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JURIDICAL PROBLEMS IN THE IMPLEMENTATION OF SUBSTITUTE HEIRS IN THE ISLAMIC INHERITANCE SYSTEM IN INDONESIA (ANALYSIS OF APPEAL DECISIONS AT RELIGIOUS HIGH COURTS)

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ABSTRACT

The implementation of the substitute heir concept in Article 185 of the Compilation of Islamic Law (KHI) aims to protect the rights of orphaned grandchildren as a manifestation of maqashid sharia. However, its implementation creates juridical problems due to norm ambiguity that triggers legal uncertainty. This study aims to analyze the dynamics of appellate judges' legal reasoning and its juridical implications for legal certainty and national justice. This research employs a juridical approach and a case study approach on decisions of Religious High Courts in Indonesia. The results indicate a sharp disparity in legal interpretation; for instance, PTA Bandung applies a progressive approach that goes beyond the text for the sake of substantive justice, PTA Jakarta uses a rigid proportional mathematical approach, while PTA Makassar tends to be formalistic by emphasizing non-retroactive principles and customary law. This variation indicates that Article 185 of the KHI functions as an open norm providing broad discretion but risks creating inconsistency in decisions. Juridically, this implementation marks a paradigm shift in inheritance from patrilineal to bilateral, yet it creates a hybrid legal status for substitute heirs. This study concludes the need for legal reform through revising the redaction of Article 185 of the KHI from a facultative nature to an imperative one, as well as elevating the legal status of the KHI to ensure equitable legal unification.

Keywords: Substitute heirs; Decision disparity; Compilation of Islamic law; Legal certainty; Legal reasoning

1. INTRODUCTION

Islamic inheritance law plays a vital role in the social order of Indonesian Muslim society, not only as a mechanism for wealth transfer but also as a manifestation of obedience to Sharia. In Indonesia, inheritance law holds a unique and dynamic position as it operates within a duality between established classical *fiqh* texts (*kitab kuning*) and codified positive law, namely the Compilation of Islamic Law (KHI). One of the most progressive yet controversial breakthroughs in the KHI is the concept of substitute heirs (*plaatsvervulling*), which is regulated in Article 185. This article grants rights to grandchildren to replace the position of their parents who died before their

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grandparents. This concept emerges as an antithesis to conventional *fiqh* doctrine—especially the Shafi'i school adhered to by the majority of Indonesian Muslims—where grandchildren are often blocked (*mahjub*) by the existence of other living sons.

Philosophically, the presence of Article 185 of the KHI is based on considerations of benefit (*maqashid sharia*) and a sense of justice, specifically to protect the rights of orphaned children who are often overlooked and neglected in traditional inheritance schemes. This provision is essentially a form of new *ijtihad* that adopts the concept of obligatory bequest (*wasiat wajibah*) from Islamic law in the Middle East (such as Egypt and Syria), which was then adapted into positive legal norms in Indonesia. It is hoped that this article can serve as a juridical solution that bridges the gap between classical legal texts and the reality of the need for justice in modern families.

However, at the implementation level, the application of Article 185 of the KHI gives rise to complex juridical problems. These problems are rooted not only in the tension between the formal legality of the KHI and judges' convictions regarding *fiqh* doctrine, but also in the ambiguity of the norms within the article itself. The wording of Article 185 paragraph (2), which states that the share of a substitute heir must not exceed the share of the heir being replaced, gives rise to diverse interpretations. Do grandchildren receive the exact same share as their parents (full replacement system), or is it limited to a maximum of one-third like the concept of *wasiat wajibah*? This ambiguity allows judges to have overly broad discretion without standard guidelines. Consequently, sharp disparities in decisions have emerged at various court levels, which in turn creates legal uncertainty (*rechtsonzekerheid*).

The issue becomes increasingly crucial when these cases are examined at the appellate level. The Religious High Court, as a second-level *judex facti* and a *voorpost* of the Supreme Court, has a strategic role in achieving legal unification. However, decisions at the appellate level often reveal an unfinished battle of paradigms between the textualist paradigm (which limits grandchildren's rights to maintain the purity of *fiqh*) and the contextualist paradigm (which prioritizes the spirit of the KHI). The inconsistency in the mindset of appellate judges in deciding substitute heir cases has the potential to injure the sense of justice for justice seekers and diminish the authority of the religious courts.

