

Legal Review And Judge's Considerations Regarding The Existence Of Substitute Heirs (Religious Court Decision Number 138/Pdt.P/2021/PA.Grt and Number 68/Pdt.P/2023/PA.JS)

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Abstract

Introduction to the Problem: The main problem in this study is how the similarities and differences in the position of substitute heirs in obtaining their inheritance rights based on Religious Court Decisions Number 138/Pdt.P/2021/PA.Grt and Number 68/Pdt.P/2023/PA.JS, and how the judges view the two decisions.

Purpose/Study Objectives: This study aims to analyze the similarities and differences in the application of the law regarding substitute heirs in the two decisions, as well as to reveal the judge's views in determining decisions based on legal facts and applicable provisions.

Design/Methodology/Approach: This research uses a normative legal research method with a statutory approach (*statute approach*) and case study approach (*case approach*). Data were obtained from a literature study of laws and regulations, the Compilation of Islamic Law (KHI), and official copies of the court decisions studied.

Findings: The research results show that both decisions share similarities in recognizing the validity of Article 185 of the Compilation of Islamic Law (KHI), which grants rights to successor heirs. However, there are differences in the distribution of inheritance shares and recognition of lineage relationships, which are influenced by the facts and evidence presented at trial. The judges' views in both decisions reflect a balance between the application of legal norms, the principle of justice, and the specific circumstances of the parties.

Paper Type: Research Article

Keywords: Legal Review, Judge's Considerations, Substitute Inheritance, and Decisions.



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Introduction

Property has been an important element in human life since the beginning of its creation. From a fiqh perspective, property is defined as something that can be owned and utilized by humans in certain forms as applicable in society (al-Zuhaili, 1989). Islam has established halal and good paths in acquiring property, and regulates in detail its distribution after the owner's death. One important aspect of property management is inheritance, which is regulated in detail in the Qur'an through verses that are divided into main verses, supporting verses, and related verses (QS. An-Nisa: 7, 11, 12, 176; QS. Al-Baqarah: 228; QS. Al-Ma'idah: 1, 47-50; QS. Al-Ahzab: 4, 36).

Islamic inheritance (*faraidh*) occupies a crucial position in Islamic law because it contains clear rules regarding who is entitled to receive an inheritance, the amount of the inheritance, and the distribution mechanism. These rules reflect the values of justice and guarantee the rights of each heir (Syarifuddin, 2014). However, in practice, the process of interpreting the provisions of the Qur'an and Hadith can produce differing understandings. Robert Roberts even criticized the application of Islamic inheritance law, which he argued was often influenced by local customs, resulting in its implementation sometimes not in line with the principles of justice contained in the sacred text (Roberts, 1980).

In Islamic inheritance law, inheritance is divided into two main categories: *dzawu al-furudh* (heirs with a certain share) and *ashabah* (heirs who receive the remainder of the estate after a certain share is distributed). These provisions not only regulate the relationship between the heir and the heirs, but also reflect the Social responsibility and family ties. The closer the kinship with the testator, the greater the inheritance rights received, accompanied by greater responsibilities (al-Sabuni, 1997).

In Indonesia, in addition to Islamic inheritance law, customary inheritance law and Western civil inheritance law (BW) also apply, which simultaneously regulate inheritance in a pluralistic manner (Soepomo, 2003). One of the unique provisions in Islamic inheritance law in Indonesia is Article 185 of the Compilation of Islamic Law (KHI), which regulates substitute heirs. This provision allows the children of deceased heirs to succeed them, except for those excluded by Article 173 of the KHI.

The existence of substitute heirs has sparked debate among academics and legal practitioners. Some consider this provision important to protect the rights of grandchildren whose parents have died before them, while others argue that this rule lacks a strong basis in Islamic law. The tentative nature of the phrase "can be replaced" in Article 185 paragraph (1) of the KHI also creates legal uncertainty, as it

depends on the judge's consideration or the willingness of substitute heirs (Rasyid, 2005).

Various court decisions demonstrate that the application of Article 185 of the Compilation of Islamic Law (KHI) often varies from region to region, depending on the judge's discretion. Examples include the Garut City Religious Court Decisions No. 138/Pdt.P/2021/PA.Grt and the South Jakarta Religious Court Decisions No. 68/Pdt.P/2023/PA.JS, both of which granted the request for a substitute heir despite differing case contexts (Harahap, 1993). These differences highlight the problematic interpretation and application of Islamic inheritance law, particularly regarding substitute heirs.

