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**CASE STUDY SURABAYA RELIGIOUS COURT
JUDGEMENT ABOUT GRANDCHILDREN AS
SUBSTITUTE HEIRS WHO CONTROL INHERITANCE
JUDGING FROM ISLAMIC LAW**

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ABSTRACT

Inheritance is an important part of one legal event, namely death. The legal consequences that arise are the management and continuation of the rights and obligations of someone who has died. This paper examines the juridical aspect of inheritance distribution to grandchildren as substitute heirs who control the inheritance. The research method used is a normative juridical approach with analytical descriptive specifications. The purpose of this study is to determine the position of the substitute heir who controls the inheritance in obtaining a share of the inheritance. Grandchildren as substitute heirs according to Islamic Law are not entitled to control and obtain inheritance. However, in KHI, grandchildren as heirs have the right to inherit no more than the other heirs, which is only 1/3 of the share.

Keywords: inheritance, inheritance law, substitute heirs.

INTRODUCTION

Inheritance is part of family law which plays an important role to determine the end of the journey of life of a human being in the family law system that applied in the behaviors of society, namely through the event of death¹. Legal consequences arising through the event of death are legal problems related to the maintenance and continuation of the rights and obligations of someone who has died, so that inheritance law is present to resolve the arrangement of the inheritance.²

The community is experiencing changes in the times seen by the increasingly complex needs of the community, Inheritance law participated in meaningful develops including arrangements regarding replacement heirs in Islamic inheritance law. Indonesia adhered to the application of the Islamic inheritance law system which is regulated through the Qur'an, Hadith, and Presidential

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¹ Suparman, Usman. (1993). *Ikhtisar Hukum Waris Menurut Kitab Undang-Undang Hukum Perdata (Burgerlijk Wetboek)*. Serang: Darul Ulum Press. p. 122.

² Suparman, Eman. (2011). *Hukum Waris Indonesia*. Bandung: Refika Aditama. p. 1.

Instruction Number 1 of 1991 on the enactment of the compilation of Islamic law, hereinafter referred to as KHI, where KHI is sourced from scholars who take the legal basis of the *ma'waris Fiqh* books.³

Successor heirs are clearly not regulated in the Qur'an, but the position of the successor heirs as heirs can be known through the expansion of the definition of heirs described in the Qur'an. Inheritance arrangements contained in the Qur'an surah An-Nisaa verse (7), (11), (12), (33), (176), while in other inheritance arrangements are also contained through *al-Hadith*, *ijma* and *ijtihad* of the companions, *imam mazhab*, and *mujtahid*.⁴ Based on the arrangement regarding the expansion of the successor heirs, the position of the successor heirs in relation to the direct heirs is seen in terms of the part that receives and the strength of his position there is no definite guidance, so Allah is here through humans with the thought that he created to determine the arrangement or law itself which is called *ijtihad*, *ijtihad* is a method of Islamic legal studies that formulate new laws related to the needs of the community for social changes experienced.⁵

Related to social changes to meet the needs of the community in the context of the arrangement of successor heirs, KHI is present to complement the existed legal arrangements regards inheritance that aim to realize justice for the heirs. The arrangement of the successor heirs in the KHI is regulated in Book II on inheritance, namely regarding the replacement of places referring to the position of the successor heirs contained in Article 185 of the KHI.⁶

Problems in the decision of the Religious Court of Surabaya No. 4813/Pdt.G/2019 /PA.Sby is the existence of a grandson as a substitute heir to control the inheritance, grandson here is the son of the deceased heir (deceased Rasening) also refers to as the defendant (Usman bin Muhammad Iksan as Defendant I and Abdul Ghofur bin Muhammad Iksan as defendant II). The property should be distributed to other living heirs first.

Verdict Surabaya Religious Court Decision Number 4813 / Pdt.G/2019 / PA.Sby stated that the judge tried the defendant, namely grandson as a substitute heir who controls the inheritance to hand over the inheritance that has been controlled, but in consideration of the law the judge did not associate with the arrangement of the successor heirs in accordance with the rules of Islamic law and KHI. In the consideration

³ Kusmayanti, Hazar & Krisnayanti, Lisa. (2019). "Hak dan Kedudukan Cucu Sebagai Ahli Waris Pengganti dalam Sistem Pembagian Waris Ditinjau dari Hukum Waris Islam dan Kompilasi Hukum Islam". *Jurnal Ilmiah Islam Futura: Vol 19, No. 1.* p. 70.

