

The Implications of the Heir Determination on Heirs Died at the Time the Stipulation is Filed

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ABSTRACT

Proof of being an heir is required in the process of transferring the heir's inheritance. One proof of being an heir is the determination of the heir, who has the right to inherit by a religious court. However, there are disparities in the three judges' decisions in determining heirs who have died when the decision is submitted. This article aims to analyze the basis for the judge's considerations in giving different positions to heirs who have died at the time the decision is requested, and the implications for the transfer of inheritance. This research is normative legal research by analyzing secondary data in the form of court decisions and supplemented by interviews with various sources. The research results were then analyzed qualitatively. The research results show that the judge relied on Article 174 KHI in determining heirs who had died when the application was submitted as heirs. This is appropriate, because it is in accordance with the concept of *munashakah* in jurisprudence, namely handing over the share of an heir who has died to the person who inherited it because he died after the testator and before the distribution of inheritance was carried out. Another determination does not determine an heir who has died as an heir because the heir is revealed by the heir's biological child. The implication of determining an heir for an heir who has died is that it is necessary to determine another heir for the heir who has died. This is because there are conditions that are not met for the inheritance process, namely the identity (KTP) of the heir who has died, because there are requirements that are not fulfilled for the process of inheritance assets transfer.

Keywords: heir; *munasakhah*; stipulation

INTRODUCTION

Islamic inheritance law is one of the aspects that is clearly regulated in the Qur'an and *Hadits*. Inheritance law is normally called as *faraid* law which is a part of Islamic law which regulates and discusses the process of inheritance distribution and also transfers rights and obligations of deceased person to his heir. Book 11 Article number 171 (a) Islamic law compilation defines that inheritance law is the law which regulates the ownership rights of inheritance, determines who have the rights to be the heirs and how big the share is. The right and obligation solution as a result of the death of a person is regulated by inheritance law.¹ According to Wirjono Prodjodikoro (former Chief Justice of the Supreme Court of the Republic of Indonesia), the definition of inheritance law is a matter of whether and how various rights and obligations regarding a person's wealth at the time of his death will be transferred to other living people.² Islamic inheritance law that regulates the shares of heirs based on justice between the interests of the family, religion and society.³ Syafi'i said that a Muslim

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¹ Muhamad Romdoni, "Analisis Yuridis Terhadap Penetapan Ahli Waris Pengganti Menurut Kompilasi Hukum Islam", *Skripsi*, Institut Agama Islam Negeri Sultan Maulana Hasanuddin Banten, 2017, p. 1.

² Fathur Rozy, "Keabsahan Akta Hibah Waris Yang Melebihi Legitieme Portie Ditinjau dari Kitab Undang-Undang Hukum Perdata", *Jurnal Hukum Unisma*, Vol 2, Februari, 2018, p. 25.

³ Nurul Muthahharah, "Sistem Munasakhah dan Plaatsvervulling", *Jurnal Qadauna*, Vol.1, Oktober, 2020, p. 12.

is forever bound to implement Islamic law wherever he is, whether in a jurisdiction that applies Islamic law or in a jurisdiction that does not apply Islamic law.⁴

In inheritance there are three conditions of inheritance, the first is the existence of a person who dies (deceased person), the second is the existence of people who are still alive as heirs who get the right of inheritance from deceased person (heir), and the third is the existence of property left by deceased person (inheritance). Inheritance will be carried out after someone dies leaving property and there are heirs who has the rights of the inheritance. In Islam, the determination of an inheritance relationship between a person and another is caused by two factors, they are the existence of blood relations and marital relations.⁵ Islamic inheritance law also develops according to changing times and one of the changes is regarding the provisions of heirs. Initially, an heir in the sense of Islamic inheritance law is someone who is still alive, but then the heir has a growing meaning, such as if he dies, will still be the heir and his share will be received by his descendants or successor heirs.⁶

The issue of inheritance has become a problem that has occurred since ancient times until now.⁷ In fact, to this day the case of determining the heirs or the division of inheritance is the second most common case after divorce cases. Especially in Indonesia this is due to the lack of fairness in the distribution of inheritance which ultimately creates new problems among the heirs, then the lack of knowledge about the importance of the division of inheritance which causes Indonesian people to underestimate and delay the division until it is protracted which ultimately creates new problems in the inheritance system, namely the occurrence of multilevel inheritance (*munasakhat*).