Given the urgency of this issue, research on these juridical problems becomes very important to dissect the legal construction built by judges. This study is relevant amidst demands for Islamic law reform that must be responsive to societal dynamics without abandoning Sharia principles. Therefore, this research aims to analyze the juridical problems in the implementation of substitute heirs in the Islamic inheritance system in Indonesia, focusing on the analysis of appeal decisions. This research will outline the dynamics of the legal reasoning of appellate judges and the juridical implications of these decisions on the fulfilment of the sense of justice and national legal certainty.

2. METHODS

This research on the juridical problems regarding the implementation of substitute heirs (*ahli waris pengganti*) employs a qualitative research design aimed at describing the legal meanings and phenomena encountered by the researcher through the presentation of relevant evidence. As explained by Gunawan (2015), the primary focus of this approach is to broaden the understanding of the issues at hand, explain reality through bottom-up theoretical exploration, and develop insights into the phenomena being studied. In the context of this study, qualitative methods are used to analyze the dynamic relationship between legal texts within the Compilation of Islamic Law (KHI) and the reality of their implementation in judicial decisions, conducted by

applying scientific logic (Azwar, 2001). The specification of this research is descriptive-analytical, aiming to collect data based on juridical factors related to the research object, which are then analyzed to identify common patterns of legal reasoning in the resolution of inheritance disputes.

To explore these phenomena comprehensively, this research integrates two main approaches. The first is the juridical approach, which consists of three types. The first type is the juridical approach, defined as a scientific research procedure to discover truth based on legal scientific logic from a normative perspective (Suganda, 2022). This includes the normative juridical approach, which examines law as written rules or norms, specifically Article 185 of the KHI, as well as theoretical aspects covering the principles of Islamic inheritance law. The second type is the empirical juridical approach, used to examine law in reality (*law in action*). In this research, the empirical approach is not directed merely at statistical data, but rather to assess the effectiveness of the law through the analysis of Religious High Court judges' decisions as objective data. The third type is the socio-legal approach, which integrates the influence of social sciences on legal science. Given that law is interdisciplinary, this approach is used to explain the aspect of the societal sense of justice that influences judges in deciding substitute heir cases. The synergy of these three approaches serves as a methodological guide to analyze the gap between ideal norms (*das sollen*) and judicial practice (*das sein*).

The second main approach in this research applies the case study method. Afifuddin and Ahmad (2012) explain that a case study aims to explore a single entity or phenomenon in depth over a specific period. This approach enables the researcher to conduct a detailed exploratory analysis of a series of appeal decisions regarding substitute heirs to fully understand the dynamics of legal interpretation within the religious court institutions.

The database for this research is sourced from primary and secondary data. Referring to Marzuki (2005), primary data is information obtained directly from the object being studied. In the context of this legal research, the main primary data is not survey results, but rather court decision documents that have permanent legal force as well as appeal decisions that are the object of study. Meanwhile, secondary data refers to information collected from literature studies (Marzuki, 2005). Secondary data in this research includes the KHI text, *fiqh* literature, scientific journals, and previous research results, using documentation techniques to gather visual and textual data (Nana & Syaodih, 2012). Documentation becomes a vital technique in this juridical research to collect copies of decisions, regulations, and legal references as authentic, verifiable evidence (Ridwan, 2002).

The final stage of this methodology is the data processing and analysis technique adopting the Miles and Huberman model, which includes data reduction, data display, and conclusion drawing. Data reduction is performed by filtering complex information from judges' decisions and interview results, discarding irrelevant data, and focusing attention on the main theme, namely the problems of implementing Article 185 of the KHI (Siyoto & Sodik, 2015). The reduced data is then presented in the form of a systematic narrative description (*data display*), supplemented by excerpts of judges' considerations to provide a complete picture of the phenomenon. The final step is verification or conclusion drawing, where the researcher seeks causal relationships, similarities, and differences from the existing data to answer the problem formulation regarding legal certainty and justice in the substitute heir system in Indonesia (Siyoto & Sodik, 2015).

3. RESULTS AND DISCUSSION

Dynamics of Appellate Judges' Legal Reasoning in Substitute Heir Disputes

The implementation of Article 185 of the Compilation of Islamic Law (KHI) concerning substitute heirs at the appellate level reveals a sharp variation in legal interpretation (disparity) among panels of judges. This phenomenon indicates that Article 185 of the KHI is a flexible article that opens up very broad room for *ijtihad* (independent reasoning), yet on the other hand, it creates legal uncertainty (*rechtsonzekerheid*). This study dissects three monumental decisions from the Religious High Courts (PTA) of Bandung, DKI Jakarta, and Makassar to map how judges construct law (*rechtsvinding*) in the face of normative vacuums or ambiguities, and how they balance between the text of the rule (legal text) and the context of justice (legal justice).