⁴ Salman, Otjie & Mustofa. (2010). *Hukum Waris Islam*. Bandung: Refika Aditama. p. 3.

⁵ Fajri, Azwar. (2012). "Ijtihad tentang Kewarisan Cucu dalam Hukum Islam". *Jurnal Ilmiah Islam Futura: Vol 21, No. 2.* p. 117

⁶ Pasal 185 Instruksi Presiden No.1 Tahun 1991 tentang Kompilasi Hukum Islam.

of the judge only focuses on the testimony of the plaintiff and witnesses. As well as the decision that the division of inheritance, namely the plaintiff gets 8/16 part or 50%, defendant I gets 2/16 part or 12.5%, and also the defendant gets 4/16% part or 25% is not mentioned and explained on what legal basis the judge can divide the inheritance with that part.

RESEARCH METHODS

The research method used by the author in this study is the method of normative juridical approach with descriptive analytical specifications. Normative juridical approach method using legal norms in legal Systematics, such as principles, norms, rules, and legislation that aims to identify the understanding and basis in law.⁷

Descriptive analytical specification has function to give an overview of the legislation and legal theory with its implementation in the positive law in accordance with existing problems.⁸

Normative juridical approach method with an analytical descriptive specification is used in this study it examines the religious court decision with number 4813/dt.G/2019/PA.Sby which contains inheritance disputes where grandchildren as successor heirs control the entire estate. Research by using the method of normative juridical approach with descriptive specifications here using Islamic law and compilation of Islamic law with the aim of knowing the law for the successor heirs in controlling the inheritance both in terms of Islamic law and compilations of Islamic law in accordance with its application in Indonesia.

DISCUSSION

Consideration of Judges in Deciding the Decision of the Religious Court of Surabaya Number 4813/Pdt.G/2019/PA.SBY on Grandson as A Successor Heir Who Controls the Estate Reviewed According to Islamic Law and the Compilation of Islamic Law

Law of Indonesia regulate related to the authority of judges in considering or deciding a case in court, namely In Law Number 48 of 2009 on Judicial Power, referred to as the Judicial Power law. The definition of the judge himself is regulated in Article 1 Number 5 of the Judicial Power law which reads:⁹

“Judges are Judges of the Supreme Court and judges of the judicial bodies that are subordinated in the General Court environment, the religious court environment,

⁷ Sugiono, Bambang. (2012). *Metodologi Penelitian Hukum*. Jakarta: Raja Grafindo, hlm. 93.

⁸ Soekanto, Soerjono. (2010). *Pengantar Penelitian Hukum*. Jakarta: UI Press. p. 53.

⁹ Pasal 1 angka 5 Undang-Undang Nomor 48 Tahun 2009 tentang Kekuasaan Kehakiman.

the 85 military court environment, the Administrative Court environment, and judges in special courts within the judicial environment.”

The judge is the images the judiciary, where he has judicial power in conducting justice with aim of upholding justice. In exercises judicial power the judge has freedom which contextually can be translated into 3 (three) points, namely:¹⁰

1. Judges are subject to law and Justice;
2. No one including the government can influenced judge in passing a verdict;
3. There are no consequences for the judge personally related to performance of his judicial duties and functions.

The legally consideration carried out by a judge must meet the elements of the law which is also called *legal reasoning*. *Legal reasoning* is useful for judges in making legal considerations and making decisions, because judges must pay attention to how much impact the decisions issued as not to caused new cases from the decision.¹¹

This understanding refers to Article 53 of the law on Judicial Power which reads:¹²

- “(1) in examining and deciding cased, the judge is responsible for the determination and decision he makes.
- (2) the determination and decision as meant in Paragraph (1) shall contain the judge's legal consideration which is based on the right and correct reason and legal basis.”

The Article 53 of the Judicial Power law, the legal considerations issued by a judge are the opinion and thoughts of the judge in making a decision that contains reasons based on legal grounds referring to matters that can alleviate or incriminate appropriately and correctly.

