



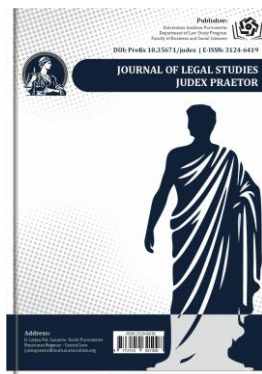
Maslahah Versus Textualism in Islamic Inheritance Law: An Analysis of Substitute Heirs in The Compilation of Islamic Law from the Perspective of Najmuddin Al-Thufi

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ABSTRACT

This article examines the legitimacy of the concept of the Substitute Heir as stipulated in Article 185 of the Compilation of Islamic Law (KHI) through the lens of Najmuddin Al-Thufi's (657–716 H/1259–1316 CE) theory of Ri'ayah al-Maslahah. Unlike previous studies that approached the Substitute Heir through Hazairin's bilateral theory or merely as part of the narrative of national legal reform, this research presents an epistemological argument that Article 185 of the KHI is fundamentally more aligned with Al-Thufi's maslahat paradigm than with the textualism of classical fara'id. Using a normative-juridical method with conceptual, philosophical, and historical approaches, this article finds that: (1) Al-Thufi constructs the concept of maslahat as an independent legal instrument that, within the realm of mu'amalah, can override the nash when there is a clear conflict with the public interest; (2) Article 185 of the Indonesian Islamic Family Law (KHI) constructs the substitution of heirs based on considerations of distributive justice, a concept unknown in the classical fara'id system; (3) epistemologically, the mechanism for substituting heirs represents the operationalization of ri'ayah al-maslahah in the form of Indonesian Islamic family law legislation. These findings contribute theoretically to the discourse on contemporary Islamic inheritance law reform by offering a more coherent philosophical framework of justification compared to the textual-normative approach that has long dominated the literature on Islamic family law in Indonesia.

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INTRODUCTION

Inheritance law is one of the most textually rigid fields of Islamic law. The verses on inheritance (mawārīth) found in Surah al-Nisā' [4]: 11–12 and 176 have given rise to the tradition of fara'id scholarship, which is highly detailed, mathematical, and appears to leave little room for more extensive ijtihad. In the classical framework of fara'id, a grandchild of a son who dies before the heir is barred (mahhūb) from the inheritance if there are other living sons. This principle has been in effect for centuries in Sunni fiqh and is widely practiced throughout the Islamic world.

However, contemporary social and family realities present problems that the textualism of fara'id has never fully addressed. A grandchild who lost his or her parents before the grandfather's death finds himself or herself in a paradoxical situation: he or she is left behind by a legal system that is supposed to guarantee distributive justice within the family.¹ This raises a fundamental question: Is the textual interpretation of the nash absolute, or does the public interest have the capacity to intervene in the mathematical calculations of fara'id?

Indonesia addresses this issue through Article 185 of the Compilation of Islamic Law (KHI), which introduces the concept of a "substitute heir": a grandchild whose parents have predeceased them may take the place of their parents as an heir, provided that the share received does not exceed the portion that would have been received by the parent being replaced. This article constitutes a legal innovation that explicitly deviates from classical fara'id provisions and has no direct precedent in the mainstream Sunni school of thought.

Academic studies on the Substitute Heir have developed considerably, but most have focused on two lines of analysis: first, justification through Hazairin's bilateral theory, which frames the Qur'anic inheritance system as bilateral-individual;² and second, a sociological-juridical analysis of the implementation of Article 185 of the KHI in the practice of Religious Courts.³ Although important, these two approaches leave a significant epistemological gap: no study has yet systematically analyzed Substitute Heirs through the framework of classical maslahat theory, particularly the perspective of Najmuddin Al-Thufi, who is known for his most radical stance in positioning maslahat vis-à-vis the nash.

¹ Amir Syarifuddin, *Hukum Kewarisan Islam*, Jakarta: Kencana, (2008), p. 27-33.

² Hazairin, *Hukum Kewarisan Bilateral Menurut Al-Qur'an, cet. ke-8*, Jakarta: Tintamas, (1990), p. 1-25.

³ Ahmad Rofiq, *Hukum Perdata Islam di Indonesia*, Jakarta: Rajawali Press, (2015), p. 301-315.



Najmuddin Al-Thufi (657–716 AH/1259–1316 CE), a scholar of *uṣūl al-fiqh* from Baghdad, developed the controversial theory of *Ri'ayah al-Maṣlaḥah*, arguing that in the realm of *mu'āmalah* (interpersonal relations), the public interest may take precedence over the text when the two conflict.⁴ This theory, developed primarily in his works *Risālah fī Ri'ayah al-Maṣlaḥah* and *Kitāb al-Ta'yīn fī Sharḥ al-Arba'īn*, urges scholars of Islamic law not to interpret the *nash* in an atomistic-textual manner, but rather within the context of broader legal objectives.

