

# Cek Artikel

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# THE BENEFITS OF JURISPRUDENCE RULES ON THE DEVELOPMENT OF SUCCESSOR HEIRS IN INDONESIA

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**Abstract: Benefits of Jurisprudence Rules on the Development of Successor Heirs in Indonesia.** The position of successor heirs in Indonesia requires a deeper concern. Indonesian laws and regulations do not clearly regulate successor heirs, so they require other sources of law that can serve as guidelines for law enforcement officials to resolve a case related to a successor heir. With the existence of jurisprudence, it can certainly help the Judge in resolving a case. This study aims to find out how the benefits of jurisprudence rules for successor heirs in their development in Indonesia. This research uses a normative juridical approach, using descriptive methods of analysis and also library research. The results of this study concluded that the benefits of the existence of jurisprudence legal rules provide two important aspects. First, the benefits of material legal aspects that can provide clarity on the existence of provisions regarding the position of successor heirs in the development of the legal system in Indonesia because the jurisprudence rules also involve related regulations, namely in the form of Article 185 of the Compilation of Islamic Law. Second, the benefit of the legal aspect of formil where in terms of formil can provide an explanation of the completeness of administrative data for litigation in the Religious Court regarding inheritance cases related to successor heirs. So that with the legal rules of jurisprudence, it is felt that it can create certainty, justice, and also legal benefits that are useful for society.

**Keywords :** successor heirs; rules of jurisprudence; Benefits; development.

**Abstrak: Manfaat Kaidah-Kaidah Yurisprudensi Terhadap Perkembangan Ahli Waris Pengganti Di Indonesia.** Kedudukan ahli waris pengganti di Indonesia memerlukan suatu perhatian yang lebih mendalam. Peraturan perundang-undangan di Indonesia belum secara jelas mengatur mengenai ahli waris pengganti, sehingga memerlukan sumber hukum lain yang dapat menjadi pedoman aparat penegak hukum untuk menyelesaikan suatu perkara berkaitan dengan ahli waris pengganti. Dengan adanya yurisprudensi tentu dapat membantu Hakim dalam menyelesaikan suatu perkara tersebut. Penelitian ini bertujuan untuk mengetahui bagaimana manfaat kaidah yurisprudensi terhadap ahli waris pengganti dalam

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27 perkembangannya di Indonesia. Penelitian ini menggunakan pendekatan yuridis normatif, dengan menggunakan metode deskriptif analisis dan juga *library research*. Hasil penelitian ini menyimpulkan bahwa manfaat dari adanya kaidah-kaidah hukum yurisprudensi memberikan dua aspek penting. *Pertama*, manfaat dari aspek hukum materil yang dapat memberikan kejelasan akan adanya ketentuan perihal kedudukan ahli waris pengganti dalam perkembangan sistem hukum di Indonesia karena dalam kaidah yurisprudensi tersebut juga melibatkan peraturan terkait yakni berupa Pasal 185 Kompilasi Hukum Islam. *Kedua*, manfaat aspek hukum formil di mana dalam segi formil dapat memberikan suatu penjelasan akan kelengkapan data administrasi untuk berperkara di Pengadilan Agama perihal perkara kewarisan yang berhubungan dengan ahli waris pengganti. Sehingga dengan adanya kaidah-kaidah hukum yurisprudensi ini, maka dirasa dapat menciptakan kepastian, keadilan, dan juga kemanfaatan hukum yang berguna bagi masyarakat.

**Kata Kunci :** ahli waris pengganti; kaidah yurisprudensi; kemanfaatan; perkembangan.

### Introduction

Inheritance law in Indonesia has been mixed with the reality of the law that becomes one, namely Islamic inheritance law, customary inheritance law, and Burgerlijk Wetboek (BW) inheritance law. This fact has a significant impact on the practice of inheritance in the midst of society. The impact can be seen from the concept of inheritance, the reason for inheriting, the share of heirs, and the way it is calculated and the form of settlement of inheritance disputes. These three subsystems of inheritance law are already functioning and have an ethical impact on a number of inheritance-related issues.<sup>2</sup>

2 In Indonesia, people who are Muslim, the Government has made a Compilation of Islamic Law (KHI). Then through the Presidential Instruction of the Republic of Indonesia No. 1 of 1991, KHI was used as the main reference material for judges in religious courts to resolve marital, inheritance, and waqf issues. KHI is a source of jurisprudence based on living law.<sup>3</sup>

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<sup>2</sup> Eman Suparman, *Hukum Waris Indonesia Dalam Perspektif Islam, Adat, Dan BW* (Bandung: Refika Aditama, 2005).