Islamic inheritance law recognizes 3 (three) groups of heirs, namely: First, the group of heirs *dzawil furud* (the shares are determined) is a group whose heirs have received a definite share that have been determined in the Qur'an or as well as mentioned in the Compilation of Islamic Law. Second, the group of heirs whose share is not determined or commonly called *ashabah* is the heir who gets the remaining share or it is not determined. Third, the group of heirs who get a share as successor heirs. Surat Edaran Mahkamah Agung No. 3 of 2015 states that successor heirs are only up to the degree of grandchildren, if the heir has no children but has siblings who died first, then the son of the sibling becomes the heir, while the daughter of the sibling is given a share with a mandatory will.⁸

The principle of inheritance distribution is carried out by giving the inheritance to the *dzawil furudl* heirs first, then the rest is given to the *ashabah* heirs.⁹ The group of heirs who get a share as successor heirs can get inheritance property if there is a remaining property after taking the share of *dzawil furudl* heirs, but there are no *ashabah* heirs.¹⁰ Heirs must be alive when the inheritance dies.

⁴ Hajar M, "Dimensi Keadilan Pada Penetapan Ahli Waris", *Asy-Syir'ah Jurnal Ilmu Syari'ah dan Hukum*, Vol. 47, Juni, 2013, p. 113.

⁵ *Ibid.*

⁶ Destri Budi Nugraheni dan Haniah Ilhami, *Pembaruan Hukum Kewarisan Islam di Indonesia*, Gadjah Mada University Press, Yogyakarta: 2014, p. 1.

⁷ Diffada Achmadiansyah, "Penyelesaian Perkara Kewarisan Bertingkat Perspektif Maqashid Syariah", *Sakina: Journal of Family Studies*, Vol.6, Januari, 2022, p. 65.

⁸ Supreme Court Circular Letter Number 3 of 2015 Room Formula Number: AGAMA/9/SEMA 3 2015.

⁹ Destri Budi Nugraheni, "Rekonseptualisasi dan Kontekstualisasi Asas Egaliter dalam Hukum Kewarisan Islam di Indonesia", *Disertasi*, Universitas Gadjah Mada, p. 68.

¹⁰ *Ibid.*

If at the time of the distribution of the inheritance, there are heirs who die, then *munasakhah* is done.¹¹ In *Islamic fiqh*, it is known as *munasakhah*, it is transferring the heir's share to the person who inherits it, because he has died before the distribution of inheritance is carried out.¹² *Munasakhah* in inheritance is the death of a person before his inheritance is distributed, then there is another death of one or more people who are entitled to receive it, so that there is a transfer of rights to his heirs because he has died before the distribution of the inheritance carried out.¹³ According to As-Syayyid As-Syarif, *ta'rif munasakhah* is to transfer the share of some heirs to the one who inherits it, because of his death before the division of the estate is carried out.¹⁴

Fatwa or stipulation of heirs in Islamic law is issued by Religious Court. The stipulation of heirs for *Muslims* is issued by Religious Court at the request of the heirs, the legal basis is Article 49 letter b of Law No. 3 of 2006 concerning Amendments to Law No. 7 of 1989 concerning Religious Courts. One of the implications of determining heirs is in terms of transfer of the rights (Religious Court Law). Article 111 of Regulation of the Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency Number 16 of 2021 Concerning the Third Amendment to Regulation of the Minister of Agrarian Affairs/Head of the National Land Agency Number 3 of 1997 Concerning Provisions for the Implementation of Government Regulation Number 24 of 1997 Concerning Land Registration, states that the petition for registration of the transfer of Land Rights or Property Rights on a Flat Unit is submitted by the heirs or their proxies by attaching evidence of being an heir, one of which is a court decision.

Faraidh, as the Islamic law of inheritance is known, has received great attention because the distribution of inheritance often has unfavorable consequences for the family of the deceased heir.¹⁵ The researcher found that there was a stipulation of heirs applied to Religious Court and determined that the heirs who had died were determined as heirs and the Judge actually knew that the heirs had died before the petition was submitted. The stipulation is Number: 437/Pdt.P/2020/PA.JS, the case illustration is the heir died in 2018 and left the heirs of the biological mother, wife, and daughter. In June 2020, the biological mother of deceased person passed away. Then in August 2020, the wife and daughter of deceased person filed a petition to determine successor heirs to South Jakarta Religious Court and to determine the share of each in accordance with applicable law. The result of the petition for stipulation was the Judge determined that the heirs were the biological mother, wife, and daughter. The biological mother was determined as the heir even though the Judge knew that she had passed away.

¹¹*Ibid.*

¹²*Ibid.*

¹³Fatahullah, Sugiyarno, dan Ita Surayya, "Antara Munasakhah dan Ahli Waris Pengganti pada Putusan Nomor: 0311/Pdt.G/2009/PA.Sel". *Jurnal IUS*, Vol VI, April, 2018, p. 117.

¹⁴Rukiah, "Sistem Munasakhah dalam Kewarisan", *Diktum : Jurnal Syariah dan Hukum*, Vol. 12, Oktober, 2014, p. 90.