This article aims to fill that gap. By situating Article 185 of the Indonesian Islamic Family Law (KHI) within the framework of Al-Thufi's *Ri'ayah al-Maṣlaḥah* theory, this study argues that: (1) epistemologically, the Substitute Heir constitutes the operationalization of *maṣlaḥat* in Indonesian Islamic family law legislation; (2) its philosophical justification is more coherent through the lens of Al-Thufi than through Hazairin's bilateral argument alone; and (3) there is a shift in orientation from formal-textual justice toward substantive-*maṣlaḥahīyah* justice.

Thus, the research questions of this article are: (a) How is the concept of *Ri'ayah al-Maṣlaḥah* understood in the thought of Najmuddin Al-Thufi? (b) How is the legal framework for substitute heirs constructed in Article 185 of the KHI? (c) How can Al-Thufi's theory of *maṣlaḥat* explain the legitimacy of substitute heirs? (d) Do substitute heirs represent a shift from textualism toward substantive justice in Islamic inheritance law in Indonesia?

LITERATURE REVIEW

Academic studies on substitute heirs, Hazairin's thought, Al-Thufi's theory of *maṣlaḥat*, and family law reform in Islam have expanded significantly over the past two decades. However, studies that specifically link these three topics within a single analytical framework remain very limited.

In the realm of substitute heirs, studies by Wahiduddin Adams (2015) and Moh. Muhibbin & Abdul Wahid (2017) provide a comprehensive mapping of Religious Courts' practices in applying Article 185 of the Indonesian Compilation of Islamic Law (KHI).⁵ Both found inconsistencies in interpretation across various courts, particularly regarding the maximum share that a substitute heir may receive. Meanwhile, Amiur Nuruddin &

⁴ Felicitas Opwis, *Maslaha and the Purpose of the Law: Islamic Discourse on Legal Change from the 4th/10th to 8th/14th Century*, Leiden: Brill, (2010), p. 186-232.

⁵ Wahiduddin Adams, "Pola Penyerapan Fatwa Majelis Ulama Indonesia dalam Peraturan Perundang-Undangan 1975-1997," *Al-Ahkam: Jurnal Ilmu Syari'ah dan Hukum*, Vol. 30, No. 2, (2015), p. 87-110.



Azhari Akmal Tarigan (2016) situate substitute heirs within the broader framework of the modernization of Islamic family law in Indonesia.⁶

A monumental study of Hazairin and his bilateral theory was conducted by Ratno Lukito (2008) in *Islamic Law and Adat Encounter*. Lukito argues that Hazairin developed a bilateral inheritance system as a synthesis between Islamic law and the bilateral kinship system in the Indonesian archipelago.⁷ M.B. Hooker (2008), in *Indonesian Islam: Social Change Through Contemporary Fatwā*, also analyzed Hazairin's influence on the KHI, though primarily from a sociological perspective of law.⁸

Research on Al-Thufi has seen rapid development following the translation of his works into various languages. Felicitas Opwis (2010), in *Maslaha and the Purpose of the Law*, provides a comparative analysis that positions Al-Thufi as an outlier within the tradition of *uṣūl al-fiqh* due to his boldness in prioritizing *maslahah* over the *nash*.⁹ Meanwhile, Wael Hallaq (2009), in *An Introduction to Islamic Law*, discusses Al-Thufi's position within the historical dynamics of Islamic law.¹⁰ Imbran Nisar's (2019) study in *Islamic Law and Society* specifically explores the contemporary implications of Al-Thufi's theory of *maslahat* for family law reform.¹¹

In the realm of *maslahat* and Islamic family law, Jasser Auda (2008), in *Maqāṣid al-Sharī'ah as a Philosophy of Islamic Law*, offers a systemic framework of *maqāṣid* that is methodologically relevant, although he does not specifically discuss Al-Thufi.¹² Mohammad Hashim Kamali (2008), in *Sharī'ah Law: An Introduction*, discusses public interest as a source of law in a comprehensive manner.¹³ Noel Coulson's (2011) study in *A History of Islamic Law* provides an important historical context regarding the

⁶ Amiur Nuruddin dan Azhari Akmal Tarigan, *Hukum Perdata Islam di Indonesia: Studi Kritis Perkembangan Hukum Islam dari Fikih, UU No. 1/1974 sampai KHI*, Jakarta: Kencana, (2016), p. 188-215.

⁷ Ratno Lukito, *Islamic Law and Adat Encounter: The Experience of Indonesia*, Jakarta: Logos, (2008), p. 77-112.

⁸ M.B. Hooker, *Indonesian Islam: Social Change Through Contemporary Fatwa*, Crows Nest: Allen & Unwin, (2003), p. 89-123.