<sup>3</sup> Islahuddin A. Subarok, 'Ahli Waris Pengganti (Studi Pasal 185 Kompilasi Hukum Islam)', *An-Nawa: Jurnal Studi Islam*, 2.2 (2020), 34-44 <<https://doi.org/10.37758/annawa.v2i2.118>>.

The issue of heirs relating to the replacement of heirs or *plaatsvervulling* (successor heirs), as contained in article 185 of the KHI which reads: (1) Heirs who have died first from the sipewaris, then the position may be replaced by their children, with the exception of those referred to in section 173. (2). The share of the successor heirs shall not exceed that of the share of the heirs equal to the substitute. The provision provides a hint that the position of this successor heir must have a clear position especially in terms of the division of inheritance. Even some experts and legal experts have a debate about the existence of a substitute heir provision which makes some argue that the determination of the existence of a successor heir is mandatory and some argue that the determination of the existence of a successor heir is uncertain.

So that basically, the regulation of legal issues to handle various cases, especially regarding inheritance, which is the authority of the Religious Court, has legal provisions that are definitely and also clearly regulated in accordance with what the community needs. However, in addition to this along with the times, judges as law enforcement officers also need other sources of law that can be used as guidelines or references to make legal considerations in deciding various cases, especially cases that are not regulated in laws and regulations. So that another source of law in question is in the form of jurisprudence that can come from the judge's decision, this jurisprudence has legal rules which of course the legal rules can play an active role and are used by judges in enforcing the law.

Previous research that discussed the position of successor heirs in Indonesia is diverse and varied. As stated by Alhafiz Limbanadi<sup>4</sup>, that based on the classification of heirs, particularly in the Islamic inheritance system, there is no known system of change of place in the division of inheritance. Generally, in classical literature, they refer to the term person who is entitled to receive (*furudul muqaddarah*) because of the causes of nasabiyah (heredity) and marriage. While the share received by the successor heir must not be greater than that of the replaced heir. Furthermore, Sofyan<sup>17</sup> Utama's research illustrates that, the legality of the successor heirs gets a guarantee in Article 185 of the Compilation of Islamic Law (KHI), it is in accordance with the principle of fairness in inheritance, and a policy of heirs in the division of inheritance for successor heirs, which is called pre-emptive

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<sup>4</sup> Alhafiz Limbanadi, 'Kedudukan Dan Bagian Ahli Waris Pengganti Dalam Hukum Islam', *LEX ET SOCIETATIS*, II.8 (2014), 170.

wisdom, namely, in the lifetime of the heir by distributing his property to the heirs or heirs of the successor.

<sup>6</sup> Research presented by Mohamad Mirzalino<sup>5</sup>, that the successor heir has problems in the form of its implementation in Islamic Law, so that the successor heir can obtain the estate if it gets the consent of the main heir(s). Then Hazar Kusmayanti<sup>6</sup> gave the understanding that, the position of the grandson as a successor heir in Islamic inheritance law is not listed in the Quran and Hadith, only recognized through the Ijtihad conducted by the scholars. However, in the Compilation of Islamic Law the existence of a grandson is recognized as a substitute for his parents who have died first from the heir and legal protection of the grandson as a substitute heir through the Compilation of Islamic Law which provides for the existence of a substitute heir position so that through the affirmation of the existence of a successor heir gets full legalization where the provision is not contained in the classical Islamic Heir Law

<sup>7</sup> Al-Qodir Zaelani argues that, the existence of a successor heir is a meeting of the ecletism of Islamic law and local wisdom. So in solving the problem of heirs can use KHI, local wisdom, judges' decisions (jurisprudence). In contrast to the research of Nina Ismaya<sup>7</sup>, that for the determination of the share of the successor heir, in Islamic law it has been determined the share of heirs according to the furudhul muqaddarah, where it has been determined its parts by sex and degree. Whereas in the civil inheritance law, the parts for heirs are equal head by head. Desma Royana<sup>8</sup> explained that the position of the heirs in their division has differences as is the case with the Kampar custom, where the division of inheritance against

<sup>5</sup> Mohamad Mirzalino Safryan Dilapanga, Desti Astati, and Eva Nurjannah, 'Kedudukan Ahli Waris Pengganti (Plaatsvervulling) Dalam Memperoleh Harta Waris Menurut Hukum Islam', *Jurnal Komunikasi Hukum (JKH)*, 7.1 (2021), 450 <<https://doi.org/10.12387/jkh.v7i1.31769>>.