Consideration of the Religious Court Judge Surabaya decided the case No. 4813/Pdt.G/2019/PA.Sby in the case study of Surabaya Religious Court Decision No. 4813/Pdt.G/2019PA.Sby about grandson as a successor heir who controls the estate, contains several legal considerations related to grandson as a successor heir who controls the estate in the principal cases including:¹³

1. “Has been considering, in this case there is a Rasening facts, the plaintiff and co-defendant are Muntinah's children with Sumadi. Furthermore, defendant I and defendant II are the children of Rasening with Iksan. Furthermore, Muntinah,

¹⁰Rifai, Ahmad. (2011). *Penemuan Hukum oleh Hakim dalam Perspektif Hukum Progresif*. Jakarta: Sinar Grafika. p. 104.

¹¹Mertokusumo, Sudikno. (2002). *Hukum Acara Perdata Indonesia*. Yogyakarta: Liberty. p. 108.

¹²Pasal 53 Undang-Undang Nomor 48 Tahun 2009 tentang Kekuasaan Kehakiman.

¹³Putusan Pengadilan Agama Surabaya Nomor 4813/Pdt.G/2019. p. 61-76.

Sumadi, and Iksan (Rasening's husband) have died, where Muntinah first died from Sumadi and Iksan first died from Rasening.”

2. “The instructions from the testimony of witnesses Muntinah's family are all Muslims, and Rasening's death was caused by illness so that there was no obstacle to inherit between heir and heir.”
3. “That Article 176 of the compilation of Islamic law that:
“The daughter, if she be one, shall have half; and if two or more shall have two-thirds; and if the daughter be with the son, then the son's share shall be two to one with the daughter.”
4. “That because Rasening has died, Rasening's part of Muntinah's inheritance is handed over to his heirs, namely defendant I and defendant II.”
5. “Considering, that because of the object of the dispute is in possession, it is reasonable for the panel of judges to punish anyone who gets the right from it to hand over the plaintiff's share of Muntinah's inheritance according to the plaintiff's rights as outlined in this ruling.”

Decision number 4813/Pdt.G/2019/PA.Sby stated that granted the contents of the plaintiff's lawsuit, where Defendant I and defendant II get the distribution of inheritance of each 2/16 of its share. The legal considerations in the decision of the Religious Court Judge Surabaya No. 4813/Pdt.G/2019/PA Sby related to Defendant I and defendant II as the successor heirs who control the inheritance based on Islamic law are not in accordance with the rules of Islamic law.

Islamic law does not regulated the division of inheritance to the successor heirs, related to this, there is no absolute rule of Islamic law which regulates that the successor heirs are entitled to get their parts in accordance with the rules of Islamic law in force, because in Islamic law inheritance entitled to a certain amount of inheritance is *dzawil furudh*, a certain amount here regulated and mentioned in the Qur'an, namely in the amount of one-second, one-quarter, one-eighth, two-thirds, one-third, and one-sixth.¹⁴

The heirs belonging to *dzawil furudh* are the father, widower, widow, son, daughter, brother of *seibu*, sister of *seibu*, granddaughter of the son, biological sister, sister of *sebapak*, grandfather, and grandmother. The inheritance system of Islamic law not recognized the existence of a change of place, because in the treasures of the classical book the person who is entitled to receive (*furudul muqaddarah*) is caused by nasabiyah (descent) and marriage.¹⁵

¹⁴Limbanadi, Alhafiz. (2014). “Kedudukan dan Bagian Ahli Waris Pengganti dalam Hukum Islam”, Jurnal Lex et Socieatis, Vol. II, September. P. 177.

¹⁵Sarmadi & H.A. Sukris, (2012). *Dekonstruksi Hukum Progresif Ahli Waris Pengganti dalam Kompilasi Hukum Islam Cetakan ke-2*. Yogyakarta: Aswaja Pressindo. P. 155.

Subject matter of the matter in the decision number 4813 / Pdt.G / 2019 / PA Sby is the section about grandchildren as a substitute heir who controls the inheritance where there are still other heirs who are entitled to get the inheritance. Seen more about the grandson as a successor heir in the case of this decision is Usman bin Muhammad Iksan as Defendant I and Abdul Ghofur bin Muhammad Iksan as defendant II who is the son of the late Rasening, then according to Islamic law he is included in the class of heirs *dzawil arham*.