⁹ Opwis, *Op.Cit.*, p. 186-232.

¹⁰ Wael B. Hallaq, *An Introduction to Islamic Law*, Cambridge: Cambridge University Press, (2009), p. 67-89.

¹¹ Imbran Nisar, "Al-Thufi's Theory of *Maslahah* and Its Implications for Contemporary Islamic Family Law Reform," *Islamic Law and Society*, Vol. 26, No. 3, (2019), p. 211-248.

¹² Jasser Auda, *Maqasid al-Shari'ah as Philosophy of Islamic Law: A Systems Approach*, London: IIIT, (2008), p. 3-45.

¹³ Mohammad Hashim Kamali, *Shari'ah Law: An Introduction*, Oxford: Oneworld, (2008), p. 131-155.



dynamics between textualism and rationalism in the development of Islamic law.¹⁴

Based on the literature review above, it is clear that no study has yet integrated the concept of Substitute Heirs, Al-Thufi's theory of *maslahat*, and the reform of Islamic inheritance law in Indonesia within a single coherent analytical framework. Table 1 summarizes the position of this research in relation to previous studies.

Table 1. Mapping of Previous Research and Position of This Article

Author/Year	Research Focus	Main Findings	Limitations	Position of This Article
Adams (2015)	The Practice of Religious Courts in Article 185 of the KHI	Inconsistency in interpretation between courts	Not examining the philosophical foundation of <i>maslahat</i>	Providing a philosophical justification based on al-Thūfī that is not yet present in Adams' study
Nuruddin & Tarigan (2016)	Modernization of Indonesian Islamic family law	KHI as a product of compromise between Islamic norms and customs	Not analyzing the theory of <i>maslahat</i> in depth	Deepening the epistemological analysis that is absent in the sociological approach
Lukito (2008)	Hazairin's bilateral theory and customary law	Islam-custom synthesis in bilateral inheritance law	Ignoring the tradition of <i>maslahat</i> in <i>ushul fiqh</i>	Offering an alternative justification based on al-Thūfī's <i>maslahat</i>
Opwis (2010)	<i>Maslahah</i> in the tradition of comparative <i>ushul al-fiqh</i>	Al-Thūfī as an outlier in the hierarchy of Islamic legal sources	Not applying theory to positive law in Indonesia	Applying Opwis's theory of al-Thūfī to Article 185 of KHI
Auda (2008)	<i>Maqāṣid al-Sharī'ah</i> as the philosophy of Islamic law	The systemic <i>maqāṣid</i> approach relevant for reform	Not discussing al-Thūfī specifically	Using Auda as a complementary framework for al-Thūfī's theory

¹⁴ Noel J. Coulson, *A History of Islamic Law*, Edinburgh: Edinburgh University Press, (2011), p. 202-220.



This Article (2025)	Article 185 of KHI from the perspective of Ri'ayah al-Maṣlaḥah al-Thūfī	Explained in the discussion	-	Novelty: the integration of al-Thūfī's epistemology with the analysis of Article 185 of the KHI as a reform of substantive justice
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Source: Author's analysis, 2026

METHOD

This research uses the normative-legal method, which is an approach that places law as a system of norms and examines legal materials systematically to find principles, concepts, and doctrines that can address the legal issues faced.

The approach used encompasses four complementary perspectives. First, the Statute Approach is conducted by critically examining the text of Article 185 of the KHI, Presidential Instruction No. 1 of 1991, and relevant Supreme Court decisions.¹⁵ Second, the Conceptual Approach is carried out by analyzing the concept of Ri'ayah al-Maṣlaḥah in Al-Thufi's works, especially *Risālah fī Ri'ayah al-Maṣlaḥah* and *Kitāb al-Ta'yīn fī Sharḥ al-Arba'in*.

Third, the Philosophical Approach is used to examine the epistemological foundation of Al-Thufi's *maslahat* theory and its implications for the construction of justice in Islamic inheritance law.¹⁶ Fourth, the Historical Approach is applied to understand the socio-intellectual context of the emergence of Al-Thufi's theory during the Mongol era and the process of formulating the KHI in Indonesia from 1988 to 1991.¹⁷

Primary legal materials include: QS. al-Nisā' [4]: 11-12, 176; KHI (Presidential Instruction No. 1 of 1991); the text of *Risālah fī Ri'ayah al-Maṣlaḥah* by Al-Thufi; and the Supreme Court of Indonesia's decision regarding substitute heirs. Secondary legal materials include literature on *uṣūl al-fiqh*, classical Sunni jurisprudence, contemporary Islamic family law

¹⁵ Peter Mahmud Marzuki, *Penelitian Hukum, cet. ke-12*, Jakarta: Kencana, (2016), p. 93-97.