Based on these conditions, this study focuses on the legal analysis and judges' perspectives regarding the status of substitute heirs, examining these two decisions. This research is expected to contribute to the development of Islamic legal studies, particularly in the realm of inheritance law, and to offer recommendations to clarify and strengthen the application of substitute heir provisions in Indonesia.

Methodology

This research is a qualitative study with a normative legal approach that is descriptive-analytical and critical analysis, focusing on the study of the legal basis and legal systematics related to the position of substitute heirs as regulated in Article 185 of the Compilation of Islamic Law (KHI). Primary data was obtained from Religious Court Decisions Number 138/Pdt.P/2021/PA.Grt and Number 68/Pdt.P/2023/PA.JS which have different legal considerations, supplemented by interviews with the judges who decided the case. Secondary data includes fiqh literature, Hazairin's works, laws and regulations such as Law No. 1 of 1974, Law No. 50 of 2009 Law No. 3 of 2006, Law No. 7 of 1989 on Religious Courts, Law No. 48 of 2009, and the opinions of the imams of the schools of thought, while tertiary materials include dictionaries, encyclopedias, directories, and relevant non-legal sources. Data collection techniques are carried out through literature studies, decision analysis, and interviews, while data analysis techniques include data reduction, editing, and organizing to compile information in a structured and systematic manner, with the application of the theory of maqashid sharia, the theory of justice, and legal certainty as the basis for analysis.

Results and Discussion

The Position of Substitute Heirs in Obtaining Their Inheritance Rights Based on Religious Court Decisions Number 138/Pdt.P/2021/PA.Grt and Number 68/Pdt.P/2023/PA.JS

Based on research findings, the status of substitute heirs in Islamic inheritance law in Indonesia is explicitly regulated in Article 185 of the Compilation of Islamic Law (KHI). This article grants the descendants of deceased heirs the right to take their

place in receiving a portion of the inheritance. This principle is intended to protect the rights of descendants so that they are not cut off from the line of inheritance due to the death of their parents before the testator's death. This provision aligns with the principles of justice and protection for heirs who are biologically related to the testator.

In Religious Court Decision Number 138/Pdt.P/2021/PA.Grt, the panel of judges recognized the rights of substitute heirs in accordance with Article 185 of the Compilation of Islamic Law (KHI). The judges considered that the party acting as substitute heir is the grandchild of the testator whose parents (the testator's children) have predeceased them. Therefore, the grandchild is entitled to receive an equal share to the share that his parents would have received if they were still alive. The judges' considerations in this decision demonstrate law enforcement in accordance with positive norms prevailing in Indonesia.

In contrast, Religious Court Decision Number 68/Pdt.P/2023/PA.JS demonstrates a different approach. In this case, the judge ruled that the substitute heirs did not receive exactly the same share as their parents. The judge argued that the substitute heirs' share needed to be adjusted to the circumstances of the other surviving heirs, so its application was not entirely identical to Article 185 of the Compilation of Islamic Law (KHI). This consideration was based on the judge's interpretation of the principle of welfare and an effort to avoid potential disputes among the heirs.

These differences in rulings demonstrate that, in practice, religious courts still have room for interpretation regarding the provisions of Article 185 of the Compilation of Islamic Law. In the Gresik case, the judge applied the legal text textually, while in the South Jakarta case, the judge tended to use a contextual approach, taking into account social conditions and relationships between heirs. This difference shows that even though the legal provisions are clear, the judge's interpretation can result in different decisions depending on the facts and legal considerations of each case.

Interviews with the judges handling the cases indicate that in determining the status of substitute heirs, in addition to referring to the Compilation of Islamic Law (KHI), judges also consider the principle of substantive justice. Judges in the PA Grt emphasized legal certainty by enforcing written provisions, while judges in the PA JS prioritized family harmony and preventing protracted conflict. This indicates a difference in emphasis between legal certainty and the public interest, which are part of the judge's discretion in deciding inheritance cases.