<sup>6</sup> Hazar Kusmayanti, '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*, 19.1 (2019), 68–85 <<https://doi.org/10.22373/jiif.v19i1.3506>>.

<sup>7</sup> Nina Ismaya, 'Tinjauan Yuridis Terhadap Ahli Waris Pengganti Dalam Hukum Kewarisan Islam Dan Hukum Kewarisan Perdata Di Indonesia', *ALDEV: Alauddin Development Journal*, 4.3 (2022), 760–70 <<https://doi.org/10.154252/aldev.v4i3.20141>>.

<sup>8</sup> Desma Royana, 'Eksistensi Ahli Waris Pengganti Dalam Hukum Adat Kampar Kecamatan Bankinang Perspektif Kompilasi Hukum Islam', *Al-Ahwal Al-Syakhshiyah: Jurnal Hukum Keluarga Dan Peradilan Islam*, 3.2 (2022), 144 <<https://doi.org/10.15575/as.v3i2.19869>>.

the successor heirs in the Kampar custom gets a share according to the heirs he replaced (superior and compatio) while in the Compilation of Islamic Law in the aforementioned Article 185, regarding the division of heirs to successor heirs shall not exceed the share of the heirs he replaced which may rule out the possibility of the successor heir obtaining an estate less than/less than the share of the estate for the heirs he replaces. So this has become a debate in Indonesia because in society there are still parties who accept the existence of a provision for the position of division for successor heirs and there are some parties who have not been able to accept this, in other words, still using the provisions of customary law.

This research uses an empirical juridical approach method that is descriptive analysis with the use of qualitative data as the type of research and library research as one of the data collection techniques<sup>9</sup>. Furthermore, the data that has been collected is compiled to be then concluded objectively<sup>10</sup>. This research is expected to be able to describe or describe a situation or symptom of an existing social situation that prevails in society, of course, regarding inheritance of successor heirs so that it can provide a description and data related to the problem that has been formulated

## Discussion

### Successor Heirs Reviewed in KHI

Theoretically, Islamic inheritance law is often also referred to as faraidh, which is the part that has been ascertained or determined to be of its level. There are several opinions about the definition of such faraidh. According to Muhammad al-Syarbiny the science of faraidh is the science of fiqh relating to inheritance, the question of the way of calculation that can complete the inheritance, and the knowledge of the obligatory parts of the estate for each owner of the right of inheritance (heir). Meanwhile, in Article 171 letter a of the Compilation of Islamic Law (KHI) the law of inheritance is a law that regulates the transfer of the right to own the inheritance property (turkah) of the heir, determining who is entitled to be the heir and how much is the share of each. So Islamic inheritance law is an Islamic sharia

<sup>9</sup> N Nasrudin, 'Kontribusi Ekonomi Syariah Dalam Pemulihan Ekonomi Indonesia Di Masa Pandemi Covid-19', *Ary-Syari'ah*, 23.2 (2021), 320 <<https://doi.org/https://doi.org/10.15575/as.v23i2.15552>>.

<sup>10</sup> Nasrudin dan Ani Fatimah Zahra Saifi, 'Muhammad Baqir Al-Shadr's Thoughts In Building A Fair Economic System', *Jurnal Ekonomi Syariah*, 8.1 (2022), 14 <<https://doi.org/http://dx.doi.org/10.30736/jes.v8i1.429>>.

rule about the transfer of ownership rights from the heir to his surviving heirs whether the abandoned is in the form of money, land or anything in the form of legal property rights.<sup>11</sup>

The elements of Islamic inheritance are the existence of an heir, the existence of an heir, and the existence of an inheritance. The heirs consist of 25 (twenty-five) groups, consisting of 15 (fifteen) classes of male heirs, among others; widowers, children, grandchildren, fathers, grandfathers, brothers, nephews, uncles, cousins and freed slaves. Meanwhile, the female group consists of 10 (ten groups) including: widows, children, mothers, mothers, mothers, siblings and freeing slaves. However, not all heirs will get a share of the inheritance, only certain heirs are due to the principle of primacy. This principle of primacy in accordance with the provisions in Article 147 paragraph (2) of the KHI states: "if all heirs exist, then only those who are entitled to inheritance are: children, fathers, mothers, widows or widowers."