¹⁶ Johnny Ibrahim, *Teori dan Metodologi Penelitian Hukum Normatif*, Malang: Bayumedia, (2006), p.57-62.

¹⁷ Abdurrahman, *Kompilasi Hukum Islam di Indonesia*, Jakarta: Akademika Pressindo, (2010), p. 13-52.



works, and reputable scholarly journal articles. The analysis is conducted qualitatively-interpretatively by applying hermeneutic techniques in Islamic law.

RESULT & DISCUSSION

A. The Concept of Ri'ayah Al-Maṣlaḥah in the Thot of Najmuddin Al-Thufi

1. Intellectual Biography and Socio-Political Context

Najm al-Dīn Abū al-Rabī' Sulaymān ibn 'Abd al-Qawī Al-Thufi al-Ḥanbalī was born in 657 AH/1259 AD in Ṭūf, a small town near Baghdad. He lived in an era marked by two major pressures: the collapse of the Abbasid Caliphate due to the Mongol invasion (1258 AD) and the fragmentation of the Islamic world that had not yet fully recovered.¹⁸ This context is very important to understand because it also shaped Al-Thufi's intellectual orientation, which was more pragmatic and responsive to social realities compared to the previous generation of scholars.

Al-Thufi was a prolific scholar with numerous important works in uṣūl al-fiqh and fiqh. Among his most monumental works are "Risālah fī Ri'ayah al-Maṣlaḥah," which serves as the foundation of his maṣlahah theory, and "Kitāb al-Ta'yīn fī Sharḥ al-Arba'in al-Nawāwīyah," which contains the practical application of his legal methodology. In the tradition of Islamic thought, he is known as a Ḥāmbalī who dared to transcend the boundaries of his own school's orthodoxy.

2. The Hadith La Ḍarara wa La Ḍirāra as a Foundation

Al-Thufi's theory of maṣlahat is based on the famous Hadith of the Prophet: Lā ḍarara wa lā ḍirāra (there should be no harm and no harming others). In the Risālah, which is his commentary on the 32nd hadith in al-Nawāwī's collection, Al-Thufi argues that this hadith represents the most fundamental principle in Islamic law: the prevention of harm and the protection of human welfare.

From this hadith, Al-Thufi builds a revolutionary argument in the tradition of uṣūl al-fiqh: that public interest (ʿumum) is the most authentic purpose of the shari'ah. When the texts of the sharia are read atomistically-textually and instead result in harm or injustice, then the public interest (maṣlahah) deserves to be prioritized.¹⁹ This

¹⁸ Wael B. Hallaq, *The Origins and Evolution of Islamic Law*, Cambridge: Cambridge University Press, (2005), p. 186-201.

¹⁹ Opwis, *Op.Cit.*, 190-197.



position fundamentally distinguishes Al-Thufi from other uṣūl al-fiqh scholars who acknowledge maslahat but still place it below nash.

3. The Position of Maslahah in Relation to Nash: The Controversial Stance of al-Ṭhūfī

The most controversial point in Al-Thufi's theory is his claim that in the realm of mu'āmalah and 'ādāt (social customs), maslahat can prevail over nash when the two are in conflict. He builds this argument thru four paths:

First, Al-Thufi argues that maslahat is the strongest proof because it is the goal (maqṣad), while nash is the means (wasīlah). When the means contradict the goal, the goal must take precedence.²⁰ Second, he shows that the Prophet's companions themselves often made decisions based on considerations of maslahat that contradicted the literal meaning of the text, as seen in the ijtihad of 'Umar ibn al-Khaṭṭāb in several cases.

Third, Al-Thufi limited the domain of his theory's application only to mu'āmalah, not to 'ibādāt (religious rituals) and laws that have qaṭ'i (definitive) evidence. This limitation is important because it is often misunderstood by his critics. Fourth, he emphasized that the maslahat in question is not individual benefit or personal preference (hawā), but rather a universal, rational, and publicly verifiable benefit.²¹

4. Critique of Scholars and Contemporary Repositioning

Al-Thufi's theory received harsh criticism from various parties. Ibn al-Subkī and several Shāfi'ī scholars condemned it as a form of taḥakīm al-'āql (prioritization of reason) that contradicts the foundations of Islamic textualism. However, Felicitas Opwis (2010) shows that these criticisms often do not read Al-Thufi's thesis in its entirety and overlook the boundaries he established.²²

In the contemporary context, as noted by Mohammad Hashim Kamali (2008), Al-Thufi's theory has undergone significant intellectual rehabilitation. Scholars such as Ahmad al-Rayyisūnī and 'Abd al-Majid al-Najāri consider Al-Thufi a pioneer of maqāṣidīyah hermeneutics, which is highly relevant for the reform of Islamic law in the modern era.²³ This relevance becomes even more apparent

²⁰ Opwis, *Op.Cit.*, p. 182-223.

