

POSITION OF SUBSTITUTE HERITAGE IN THE PERSPECTIVE OF ISLAMIC INSTRUCTION LAW

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ABSTRACT

Substitute heirs are heirs who get their inheritance rights because of the position of the parents who died before the heirs. The problem is what is the position of the successor heirs in the perspective of Islamic inheritance law? and how is the distribution of inheritance for the successor heirs? normative juridical approach, descriptive analytical research specifications, sources and types of data using secondary data, data collection techniques using library data, data analysis techniques using qualitative analysis methods. Based on the results of the research that the position of the successor heir according to Islamic inheritance law is recognized as being able to obtain an inheritance as stated in the Qur'an Surah An-Nisa verse 33 and the distribution of inheritance for replacement heirs is the same as the distribution of inheritance for people who are expected to get inheritance.

Keywords: successor heirs, Islamic inheritance

INTRODUCTION

Inheritance law is one part of civil law and is the smallest part of family law. Inheritance law is closely related to human life, because every human being will experience death. The legal consequences arising from the event of a person's death are the management and continuation of the rights and obligations of a person who dies.

The event of death is an event that will certainly be experienced by every human being, because death is the end of a person's journey in the world. With the event of death, an inheritance begins. Inheritance law is closely related to family law which plays an important role in the distribution of inheritance, and determines the family system that will be used in the distribution of the inheritance

The death of a person causes inheritance problems for the property he left behind. The property will be inherited to whom and if the heir has no descendants and his wife or husband has died earlier than the heir, those who are the heirs or who are entitled to the inheritance of the heir are his siblings. While there are siblings who have died first, but they have offspring.

So, a child can replace the position of his parents as heirs who are entitled to the inheritance of the heir, because of his position as a substitute heir.

The replacement of the place of heir is known in the Civil Code (KUHPdata), while in the Qur'an the term replacement heir is not known, but his position as an heir is directly explained in the Qur'an. Regarding the extent of his position as an heir in relation to the direct heirs he replaces, both in terms of the portion received and in terms of his position, there are no definite instructions in the Qur'an and strong Hadith.

The position of inheritance according to Islamic inheritance law applied in Indonesia (Compilation of Islamic Law) is a new thing and is the result of the *ijtihad* of the scholars on the provisions of inheritance in the Qur'an and Hadith.

DISCUSSION

The development of the era that occurred resulted in a progress in the field of Islamic inheritance in Indonesia with the recognition of a substitute heir. Substitute heirs are a new concept in Islamic inheritance law, giving the rights of an heir who has died to his descendants who are still alive. This is due to the sense of injustice experienced by the grandchildren who replace their parents and occupy the place of their parents as the heirs. A substitute heir is a person who from the beginning was not an heir, but due to certain circumstances he became an heir and received an inheritance in the status of an heir.

Understanding the existence of a substitute inheritance term allows for a new interpretation. This is a thought for and so that the daughter's granddaughter will get her rights that are different from the general opinion in Islamic inheritance law. The reaction to the desire to implement a substitute heir in the Islamic inheritance law system was finally sparked in Article 185 paragraph (1) and paragraph (2) of the Compilation of Islamic Law which turned out to be very influential in the distribution of inheritance law.

The division of inheritance in the perspective of Islamic inheritance law, used to use the patrilineal inheritance system which was also adopted by the Sunnis. At the time of the formation of *fiqh*, knowledge of the forms of society had not yet developed, so that the *fuqoha* in various schools of *fiqh* had not obtained comparisons about several inheritance systems in various forms of society. Therefore, it is not surprising that the inheritance law which was later compiled has a patrilineal pattern. According to the Sunni school of thought, there are 3 (three) principles of inheritance:

1. Female heirs cannot veil (block) further male heirs. For example, a daughter's heir cannot block a brother.

2. Inheritance through the male line takes precedence over the female line. The existence of the classification of heirs into ashabah and dzawu al-arham is a clear example. Ashabah are heirs according to a pure patrilineal system, while dzawu al-arham are women who are not dzawu al-faraid and not ashabah.⁵
3. Do not know the successor heirs, all inherit because of himself. So that the grandson whose parents died before his grandfather, will not get an inheritance when his grandfather died. Meanwhile, the siblings of the grandson's parents still receive the inheritance

However, according to Hazairin, the Sunni inheritance system with a patrilineal pattern is deemed to be incompatible with the sense of justice of the people in Indonesia, which is generally bilateral in terms of inheritance. The Qur'an cannot provide unfair provisions for Muslims. The basis is Surah An-Nisa (4) verses: 7, 8, 11, 12, 22-24 and 176. Surah An-Nisa provides provisions that the inheritance system desired by the Qur'an in addition to bilateral is individual. This means that each heir is entitled to a definite share and these parts must be given to them.