In addition to the foregoing primacy, there is a reason for the prohibition of a person not having share of the inheritance as explained in Article 173 of the KHI namely: "a person is prevented from becoming an heir if by a judgment of a Judge who has the force of law, is punished for: First, it is blamed for having killed or attempted to kill or severely persecute the testator; Secondly, it is libelously blamed for having filed a complaint that the testator has committed a crime punishable by 5 years in prison or a more severe penalty.

In reality, the field of inheritance has experienced significant development, due to the increasingly complex needs of society and its thinking patterns can change according to the times. Among them is the Islamic inheritance law which has developed with the existence of a successor heir whose application in Indonesia is regulated in the Compilation of Islamic Law. The results of the National Assembly of the Supreme Court of the Republic of Indonesia in 2010 and 2011 explained that the successor heirs are only up to grandchildren, according to article 185 of the Compilation of Islamic Law, which states: (1) Heirs who die earlier than the heir then their position can be replaced by their children, except those

<sup>11</sup> Fatahullah, & Sugiyarno, and Ita Surayya, 'Antara Munasakhah Dan Ahli Waris Pengganti Pada Putusan Nomor 42/11/Pdt.G/2009/PA.SEL.', *Jurnal IUS Kajian Hukum Dan Keadilan*, VI.1 (2018), 112 <<https://doi.org/10.29303/ius.v6i1.526>>.

1 mentioned in article 173; (2) The share of the successor heirs shall not exceed that of the share of the heirs equal to that which is replaced.<sup>12</sup>

One of the conditions of inheritance is the life of the heir. If someone dies, those who can inherit their estate are their surviving children. If any of his children died earlier than the heir, his position would be replaced by his children. The concept of replacing position is the ijihad of the scholars to the provisions of inheritance in the Qur'an and As-Sunnah. The replacement of this position in civil law is called *Plaatsvervulling*.

The definition of a successor heir in Islamic heir law is not the same as that of a successor heir in customary inheritance law, or western inheritance law (BW), which essentially only views the successor heir as the descendant of the successor heir who was replaced. The definition of a successor heir in Islamic heir law is an heir who is only open as a result of the absence of a particular heir. While these successor heirs can be understood as the act of instituting in a place replacement by the method of modification. As stated in article 185 of the KHI which provides for the successor heirs that the acceptance of this institution of successor heirs is not unanimous but in the form of a modification in which the share of the successor heirs shall not exceed the share of the heirs which is equal to that which is replaced. For example, the successor heir is only one and the father only has a sister, the heir is divided in half between the successor heir and his aunt.<sup>13</sup>

The heir is not always the descendant of the heir he replaced. Therefore, a number of fiqh experts say that Islamic inheritance law does not recognize a change of position. Granddaughter, that is, the daughter of the son if no other son is still alive and gets half a share of the inheritance. Two or more granddaughters get two-thirds of a share. If there is a son, the granddaughter does not get a share at all. Thus in Islamic law there is no system of substitution of inheritance (*Plaatsvervulling*), meaning that a granddaughter does not replace her father who died first from the one who left the inheritance (heir). If besides the granddaughter of the daughter of the person who left the inheritance then together they get two-thirds of the inheritance.

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<sup>12</sup> Kementerian Agama, *Kompilasi Hukum Islam, Cetakan Ke-11* (Bandung: Citra Umbara, 2009).

<sup>13</sup> Oyo Sunaryo Mukhlas, *Pranta Sosial Hukum Islam* (Bandung: Refika Aditama, 2015), h.192-193.