²¹ Bernard Weiss, *The Spirit of Islamic Law*, Athens: University of Georgia Press, (2006), p. 115-118.

²² Opwis, *Op.Cit.*, p. 212-218.

²³ Kamali, *Op.Cit.*, p. 149.



when faced with contemporary inheritance issues that cannot be adequately resolved by classical fara'id textualism.

Table 2. Teori Ri'ayah al-Maṣlaḥah Najmuddin Al-Thufi

Theory of Maslahah Preservation
● MASLAHAH ● Legitimate and Rational Public Interest
① JUSTICE ② PROTECTION OF RIGHTS ③ BENEFIT ④ PREVENTION OF HARM ⑤ SOCIAL RESPONSIVENESS
In mu'āmalah: Maslahah can intervene in nash when there is ta'āruḍ (conflict).

Source: Adapted from *Risālah fī Ri'ayah al-Maṣlaḥah* (Al-Thufi) and Opwis (2010)

B. Substitute Heir in the Compilation of Islamic Law

1. The History of the Birth of Islamic Law Compilation

The Compilation of Islamic Law (KHI) ratified thru Presidential Instruction No. 1 of 1991 is a historic milestone in the unification of Indonesian Islamic family law. The process of its compilation involved research on fiqh books from 13 relevant schools of thought, comparative studies with Muslim countries, and a series of workshops with scholars from various Islamic organizations.²⁴ One of the most important contributions of KHI is accommodating legal innovations that consciously deviate from classical fara'id provisions in order to meet the demands of contemporary social justice.²⁵

Hazairin's thoughts, a professor of customary law and Islamic law from the University of Indonesia, had a significant influence on the formulation of KHI, particularly in the field of inheritance. Hazairin argues that the Qur'an desires a bilateral-individual inheritance system that is conceptually different from the patrilineal system developed in classical Sunni jurisprudence.²⁶ One direct implication of Hazairin's bilateral theory is the recognition of

²⁴ Cik Hasan Bisri, *Kompilasi Hukum Islam dan Peradilan Agama dalam Sistem Hukum Nasional*, Jakarta: Logos, (2000), p. 1-42.

²⁵ M. Yahya Harahap, *Hukum Acara Perdata*, Jakarta: Sinar Grafika, (2017), p. 789-802.

²⁶ Hazairin, *Op.Cit.*, p. 11-24.



inheritance rights for grandchildren thru a substitution mechanism.²⁷

2. Article 185 KHI: Legal Construction and Its Scope

Article 185 of the KHI states: (1) An heir who dies before the testator can be replaced by their child, except for those mentioned in Article 173; (2) The share of the substitute heir must not exceed the share of the heir of equal rank being replaced. This article introduces the concept of substitution, which is a revolutionary innovation in the Indonesian Islamic inheritance system.

The Supreme Court of the Republic of Indonesia has issued several rulings that strengthen and clarify the application of Article 185 of the KHI. Decision No. 4 K/AG/1987 was one of the earliest to recognize the right of grandchildren as substitute heirs. Decision No. 86 K/AG/1994 further clarified that substitution applies thru both male and female lines, unlike classical *fara'iḍ* which only recognizes substitution thru certain lines.²⁸

3. Fundamental Differences with Classical *Farā'iḍ*

To understand the innovation brought by Article 185 of KHI, a systematic comparison with classical *farā'iḍ* provisions is necessary.

Table 2 presents a comprehensive comparison of the two.

Table 3. Comparison of Inheritance Systems: Classical Fiqh vs. Compilation of Islamic Law

Aspect	Classical Fiqh <i>Farā'iḍ</i>	KHI (Article 185)
Position of Grandchildren	The grandchild of the deceased child is blocked (<i>maḥjūb</i>) by the living son (grandchild as <i>dhawī al-arḥām</i>).	Grandchildren replace their parents' position as heirs with full rights according to the share of the parents being replaced.
Hijab Mechanism	The <i>ḥijab ḥirmān</i> applies: a closer sibling prevents a more distant sibling. Grandchildren are blocked by living children.	The prohibition of <i>ḥirmān</i> does not apply in the context of substitution: grandchildren are not obstructed even if there are living uncles/aunts.
Principle of <i>Dzawil Arham</i>	Distant relatives (<i>dzawil arḥām</i>) do not receive a share if there are still <i>aṣḥāb al-furūḍ</i> and <i>'aṣabah</i> .	KHI provides a separate path for grandchildren thru a substitution

²⁷ Sajuti Thalib, *Hukum Kewarisan Islam di Indonesia, cet. ke-8*, Jakarta: Sinar Grafika, (2008), p. 144-158.

