the daughter's descendants (Aniroh et al., 2024; Sholihah et al., 2024; Yusmita, 2023). However, the reading is contested, and the contest is exactly where the continuity thesis is most exposed. The relied-upon Shafi'i doctrine that dominates Indonesian religious-court practice is agnatic, and Hazairin's bilateral construction has been criticised both for the weight it places on a reinterpretation of *walad* and for the distance it travels from the received understanding of the school (Anggraeni, 2023; Hasballah et al., 2021). A continuity thesis cannot dissolve this tension by assertion. The most it can honestly claim is that the bilateral admission of the female line is a development supported by one reasoned, if disputed, reading of the sources, and that on the male line, where no such reinterpretation is required, the case for continuity is considerably stronger than on the female line.



The textual anchor most often offered for the bilateral reading is the word *walad* in Qur'an 4:11, which some Indonesian scholars read as encompassing the grandchild through either a son or a daughter, so that the grandchild's entitlement would rest on the text rather than on substitution alone (Aniroh et al., 2024; Huda & Hidayati, 2023; Yusmita, 2023). The claim is hermeneutically significant and cannot be settled here. Classical *tafsir* and *usul al-fiqh* generally read *walad* as the immediate child, extending it to the son's child by analogy and excluding the daughter's child from the agnatic line. Any reinterpretation that brings the daughter's child within *walad* must engage that body of exegesis rather than assert against it. The honest position is that the *walad* reading is the strongest potential textual foundation for the continuity thesis on the female line and, at the same time, its least secure, which is why the conclusion below names a dedicated study of that interpretation as the most promising line of further work.

The claim that the Compilation represents a collective exercise of juristic reasoning should be made with the same care. The drafting proceeded through consultation among scholars, judges, and officials, and it is commonly described in those terms, but whether it amounted to *ijtihad* in the technical sense and whose authority it carried are contested questions rather than settled facts (Bowen, 2003; Nurlaelawati, 2010). The same caution applies to the support sometimes drawn from judicial practice. The religious courts and the Supreme Court have on occasion extended the obligatory bequest beyond the strict circle of Qur'anic heirs, most visibly in the line of decisions granting *wasiat wajibah* to non-Muslim relatives, of which Supreme Court Decision No. 51 K/Ag/1999 is the early and much-discussed instance, followed by later rulings in the same direction (Baihaqi, 2026; Jafar et al., 2024; Wahyudi, 2021). Those decisions show a judicial willingness to use the obligatory bequest as an instrument of equity, which is suggestive for the surrogate heir. However, they are not authorities for Article 185 itself, and the continuity thesis should lean on them only as evidence of a disposition, not as proof.

The contest over the female line also has an institutional dimension that the doctrinal argument should not obscure. Hazairin's bilateral construction was not merely an academic proposal but became, through the work of his students and through its partial absorption into the Compilation, one of the intellectual currents that shaped Indonesian inheritance law as the religious courts now apply it (Aniroh et al., 2024; Sholihah et al., 2024; Yusmita, 2023). That practical influence is real, and it explains why the female-line provision cannot simply be excised as an alien graft. Yet influence is not the same as textual vindication. The relied-upon Shafi'i doctrine remains agnatic, the reinterpretation of *walad* on which the bilateral reading leans is contested in the classical exegesis it must answer to, and the courts that apply Article 185 do so within a community formed in that doctrine (Anggraeni, 2023; Hasballah et al., 2021; Huda & Hidayati, 2023). The honest conclusion is therefore double. On the one hand, the female-line provision rests on a reasoned and institutionally embedded reading that has shaped the living law; on the other, that reading is the most exposed point of the continuity thesis, the place where the claim of fidelity to al-Nawawi is hardest to sustain on the texts alone. Holding both halves of this conclusion together, rather than

collapsing into either celebration or rejection, is what a faithful account of the provision requires (Fahimah et al., 2024; Rasyid et al., 2024).