The daughter of the son (granddaughter) does not get an heirloom, if there is a son, as well as if there are two daughters. If the granddaughter has a brother then it becomes ashobah, meaning that both of them get heirlooms from the heirloom property after being distributed to those who get a share. For males twice the female part. That the grandson of the daughter and the granddaughter of the daughter, and the granddaughter of the son of all of them are called Zawil Arham. According to Ali ibn Abi Talib, Ibn Abbas, Abu Bakr, Umar, Usman as well as some tabi'in, that Zawil Arham only gets an heirloom if there are no more heirs entitled to fara'id or ashobah, while according to Zaid bin Tsabit, that Zawil Arham does not get heirloom from the heir. If the deceased person has no heirs, both entitled to fara'id and ashobah then his heirloom property is handed over to the baitul maal (state treasury in the Islamic State). The opinion was approved by Imam Maliki, Shafi'i and others.<sup>14</sup>

### **History of Development Regarding Successor Heirs in the Legal Rules of Jurisprudence**

Talking about the history of development that is closely related to the condition of a Muslim society, namely about inheritance, then based on the legal system and society will certainly produce social changes. In the opinion of Ratna Lukito, an expert in legal sociology with the existence of an Islamic law which is used as a goal for the running of the judiciary. The existence of this development can provide certainty from religious law that adapts to existing laws in society and also customary law, so with the existence of Islamic law in Indonesia which uses a modern approach to provide a change or creation of law.<sup>15</sup>

The law can apply if it is enforced and implemented by a community and is also determined by the authorized government in the area of the community. So the existence of a positive law in the form of legislation and legislation and other sources of law will provide a significant development and change, especially on the issue of successor heirs.<sup>16</sup>

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<sup>14</sup> Musa Asy'ari, 'Ahli Waris Pengganti Dalam Tinjauan Kompilasi Hukum Islam Dan Hukum Perdata', *ISTIDAL: Jurnal Studi Hukum Islam*, 7.1 (2020), 53–78 <<http://doi.org/10.34001/istidal.v7i1.2154>>.

<sup>15</sup> Ratna Lukito, *Tradisi Hukum Indonesia* (Yogyakarta: Teras, 2008), h.146.

<sup>16</sup> M Nur Kholis and Al Amin, 'Hibah Orang Tua Kepada Anak Sebagai Pengganti Waris (Telaah Hermeneutika Terhadap Pasal 211 Kompilasi Hukum Islam)', *Al-Ahwal: Jurnal Hukum Keluarga Islam*, 6.1 (2013), 29–44.

This indicates that the Islamic inheritance law in Indonesia combines one provision of customary law. So that in the history of development regarding the position of successor heirs which can be seen from the legal rules of jurisprudence that will be presented later, of course, it must attach importance and adjust to the laws that apply in society. However, the object of this discussion will explain how the history of a provision regarding the position and also the division of inheritance to successor heirs for the development of the legal system in Indonesia.

Plaatsvervulling (Successor heirs) is not a concept of inheritance derived from Islamic law. The successor heirs are found to be regulated in the provisions of articles 841-848 of the Civil Code. In essence, a successor heir is a person who replaces the position of an heir who has died first. The person entitled to be the successor heir is the child of the deceased heir. In the Civil Code, if the parents die, the successor heirs will occupy the position of the parents absolutely. All the rights and obligations of his parents relating to inheritance passed to him.

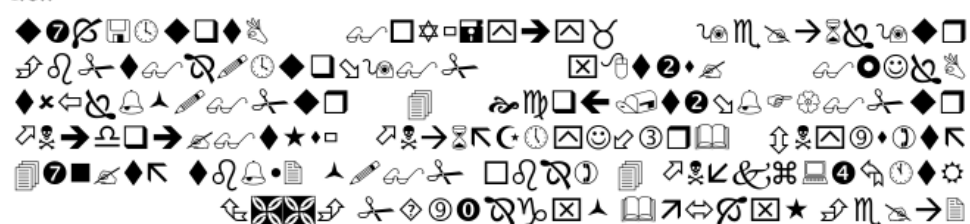
Article 841 of the Civil Code, replacement gives the right to the replacing person to act as a substitute in degree and in any right of the person he replaces. Furthermore, 842, 844, 845 provide for three types of substitution in this concept: first, replacement in a straight line down lasts continuously without end (Article 842); second, substitution in the sideways line (Article 844); and third, Substitution in a distorted sideways line.