1) Judicial Progressivity in Protecting Collateral Relatives (Analysis of Bandung Religious High Court Decision Number 152/Pdt.G/2023/PTA.Bdg)

The decision of the Bandung Religious High Court Number 152/Pdt.G/2023/PTA.Bdg represents a bold and progressive landmark decision. This case originated from an inheritance dispute where the deceased, Ria Hamria Pajattangi, died without leaving any children but left behind nephews/nieces from a sibling who had predeceased her. In the construction of conventional Islamic law (*Shafi'i*) and applicable normative rules, nephews/nieces (children of siblings) are often blocked (*mahjub*) by the presence of living siblings, or are not considered valid substitute heirs because they are not in a direct downward line.

However, the Panel of Judges of the Bandung PTA took a *contra legem* stance (deviating from the text for the sake of justice). In their considerations, the judges did not immediately apply the textual *fiqh* rigidly which would cut off the inheritance rights of the nephews/nieces. The judges used sociological and philosophical approaches by referring to the spirit of *maqashid sharia* and Q.S. An-Nisa verse 8 which commands the giving of property to relatives who are present at the time of inheritance distribution "in moderation." The judges interpreted this command not merely as a moral recommendation (*sunnah*), but as a legal obligation to uphold distributive justice for disadvantaged relatives.

In this decision, the judges determined Asdi Juwirman, Andini May Andriani, and Andi Saputra as substitute heirs of their parents (the deceased's siblings). The judges' boldness was evident when they deviated from the Supreme Court Circular Letter (SEMA) Number 3 of 2015 which explicitly limits substitute heirs only to the degree of grandchildren (direct downward line). The judges of the Bandung PTA performed an extensive interpretation by drawing a line to the side. The judges granted a share of 1/54 of the inheritance to each of the nephews/nieces.

This decision shows that appellate judges strive to fill legal vacuums (*rechtsvacuum*) and overcome injustices arising from the premature death of the parents of heirs. The judges realized that leaving orphaned nephews/nieces with nothing while there is abundant inheritance is a form of substantial injustice. The juridical implication of this decision is very significant. It opens up a jurisprudential opportunity that the concept of substitute heirs in Article 185 of the KHI is not limitative only to the direct downward line but can be extended to the sideline (siblings) if the sense of justice demands it.

2) Mathematical Rigidity and the Principle of Balanced Justice (Analysis of DKI Jakarta Religious High Court Decision Number 78/Pdt.G/2019/PTA.JK)

Unlike the extensive approach in Bandung, the Decision of the DKI Jakarta Religious High Court Number 78/Pdt.G/2019/PTA.JK shows how judges grapple with the complexity of mathematical calculations (*hisab waris*) in applying the normative limitations of Article 185 paragraph (2) of the KHI. This case involved the deceased Hamimah alias Hj. Siti Hamimah who

left behind biological children and two grandchildren from a daughter who had predeceased her (Dr. Dara Rahma).

In its ruling, the Judges of the DKI Jakarta PTA determined Azis Yudhowijoyo and Akbar Adiwijoyo as substitute heirs. A crucial issue in this case was determining the amount of their share so as not to violate the principle of "must not exceed the share of the heir of equal degree." The judges determined that the grandsons each received a 1/22 share, while the biological son (their uncle, Hafizh Reza Hasan) received a 4/22 share. This calculation shows the judges' caution in maintaining the structure of Islamic inheritance so as not to be "damaged" by the inclusion of substitute heirs.

This decision reflects the strict application of the *ijbari* principle, where the transfer of property occurs automatically by law, but with rigid limitations to maintain harmony with the *ashabah* doctrine. Judges must perform "legal acrobatics" in calculations to ensure that the accumulated share of substitute heirs does not injure the rights of the main heirs. If grandchildren are given a full portion replacing their mother without adjustment, it is feared that it will significantly reduce the share of the deceased's son, who in the patrilineal doctrine is considered to have greater financial responsibility.