²⁸ Ahmad Rofiq, *Op.Cit.*, p. 307-312.



		mechanism without having to compete as dzawil arḥām.
Women's Inheritance Rights	Inheritance rights thru the female line are more limited; grandchildren thru daughters fall into the category of dzawil arḥām.	KHI does not differentiate between male and female lines in the mechanism of heir replacement.
Principle of Justice	Formal-textual justice: the division follows the formula of the Qur'an mathematically without considering the fate of the grandchildren.	Substantive-distributive justice: grandchildren who lose their parents early should not lose their inheritance rights at all.
The Purpose of Law	Legal certainty based on the normative text of the Qur'an; minimization of ijtihad in the field of inheritance	Protection of grandchildren's rights as a reflection of social justice and legal responsiveness to family realities
Epistemic Foundation	Textuality of naṣ: certainty (qaṭ'i) of inheritance law based on mawārith verses that are considered not open to extensive ijtihad.	Interest: the best interests of the grandchildren and family as the main consideration for legal reform

Source: Processed from KHI (1991), Syarifuddin (2008), and Mughniyah (2009)

C. Maslahah Versus Textuality: Analysis of Article 185 of Khi from the Perspective of Al-Ṭāfi

1. Substitute Heir as a Mechanism for Protecting Grandchildren's Rights

To understand how Article 185 of the KHI operates as an instrument of rights protection, it is necessary to first understand the anatomy of the injustice it aims to rectify. In the classical fara'id system, a grandchild of a deceased child faces two unfortunate scenarios: (1) he does not receive any inheritance at all if there is a living male heir; (2) in the best-case scenario, he only receives a small portion as dhawī al-arḥām.²⁹

Al-Thufi would accurately identify this situation as a manifestation of ḍarar (harm): a grandchild who is factually closer to the heir than other heirs becomes a victim of their parent's premature death. Within the framework of lā ḍarara wa lā ḍirāra, Al-Thufi would argue that the application of textual fara'id provisions

²⁹ Muhammad Ali al-Sabuni, *al-Mawarith fi al-Shari'ah al-Islamiyyah fi Daw' al-Kitab wa al-Sunnah*, Beirut: 'Alam al-Kutub, (2008), p. 67-88.



in this situation actually creates harm that contradicts the spirit of sharia.

Article 185 of the KHI responds to this anomaly by constructing the right of substitution: grandchildren no longer compete as independent heirs in the classical priority order, but instead "step into" their parents' position. This is a direct operationalization of what Al-Thufi referred to as *ri'ayah al-maṣlaḥah*: the law must preserve and protect the real interests of its citizens, not merely apply a mathematical formula that, in certain contexts, can produce injustice.³⁰

2. Shift from Formal Justice to Substantive Justice

The debate between formal and substantive justice is one of the fundamental debates in legal philosophy. Formal justice demands consistency in the application of rules without considering the substantive consequences for concrete individuals; substantive justice demands that the law produces an actual fair distribution.³¹ In the context of Islamic inheritance law, this tension manifests as a conflict between the precision of the *fara'id* formula and justice for the remaining grandchildren.

Al-Thufi's theory implicitly defends substantive justice when he states that the ultimate goal of Sharia is the preservation of public interest (*ri'ayah al-maṣlaḥah*), not mere formal adherence to texts. He wrote in his *Risālah*: "Indeed, the purpose of the creation of law is to realize benefit and prevent harm for humans, and this is more important than other texts."

Article 185 of the KHI represents an epistemic shift that aligns with that perspective. The drafters of KHI consciously chose substantive justice over textual consistency when facing the dilemma of obstructed grandchildren. Abdurrahman (2010) notes that in the sessions of formulating KHI, arguments for social justice and family protection were explicitly used as the foundation for articles that deviated from classical *fara'id*.³²

3. The Tension between Nash Farā'id and Maslahat: An Epistemological Analysis

The fundamental epistemological question that must be answered is: does the provision in QS. al-Nisā' [4]: 11 regarding the distribution of inheritance fall into the category of law that cannot

³⁰ Opwis, *Op.Cit.*, p. 196-200.

³¹ Satjipto Rahardjo, *Ilmu Hukum*, Bandung: Citra Aditya Bakti, (2014), p. 178.

³² Abdurrahman, *Op.Cit.*, p. 78-92.



be intervened by *maslahat*, or does it belong to the realm of *mu'āmalah* that is open to *ijtihad maslahat*?³³

Al-Thufi himself does not explicitly discuss inheritance law in his *Risālah*. However, based on the principles he established, an argument can be constructed that the verses on inheritance (*mawārith*), although they are *qath'i al-wurūd* (certain in transmission), are not entirely *qath'i al-dalālah* (certain in meaning) in all their applications.³⁴ The issue of grandchildren being excluded, for example, is not explicitly mentioned in the verse; it is the result of *ijtihad* by the *fuqahā'* who developed the *hijab* system thru *qiyās* and *ra'y*.