The spirit of this concept of substitute (reprezentatie) is then internalized into the preparation of KHI related to the Inheritance Chapter. Although in the end the provisions regarding the successor heirs had been agreed upon by the drafters of the KHI, in the course of which the dissolution on this matter continued. Kotabumi Religious Court Judge, Shobirin in his paper entitled "Substitute Heirs in Islamic Inheritance from the Perspective of the National School" revealed an interesting debate at the National Working Meeting of Religious Court Judges in Palembang, 2009 ago.

Based on the paper, Shobirin openly described the discourse of the National Assembly of Religious Court Judges in 2009. He explained this by the difference in attitude of other judges towards the presentation of Chief Justice Habiburrahman. The head of the Palembang Religious High Court at that time, Mukhsin Asyrof replied to Habiburrahman's explanation that the provision of successor heirs although not mentioned in fiqh as a mandatory

will, but this was intended to provide justice to the heirs. While KH. Azhar Basyir, who was the leader of the KHI formulation meeting, asserted that the article of successor heirs at the time of ratification had been agreed upon by the clerics.

Shobirin then expounded on Hazairin's perspective in constructing the concept of a successor heir which he said had its roots in the literature of Islamic legal sources. Citing Hazairin's explanation in his book *The Law of Bilateral Inheritance and the Qur'an and Al Hadith*, Shobirin explained the concept of a successor heir according to Hazairin. According to Shobirin, Hazairin interpreted the word mawali in the Qur'an Surat an-Nisa' verse 33 i.e.:



“For each of the relics of the property left by the father's mother and relatives, we make it the heirs. And (if there are) those whom you have sworn allegiance to them, then give them a share. Verily God witnesses all things”

According to Hazairin, this verse implies that God institutes a mawali for the fulan of the estate of his parents and immediate family and that for that give to the mawali the rights of which he is a part. If the heir is a parent, the heir is the child and or the child's guardian. "If the children are still alive, of course they are the ones who immediately take the inheritance based on verse 11 of surah An Nisa,”

Furthermore, this provision by Hazairin was considered more in line with the desired system of inheritance in Islam which adheres to bilateral principles. This is considered different from Arab culture which adheres to patrilineal principles. "Thus the Indonesian context is more appropriate with the Islamic inheritance system based on bilateral principles as is generally the case in Javanese and surrounding communities," Shobirin said, quoting Hazairin.<sup>17</sup>

<sup>17</sup> Huzaini, 'Ahli Waris Yang Meninggal Dunia Lebih Dahulu Dari Pada Si Pewaris Maka Kedudukannya Dapat Digantikan Oleh Anaknya', *Mengenal Kembali Plaatsvervulling Dalam Hukum Kewarisan Nasional* <<https://www.hukumonline.com/berita/a/mengenal->

Discussing the rule of law, the legal rule of jurisprudence can certainly be defined as a rule that applies and can determine how the human being must behave and also act in the midst of social life in society this aims to protect the legal interests and legal interests of others. This is because the applicable legal rules are essentially a formulation or objective view that applies as a whole regarding an assessment that must be carried out and not carried out then a prohibition or something that must be done or encouraged.<sup>18</sup>

There are several rules of jurisprudence relating to successor heirs in the form of a judgment that has been determined by the Supreme Court of the Republic of Indonesia systematically based on the year of its formation, namely:

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First: Decision of the Supreme Court of the Republic of Indonesia number 537 K/AG/1996 dated July 11, 1997, "Yudex Factie has misapplied the law because there are other heirs who are not included as parties in utilizing the heir's estate". In the jurisprudence judgment, of course, it has been explained that all heirs must be included in the division of inheritance, in their legal considerations the judge has erred and only based on the testimony of the respondent's witnesses, the Banda Aceh high religious court and the Lhoksukon religious court have misapplied the law therefore in the said rule other heirs who are not included as parties.

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Second: Decision of the Supreme Court of the Republic of Indonesia number 332 K/AG/2000 dated August 3, 2005, "In the case of inheritance, to determine the inherited property first, it must be clear which is the inherited property and which is the common property. The inherited property returns to the heir's brother and the common property that is the right of the heir becomes the inherited property that must be distributed to the heirs. In dividing the estate it must be clearly stated the persons entitled to be the heirs and their respective shares. If a grant is made to another party for an estate that has not been distributed to the heirs, then the grant is null and void because one of the conditions of the grant is that the goods granted must belong to the grantor himself not an undivided estate nor is the property still bound by a dispute."