### **The Size of the Share: A Consolidated Answer**

The second research question, concerning magnitude, can now be answered in one place rather than reassembled from scattered passages. In the specified estate, the Compilation gives the surviving son two-fifths, the son's son two-fifths, and the daughter's daughter one-fifth; al-Nawawi gives the surviving son the whole and each grandchild nothing. In the second configuration, where the deceased leaves a single daughter and a son's son, with no surviving son, the Compilation gives the grandson two-thirds and the daughter one-third, while al-Nawawi gives the grandson one-half and the daughter one-half. The analytical significance of these numbers is the point that the description alone cannot supply. The difference is greatest, a move from nothing to a substantial share, precisely where the social need is most acute, in the case of the orphaned grandchild displaced by an uncle; it is smaller but still real where both schemes admit the grandson, which shows that the divergence is not confined to the exclusion cases; and it disappears where the grandson inherits alone, which shows that the Compilation has not rebuilt the system but adjusted it. Magnitude, in other words, tracks purpose: the provision moves shares only where the inherited rule would otherwise leave the deceased's line worse provided for than the reformers judged just.

### **Implications for Judicial Practice**

Because the study claims a practical objective, it owes more than a doctrinal verdict, and the implications for the religious courts can be stated concretely. If the analysis is right that Article 185 develops rather than contradicts the qath'i core, then a judge applying the provision is not choosing state law over fiqh but applying a codified development of the school's own purposes, and may apply it with corresponding confidence in the male-line cases, where the continuity case is strong, irrespective of the parties' particular madhhab affiliation (Bilalu et al., 2022; Budiono et al., 2023; Karjoko et al., 2021; Roslina et al., 2025). The female-line cases call for more caution. There, the bilateral admission rests on a reasoned but contested reading. A judge who must reconcile Article 185 with the classical doctrine in a contested estate would do well to reason explicitly from the obligatory-bequest rationale and the ceiling, which keep the substitute within the bounds of an heir of equivalent degree, rather than to treat the female-line grandchild as a Qur'anic heir simpliciter. The ceiling in the second paragraph is, on this view, not a technicality but the very device that holds the reform within the tradition, and judicial reasoning that foregrounds it will be both more faithful to the provision and more persuasive to parties formed in the Shafi'i school.

The guidance offered here gains support from the way Indonesian religious courts have begun to reason in cognate areas, where judges have moved from an unarticulated discretion toward an explicit invocation of the objectives of the law. A close study of marriage-dispensation decisions at the Muara Bulian Religious Court documents that shift, showing judges grounding their rulings not in bare equity but in a reasoned appeal to the maqasid al-shari'ah, and thereby making the basis of the decision reviewable rather than personal (Kurniawan et al., 2025). The surrogate heir

invites the same discipline. A judge who awards a grandchild a substitute share can either leave the award resting on an unexplained sense of fairness, which invites the charge that state law has displaced the school, or can set out the obligatory-bequest rationale, the ceiling, and the maqasidic purpose the provision serves, which shows the award to be a development of the tradition rather than a departure from it. The second course is the more demanding, but it is also the more defensible, and the experience of the courts in adjacent matters suggests that it is within reach of the judges who must apply Article 185 (Bilalu et al., 2022; Roslina et al., 2025).

The practical payoff of distinguishing the two lines is that it tells a judge not only that reasoning is required but what the reasoning should foreground in each case. On the male line, where the continuity with al-Nawawi is strong, the judge can apply the substitution with confidence and need say little more than that the provision realises, in codified form, the same provision for the agnatic grandchild that the classical residuary rules would reach in the configurations where they admit him (Budiono et al., 2023; Karjoko et al., 2021). On the female line, where the warrant is the contested bilateral reading, the judge should lean on the ceiling and the obligatory-bequest rationale rather than present the daughter's child as a Qur'anic heir, since it is the ceiling that holds the award within the bounds of an heir of equivalent degree and so keeps the reform tethered to the tradition. Reasoning of this differentiated kind would also build a record from which the empirical study proposed below could later assess whether the courts in fact reconcile the provision with the classical doctrine in the manner the analysis recommends (Bustomi & Setyawan, 2025; Roslina et al., 2025).