Substitute heirs were previously unknown in Islamic inheritance law, because in the verses of the Qur'an that explain the field of inheritance, it is seen that the position of grandchildren, nephews, grandfathers and furthermore on the parts obtained by them.

For a group of heirs whose parts have been clearly identified and explained in the Qur'an, they are called direct heirs, consisting of children, fathers, mothers, brothers, who are heirs because of their blood relationship, while for husband and wife they are heirs. inheritance due to marital relations. In addition, there are also heirs who get a share of the inheritance due to the absence of other heirs or direct heirs. A person who occupies the position of the deceased liaison is then called a substitute heir because they are replacing the position of the heir who has died earlier.

As-Sunnah is a source of law after the Qur'an is a guide if there are rules or problems that are not contained in the Qur'an. As-Sunnah regulates inheritance for the share of grandchildren, nephews, and grandfathers as well as other heirs who are further in rank to get a share of the inheritance. However, in the Qur'an and As-Sunnah there is no detailed and unequivocal explanation regarding the share received by grandchildren, nephews, and grandfathers, as well as other heirs whose degrees are more advanced, so another way out is through *ijtihad*.

1. Substitute Heirs according to Fiqh Scholars

In classical fiqh there is no known substitute heir, because classical fiqh applies a patrilineal inheritance law system based on Arabic culture, which is very rigid in the interpretation of the Qur'an. In the Qur'an there is no term substitute heir, nor does the patrilineal inheritance system recognize the term substitute heir, there is only one person inheriting because of his position as an heir or because of himself. Substitute heirs are heirs who receive their share not the heirs they replace, which in this case means that they do not completely replace the position of the heirs who connect the successor heirs to the heirs. They receive inheritance rights because of their own position as heirs.

2. Substitute Heirs According to Hazairin

Hazairin argued that Islamic inheritance law adheres to the Bilateral inheritance system. This is based on the interpretation of the Qur'an Surah An-Nisa verse (11), that boys and girls inherit from the father's side and from the mother's side. Fathers and mothers also inherit from sons and daughters. This shows that the inheritance rights of a man and a woman are the same, meaning that both men and women inherit regardless of whether the inheritor or the heir is male or female. If Surah An-Nisa verse (11) is associated with Surah An-Nisa verse (7) it shows that the Qur'an requires a bilateral system in terms of inheritance. The replacement of place for heirs is interpreted from the verse of the Qur'an Surah An-Nisa verse (33) which is said to be the verse that underlies the existence of a substitute heir. The heirs contained in the Qur'an by Hazairin are divided into 3 (three) groups, namely:

1. Dzawul al-Faraid
2. Dzawul al-Qarabat
3. Mawali

Al-Qur'an Surah An-Nisa verse 33 contains the word *mawali*, which means For every inheritance from the property left by the mother and father and close relatives, We make his heirs. And (if there are) those whom you have sworn allegiance to, then give them their share. Verily Allah sees everything.

Mawali is also called heir because of replacement. What is meant by *mawali* are people who become heirs because there is no longer a liaison between them and the heir, because the person who is the liaison has died earlier than the heir, who should have received the inheritance if he was still alive. The heirs included in *mawali* are:

1. Descendants of the heir's children (parents)
2. Descendants of heir's siblings
3. Descendants of the line to the heir.

3. Substitute Heirs According to the Compilation of Islamic Law (KHI)

The Compilation of Islamic Law applies in Indonesia based on the Instruction of the President of the Republic of Indonesia Number 1 of 1991, and the Decree of the Minister of Religion of the Republic of Indonesia Number 1 of 1991, dated July 22, 1991. In the Compilation of Islamic Law the regulations regarding heirs and the parts obtained are contained in the Book II KHI. The provisions governing and enactment of substitute heirs in the distribution of inheritance are also contained in it which were not previously known in the Shafi'i School.

The position of inheritance according to Islamic inheritance law applied in Indonesia (Compilation of Islamic Law) is a new thing and is the result of the *ijtihad* of the scholars on the provisions of inheritance in the Qur'an and Hadith.⁶ In the Compilation of Islamic Law in Book II discussing inheritance law, based on the general provisions of Article 171 letter a it defines that inheritance law is the law that regulates the transfer of ownership rights to the inheritance (*tirkah*) of the heirs, determines who is entitled to become heirs and how much. their respective parts. ⁷

Substitute heirs are basically heirs by replacement, which can then be interpreted as people who become heirs because their parents who are entitled to the inheritance have died before the testator, so that his domicile is used by him.