Dhawil arham are people who inherit based on kinship. Among of ahlul Sunnah inheritance *dhawil arham* devoted to people who have a hereditary relationship that is not mentioned in the Qur'an *furudh* Allah and not also a group entitled to the rest of the property. The position of *dhawil arham* is a descendant other than the male line, but from the female line whether he is a man or a woman.¹⁶

Analysis of the inadmissibility of the acts of possession of inheritance by grandchildren as a substitute heir in the decision of the Surabaya Religious Court Number 4813/Pdt.G/2019/PA.SBy according to Islamic law is also supported by the opinion of the Islamic inheritance law expert from the Faculty of Sharia and law UIN SGD Bandung Mrs. Dede Kania, who stated that in Islamic law if the grandson who becomes the successor heir who replaced his parents to get the inheritance comes from a female lineage, so he has no right to get the inheritance let alone control the inheritance.

Islamic law the positioning of grandson as the successor heir who controls the inheritance, namely Usman bin Muhammad Iksan as Defendant I and Abdul Ghofur bin Muhammad Iksan as defendant II who is the son of the late Rasening is the son of the female line included in *dzawil arham*, then both are not entitled to control the inheritance and cannot get a part of the inheritance.

The Islamic law contained in the Qur'an and Hadith, KHI expands the arrangements regarding successor heirs. The position of the successor heir is emphasized in Article 185 of Presidential Instruction Number 1 of 1991 concerning the compilation of Islamic law which reads as follows:¹⁷

- “(1) the heir who died before the Heirer his position can be replaced by his son, except those mentioned in Article 173
- (2) the share of the successor heir shall not exceed the share of heir equal to the one replaced.”

Article 185 KHI this is an extension of the position of the successor heirs in obtaining a share of the estate, which provides protection for the rights of people who

¹⁶Saebani, Beni Ahmad. (2009). *Fiqh Mawaris*. Bandung: Pustaka Setia. p. 109.

¹⁷Pasal 185 Instruksi Presiden No. 1 Tahun 1991 tentang Kompilasi Hukum Islam.

get the estate of the deceased first and realized with their descendants. Replacement of heirs occurs because the successor did not have time to get his share because he died first but left descendants.

The article 185 of the KHI, which is present in the extension of arrangement to the successor heirs, the grandson or daughter of the female line equally acquiring inheritance rights as the grandson or daughter of the male line. This Article 185, KHI makes a further step forward for inheritance law in Indonesia, especially the inheritance rights of the grandchildren of the female line and grandchildren who are hindered because of the presence of sons and daughters, this is a breakthrough against the institutionalization of the rights of grandchildren.

Usman bin Muhammad Iksan as Defendant I and Abdul Ghofur bin Muhammad Iksan as defendant II who is the son of Rasening where they are the heirs of the female lineage in the decision of the Religious Court of Surabaya number 4813/Pdt.G/2019/PA. Sby regarding the successor heirs who control the inheritance, then based on Article 185 KHI the position of the successor heirs who control the inheritance, namely Usman and Abdul Ghofur, are entitled to obtain a partial inheritance but cannot control the entire inheritance, because it cannot exceed the amount of inheritance obtained by equal heirs, in this case there are other heirs, namely the plaintiff as a biological son and the defendant as Muntinah's daughter who inherited the inheritance.

Legal considerations used by judges in deciding these parts using Article 176 KHI which reads:

“The daughter, if she be one, shall have half; and if two or more shall have two-thirds; and if the daughter be with the son, then the son's share shall be two to one with the daughter.”

Legal considerations of the judge on Decisioned number 4813/Pdt.G/2019/PA. Sby megenai position grandson who controls the estate only using Article 176 KHI, the article 176 KHI does not discussing the arrangement of the position of the grandson as a substitute heir but the amount of inheritance obtained. The judge should in legal consideration use Article 185 KHI because the article directly regulates the rights of the successor heirs in replacing the position of the heir and the amount of inheritance he replaces. Where in accordance with the problems that existed in the subject matter, namely Usman bin Muhammad Iksan as Defendant I and Abdul Ghofur bin Muhammad Iksan as defendant II are the successor heirs who control the entire object of the dispute, namely the inheritance.