## Conclusion

This study set out to determine whether Article 185 of the Compilation, by making the grandchild a surrogate heir, deviates from the inheritance doctrine of al-Nawawi, and to assess the share the substitute grandchild receives under each framework. On the first question, the comparison shows that the two frameworks diverge clearly at the level of positive rules: al-Nawawi knows no category of substitution, admits only the male line to direct inheritance, and lets a surviving son exclude the son's children entirely, while Article 185 substitutes the grandchild on either line and caps the result by reference to an heir of equivalent degree. The word that needs defining is substance. If substance refers to the positive rules and their computed outcomes, the provision plainly differs from al-Nawawi, and the worked example shows that the difference can be total. If substance means the underlying purpose of the *fara'id*, the just provision of the deceased's line within a definite framework of shares, then the provision aligns with that purpose and operates, as the *usul* analysis indicates, within the *zanni* space rather than against the *qath'i* core. The defensible conclusion is the narrower one: Article 185 aligns with the objectives of al-Nawawi's doctrine, not with its positive rules, and on the male line that alignment is firm, while on the female line it rests on the contested bilateral reading and is correspondingly more tentative.

On the second question, the magnitude of the divergence is the study's most striking finding and carries the clearest practical and jurisprudential weight. In the configuration tested, the grandchildren move from complete exclusion under the classical rule to three-fifths of the estate between them under the Compilation, and

even where both schemes admit the grandson, his share rises from one-half to two-thirds. A divergence of this size is not an academic curiosity: it is the difference, in real estates settled by the religious courts, between an orphaned grandchild who inherits and one who does not, which is why the legitimacy of the provision is a live question and not merely a doctrinal one. The provision should accordingly be applied with confidence in the male-line cases and with explicit, ceiling-anchored reasoning in the female-line cases, so that its equity is realised without overstating its textual warrant.

Three lines of further work follow, and they are meant to be more pointed than the standard call for cross-school and empirical study. The first and most promising is a dedicated *usul al-fiqh* and *tafsir* study of the reinterpretation of *walad* to encompass the daughter's child, since that interpretation is the strongest potential textual foundation for the continuity thesis on the female line and, at present, its least secure. The second is an empirical study of how religious-court judges, in fact, reconcile Article 185 with the classical doctrine when the two yield different outcomes in the same estate, thereby testing the practical guidance offered here against actual reasoning. The third is a comparative study of the Indonesian surrogate heir against the obligatory-bequest reforms of Egypt and other jurisdictions, which would situate the Compilation more precisely within the modern movement from which it borrowed.

Two broader implications deserve a final word, since they reach beyond the particular provision. The first concerns the method by which a codified Islamic family law should be evaluated. The surrogate heir shows that the question of fidelity cannot be settled by matching the rule against the manuals at the level of positive outcomes alone, because a faithful development will often differ from the inherited rule precisely in order to serve its purpose under changed conditions; the evaluation must reach the level of objectives, but it must do so within the discipline that forbids the objectives from overriding a definite text (Ahyani et al., 2023; al-Shatibi, n.d.). The second concerns the asymmetry the study has located. That a single provision can be firmly grounded on one line and only tentatively grounded on another is itself a finding about the limits of codified reform, for it shows that the bilateral aspirations of the modern law meet a textual resistance on the female line that they do not meet on the male, and that honest reform must acknowledge the difference rather than paper over it (Fitriyati et al., 2025; Heriandita et al., 2025). A jurisprudence that names its strong and weak points, rather than presenting an even confidence across both, is better placed to defend the reform where it is defensible and to do the further interpretive work where the warrant is still incomplete.

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