This opens up significant space: if the *hijab* rule that sacrifices the rights of grandchildren is the result of *ijtihad* (not an explicit text), then it fully falls into the category of *mu'āmalah* which, according to Al-Thufi, is open to *maslahat* intervention.³⁵ Article 185 of the KHI, therefore, can be interpreted as an *ijtihad* that corrects previous *ijtihad* based on stronger *maslahat* considerations.

4. Justification of Article 185 of KHI thru *Ri'ayah al-Maṣlaḥah*

If we apply the analytical framework of *Ri'ayah al-Maṣlaḥah* Al-Thufi systematically to Article 185 of KHI, five points of correspondence can be identified that validate the main claim of this article:

First, *maslahat* as a legal orientation: Al-Thufi established that the law should be oriented toward *ri'ayah al-maṣlaḥah*. Article 185 of the KHI explicitly focuses on protecting the rights of grandchildren who have lost their parents, a tangible, verified, and undeniably relevant benefit.³⁶

Second, intervention against the results of textual *ijtihad*: Al-Thufi justified the correction of *ijtihad* that results in harm. The rule of *hijab ḥirmān* for grandchildren is a textual *ijtihad* that, in certain cases, can cause real harm. Article 185 of the KHI corrects it based on *maslahat*.

Third, universal and verifiable *maslahat*: Al-Thufi stipulates that the intended *maslahat* must be universal and publicly verifiable, not merely individual preference. The protection of grandchildren from the poverty of inheritance is a benefit that can be socially

³³ Abd. Shomad, *Hukum Islam: Penormaan Prinsip Syariah dalam Hukum Indonesia*, Jakarta: Kencana, (2017), p. 267-280.

³⁴ Fazlur Rahman, *Islam and Modernity: Transformation of an Intellectual Tradition*, Chicago: University of Chicago Press, (1982), p. 78-89.

³⁵ Opwis, *Op.Cit.*, p. 222-228.

³⁶ Auda, *Op.Cit.*, p. 167-183.



verified and is consistent with the *maqāṣid al-ṣarīʿah* regarding the protection of lineage (*ḥifẓ al-nasl*).

Fourth, the domain of *muʿāmalah*: Al-Thufi limits its application to *muʿāmalah*. Inheritance law, although regulated in the Qur'an, in its technical-applicative dimension (especially the *hijab* rules which are a product of *ijtihād*), falls into the category of *muʿāmalah* that is open to reform based on *maslahat*.³⁷

Fifth, prevention of harm: the principle of *lā ḍarara wa lā ḍirāra* requires the elimination of harm. The exclusion of grandchildren from inheritance due to the premature death of their parents is a concrete harm that must be prevented. Article 185 of the KHI implements the prevention of this harm thru a substitution mechanism.

5. The Limits of the Use of *Maslahat* in Inheritance Law Reform

Although Article 185 of the KHI can be justified thru Al-Thufi's theory, it is important to note the limits of the application of *maslahat* as established by Al-Thufi. The first limit is that *maslahat* cannot intervene in the provisions of *ʿibādāt* and laws that are devotional in nature. This means that the core distribution formula (2:1 between men and women) cannot be changed solely based on *maslahat*.³⁸

The second limit is that the prioritized *maslahat* must be *dā'imah* (permanent) and *kulliyah* (universal), not temporal and partial. This implies that *maslahat*-based reforms must be carried out thru a legitimate legislative process, not thru *ad hoc* judicial decisions.³⁹ KHI, which was born thru a broad national consultation process, meets this requirement.

The third limit, which is the most crucial in the context of Indonesia, is that *maslahat* must not produce less certainty than the text it replaces. This means that the substitution system introduced in Article 185 of the KHI must be reinforced with clear technical provisions, including section limits, calculation mechanisms, and enforcement provisions. The technical ambiguities often complained about by religious court practitioners are weaknesses in implementation, not in principle.⁴⁰

³⁷Kamali, *Op.Cit.*, p. 147-151.

³⁸ Ahmed An-Na'im, *Toward an Islamic Reformation: Civil Liberties, Human Rights, and International Law*, Syracuse: Syracuse University Press, (1990), p. 67-72.

³⁹ Auda, *Op.Cit.*, p. 200-215.

⁴⁰ Adams, *Op.Cit.*, p. 99-104.