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kembali-iplaatsvervulling-i-dalam-hukum-kewarisan-nasional-  
25f785616f9ab?page=3>.

18 Ahmad Kamil dan M Fauzan, *Kaidab-Kaidab Hukum Yurisprudensi* (Jakarta: Prenada Media Group, 2006), h.15.

Third: Judgment no. 354.K/AG/1998, the judgment regarding the settlement of inheritance property cases that occurred<sup>28</sup> in 1988, can be applied "Compilation of Islamic Law" (which took effect in 1991 Presidential Instruction No. 1/1991), because the civil suit on the issue of inherited property<sup>4</sup> was filed with the Religious Court in 1997, after the enactment of "K.H.I". According to the<sup>33</sup> Compilation of Islamic Law Article 185 = The heir who dies first than the "Heir", then the position of this Heir may be replaced by<sup>8</sup> his son referred to as the "Successor Heir", whose share of the Estate shall not exceed the share of the heirs equal to that which is replaced in the above case = heirs : a) The son Gets 6/18 share; b) the daughter of the successor heir gets 1/18th of the share; and c) the successor heir's son = 2/18 part.

Fourth: Judgment 334/K/AG/2005, which states that "the successor heirs and the successor heirs have both died, hence the time of leaving each must be clearly stated, both in the suit letter and in the condtatering of the judge. If not, then the suit cannot be accepted (No) because it is vague". The rule of law is stated in the book Jurisprudence MA 2006 and 2010 contains the rule<sup>1</sup> of law, the successor heir is determined expressly and clearly by the death of the heir who is replaced earlier than the heir. If this is not the case, then the lawsuit cannot be accepted because it is considered vague.

Fifth: Judgment 86/K/AG/2001, which has the legal principle of jurisprudence that the Grandsons and daughters of the sons and daughters of the heirs become successor heirs.

These jurisprudence decisions provide an overview of legal developments, especially in successor heirs in Indonesia, and show that judges are not jumud<sup>41</sup> in seeing legal events that occur in society so as to create laws that can provide a sense of benefit, fairness and provide legal certainty to the community. Jurisprudence is included in the renewal of the law carried out by judges, this provides benefits because if you wait for the renewal of the rules through legislation it will take a long time while the need for inheritance law in the community is very urgent so that it greatly affects the existing jurisprudence.

### **Benefits of Jurisprudence Legal Rules against the Position of Successor Heirs**

It has 2 benefits, namely material benefits and formal benefits. In terms of material benefits, it can be seen from the relevant regulations that

become a reference to the establishment of jurisprudence legal rules regarding successor heirs which are then interpreted in such a way. Then in the aspect of formal benefits, can the author find in terms of its material usefulness in the process of implementing the use of the jurisprudence rule whether it produces a clarity on the existence of a substitute heir provision or vice versa that only applies as an existence based on the provisions of customary law that apply to certain societies? Therefore, the author describes some of these benefits as follows:

First, the material benefits that we can see first in the process of compiling the Compilation of Islamic Law (KHI) which was then passed in 1991. One of them that invited quite deep discussion among the drafters of the KHI was the adoption of the concept of *plaatvervulling* or successor heirs into the KHI. Although the Successor Heirs is not a new tradition in national law, the internalization of this concept of Dutch inheritance and custom into the KHI rooted in Islamic legal values demands more scrutiny from the drafters. Islamic law when viewed from the source is a static law. Therefore, most Muslims view Islamic law using a sacred and eternal approach. However, in the process, the implementation of Islamic law into social spaces still requires continuous interpretation as an effort to attract the relevance of Sharia law and jurisprudence to a number of contemporary social problems..

Let's take a general chapter that explains what a successor heir is. In the Compilation of Islamic Law Article 185 = "The heir who dies first than the "Heir", then the position of this Heir can be replaced by a son referred to as the "Successor Heir", whose share of the Estate shall not exceed the share of the heirs equal to the one replaced. The enactment of the provision of a successor heir in the Islamic inheritance system in Indonesia or the legal system in Indonesia is an alternative to resolve difficulties in handling Islamic inheritance cases.