This decision confirms that the implementation of Article 185 of the KHI in the field is often trapped in a dilemma between granting full rights (absolute substitution version of Western Civil Law) or granting limited rights (similar to *Wasiat Wajibah* in the Middle East). The Judges of the DKI Jakarta PTA chose a middle path by granting inheritance rights, but with a portion that has been adjusted (reduced) to maintain proportional balance. This proves that the concept of substitute heirs in Indonesia is a unique hybrid that attempts to accommodate the rights of grandchildren without demolishing the edifice of Sunni *fiqh*.

3) Conflict of Non-Retroactive Principle and Local Tradition (Analysis of Makassar Religious High Court Decision Number 047/Pdt.G/2019/PTA.Mks)

The Decision of the Makassar Religious High Court Number 047/Pdt.G/2019/PTA.Mks presents a different dimension of problems, namely the conflict between positive law (KHI), customary law, and the non-retroactive principle. This case involved a land dispute inheritance of Andi Basse Karaeng Sangnging who died in 1971, long before the KHI was born. The Plaintiffs are grandchildren of the deceased's child who died earlier in 1966.

The Panel of Judges of the Makassar PTA rejected the grandchildren's lawsuit to be determined as substitute heirs. The judges' main legal consideration was the non-retroactive principle (law does not apply retroactively). The judges argued that the KHI (1991) could not be applied to a legal event (the death of the testator) that occurred in 1971. The judges found the fact that the inheritance had been divided *de facto* by the living heirs in the period 1972-1975, so the grandchildren's lawsuit was considered to disturb the established legal order.

The judges accommodated the local wisdom values of the Bugis community known as *polo aletenna* (broken bridge). In this customary concept, if someone dies before their parents, the inheritance relationship is severed, and their children are not entitled to claim inheritance from their grandparents. The judges affirmed that the division of inheritance carried out in the past, which did not include grandchildren, was valid according to customary law and traditional Islamic law applicable at that time. However, the judges still considered the humanitarian aspect by acknowledging the existence of "compassionate money" (*tali asih*) given in the past as a valid form of compensation.

This decision highlights the tension between legal certainty and substantive justice. Juridically formal, the judges were correct in applying the non-retroactive principle to protect the stability of property ownership that had lasted for decades (*rechtsverwerking*). However, for the grandchildren, this decision was felt as a denial of rights that should have been guaranteed by the state through the KHI. This case confirms that the implementation of substitute heirs in Indonesia is highly dependent on the *locus* (place) and *tempus* (time) of the event, as well as the strength of customary law living in the community, making the implementation of Article 185 of the KHI not always linear and uniform.

Juridical Implications of the Implementation of Substitute Heirs

The implementation of the concept of substitute heirs (*plaatsvervulling*) within the architecture of Islamic inheritance law in Indonesia, as codified in Article 185 of the Compilation of Islamic Law (KHI), is not merely the addition of a new norm in the national legal order, but a fundamental transformation that triggers waves of multidimensional juridical, sociological, and philosophical implications. The presence of this article is a state response to dynamic societal needs, as well as an attempt to bridge the gap between classical *fiqh* doctrines, which tend to be textual-patrilineal, and the sociological reality of Indonesian society, which is bilateral-parental.

However, at the implementation level, the application of this rule through the decisions of Religious High Courts in various jurisdictions—such as Makassar, Jakarta, and Bandung—reveals an unresolved dialectical tension. The implications of applying this rule are not limited to the settlement of casuistic disputes in the courtroom but extend to the level of national legal certainty, the reconstruction of the meaning of justice, harmonization between legal systems, and challenges in judicial administration. Based on a comparative analysis of primary legal materials (court decisions) and secondary materials (academic literature), this discussion will outline these implications comprehensively across several key dimensions.

1) Implications for Legal Certainty

Legal certainty is a main pillar in the rule of law (*rechtsstaat*), requiring that laws be clear, unequivocal, and consistently applied. However, an analysis of the regulations and jurisprudence regarding substitute heirs reveals a paradox. The rules created to provide certainty of rights for heirs have instead given birth to new uncertainties due to the "open texture" of the norms.

The primary source of juridical uncertainty is rooted in the redaction of Article 185 paragraph (1) of the KHI, which states that the position of an heir who dies first "can be replaced" (*dapat digantikan*) by their child. Aini (2023), in a critical analysis, highlights that the use of the word "can" (*dapat*) in legal semantics indicates a facultative, permissive, and non-imperative nature. This phrase provides a very broad—and potentially unbridled—discretion for panels of judges to determine whether, in a specific case, a grandchild is "worthy" or "unworthy" of receiving an inheritance. The juridical implication is the absence of a binding standard. In one case, a judge might reject a request for a substitute heir on the grounds that the welfare of the primary heirs is disturbed or the grandchild is deemed capable, while in another case with similar facts, a judge might grant it on the basis of compassion.