The Islamic inheritance law expert from the Faculty of Sharia and law lecturer at UIN SGD Bandung, Mrs. Dede Kania, stated that the judge in making a decision must be considered by the judge who contains the appropriate and clear legislation. He said

that the contents of the decision of the Religious Court of Surabaya number 4813/Pdt.G/2019/PA Sby does not include the sources of jurisprudence from Islamic law listed in the Qur'an and Hadith, and does not associate with Article 185 KHI which contains arrangements regarding replacement heirs, where the case or subject matter at issue is about the heirs who control the inheritance.

The opinion of the Islamic inheritance law expert from the lecturer of the Faculty of Sharia and Law of UIN SGD Bandung, Mrs. Dede Kania, can be a reference to the consideration of the law by judges and the imposition of disputed decisions in religious courts, because the subject matter of this case is included in religious courts, judges should include sources of Islamic law, not only seen from the perspective of KHI, because the arrangement regarding the successor heirs of Islamic law and KHI have different views. Surabaya Religious Court Decision No. 4813/Pdt.G/2019/PA. Sby decides whether the successor heirs are entitled to receive the inheritance only directly to the amount of the division of property using the legal basis of Article 176 KHI.

The analysis of the judge's consideration in the decision of the Surabaya Religious Court No 4813/Pdt.G/2019/PA. Sby about grandson as a substitute heir who controls the estate reviewed according to Islamic law and KHI, the author agrees with the analysis, legal considerations in the decision is less precise. The analysis of the judge's consideration in deciding the decision must be associated with the rules of Islamic Law first and then proceed based on KHI as an extension of Islamic law itself. There is a comparison between both of Islamic law and KHI, because the regulation of Islamic inheritance law in Indonesia is governed by the Qur'an, Hadith, and KHI.¹⁸

In this decision the parties to the Islamic litigants, the inheritance that applied is the Islamic inheritance law which is based on the principle of *ijbari*, namely the inheritance property moves by itself according to the decree of Allah SWT without being dependent on the will of the heir or heir.¹⁹

Is related to the judge in the Surabaya Religious Court decision number 4813/Pdt.G/2019/PA. Sby decided to grant the lawsuit, it said that the decision is incomplete, or called *onvoldoende gemotiveerd*. *Onvoldoende gemotiveerd*. it is the decision of the court judge who, in his legal consideration, does not consider all parts of the lawsuit, both *posita* and *petitum* in the plaintiff's lawsuit, including the defendant's objections, exceptions, counterclaims, and does not use the provisions of existing legislation and should be the basis for the decision, and does not carefully consider all

¹⁸Kusmayanti, Hazar dan Krisnayanti, Lisa. (2019). "Hak dan Kedudukan Cucu Sebagai Ahli Waris Pengganti dalam Sistem Pembagian Waris Ditinjau dari Hukum Waris Islam dan Kompilasi Hukum Islam, *Op. Cit.* P. 70.

¹⁹Ali, Muhammad Daud. (1990). *Asas Hukum Islam*. Jakarta: Rajawali Press. P. 129.

legal facts revealed at the trial, and does not consider the legal consequences of existing legal facts.²⁰ Article 185 KHI can be included by the judge as a legal consideration in deciding the decision, because Article 185 KHI contains clear arrangements for the rights of the successor heirs in obtaining inheritance.

Calculation of the Distribution of Inheritance to Grandchildren as Substitute Heirs in the Decision of the Surabaya Religious Court Number 4813/Pdt.G/2019/PA.Sby Based on Islamic Law and Compilation of Islamic Law

Surabaya Religious Court Decision No. 4813/Pdt.G/2019/PA.Sby is a decision regarding inheritance disputed where grandchildren as successor heirs as Defendant I and defendant II controls the inheritance. Defendant I and defendant II are classified as successor heirs because he is the son of Rasening who has died. Muntinah as a parent who left an inheritance and died in 1994, leaving heirs namely:

1. Sumadi (Husband of Rasening);
2. Rasening (Second Son of Almh. Muntinah who has died);
3. Muchamad Sadjad (first son of Almh. Muntinah);
4. Soehermi (the third son of Almh. Muntinah).