From the perspective of the theory of *maqashid sharia*, both decisions have their own justification. The PA Grt decision fulfills the following aspects: *hifz al-mal* (property protection) for the successor heirs by granting full rights, while the PA JS decision emphasizes more *hifz al-nafs* and *hifz al-nas* taking into account the continuity of good relationships between family members. This difference also

demonstrates the flexibility of Islamic law in Indonesia, which allows for adjustments to specific situations, although it can potentially lead to inconsistencies between decisions.

Overall, this study concludes that the status of substitute heirs in religious court practice remains recognized and protected, but its implementation can vary depending on the judge's interpretive approach. Decision Number 138/Pdt.P/2021/PA.Grt represents a strict application of Article 185 of the Compilation of Islamic Law (KHI), while Decision Number 68/Pdt.P/2023/PA.JS reflects a more flexible application that takes into account social conditions and family relationships. This difference illustrates that in addition to legal certainty, social welfare and harmony also play a significant role in determining the rights of substitute heirs.

Similarities and Differences in the Position of Substitute Heirs in Obtaining Their Inheritance Rights Based on Religious Court Decisions Number 138/Pdt.P/2021/PA.Grt and Number 68/Pdt.P/2023/PA.JS

The equality of the substitute heirs' position in both decisions lies in the legal basis used by the judges in deciding the case, namely, both are guided by Article 185 of the Compilation of Islamic Law (KHI). This article emphasizes that substitute heirs are entitled to receive the portion of the inheritance that should have been received by the parents they replaced, provided that the substitute heirs are descendants of the heir who died before the testator. In both decisions, the judges placed the position of the substitute heirs substitute heirs as legal subjects who are legitimate to receive inheritance in accordance with the proportion of the portion regulated by the KHI.

Another similarity is that in both cases, the judges recognized the principle of continuity of inheritance rights through the bloodline, allowing the testator's grandchildren to take the place of their deceased parents in receiving a share of the inheritance. This aligns with the objective of Article 185 of the Compilation of Islamic Law (KHI), which aims to protect the rights of the testator's descendants from being interrupted simply because their parents died earlier. Both decisions emphasize the need to protect the rights of successor heirs in order to achieve justice in the distribution of the testator's estate.

However, there are fundamental differences in the application and interpretation of Article 185 of the Compilation of Islamic Law (KHI) between the two decisions. In Decision Number 138/Pdt.P/2021/PA.Grt, the judge ruled based on the consideration that the substitute heir receives a full share of the rights of the parent they replaced, without any reduction resulting from the presence of other heirs at the same level. The judge emphasized maximum protection for the substitute heir, so that the distribution remains proportional to the replaced parent's share.

In contrast, in Decision Number 68/Pdt.P/2023/PA.JS, the judge adopted a more contextual approach, taking into account the existence of other surviving heirs, such as the testator's siblings. In this decision, the share of the substitute heirs was adjusted because the judge deemed a balanced distribution necessary to avoid harming the other heirs. This difference demonstrates the scope for interpretation within Article 185 of the Compilation of Islamic Law, particularly in situations where the composition of heirs is complex.

Another difference is evident in the evidentiary methods used. In case No. 138/Pdt.P/2021/PA.Grt, the evidentiary method focused more on official documents such as birth certificates and death certificates to confirm the status of substitute heirs. Meanwhile, in case No. 68/Pdt.P/2023/PA.JS, in addition to documentary evidence, the judge also considered witness testimony to establish family relationships and order of death, which are relevant in determining inheritance rights. This demonstrates that variations in evidentiary methods can influence the judge's considerations.

Despite differences in the details of how the distribution is implemented, both decisions demonstrate the judges' commitment to the principles of justice and legal certainty. Both recognize the existence of substitute heirs as legitimate recipients of inheritance rights and strive to avoid neglecting any party in the distribution of inherited assets. However, these differing interpretations also indicate that the enforcement of Islamic inheritance law in Indonesia has a flexible dimension, allowing judges to adapt their decisions to the factual context of each case.

Thus, the similarities and differences in the status of substitute heirs in these two decisions illustrate that normatively, the legal basis is the same and their status remains recognized, but in practice, the application of the distribution can differ according to the judge's consideration of family circumstances and the composition of the heirs. These differences also emphasize the importance of comparative studies of court decisions to understand how the same rule can be applied in different ways, thereby providing broader insight into the dynamics of Islamic inheritance law in Indonesia.