In KHI, children can replace the position of parents in terms of receiving an inheritance. The heirs who replace the position of other heirs are called substitute heirs. Substitute heirs are limited to the descendants of the actual heirs. This case usually occurs in a child who died before his father, while he himself already had a child. In other words, a grandson can inherit from his grandfather. Not because of his position as a grandson, but because he used his father's position. The amount of inheritance he receives is adjusted to the amount of inheritance received by the real heirs.⁸

In Article 185 of the KHI, Paragraph (1): The heir dies before the heir, then his position can be replaced by his child, except those mentioned in Article 173. Paragraph (2): The share of the substitute heirs may not exceed that of the expert equal heir to the one being replaced.⁹ In Article 185 paragraphs (1) and (2) this has been accommodated into one article which contains a broad understanding of substitute heirs. This article covers the bilateral inheritance system that was initiated by Hazairin, and which is contained in the Qur'an Surah An-Nisa verse (7), as well as the term *mawali* which basically has similarities with the substitute heirs in the KHI.

Hazairin's *ijtihad* against the Qur'an sura An-Nisaa verse 33 gives the right to inherit to grandchildren both through sons and grandchildren through daughters, as replacement heirs from their parents who died earlier.¹⁰

Based on the study of *maqasid al-syariah*, substitute heirs can be accepted in Islamic law. It can be proven not only to fulfill the normative and basic elements of *nas sarih* such as Q.S. Al-Nisa verses 7, 8, 9, 11, 12 which aim to benefit the heirs, both in terms of philosophical, sociological and juridical. Based on the law, the change of heirs for the grandchildren of direct heirs is the most perfect legal model to understand the benefits of law and there will be no social jealousy because such a law is understandable in any *nasabiyah* kinship system (blood relations), including in Indonesia, which is known to have long enforced it, both through customary law and BW which are positive in Indonesia with a different distribution system with BW and Hazairin. While this method also does not conflict with the basic law of Islamic inheritance itself, but instead becomes an alternative idea for the benefit of the distribution of Islamic inheritance, which so far has a certain part that is not considered *maslahah* and tends to discriminate against the female *pancer* grandchildren.¹¹

The case study regarding the Substitute Heirs is based on the Decree of the Banjarnegara Religious Court No.0171/Pdt.P/2011/PA.Ba. The position case begins with the submission of a letter of determination of heirs to take care of a plot of land and buildings owned by heir Doel Jaelani bin Jaelani (deceased). Doel Jaelani bin Jaelani (deceased) died on September 25, 2007, while his wife Amien Kapsah (deceased) died first on May 23, 1995. Doel Jaelani bin Jaelani (deceased) and Amien Kapsah (deceased) have no children. However, Doel Jaelani bin Jaelani has 6 (six) siblings, consisting of 1 (one) older sister named Siti Soewarni bint Jaelani who has died, leaving 2 (two) children, and 5 (five) younger siblings, namely Siti Soenarti bint Jaelani who has died and left 8 (eight) children, Muhammad Jaelani bin Jaelani who has died and left 8 (eight) children, Sugito Jaelani bin Jaelani who is still alive, Pudji Rahardjo bin Jaelani who has died and left 3 (three) children, and Sutopo Jaelani bin Jaelani who is still alive.

The heir who dies before the heir, then his position can be replaced by his child, except those mentioned in Article 173 KHI. The application for the determination of heirs is based on Article 174 paragraph (1) letter a jo. Article 185 paragraph (1) KHI. Determination of the Banjarnegara Religious Court No.0171/Pdt.P/2011/PA.Ba. stipulates that the heirs of Doel Jaelani bin Jaelani are 2 (two) siblings who are still alive and 21 (twenty one) nephews who replace the position of their parents who have died first, because the wife of the testator has died before the heir and does not have descendants, then those who are entitled to inherit are the siblings of the heir (direct heirs) and nephews of the heir who replace the position of his parents or who are referred to as substitute heirs

Case study of the application for the determination of the Banjarnegara Religious Court No.0171/Pdt.P/2011/PA.Ba. granted because the applicants are siblings (Petitioner I) and nephews of the deceased (Petitioner II). This determination is in accordance with the petition of the applicants to the Banjarnegara Religious Court, because both the heirs and the applicants are Muslim.

Letter of Determination of the Banjarnegara Religious Court No.0171/Pdt.P/2011/PA.Ba. this can be used as authentic evidence regarding the determination of the heirs of Doel Jaelani bin Jaelani (deceased), this stipulation letter has executive power. Decisions

that have permanent legal force can be used to take care of a plot of land and buildings left by the deceased, but also other inherited assets that have not been divided and the rightful heirs of course listed in the stipulation letter are Direct Heirs (siblings who still living) and Substitute Heirs who in this case are descendants of the deceased's siblings.