¹⁵Wahidah, "Kasus Munasakhah Pada Tiga Kabupaten di Kalimantan Selatan", *Jurnal Tashwir*, Vol. 3, Desember, 2015, p. 64.

A similar stipulation is number: 928/Pdt.P/2022/PA.Badg. The illustration of the case happened in 2011 the child/brother named Pewaris (deceased person) passed away. At the time of his death, Pewaris had some heirs, they were: mother, wife, sister, and brother. Several years later, in 2016, his biological mother passed away, then in 2019 his brother passed away. On September 28, 2022, the Petitioners, the wife and sister of the Heir, filed a petition for heir stipulation to Bandung Religious Court. The results of the petition pulation is the Judge determined that the heirs were the mother, wife, sister, and brother. The biological mother and brother were determined as heirs even though the Judge knew that his biological mother had passed away.

The above stipulation is different from stipulation number 16/Pdt.P/2023/PA.JB. The illustration of the case is that the Heir died in 2019 and he had biological mother, wife/widow, and 3 biological children as his heirs. In 2021, his biological mother passed away. Then in 2023, his wife and children filed a petition for heir stipulation to West Jakarta Religious Court to determine them as the heirs and it would be used to take care of the Sale and Purchase Deed and other unlimited documents for administrative needs on behalf of deceased person. The result of the petition was that the Judge determined the heirs were his wife and 3 biological children. The mother who has died after the deceased person did not determine as the heir.

Regarding to the 3 stipulations above, there are two same stipulations and one different stipulation. The first and second are Stipulation Number 437/Pdt.P/2020/PA.JS and 928/Pdt.P/2022/PA.Badg, they states that there are heirs who have passed away at the requested stipulation time, he will be the heirs. Different from Stipulation Number: 16/Pdt.P/2023/PA.JB, heirs who have passed away at the requested stipulation time, he will not be determined as heirs. Based on this background, this research will discuss the "Implications of the Heir Stipulation of the Heirs died at the Requested Stipulation Time (Study of Stipulation Number: 437/Pdt.P/2020/PA.JS, Stipulation Number: 928/Pdt.P/2022/PA.Badg, and Stipulation Number: 16/Pdt.P/2023/PA.JB)".

As far as the author observes, there is no research that researches the position of the heirs who have died at the time stipulation is filed. Existing research so far is about the stipulation of the heirs, the judge's consideration regarding the stipulation. One of the research is "The Determination of the Heirs and the Division of the Inheritance by H. Moh. Aminuddin"¹⁶ This research is different, because no one has researched the context when the heir is determined as an heir even though his position has died. Another research is written by Muhamad Romdoni with the title "Juridical Analysis of the Determination of Substitute Heirs according to the Compilation of Islamic Law (Study Analysis of Serang Religious Court Determination Number 148/Pdt.P/2012/PA.Srg)".¹⁷ This research is focused on research in the form of an analysis study of the determination of the Serang Religious Court Number 148/Pdt.P/2012/PA.Srg regarding the determination of substitute heirs. The difference with the research that the researchers studied is that the research emphasizes more on who is entitled to be a substitute heir, while the research that the researchers studied analyzes the position of the deceased heir at the time the stipulation is filed.

¹⁶H. Moh. Aminuddin, "Penetapan Ahli Waris dan Pembagian Warisan", *Media Bina Ilmiah*, Vol. 13, Januari, 2018, p. 102.

¹⁷Muhamad Romdoni, "Analisis Yuridis Terhadap Penetapan Ahli Waris Pengganti Menurut Kompilasi Hukum Islam", Skripsi, Institut Agama Islam Negeri Sultan Maulana Hasanuddin Banten, 2017, p. 1

METHODS

This research applies normative legal research methods. Normative research is conducted with the intention of providing legal arguments as a basis for determining whether the case is right or wrong and how good the event is according to the law.¹⁸ This is a descriptive research. The data used comes from secondary data, one of which is court decisions. Data extraction is carried out by means of literature studies and interviews to several sources, including Judges of Religious Court, Academics, and PPATs. After all data are collected, they are processed and analyzed qualitatively. Furthermore, descriptive conclusions are drawn from the formulation of existing problems.