In 1988, Sumadi died and left heirs, namely:

1. Rasening (the Second Son of Alm. Sumadi);
2. Muchamad Sadjad (the first son of Alm. Sumadi);
3. Soehermi (the third son of Almh. Sumadi).

In 2006, Rasening died and left heirs, namely:

1. Usman (the first son of Almh. Rasening);
2. Abdul Ghofur (Second Son of Almh. Rasening).

Related determination of heirs in inheritance disputes Surabaya Religious Court decision number 4813/Pdt.G/2019/PA.Sby above, the analysis of the distribution of inheritance to the grandson as a substitute heir needs to be done, which aims to determine the amount of inheritance actually obtained by the grandson as a substitute expert in accordance with Islamic law and the compilation of Islamic law because in the subject matter of this decision grandson as a substitute heir intends to control the entire estate.

The calculates of the division of inheritance whether the grandson as a substitute heir listed the amount of inheritance settings according to Islamic law can be seen in

²⁰PW, Teresia Mira & Harjono. (2021). "Studi tentang Pertimbangan Hakim yang Tidak Lengkap (*Onvoldoende Gemotiveerd*) Sebagai Alasan Permohonan Kasasi Sengketa Sarang Burung Wallow (Studi Putusan Mahkamah Agung Nomor: 1609 K/Pdt/2012), Jurnal Verstek Volume 9 Nomor 2. P. 401.

advance to the Islamic law settings in regulating the calculation of the division of inheritance with the form referred to in the Qur'an as follows:²¹

- 1) The eorem of Q.S. An-Nisa verse 11 describes that the division of inheritance according to Islam between men and women compared to 2 :1.
- 2) Q.S An-Nisa verse 11, girls whose number exceeds 2 children, get a share of 2/3 (two thirds). If a woman is single in the sense that she has no brothers and sisters, then she gets a 1/2 (second) share.
- 3) Proposition Q.S An-Nisa verse 11, explained that the father and mother get a share of 1/6 (one sixth) if they have offspring, if the father and mother do not have offspring then get 1/3 (one third) of the share except if the heir has other relatives get 1/6 (one sixth).
- 4) Proposition Q.S An-Nisa paragraph 11, explains that the inheritance is the remaining property after the inheritance of the testator paid only for the Will and all debts if any.
- 5) Proposition Q.S An-Nisa verse 12 explains that the husband gets 1/2 (half) if the wife dies and has no offspring. If he has offspring, then the husband only gets 1/4 (quarter) of the share.
- 6) Proposition Q.S An-Nisa verse 12 explains that the wife will get 1/4 (quarter) of the SHARE if the husband dies. If he has offspring, then the wife only gets 1/8 (one-eighth) of the share.
- 7) Proposition Q.S An-Nisa verse 12 explains that if there is a brother or sister of the heir without the father and son of the heir, then each will get 1/6 (one sixth) of the share and if more than one person will only get 1/3 (one third).
- 8) Proposition Q.S An-Nisa verse 12 explains that an heir who dies without leaving a child then the sister will receive 2/3 (two-thirds) of the share.

The procedure for the calculats can also occureds for heirs who leave a brother, the calculation is the same as described earlier. When they multiply between a man and a woman, then they will get a share together with the ratio for a man as for two parts of a woman.

Seeing the classification of the determination of the heirs, the actual distribution of the inheritance on the object of dispute, Rasening, Muchamad Sadjad, and Suhermi are entitled to get their respective parts in accordance with the rules of Islamic law Q.S. An-Nisa verse 11, but because Rasening died first, the right to inherit it passed to his descendants, namely Usman and Abdul Ghofur.

²¹ Sarmadi dan H. A. Sukris. (2012). *Dekonstruksi Hukum Progresif Ahli Waris Pengganti dalam Kompilasi Hukum Islam Cetakan ke-2, Op. Cit.* p. 155.