This condition differs diametrically from the inheritance regime in the Civil Code (*KUHPerdata*). As outlined by Irwansyah, Haerani, and Aswadi (2024), Article 842 of the Civil Code stipulates that representation in the direct downward line continues endlessly and is absolute. In this Western legal system, the right of a substitute heir is a right arising *ipso jure* (by operation of law). There is no room for judges to weigh compassion, economic conditions, or the consent of other heirs. Once a parent dies, the child automatically replaces their position with full rights. The

disparity in the nature of norms between the KHI (which is tentative) and the Civil Code (which is imperative) implies weak legal protection for Muslim legal subjects compared to those subject to Western civil law. A Muslim grandchild's fate depends on the "conviction" of the panel of judges examining their case, whereas a non-Muslim grandchild has definite statutory guarantees.

Implications of uncertainty are also strikingly visible in the application of the principle of the time of the law's validity (*tempus delicti/tempus actus*). The analysis of the Makassar Religious High Court Decision Number 047/Pdt.G/2019/PTA.Mks shows the rigidity of applying the non-retroactive principle. In this case, the testator (Andi Basse Karaeng Sangnging) died in 1971, and the child of the testator (the plaintiffs' father) died earlier in 1966. The panel of judges rejected the grandchildren's lawsuit to be designated as substitute heirs considering that the KHI was only promulgated in 1991 via Presidential Instruction No. 1 of 1991. The judges argued that the KHI could not be applied retroactively to past legal events, especially since the inheritance was considered to have been divided in reality or settled according to the customary law applicable at that time.

This decision has serious juridical implications: the KHI is deemed to lack executorial power to correct past injustices that occurred before 1991. For justice seekers, this means that the status of "substitute heir" seems to be a privilege only for those whose grandparents died in the modern era (post-1991). This creates legal stratification based on the time of the testator's death. Whereas, in the spirit of *maqashid sharia* and principles of universal justice, protection of the rights of orphans should be eternal and not limited by administrative temporal barriers. A further implication is the closing of the door to justice for thousands of old inheritance cases in Indonesia that remain unresolved, where grandchildren lose their rights simply because their grandparents died before the KHI Presidential Instruction existed.

Uncertainty is further exacerbated by Article 185 paragraph (2) of the KHI, which states that the share of the substitute heir "must not exceed" (*tidak boleh melebihi*) the share of the heir of equal degree. This phrase triggers sharp hermeneutical debates among judges and academics. Does "not exceed" mean equal or must it be less? Aini (2023) notes that this ambiguity often disadvantages substitute heirs because judges tend to take the safe route by awarding a much smaller share.

In the DKI Jakarta Religious High Court Decision Number 78/Pdt.G/2019/PTA.JK, the panel of judges interpreted this phrase with a very cautious mathematical approach. The judges set the share of the grandsons (Azis and Akbar) at 1/22 each, while their uncle (Hafizh Reza Hasan, the testator's biological son) received 4/22. If totaled, the share of the two grandchildren (2/22) remains smaller than the share of one son. This calculation implies that the judges attempted to ensure the grandchildren's portion did not equal, let alone exceed, the son's portion, to maintain family harmony and the dignity of the primary heirs (*ashabah*). The juridical implication is that the status of substitute heirs is *de facto* positioned as "second-class heirs"; their existence is formally recognized, but their material rights are limited. This is fundamentally different from the concept of *plaatsvervulling* in the Civil Code, which provides full rights without deduction (*full share*), where grandchildren inherit their parent's rights entirely (*pancang demi pancang*).

2) Implications for the Construction of Justice (Legal Justice)

The application of substitute heirs in the KHI is not merely a technical legal issue but a representation of an ideological struggle between the established patrilineal *fiqh* paradigm and the egalitarian progressive Islamic law paradigm. The juridical implications of this shift touch upon the philosophical foundations of gender justice and child protection.

Traditionally, the majority of Indonesian Muslims adhere to the Shafi'i School, which firmly holds the principle of total exclusion (*hijab hirman*). In this doctrine, grandchildren (especially from daughters, or grandsons if there is a living son of the testator) are absolutely blocked from receiving inheritance. The principle of "the closer relative blocks the more distant" (*al-aqrabu fal aqrab*) becomes a dogma difficult to shake.