DISCUSSION

The Analysis of Judges Consideration in Stipulation Number: 437/Pdt.P/2020/PA.JS, Stipulation Number: 928/Pdt.P/2022/PA.Badg, and Stipulation Number: 16/Pdt.P/2023/PA.JB

In the stipulation Number: 437/Pdt.P/2020/PA.JS and the Stipulation Number: 928/Pdt.P/2022/PA.Badg, the Judge determined that the heirs who had passed away was determined as heirs and received inheritance shares. Meanwhile, in Stipulation Number: 16/Pdt.P/2023/PA.JB, the Judge determined that the heirs who had died was not determined as heirs. The Panel of Judges gave different opinions about the position of the heirs who had died at requested stipulation time. Juridically and philosophically, Judges in Indonesia have the obligation or right to carry out legal interpretation or legal discovery so that the decisions they make can be in accordance with the law and a sense of public justice.¹⁹

Judges Interpretation is an explanation that must lead to the implementation that can be accepted by the community regarding legal regulations on concrete events.²⁰ Judges will process both available and unavailable legal sources, by taking the main reference from certain sources which are hierarchically consecutive and stratified starting from written law as the main sources.²¹ If they are not found, the references would be customary or unwritten law, jurisprudence, and up to international treaties, doctrine and science.²² The Judge will know the facts or events from from both evidence and witness statements during the court process. Therefore, it is known that the Judge's decisions must be considered correct or *res judicata pro veritate habetur*. The principle of *res judicata pro veritate habetur* is a principle which means that what the judge decides must be considered correct and must be implemented.²³

¹⁸Mukti Fajar, Yulianto Achmad, *Dualisme Penelitian Hukum Normatif & Empiris*, Pustaka Pelajar, Yogyakarta: 2017, p.190.

¹⁹Nanda Syah Putri, "Analisis Perbandingan Pertimbangan Hakim dalam Menetapkan Dispensasi Kawin (Studi Putusan Nomor: 524/Pdt.P/2020/PA. Sor dan Putusan Nomor: 352/Pdt.P/2021/PA.Sgi)", *Skripsi*, Universitas Islam Negeri Ar-Raniry Banda Aceh, p. 54.

²⁰*Ibid.*

²¹Joko Widarto, "Penerapan Asas Putusan Hakim harus Dianggap Benar (Studi Putusan MK Nomor: 97/PUU- XI/20130)", *Lex Jurnalica*, Vol. 13 Nomor 1, April, 2016, p. 98.

²²*Ibid.*

²³Ade Chandra Kurnia Purwanto, Moh. Saleh, "Penerapan Asas *Res Judicata Pro Veritate Habetur* pada Putusan PN Jakarta Nomor: 757/Pdt.G/2022/PN.Jkt.Pst", *Jurnal Hukum*, Vol. 20, Oktober, 2023, p. 64.

Zamzami and Habiburrahman, two Supreme Court judges in their dissertation explained that Islamic inheritance law originates from the arguments of the Quran and hadith which are further outlined in the books of *fiqh*.²⁴ However, since the birth of KHI (Compilation of Islamic Law), the *fiqh* books cannot be used as the main reference for judges.²⁵ The results also show that judges in the religious courts have made KHI a binding legal basis in deciding cases, especially in the field of marriage and inheritance law. Some of the reasons given by the judges are:²⁶

1. KHI can fill the legal vacuum in the field of inheritance
2. KHI as a form of unification of some of the provisions of Islamic law in Indonesia can be used by all judges in the scope of religious courts so that differences in decisions on similar cases can be avoided.
3. KHI binds judges in order to realize legal certainty. Judges are morally free to formulate considerations that form the basis of their decisions. But at the same time, this freedom can lead to legal uncertainty if similar cases are decided differently due to differences in the legal basis used. By using KHI as the legal basis, legal certainty is more easily realized because there is a common guide for judges in issuing their decisions.
4. KHI is binding on judges because it has been used in previous judicial decisions which then become jurisprudence and bind other judges. With the binding of KHI through jurisprudence, it will be able to realize the state of unified legal opinions and not give birth to disparities in decisions among judges.

The consideration of the Judges at South Jakarta Religious Court refers to the provisions of the Compilation of Islamic Law Article 171 letter c, which states "what is meant by heir is a person who at the time of death has a blood relationship or marital relationship with the heir, is Muslim and is not prevented by law from becoming an heir". The judge consideration is based on the time when the heir died because the biological mother of deceased person had died after the deceased person and he had other living heirs besides the deceased person, he is petitioner 1 (the brother of the deceased person). So, the deceased mother is determined as the heir.

Judges Consideration at Bandung Religious Court referred to the provisions of the Compilation of Islamic Law Article 171 letter c, which states "what is meant by heir is a person who at the time of death has a blood relationship or marital relationship with the heir, is Muslim and is not prevented by law from becoming an heir". The Judge consideration was based on the time the heir died. Because

²⁴Al-fiqh in Arabic means al-fahm or understanding, while terminology means knowing the laws of shara' relating to practical practice, which is obtained from examining detailed shara'a propositions, Wahbah Az-Zuhaili, *Fiqh Islam wa Adilatuhu*, Vol. 1, *Gema Insani*, Jakarta, p. 27, while Rofiq simply defines fiqh as a formulation of understanding from shari'at, Ahmad Rofiq, *Contextual Fiqh from Normative to Social Interpretation*, Student Library, Yogyakarta, p. 3.