As from the provisions in article 185 of the compilation of Islamic law which is one of the relevant regulations in the preparation of jurisprudence taken by this judge, then with the provision that the heirs of a person who is replaced because the previous heirs have died who did not have time to obtain a share will get protection of rights for the deceased person first which is realized through their descendants or grandchildren for example.

It can realize a theory of the purpose of law in the form of the benefit of maintaining and protecting and giving rights to man because the law is not a law for himself but for man, it can create <sup>3</sup> theory of legal expediency. So it can be seen from the interpretation of article 185 of the compilation of Islamic law that it greatly affects the position of successor heirs and makes parties who were previously unable to obtain inheritance entitled to inheritance. Whether it is the amount he will earn or his position because the successor heirs in question are usually male or female Pancar's grandchildren and so on downwards.

The rules of jurisprudence included in the material benefits are Judgment no. 354.K/AG/1998 and judgment 86/K/AG/2001. In the legal rules of jurisprudence it explains what is meant by a successor heir then the provisions for the division of the estate of the replaced heir and who is entitled to be the successor heir. Therefore, with the provision of jurisprudence rules involving a regulation in the form of a Compilation of Islamic Law regarding successor heirs which can be interpreted that the enactment of jurisprudence law rules will create justice. This is because the provision was made starting from a reaction to the injustice of the rights of successor heirs, especially in the Indonesian state which adheres to the Muslim-majority religion.<sup>19</sup>

Secondly, the benefit of the formil is that by affirming the provisions or position of the successor heirs which is then emphasized by some of the legal rules of jurisprudence relating to the successor heirs providing a clarity in which the successor heirs get a legality that with the existence of these provisions can be carried out and fulfilled the benefits of the formil in the form of completing the data in the administration of the case of the heirs in order to may be settled and settled in the Religious Court authorized to handle the case of the successor heir. So that with all these aspects of benefits, it is very supportive of the creation of clarity of a law because the existing law is not yet clear, and can also create legal renewal and development.

Then it can give the heir's discretion to give his inheritance, in its provisions to the division of inheritance and the importance of the position as the successor heir. The wisdom is called pre-emptive i.e. where the

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<sup>19</sup> Alhafiz Limbanadi, h. 178-179.

lifetime of the heir who divides his estate to the subject of the heir or the heir whether it is the successor heir referred to in the discussion times.<sup>20</sup>

The legal rules of jurisprudence related to the benefit aspects of formil are the decision of the Supreme Court of the Republic of Indonesia number 537 K / AG / 1996 dated July 11, 1997, the decision of the Supreme Court of the Republic of Indonesia number 332 K / AG / 2000 dated August 3, 2005, and Decision 334 / K / AG / 2005. In these formal rules of jurisprudence, it is stipulated how to argue in a religious court just as all the heirs concerned must be included as parties to the application for heirs and must be clearly stated otherwise the suit is considered not accepted, the estate must be clear. Surely in the division it must be furthest in the nature of discrimination where there must be nothing that reflects the difference between the sexes then the distinction between pure heirs or successor heirs aimed at justice or benefit in the life of society. It can also certainly provide a legal builder or reconstruction.

Of course, in the material and formal aspects, it has an impact on the application or suit of heirs for which there are successor heirs, so that with the decisions of jurisprudence it provides guarantees against the right of inheritance for the heirs who died first for the heirs, and with the decision of jurisprudence avoids disputes, and fosters a sense of sharing among the heirs because they are still bound by nasab and marriage.

### **Cover**

The rules of jurisprudence on the development of successor heirs in Indonesia are certainly very beneficial. The benefit consists of two aspects. The first aspect, namely the material legal aspect, which can provide clarity on the position of successor heirs in the development of the legal system in Indonesia, can also create justice for society. The second aspect is the legal aspect of formil where the rules of jurisprudence against the successor heirs can provide a completeness of administrative data in the case of the successor heir, which can be in the form of regarding the results of his determination, application, lawsuit and so on so that the case can be resolved properly or not rejected because it has complied with the provisions of the applicable formal law and from this it is beneficial for the parties seeking justice and also law enforcement officials who uphold justice. Therefore, as the times progress, the applicable legal rules will also develop as well as the

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<sup>20</sup> Utama.



existence of these jurisprudenc<sup>1</sup> rules can provide very significant benefits by analyzing the development of the position of successor heirs in Indonesia to date.

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