However, Rasyid and Krismono (2024) explain that the KHI, influenced by Hazairin's thoughts, attempts to deconstruct this dogma through a bilateral inheritance system. Hazairin argued that the Qur'an essentially does not distinguish between male and female lines in inheritance, so grandchildren from daughters have the same right to replace their parents. The juridical implication of adopting this thought is clearly visible in the DKI Jakarta Religious High Court Decision, where grandchildren from a daughter (Dr. Dara Rahma) were still designated as substitute heirs despite the presence of a son (their uncle).

This decision has revolutionary implications: Indonesian positive law has officially abandoned the classical *hijab* doctrine in certain contexts to uphold gender justice and child protection. The state intervenes in religious interpretive authority to ensure that granddaughters or grandchildren from the female line are no longer structurally marginalized in the distribution of family economy. This is a crystallization of what Almubarrok (2020) calls an effort to accommodate the "living law" in Indonesia, which tends to be parental.

Another interesting implication is the emergence of the phenomenon of judicial activism among Religious Court judges. Judges are no longer merely "mouthpieces of the law" (*la bouche de la loi*), but become law-makers (*judge-made law*) who actively excavate the value of justice behind the text. This is clearly evident in the Bandung Religious High Court Decision Number 152/Pdt.G/2023/PTA.Bdg. In this case, the judge granted inheritance rights to nephews/nieces (children of the testator's sister), even though the Supreme Court Circular Letter (SEMA) and the KHI text explicitly limit substitute heirs only to the direct downward line (grandchildren). The judge performed an extensive interpretation by using the argument of Q.S. An-Nisa verse 8 to provide a "moderate" share (1/54 part) to these nephews/nieces. The juridical implication is that the judge dared to breach regulatory text limits to achieve substantive justice. The judge realized that leaving orphaned nephews/nieces with nothing while there is abundant inheritance is a form of conscientious injustice. This decision sets a precedent that the concept of substitute heirs is dynamic and can be expanded to the sideline (*zijlinie*) if the sense of justice demands it, even though this has not been explicitly regulated in the law.

Despite having noble goals, the legal construction of substitute heirs in the KHI leaves a theoretical ambiguity that impacts judicial practice. Almubarrok (2020) notes that this concept is essentially an adoption of the Obligatory Bequest (*Wasiat Wajibah*) applicable in Egypt and Syria but packaged with the term substitute heir. The juridical implication is the creation of a hybrid legal status; formally, the legal subjects are called heirs, but materially, their rights are treated like legatees (limited to a maximum of 1/3 or not exceeding the parent). This hybridization creates dogmatic confusion. If they are purely heirs, they should receive a full share according to the *faraidh* scheme (e.g., *ashabah* or *dzawil furudh*). However, if they are legatees, they should not be included in the main inheritance calculation scheme and should be taken from the remainder of the estate. Consequently, judges often struggle to determine the appropriate mathematical formula, leading to decisions that seem compromising and non-uniform across courts. Krisnawati, Suryati, and Kusumasari (2024) highlight that this status ambiguity makes the position of substitute heirs vulnerable to being sued by primary heirs who feel their share is reduced.

3) Procedural Implications and Judicial Governance

The implementation of the substitute heir concept brings serious consequences to the procedural aspects of the religious courts, particularly regarding the burden of proof (*bewijslast*) and case administration. The absolute prerequisite for a substitute heir is that the grandchild's parent must die *before* the testator. If the parent dies *after* the testator (even by just one hour), the case is not one of substitute heirship, but rather ordinary inheritance or successive inheritance (*munasakhah*). Therefore, procedurally, judges are required to verify the fact of death (*fact of death*) with extreme precision.

In the DKI Jakarta Religious High Court Decision, the judge detailed the dates of death of Tengku Muhamad (May 10, 1995), Hj. Siti Hamimah (June 2, 2013), and their child Dr. Dara Rahma to ensure the validity of the status of grandsons Azis and Akbar as substitute heirs. A minor error in determining the sequence of death times would invalidate the grandchild's legal status and alter the entire inheritance distribution scheme. In Indonesia, where population administration (death certificates) is often disorderly, especially in rural areas, this becomes a heavy burden of proof for the parties. This demands extra vigilance from the panel of judges to excavate material facts, not relying solely on formal evidence.