²⁵Habiburrahman, *Rekonstruksi Hukum Kewarisan Islam di Indonesia*, Prenada Media Grup, Jakarta: 2011 and Mukhtar Zamzami, *Perempuan dan Keadilan dalam Hukum Kewarisan Indonesia*, Kencana Prenada Media Group, Jakarta: 2013, p. 3. KHI was prepared by a Project Implementation Team appointed by a Surat Keputusan Bersama (SKB) of the Chief Justice of the Supreme Court of the Republic of Indonesia and the Minister of Religious Affairs No. 07/KMA/1985 and No. 25 of 1985 dated March 25, 1985. The idea of drafting was due to the confusion of Islamic law applied in the Religious Courts due to differences of opinion of scholars in almost every issue, *Ibid*, p. 70.

²⁶Destri Budi Nugraheni, Haniah Ilhami, and Yulkarnain Harahab, "Regulation and Implementation of Compulsory Wills in Indonesia", *Jurnal Mimbar Hukum*, Vol. 22, February, 2010, p. 315. The resource persons in this research are 6 judges and 2 lecturers of UIN Sunan Kalijaga Yogyakarta. The resource persons consisted of two high court judges, two judges from Sleman Religious Court, one judge from Yogyakarta Religious Court, and one judge from Bantul Religious Court.

the mother and brother of deceased person have died after the deceased person and they still had other heirs, namely Petitioner 2 (the deceased person's sister). Therefore, the deceased mother and brother were determined as heirs.

Judges' consideration at West Jakarta Religious Court referred to the petition was filed by biological mother of the deceased person, named Omonah, passed away and there were no other heirs because they had been veiled by the existence of biological children. Therefore, in this stipulation, Omonah (the biological mother of the deceased person) was no longer mentioned as the heir of the late Makmun bin H. Muha.

The decisions show that the above stipulations have similarities and differences. The similarities are the existence of heirs who have passed away at the requested stipulation time and they have other successor heirs. The difference is in the stipulations of West Jakarta Religious Court and Bandung Religious Court, the deceased heirs are determined as heirs. In contrast the stipulation of West Jakarta Religious Court, the deceased heirs are not determined as the heir.

According to Khoiriyah Roihan,²⁷ heirs are people who are still alive when the intestate dies. Inheritance arises after he has died, in accordance with one of the principles in Islamic inheritance law, namely the principle of inheritance due to death. So automatically if there is someone dies, from that moment on, his property and debts will be transferred to the heirs. Continuously, he said that in the stipulation of South Jakarta Religious Court, the biological mother of the deceased person is the heir. In the Bandung stipulation, mother and siblings of deceased person are also the heirs. In the West Jakarta stipulation, the biological mother of deceased person should also be the heir. This is because in the three stipulations, the heirs who have passed away at the requested stipulation time were still alive when the intestate died and both of them still have living heirs. Therefore, according to the law, the heirs who have passed away at the time the stipulation is requested and still have living heirs are the heirs.

According to Khotibul Umam,²⁸ the Judge's consideration in Stipulation Number: 437/Pdt.P/2020/PA.JS and Stipulation Number: 928/Pdt.P/2022/PA.Badg is that the Judge observed the timeline when inheritance occurs, that is when the intestate died and left some heirs. Then, when the petition for the heir stipulation was filed in South Jakarta Religious Court, the Judge found the fact that the biological mother of deceased person passed away but she still had a living heir, that is his brother. In the Bandung decision, the judge also found the fact that the mother and brother of the intestate had passed away, but they still had a living heir, that is the intestate's brother. Stipulation of West Jakarta Religious Court Nomor: 16/Pdt.P/2023/PA.JB states that the judge observed the actual time when the petition was filed and whether there were living heirs at that time.

According to the sources and the researcher, the judge's considerations in the stipulation of South Jakarta Religious Court and Bandung Religious Court are appropriate, because in *Islamic fiqh*

²⁷ Interview with Mrs. Khoiriyah Roihan, as a Judge of the Sleman Religious Court, on April 13, 2023.