Table 4. Transformation Pathway: From the Textuality of Farā'īd to Substantive Justice

CLASSIC FARĀ'ID The mathematical inheritance system based on the Qur'anic text (QS. al-Nisā' 4:11-12)
↓
SOCIAL ISSUES The grandchild lost their parents before the grandfather passed away → blocked from the inheritance
↓
LOSS OF GRANDCHILD'S RIGHTS Distributive injustice: the grandchild who needs it more is actually excluded
↓
CONSIDERATION OF MASLAHAT Ri'ayah al-Maṣlaḥah al-Thūfī: the welfare of grandchildren as a legitimate public interest
↓
Article 185 KHI Legislation on heir substitution as the operationalization of maslahat in positive law
↓
SUBSTANTIVE JUSTICE The shift from formal-textual certainty to distributive-maṣlaḥah justice

Source: Author's construction based on KHI analysis and Al-Thufi's theory, 2025

D. Theoretical Implications for the Renewal of Islamic Inheritance Law in Indonesia

The analysis in the previous section has several important theoretical implications for the discourse on the renewal of Islamic inheritance law in Indonesia. The first implication is that the justification of Article 185 of the KHI does not need and perhaps it is more appropriate not to depend exclusively on Hazairin's bilateral theory. Hazairin's bilateral theory has a fundamental weakness: it relies on a



linguistic-structural reconstruction of the Qur'an that is still debated.⁴¹ On the other hand, the justification based on Ri'ayah al-Maṣlaḥah al-Thufi operates within the widely recognized framework of uṣūl al-fiqh and is more readily accepted by the fiqh community.

The second implication is that Al-Thufi's theory paves the way for other potential reforms in inheritance law that may be needed in the future. Jasser Auda (2008) notes that maqāṣid al-ṣarī'ah as a systemic approach allows for continuous evaluation of family law provisions in Islam.⁴² If methodological consistency is maintained, the maslahat approach allows Islamic inheritance law in Indonesia to continue adapting to social realities without sacrificing its Islamic identity.

The third implication concerns the relationship between Islamic law and national law. Noel Coulson (2011) identifies one of the greatest tensions in the history of Islamic law as the tension between normative universalism (Islamic law as a perfect system) and contextual particularism (response to local conditions).⁴³ Article 185 of the KHI through the lens of Al-Thufi shows that this tension can be resolved not by choosing one over the other, but by asserting that responsiveness to the local context is part of the maqṣad al-sharī'ah itself.

The fourth and most significant implication for policy is that the Indonesian government needs to consider the more detailed development of technical provisions in Article 185 of the KHI. As noted by Wahiduddin Adams (2015), the inconsistency of religious court decisions in applying this article is partly due to the normative ambiguity that needs to be resolved.⁴⁴ The maslahat-based reform introduced by Al-Thufi requires legal certainty that is no less than the system it replaces.

Finally, from a comparative perspective, Al-Thufi's approach of Ri'ayah al-Maṣlaḥah provides Indonesia with a conceptual framework to engage in dialog with inheritance law reforms in other countries. Comparison with the Tunisian Personal Status Code (1956), the Moroccan family law reform, and the inheritance system developed in Malaysia shows that Indonesia is not alone in facing the tension between textualism and maslahat in Islamic inheritance law.⁴⁵

⁴¹ Tahir Mahmood, *Personal Law in Islamic Countries*, New Delhi: Academy of Law and Religion, (2006), p. 78.

⁴² Auda, *Op.Cit.*, p. 241-260.

⁴³ Coulson, *Op.Cit.*, p. 203-208.

⁴⁴ Adams, *Op.Cit.*, p. 104-108.

⁴⁵ Judith E. Tucker, *Women, Family, and Gender in Islamic Law*, Cambridge: Cambridge University Press, (2008), p. 101-130.



CONCLUTIONS

This article proves that Najmuddin Al-Ṭūfī's theory of Ri'āyah al-Maṣlaḥah provides a much more coherent philosophical foundation for Article 185 of the KHI compared to Hazairin's bilateral theory. The construction of Article 185 of the KHI fully operationalizes the five main elements of Al-Ṭūfī's thought from the orientation of maslahat in the domain of mu'āmalah to the prevention of harm. This integration marks a fundamental shift from formal-textual justice to substantive-maṣlaḥīyah justice, while also validating that KHI is a manifestation of the Islamic intellectual tradition that is responsive to social dynamics without neglecting the principle of revelation.

Based on these findings, this study recommends two follow-up research agendas. First, a systematic comparative study is needed on the application of Al-Ṭūfī's maslahat theory in family law reforms across various Muslim countries. Second, an empirical study is required to verify the impact of the implementation of Article 185 of the KHI on the welfare level of grandchildren as substitute heirs in the reality of Indonesian society.

Overall, Al-Ṭūfī's thot has proven to be highly relevant in addressing the challenges of contemporary Islamic law reform. His thoughts provide academic and juridical courage to reaffirm that the achievement of true justice for humanity is the highest goal of sharia, even when it requires intervening in rigid textual interpretations.

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