The case in the Makassar Religious High Court highlights another challenge in evidence, namely the use of *testimonium de auditu* witnesses (hearsay testimony). In inheritance disputes involving past events (testator died in 1971), eyewitnesses have often passed away. Parties then present witnesses who only heard stories from their parents about the lineage and asset division. In its decision, the Makassar PTA judge rejected such testimony because it was considered not to meet the material requirements of a witness and only had the status of *testimonium de auditu*. The juridical implication is the extraordinary difficulty for substitute heirs (grandchildren) to prove their rights if the dispute relates to old inheritance. The rigid rejection of *de auditu* witnesses, without considering the specificity of customary inheritance cases which are often based on oral tradition, can close access to justice for grandchildren who are truly entitled. This indicates a gap between formal civil procedural law and the sociological reality of indigenous communities relying on collective oral memory.

The Bandung Religious High Court Decision shows another procedural implication, namely the urgency of site inspection (*descente*) to validate the object of dispute. Before deciding on the rights of substitute heirs, the judge ordered a *descente* to ensure that the land being sued for actually exists, its boundaries are clear, and it has not been divided. This step confirms that the determination of substitute heirs cannot be separated from the certainty of the inheritance object. The judge not only examines the subject (heir) but also the object (asset), making the judicial process more comprehensive but also longer and more costly. This has implications for the principles of simple, fast, and low-cost justice, which often must be sacrificed to achieve material truth.

4) Socio-Legal Implications

Law does not operate in a vacuum but its application always interacts with social reality. The implementation of Article 185 of the KHI triggers significant sociological dynamics in society, especially regarding conflicts with customary law. The Makassar Religious High Court Decision provides a real picture of the harsh clash between state law (KHI) and customary law. The Bugis community recognizes the concept of *polo aletenna* (broken bridge), where if a child dies before their parents, the inheritance relationship to the grandchild is severed according to custom. In this case, the judge acknowledged the existence of such customary law and refused to apply the KHI retroactively. The judge also considered the fact that the plaintiffs' uncle had given

"compassionate money" (*tali asih*) in the past as a form of customary settlement that must be respected.

The sociological implication is the acknowledgment by religious courts that societal legal consciousness has not fully integrated with positive state law. This decision seems to legitimize customary practices that marginalize grandchildren, even though the KHI attempts to protect them. This shows that the unification of inheritance law in Indonesia still faces a steep road of cultural resistance. For the community, this could be interpreted that customary law still has strong teeth to set aside positive Islamic law if it concerns past events. This is a reflection of the legal pluralism that is still strong in Indonesia.

The application of substitute heirs also has implications for potential horizontal conflicts within extended families. Uncles and aunts (children of the testator) often feel their inheritance rights are significantly reduced by the entry of nephews/nieces (grandchildren) into the circle of heirs. In the logic of classical *fiqh* they understand, nephews/nieces should be blocked. When the court forces the entry of nephews/nieces based on Article 185 of the KHI, this often causes psychological resistance and the rupture of kinship ties (*silaturahmi*). The cases in the DKI Jakarta and Bandung Religious High Courts are real examples of disputes involving uncles against nephews. The implication is that court decisions might resolve asset disputes formally (certificate division), but not necessarily resolve inner and social conflicts within the family. Inheritance law, which should be a means of welfare distribution and family bonding, turns into an arena of battle triggering social fragmentation.

The disparity of rules between the KHI (which limits grandchildren's rights) and the Civil Code (which grants absolute rights without degree limits) implies *forum shopping* behavior. Ningtias et al. (n.d.) note that in the Civil Code, the right of representation applies to an unlimited degree. Legally savvy communities will try to choose the legal system that is most profitable for them. The socio-juridical implication is the possibility that certain parties (e.g., great-grandchildren or nephews rejected by the religious court) will try to register lawsuits in the district court under the guise of unlawful acts (tort) disputes or property ownership disputes, to avoid the jurisdiction of the religious court and obtain a larger share according to the Civil Code. This weakens the principle of Islamic personality in religious courts and creates disorder in the national legal system, where one's religion can be "set aside" for economic interests.