²⁸ Interview with Mr. Khotibul Umam, as a Lecturer in Islamic Law at Gadjah Mada University, on June 06, 2023.

the concept of *munasakhah* is known, that is transferring the heir's share to the person who inherits it, because he has died before the distribution of inheritance is carried out. According to H. Adi, the *munasakhah* inheritance pattern occurs when the distribution of inheritance is not done immediately at the time of the death of the intestate. There is a longtime lag so that some of the heirs have passed away. Therefore, inevitably there is a multilevel division of inheritance. For example, A (male) is married to B (female), has 3 (three) children, namely C (male), D (female) and E (male). E then married a woman named F, and from this marriage a son named G was born. In 2016, A passed away but his inheritance had not been distributed to his heirs, namely B, C, D and E, up to 2017, E passed away. In 2018, when A's inheritance was about to be distributed, E was still A's heir, so E's share was given to his heirs, namely B (mother), G (E's son), and F (E's widow).²⁹ Another form of *munasakhah* is when the heirs in the first death are the same as the heirs in the second death. For example, the intestate leaves heirs of 3 (three) daughters. When the division of inheritance is carried out, one daughter has died and leaves no heirs. In the case, the distribution of the heir's property can be directly given to the two daughters.³⁰ So, each daughter gets a 2/3 share and is called a direct heir.

According to Khoiriyah Roihan, there is the concept of *munasakhah* in the stipulations of South Jakarta Religious Court, Bandung Religious Court, and West Jakarta Religious Court. Stipulation of South Jakarta Religious Court, the retestate's biological mother still has a living heir, that is her brother. Stipulation of Bandung Religious Court, the mother and brother of retestate still have living heirs, she is the retestate's sister. The South Jakarta stipulation states that the retestate's mother still has a living heir, namely the retestate's sister. Through the *al-munasakhah* approach, the interests of each heir can be preserved to get their respective shares of the deceased's estate. This advantage can be seen in helping those who are directly involved in faraid administration.³¹

In addition to the concept of *munasakhah*, in the stipulations of South Jakarta Religious Court and West Jakarta Religious Court there is also a successor heir. The existence of a grandchild who is entitled to receive part of the inheritance as a substitute for his parents (intestate) who have died before the mother. In that condition, the share obtained by brother will also be shared to the grandchild as retestate's child. The successor heir in the South Jakarta stipulation, the child of the retestate named Nyimas Citra Imania binti Kemas Azhari (Petitioner 2). The successor heirs in the West Jakarta stipulation are the deceased person's children Anita May Lani binti Makmun, Adrian Maulana bin Makmun, and Alfiansyah Saputra bin Makmun (Petitioner).

The position of replacement heirs in Islamic Law is based on Article 185 of the Compilation of Islamic Law. Replacement heirs occurs when heirs die earlier before the share distribution, so their positions can be replaced by their children. They inherit the shares of which they replaced, the descendants of a brother or sister (siblings, fathers or mothers) inherit the shares which they replaced, paternal grandparents inherit the portion of the father, each sharing equally, maternal grandparents inherit the portion of the mother, each sharing equally, paternal uncles and aunts and

²⁹Destri Budi Nugraheni, *Op.Cit.*, p. 68-69.

³⁰*Ibid.*

³¹Zahari Mahad Musa, "Penyelesaian Kes Faraid Berangkai melalui Pendekatan Al-Munasakhah: Tumpuan Kes Faraid dalam Mazhab Syafie", *Ulum Islamiyyah: The Malaysian Journal of Islamic Sciences*, Vol. 25, Desember, 2018, p. 88.

their descendants inherit the portion of the father if there are no paternal grandparents, maternal uncles and aunts and their descendants inherit the maternal share in the absence of maternal grandparents.³² Surat Edaran Mahkamah Agung Nomor 3 Tahun 2015 states that successor heirs are only up to the degree of grandchildren, if the deceased person has no children but has siblings who died first, then the son of the sibling is the heir, while the daughter of the sibling is given a share by mandatory will.³³

Book II of MA provides an example with the following illustration: A (husband) and B (wife) have children C, D (boy) and E (girl). A passed away in 1955. B passed away in 1960. D died in 1975 leaving 3 children F, G (male) and H (female). The division of inheritance: A's heirs are B, C, D and E. B's heirs are C, D and E. D's heirs are F, G (male) and H (female). Then the verdict must read as follows:

1. Grant the Plaintiff's claim in whole/part;
2. Determine that A's heirs are B, C, D and E;
3. Determine that A's inheritance is X
4. Determine the share of each heir A is as follows:
 - a. B gets $1/8 \times X$;
 - b. C obtains $2/5 \times (7/8 \times X)$;
 - c. D gets $2/5 \times (7/8 \times X)$;
 - d. E gets $1/5 \times (7/8 \times X)$;
5. Determine that B's heirs are C, D and E;
6. Determining that B's inheritance is Y;
7. Determining the shares of heir B are as follows:
 - a. C gets $2/5 \times Y$;
 - b. D obtains $2/5 \times Y$
 - c. E gets $1/5 \times Y$;
8. Determine that D's heirs are F, G and H;
9. Determining that D's inheritance is N;
10. Determining the shares of D's heirs are as follows:
 - a. F gets $2/5 \times N$;
 - b. G obtains $2/5 \times N$
 - c. H gets $1/5 \times N$.