The Judge's View on the Religious Court Decision Number 138/Pdt.P/2021/PA.Grt and Number 68/Pdt.P/2023/PA.JS which have been determined regarding substitute heirs

The results of the study indicate that the judges' views on the Religious Court decisions Number 138/Pdt.P/2021/PA.Grt and Number 68/Pdt.P/2023/PA.JS regarding substitute heirs are based on different legal considerations despite referring to Article 185 of the Compilation of Islamic Law (KHI). The judge in case Number 138/Pdt.P/2021/PA.Grt emphasized that the existence of substitute heirs is to accommodate the rights of descendants of heirs who have died before the

testator, so that they receive the same share as the share that their parents should have received.

In an interview, the judge in case No. 138/Pdt.P/2021/PA.Grt explained that the application of Article 185 of the Compilation of Islamic Law (KHI) must be understood as a form of legal protection for the rights of descendants, particularly the children of the testator's children who died before the testator's death. According to him, the purpose of this provision is to prevent the severance of inheritance rights, which are morally and socially considered essential for maintaining family justice.

Meanwhile, the judge in case No. 68/Pdt.P/2023/PA.JS observed that although the legal basis used is the same, namely Article 185 of the Compilation of Islamic Law (KHI), its application must take into account the context and evidence presented in court. In this case, the judge placed greater emphasis on proving blood relations and the legal status of the substitute heir, as well as ensuring that the substitute heir is not hindered by reasons that would invalidate inheritance rights under Islamic law.

The judge in case No. 68/Pdt.P/2023/PA.JS also stated that determining substitute heirs is not only a legal issue but also relates to the sociological and psychological aspects of the family. In his view, the judge must be wise in ensuring that the distribution of inheritance does not trigger new conflicts among the heirs, thereby upholding the principle of mutual benefit.

From both decisions, it can be seen that the judges both recognized the position of the substitute heir as a legal subject who is entitled to receive rights. inheritance. However, differences arise in the analytical approach and the weight of the considerations given, where the first case places more emphasis on protecting the rights of descendants, while the second case focuses more on the evidentiary aspects and caution in determining the inheritance.

The judges' views on these two decisions demonstrate that while Article 185 of the Compilation of Islamic Law (KHI) is clear, room for interpretation remains open. Differences in case context and the characteristics of the parties' family relationships are factors that influence the outcome. This indicates that the judge's role in interpreting and applying the law is crucial to achieving substantive justice.

In general, the judges argued that the existence of substitute heirs is a manifestation of the spirit of justice and protection of family rights in Islamic inheritance law in Indonesia. Both decisions demonstrate that, despite the same legal basis, implementation in practice can vary depending on the factual circumstances and the judge's interpretation, ultimately aiming to maintain the integrity and harmony of the testator's family.

Conclusion

Based on the research results, it can be concluded that the position of substitute heirs in obtaining their inheritance rights as reflected in Religious Court Decisions Number 138/Pdt.P/2021/PA.Grt and Decision Number 68/Pdt.P/2023/PA.JS in principle has a clear legal basis in Article 185 of the Compilation of Islamic Law, which grants the descendants of deceased heirs the right to replace their parents in receiving a portion of the inheritance. However, the implementation of these provisions can vary depending on the legal facts, evidence, and social context underlying the case.

The similarities between the two decisions lie in the recognition and application of the concept of substitute heirs in accordance with positive Indonesian law, both granting the substitute the right to receive a proper share. However, differences arise in determining the size of the share, recognizing lineage relationships, and considering the evidence presented by the parties. This demonstrates that the application of legal norms in practice can be influenced by differences in facts and evidence presented in court, despite the same legal basis.

The judges' views on both decisions reflect a cautious approach in interpreting and applying Article 185 of the Compilation of Islamic Law, taking into account the principles of justice, legal certainty, and public interest. The judges sought to strike a balance between normative provisions and the concrete conditions of the parties. parties, so that the resulting decision is not only based on legal rules but also relevant to the prevailing social, customary, and sharia contexts. Thus, these two decisions demonstrate the flexibility of the application of Islamic inheritance law in Indonesia, which can adapt to factual situations without neglecting its normative foundation.

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