5) Implications for National Law Reform

The dynamics of substitute heir implementation provide a strong signal regarding the direction of Indonesia's national law development in the future. The KHI currently only has the status of a Presidential Instruction (Inpres No. 1/1991), which hierarchically is very weak legislation. Punuh, Kalalo, and Baftim (2024) note that this weakness forces judges to constantly refer to Supreme Court Jurisprudence to patch up the deficiencies of KHI articles. The juridical implication is that Islamic inheritance law in Indonesia relies heavily on *judge-made law*, approaching the characteristics of a *common law* system, even though Indonesia adheres to *civil law*. This demands the necessity of elevating the status of the KHI to become a Material Law of Religious Courts to possess stronger binding power and minimize interpretative disparity.

Aini (2023) urges for the reconstruction of Article 185 of the KHI. The word "can" (*dapat*) must be changed to "imperative" (*wajib*) to ensure legal certainty. Furthermore, the formulation of shares "not exceeding" must be clarified mathematically to avoid dual interpretations. Without revision, the substitute heir article will continue to be a catch-all article whose application depends heavily on the subjectivity of the judge, which in turn perpetuates legal uncertainty.

Viewed from a jurisprudential perspective, the implementation of the substitute heir concept reflects the dynamics of legal discovery (*rechtsvinding*) by religious court judges who are no longer confined to mere textual positivism but are moving towards legal progressivity. Supreme Court decisions that consistently grant substitute heir rights, as affirmed in various jurisprudences, show that the judicial institution has placed the principle of *maqashid sharia*—specifically the protection of lineage and property—as the main legal reason (*ratio decidendi*) to fill the legal vacuum (*rechtsvacuum*) found in classical *fiqh*. As noted by Krisnawati et al. (2024), this trend of decisions confirms the function of jurisprudence as a vital instrument in transforming Islamic law into responsive law that accommodates the societal sense of justice (*living law*).

The juridical implication is seen in how this series of decisions has formed a fixed legal rule that strengthens the distinct characteristics of national Islamic law, where local wisdom values are harmoniously integrated into judges' legal considerations without deconstructing the substance of sharia, while simultaneously guaranteeing legal certainty for justice seekers in Indonesia. Overall, the juridical implication of applying substitute heirs in Indonesia illustrates a legal transformation seeking its ideal form. On one hand, this concept has succeeded in becoming a progressive instrument of justice protecting the rights of vulnerable groups (orphans and women) who have been neglected by classical *fiqh* doctrines, as seen in progressive decisions in the Jakarta and Bandung Religious High Courts.

However, on the other hand, normative ambiguity and clashes with customary and Western civil law systems still leave serious gaps of uncertainty, as reflected in the rejection of the lawsuit in the Makassar Religious High Court. This condition confirms that the reform of Islamic inheritance law in Indonesia is not yet complete. Concrete steps are needed in the form of legislative revision to clarify the imperative nature of the article, harmonization with other national laws, and capacity building for judges in conducting fair legal discovery. Only then can the noble goal of protecting substitute heirs shift from mere discourse on paper to a reality of justice felt by every citizen.

4. CONCLUSION

The implementation of the concept of substitute heirs (*ahli waris pengganti*) within the Islamic inheritance law system in Indonesia, as stipulated in Article 185 of the Compilation of Islamic Law (KHI), represents complex legal dynamics between the effort to realize substantive justice and the challenge of maintaining legal certainty. An analysis of the decisions of the Religious High Courts in Bandung, Jakarta, and Makassar reveals sharp disparities in interpretation among judges, ranging from a progressive approach that goes beyond the text to protect relatives (as seen in Bandung), a rigid yet accommodative mathematical approach (in Jakarta), to a formalistic approach constrained by the non-retroactive principle and customary law (in Makassar). This variation in legal reasoning indicates that Article 185 of the KHI functions as an open norm providing broad room for *ijtihad*, yet simultaneously holds the potential to create legal uncertainty due to the facultative nature of its wording.

Juridically, the application of this rule carries profound implications, namely a paradigm shift from a pure patrilineal system towards the strengthening of a more egalitarian bilateral system, as well as the emergence of a hybrid legal status for substitute heirs who are formally recognized but have limited material rights. Furthermore, there are significant procedural challenges regarding the burden of proof for the sequence of death and witness validity in past inheritance disputes, as well as potential conflicts between state law and customary law and *forum shopping* practices due to regulatory disparities with the Civil Code (*KUHPerdata*). Therefore,

concrete legal reform steps are needed through elevating the status of the KHI to a statute and revising the article's wording to be imperative to ensure legal unification, so that protection of the rights of substitute heirs can be realized consistently as a manifestation of *maqashid sharia* that is responsive to the sense of justice of the Indonesian people.

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