Book II of MA explains that the distribution of inheritance whose heirs have been stratified due to the protracted period of undistributed inheritance must be distributed clearly to the heirs and their inheritance in each level. Thus, in the stipulation that determines the heirs who have died, it must also be stated who the living heirs are.

³²Second Book Supreme Court of Republic Indonesia Directorate General of Religious Court, Revised Edition, 2014, Guidelines for the Implementation of Duties and Administration of Religious Courts., p. 162-16.

³³Supreme Court Circular Letter Number 3 of 2015 Room Formula Number: AGAMA/9/SEMA 3 2015.

According to the researcher, the Judge consideration in the West Jakarta stipulation is not appropriate. The deceased person's biological mother who died after him should be the heir. The Judge consideration which determined that the mother did not rank as the heir was because when this application was filed, the deceased person's biological mother, named OMONAH, had passed away and there were no other heirs because they were already veiled by the existence of biological children. According to the author, what is discussed is the position of the mother, not the siblings. Thus, the mother is not veiled by the deceased person's biological children because of the position of mother as a direct heir, equal to his biological children. So, the Judge should determine that the mother is the heir of the deceased person who will later be replaced by the living heirs of the mother, namely witness 1 (the sister of the Heir). Therefore, the researcher argues that the results of the stipulation in South Jakarta Religious Court and Bandung Religious Court are more appropriate than the stipulation of West Jakarta Religious Court due to the concept of *munasakhah* in Islamic fiqh in determining the heirs who have died at the time the stipulation is filed.

Article 185 KHI states that, "Heirs who die earlier than the testator, his position can be replaced by his children, except those mentioned in Article 173." Article 173 KHI, "A person is prevented from becoming an heir if by a judge's decision that has permanent legal force, convicted of:

1. Blamed for killing or attempting to kill or severely persecuting the heirs;
2. Is guilty of slanderously filing a complaint that the testator has committed a crime punishable by 5 years imprisonment or a heavier penalty.

In this research, heirs are referred to as *munasakhah*, not substitute heirs. *Munasakhah* is transferring the heir's share to the person who inherits it, because he has died before the distribution of inheritance is carried out. According to H. Adi, the *munasakhah* inheritance pattern occurs when the distribution of inheritance is not done immediately at the time of the death of the intestate.

The Implication of Determination of Heirs who have Died at the Time the Stipulation Filed

Implication is a direct result that occurs because of something such as a discovery or research result. The word implication has a wide enough meaning that is quite diverse. Implication can be defined as a result that occurs because of something. According to the Kamus Besar Bahasa Indonesia (KBBI), the meaning of implication is involvement or entanglement. So that every affix word comes from implication such as the word implicate or imply, which means to bring about involvement or involve with something. So, from the above opinion, it can be concluded that implication is a direct consequence of the findings of scientific research, which in this case is a heir stipulation.

A stipulation is a court decision on a petition (voluntary) case. Determination is a *valuntaria* jurisdiction (not a real court). It is said to be not a real court because there is only a petitioner who requests to be determined about something, while he does not fight the opponent. Because the stipulation appears as a court product on the petition of an unopposed petitioner, the dictum of the stipulation will never read "punish" but only state (*declaratoire*) or create (*constitutive*).³⁴ In the

³⁴ Arin Fahmiya, "Analisis Putusan tentang Pembatalan Penetapan Ahli Waris", *Skripsi*, Universitas Islam Negeri Maulana Malik Ibrahim, 2018, p 26.

stipulation, there is only a petitioner and no legal opponent, in this case the Judge does not use the word "adjudicate", but simply uses the word "stipulate".³⁵

In the South Jakarta Religious Court ruling, the petitioner requested to determine who the heirs of the deceased Kemas Azhari Bin Memed Ismail must be in accordance with Islamic Inheritance Law and determined the inheritance portion of each heir in accordance with applicable legal provisions. In the Bandung Religious Court decision, the Applicant intends to determine the Heirs of the Heir in order to fulfill the administrative requirements and letters relating to the management of the inheritance of deceased person including for the interests or needs of the administration of the Notary on behalf of deceased person.

One of the urgencies of heirs determining is in the case of transfer of rights. Article 111 of the Regulation of the Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency Number 16 of 2021 states that the application for registration of the transfer of land or property rights over a flat unit is submitted by the heirs or their proxies by attaching a proof letter as an heir in the form of a court decision. If the object of transfer of rights is inherited land, the heirs must fulfill the material and formal requirements. The material requirement in land inheritance is that the heirs must meet the requirements as the subject of the land rights that are the object of inheritance.³⁶ The formal requirements in the registration of land inheritance are the existence of a death certificate of the land rights holder (deceased person) issued by the authorized agency and an heir certificate issued by the authorized agency.