The author concluding the systematic division of inheritance according to Islamic law above clearly seen there is no division of inheritance for Usman and Abdul Ghofur, no one is the Islamic jurists in the book of jurisprudence which mentions the existence of a successor heir. There is no difference between the imams (A.s.) and the imams (A. s.) in that the imams (A. s.) are the imams (A. s.) and the imams (A. s.) in that they are the imams (A. s.). the imams (A. s.) are the imams (A. s.).²²

The meaning of the succession is mentioned but the nature of the succession itself is not full, because in Islamic law the grandson of the male line can replace as a substitute heir, and even then on the condition that no one of the heir's children is still alive if one of the heir's children is still alive if the parents he replaces do not die first, and the amount obtained is not the same as their parents who died first.²³

The grandson or granddaughter of this female lineage is called the *dhawil arham* group, in other words, there is no substitute for the term heir because certain people are entitled to a *fard* or obtain a part of the inheritance called in *dhawil furudh* and *ashabah*, because *dhawil arham* are people who obtain the right to inheritance due to the absence of *dhawil furudh* and *ashabah*.²⁴

Surabaya Religious Court Decision No. 4813/Pdt.G/2019/PA.Sby who has been studied by the author about the successor heirs who dominate the estate of the heir, the grandson as the successor heir here is the grandson of the female line. Usman bin Muhammad Iksan as Defendant I and Abdul Ghofur bin Muhammad Iksan as defendant II is the son of Rasening. So based on Islamic law, Uthman and Abdul Ghofur are not entitled to the amount of inheritance from the object of the dispute, because their male or female grandchildren from the female line are not entitled to the division of inheritance if there is still *dhawil furudh*, the people who are determined for their share and *ashabah*, the people who spend the rest.

The distribution of inheritance to grandchildren as substitute heirs in the decision of the Surabaya Religious Court Number 4813/Pdt.G/2019/PA. Sby based on Islamic law does not get the inheritance distribution property on the object of the dispute, namely 1 (one) plot of land formerly owned by Yasan Petok D, Desa Siwalankerto number: 516, Persil 33 d, Class D. III, area 1476 m2 (written area 1,060 m2).

In contrast to the Islamic law in the Qur'an and Hadith, KHI regulates the position of the successor heirs in the division of inheritance described in Article 185 KHI. Elucidation of Article 185 KHI is present and can be said to be a breakthrough against

²² *Ibid*, P. 156.

²³ Limbanadi, Alhafiz. "Kedudukan dan Bagian Ahli Waris Pengganti dalam Hukum Islam", *Op. Cit*, 176.

²⁴ *Ibid*

the institutionalization of grandchildren's rights to inheritance, can be proven in the sentence:

“... the heir who dies before the heir then his position can be replaced by his son.”

Based on this sentence, KHI itself through Article 185 in formulating the amount of the share obtained by the successor heirs does not distinguish between male lineage and female lineage where both equals have the same right to get a share of the inheritance.²⁵

In determining the share received by a successor heir, KHI does not discriminate between the descendants of the person being replaced, whether male or female, in the sense that the descendants of the daughter who died first have the same rights as the descendants of the son who died first in inheriting.

Related to the same thing is also applied to the successor heirs of sons and heirs of daughters, in the sense of the offspring of a daughter who replaces her mother even though she is a man will not ter hijab, as well as daughters. Given the possibility that the successor heirs may exceed the share of the heirs who are replaced, KHI provides restrictions so that the successor heirs in obtaining the inheritance do not exceed the share of persons equal to the heirs who are replaced in accordance with Article 185 paragraph (2) KHI.

Through the regulation of Article 185 paragraph (2) KHI can be understand the successor heir does not have absolutes rights, in the sense that he does not fully obtain the rights that should be received by the successor. Seen in terms of propriety, it is not feasible for a successor heir to get a share that exceeds the share of direct heirs, seen in terms of contributions, direct heirs contribute a lot to the heir where many contributions are attached to the inheritance.²⁶ The author argues that KHI limits the property that can be obtained by grandchildren instead of the whole of the property that should be obtained by their parents who have died first, only 1/3 of it.

The distribution of inheritance to grandchildren as replacement heirs in the decision of the Surabaya Religious Court Number 4813/Pdt.G/2019/PA. Sby based on KHI, where Usman and Abdul Ghofur as the children of Rasening who are the heirs of the heirs of the object of dispute is 1 (one) piece of land formerly owned by Yasan Petok D, Siwalankerto Village number: 516, Persil 33 d, Class d. III, an area of 1476 m2 (written area of 1,060 m2) is entitled to the distribution of inheritance but only 1/3 is in

²⁵ *Ibid.* p. 178.