Legal Considerations in Determining the Banjarnegara Religious Court No.0171/Pdt.P/2011/PA.Ba. is:

1. Whereas the petitioners are siblings and nephews of Doel Jaelani bin Jaelani (deceased) as well as substitutes for Doel Jaelani bin Jaelani's (deceased) siblings who have passed away first.
2. Whereas in strengthening the arguments for the petition, the petitioners have shown written evidence and 2 (two) witnesses and have fulfilled the formal and material requirements as appropriate, a proof that can convince the Panel of Judges.
3. That based on written evidence that Doel Jaelani bin Jaelani (deceased) and Amien Kapsah (deceased) are husband and wife and have no children.
4. That Doel Jaelani bin Jaelani (deceased) only had siblings and nephews, and no other siblings or nephews apart from the applicants.
5. That Doel Jaelani bin Jaelani (deceased) once made a statement that the deceased had no children.
6. That Doel Jaelani bin Jaelani (deceased) and the petitioners are Muslims.
7. That when Doel Jaelani bin Jaelani (deceased) passed away on September 25, 2007, the people who were alive at that time were the applicants. Therefore, based on Article 174 paragraph (1) and Article 185 paragraph (1) KHI, the applicants are the heirs of Doel Jaelani bin Jaelani (deceased). Therefore, the petition from the petitioners should be granted by stipulating that the petitioners are the heirs of Doel Jaelani bin Jaelani (deceased).

The legal considerations carried out by the Banjarnegara Religious Court on the determination of the heirs of Doel Jaelani bin Jaelani (deceased) were deemed to have been in accordance with the positive legal rules and written law applicable in Indonesia, as regulated in the KHI.

The Religious Court considers that the petition submitted by the petitioners to manage the deceased's inheritance is reasonable and not against the law.

The legal basis used as the basis for the application for determination, namely Article 174 paragraph (1) in conjunction with Article 185 paragraph (1) is appropriate and in accordance with the applicable provisions. This confirms that the determination of successor heirs has been recognized and implemented in Indonesia with due observance of the applicable written legal provisions and rules. The determination of the heirs also shows that Islam in Indonesia has tended to a bilateral inheritance legal system, so it is hoped that it can avoid problems that cause disputes, and can create a sense of justice for the heirs.

Regarding the position of the successor heirs, it is appropriate according to the scholars, in law enforcement, because there are doors of *ijtihad* that provide solutions without having to violate the rules of the Qur'an. It is seen from the point of view of life that it will bring a benefit, both in terms of its influence on human life, in family and brotherhood ties or benefit in terms of its relationship with the public and individual interests in society, and or even benefits that are universal and involve collective interests. (*kulliyah*) and benefits concerning individual interests (*farduyyah*), it is based on a general principle of Islamic law, namely that all humans are in a *tawhid* statute which is stated in the sentence *Laa ila'ha illallah* (there is no God but Allah SWT).¹²

CONCLUSION

1. The position of the substitute heir in the perspective of Islamic inheritance law is to obtain inheritance rights due to replacing the position of his parents who have died first. The position of the substitute heir is the same as the person he replaces to get the inheritance.
2. Distribution of inheritance for replacement heirs based on Stipulation No.0171/Pdt.P/Banjarnegara Religious Court granted the petition from the applicants regarding the determination of heirs because it is in accordance with the provisions applicable to Indonesian law based on Article 174 paragraph (1) letter a jo. Article 185 paragraph (1) Compilation of Islamic Law (KHI). Whereas this Article covers the bilateral inheritance system that was initiated by *Hazairin*, as well as the term *Mawali* which basically has similarities with the substitute heirs in the KHI. In Article 185 of the KHI it is not allowed to get the portion obtained by the replacement heir, it must not exceed the share of the other heirs that is parallel to the replaced heir This means that you can get according to the portion of the heirs but it is not allowed to exceed it. If interpreted broadly, then the substitute heir is a new system in the Islamic inheritance law system.
3. Legal considerations in Determination No.0171/Pdt.P/Banjarnegara Religious Court that the application submitted by the applicants to take care of the inheritance of Doel Jaelani bin Jaelani (deceased) is reasonable and not against the law. The legal basis used is Article 174 paragraph (1) jo. Article 185 paragraph (1) is appropriate and in accordance with the applicable provisions. This explains that the determination of successor heirs has been recognized and implemented in Indonesia by taking into account the applicable written provisions or rules. The determination of the heirs also shows that Islam in Indonesia has tended to the bilateral inheritance law system and is expected to avoid disputes, and can create a sense of justice for the heirs

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