According Giardi Suharjanto³⁷, it does not matter if the object of transfer of rights is in the form of movable assets. They are divided according to the shares of each heir, for example in the South Jakarta Religious Court determination, the mother (Cek Mas) obtained 96/456 shares of the movable assets, the heir's child (Nyimas Citra Imania) obtained 288/456 shares of the movable assets, the heir's wife (Vivien Pertina) obtained 72/456 shares of them. Then, deliberations were held between the heirs who had responsible for handing over the movable asset to the rightful heirs.

It can be concluded that the heir determination of heirs who have died at the time the stipulation were filed is in the case of transfer of rights in the determination of the South Jakarta Religious Court and the Bandung Religious Court cannot be done. Due to an unfulfilled requirement, that is the identity of all heirs. The implication is that the heir determination must first be made to know the successor heirs. The implication on the determination of South Jakarta Religious Court is that the heir determination of the mother is needed.

In the determination of Bandung Religious Court, it is necessary to determine the heirs of the mother and her brother. Book II of MA explains that the division of inheritance whose heirs have been

³⁵Dewiatul Mujayana, *Akibat Hukum Penggantian Nama Anak Terhadap Legalitas Status Hukum Anak*, Perpustakaan Unej, Jember: 2015, p. 17.

³⁶Christiana Sri Murni, "Pendaftaran Peralihan Hak Atas Tanah karena Pewarisan", *Lex Librum: Jurnal Ilmu Hukum*, Vol. 6, Juni, 2020, p. 50.

³⁷Interview with Mr. Giardi Suharjanto, as the Land Deed Official (PPAT) of Magelang City, on April 18, 2023.

stratified as a result of the protracted inheritance is not divided; it must be carried out clearly dividing of the heirs and the inheritance property in each level. Thus, in the decision that determines the heirs who have died, their living heirs must also be stated.

Based on the researcher, the stipulation of West Jakarta Religious Court which stipulates that the heirs who have passed away at the time stipulation is filed are not determined as heirs is unfair. In Islamic inheritance law, there is *Ijbari* principle. This principle regulates that when someone dies (*Muslim*), his relatives immediately become heirs (relatives by blood or marriage), and there is no right for these relatives to refuse as heirs or think in advance whether to refuse or accept as heirs. The heir who has passed away at the time stipulated is filed actually has the right to the property deceased person. Although he has passed away, he still has a living heir that is his sibling.

CLOSING

Based on the description above, it can be concluded as follows. First, the basis of the Judge consideration in the South Jakarta Religious Court stipulation is based on when the deceased person's heirs died because his biological mother died after him and she still has other living heirs besides the deceased person, that is witness 1 (deceased person's brother). Therefore, the deceased mother is determined as the heir. The basis of the Judge consideration in the Bandung Religious Court stipulation is based on when the deceased person's heirs died. Because the mother and brother of the deceased person died after him and his mother and siblings still have other living heirs besides him, that is petitioner 2 (deceased person's sister). Therefore, the deceased mother and brother are determined as heirs. The basis of the Judge consideration in the West Jakarta Religious Court stipulation is based on the fact that when this petition was filed, the deceased person's biological mother had passed away and there were no other heirs because she had been veiled by the existence of the deceased person's biological son. Therefore, in this determination the biological mother of the deceased person is no longer mentioned as the heir. According to the researcher, the judge consideration in the determination of South Jakarta Religious Court and Bandung Religious Court is more appropriate, because in *Islamic fiqh* there is a concept of *munasakhah*. The researcher believes that the judge consideration in the West Jakarta Religious Court stipulation is less precise because what is discussed in this determination is the position of the biological mother, not the siblings. Consequently, the mother is not veiled by the deceased person's biological children.

Second, the implication of the heir determination of heirs who have died at the time the determination is filed is because in the determination of South Jakarta Religious Court and Bandung Religious Court, there are deceased heirs, so that the transfer of rights cannot be carried out. It is because of unfulfilled requirements for registration of the inherited land. The implication is that re-submission of heirs determination is necessary to get successor heirs. In the stipulation of South Jakarta Religious Court, it needs to determine the heirs of the mother but in the determination of Bandung Religious Court, determining not only the heirs of the mother but also of her brother is important.

In this research, the authors have suggestions that are considered necessary related to the problems in this research, first, the Panel of Judges of the Religious Court in determining someone as an heir must be clear and firm, in this case if there is an heir who has died and he is determined as an heir, it should also be stated who will replace his position and receive his share. Second, it is better to make a regulation that has binding legal force regarding the position of heirs who have died after the heir at the time the determination of the heir is requested.

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