²⁶ M. Yahya Harahap, (1992). *Pokok-Pokok Materi Kewarisan dalam KHI, Hukum Kewarisan dalam KHI*. UI Depok: Makalah Seminar. p. 38.

accordance with the provisions of Article 185 KHI which must not exceed the share of heirs who are equal to those who are replaced.

The calculations of the distribution of the inheritance refers to Article 176 KHI which can be explained as follows:

- a. Plaintiff gets 8/16 share or 50%;
- b. Defendant I get 2/16 part or 12.5%;
- c. Defendant II get 2/16 share or 12.5%; and
- d. Co-defendant get 4/16 part or 25%

Plaintiff, namely Mochamad Sadjad son get 2 of 2:1 share of the inheritance, also defendant, namely Suhermi daughter get 1 of 2: 1 share of the inheritance because the daughter with the son. Defendant I and defendant II, namely Usman and Abdul Ghofur get 1/3 of the inheritance and cannot control the entire inheritance, but are entitled to 1/3 of the share as a replacement heir of their deceased parents.

Based on the analysis of the calculations of the distribution of inheritance to grandchildren as a substitute heir in the decision of the Surabaya Religious Court Number 4813/Pdt.G/2019/PA.Sby according to Islamic law and the compilation of Islamic law, the authors agree that the settlement of disputes and the calculation of the distribution of inheritance in the religious courts should use the arrangement of KHI, because KHI itself is an extension of Islamic law.

Arrangement of successor heirs through Article 185 khi regulates the successor heirs are entitled to inherit but must not exceed the number of other heirs. So that KHI embodies the legal protection related to the right of a successor heir in obtaining inheritance, and KHI itself is a solution for grandchildren from the female lineage or grandchildren who are veiled or hindered because of the existence of other heirs, namely sons and daughters.

The author took the opinion of Hazairin as an Islamic jurist who conducted *ijtihad* on the arrangement of successor heirs who argued that with the theory of the intended purpose of law as *Satibi* in the explanation of Ahmad Al Raisuni *Ijtihad* Islamic law embodies the benefit, maintain, protect, and give rights to all human beings, in accordance with progressive law that law does not exist for the law itself, but for humans.²⁷

The enactment of the law governing the successor heirs in Article 185 KHI is a form of injustice for the grandchildren of the female line and for the hijabs of boys and girls,

²⁷ Sarmadi dan H.A. Sukris. (2012). *Dekonstruksi Hukum Progresif Ahli Waris Pengganti dalam Kompilasi Hukum Islam Cetakan ke-2*, Op. Cit. p. 243.

on this basis *ijtihad* is carried out in order to resolve various problems that arise over the successor heirs.

CONCLUSION

Consideration of judges in decides the decisions of the Surabaya Religious Court Number 4813/Pdt.G/2019/PA.Sby related to the position of the grandson as a substitute heir who controled the inheritance is reviewed according to Islamic law and KHI is correct, but the legal considerations used are less precises and incomplete. Parties litigants are Muslims, then in consideration of the law should include the source of Islamic law (Al-Qur'an and Hadith) and associated with Article 185 KHI which contains arrangements regarding the successor heirs. Because the arrangement against grandchildren as a successor heir according to Islamic law and KHI have different arrangements.

Calculations of the distribution of inheritance to grandchildren as replacement heirs in the decision of the Surabaya Religious Court Number 4813/Pdt.G/2019/PA.Sby according to Islamic law, Usman and Abdul Ghofur are not entitled to inheritance because they are the grandchildren of the female line, so there is no calculation of the distribution of inheritance for Usman and Abdul Ghofur. According to KHI, the calculation of the distribution of inheritance to grandchildren as a substitute heir is Usman and Abdul Ghofur get the amount of inheritance from the object of dispute by 1/3 according to Article 185 KHI. So that the calculation of the distribution of inheritance for Usman and Abdul Ghofur get 2/16 share or 12.5% of the entire inheritance.

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