

Analysis Of The Regulation Of The Rights Of Substitute Heirs According To Statutory Regulations And Legal Principles

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Abstract

The deceased heir can be replaced by his heir (his child) as a substitute heir. In legal terms, the legal norms governing substitute heirs contain legal dualism because they are regulated by more than one legal norm, namely the Civil Code and the KHI. The problem analyzed in this study is about the distribution of inheritance for substitute heirs based on a legal theory approach. The research method used to analyze the problem is the normative legal research method with a statutory regulatory approach and legal theory. The results of the study indicate that in Indonesia there is a dualism of legal norms governing inheritance including substitute heirs. Based on legal theory, the KHI applies to heirs who are Muslim because of its special nature according to Islamic law and for those outside Islam, the Civil Code can be used.

Keywords: *Substitute Heirs, Civil Code and KHI.*

I. INTRODUCTION

It is the provision of God Almighty that every person will surely experience death. After death, the terms heir and beneficiary were born. An heir is a person who leaves property to be distributed to his heirs, namely people who are entitled to the inheritance left by the testator. [1] In other literature, an heir is defined as one or several people who are recipients of the inheritance. [2] An heir is also defined as a person who is entitled to the inheritance left by the deceased. [3] According to Article 171 letter c of the Compilation of Islamic Law (KHI) [4] an heir is a person who at the time of death has a blood relationship or marriage relationship with the testator, is Muslim and is not prevented by law from becoming an heir. [5] So that an heir is a person or several people who are entitled to receive an inheritance due to their kinship and marriage relationship with the testator, is Muslim and is not prevented by law from becoming an heir. [6] Legally, according to the Civil Code (KUHPerdata), heirs consist of the longest surviving husband/wife and their children/descendants (Article 852 of the Civil Code), parents and siblings of the testator, family in a straight line upwards after the testator's father and mother, uncles and aunts of the testator from both the father's and mother's side, descendants of uncles and aunts up to the sixth degree counted from the testator, siblings of grandparents and their descendants, up to the sixth degree counted from the testator. According to the compilation of Islamic Law (KHI), heirs consist of heirs based on blood relations and heirs based on marriage.

Heirs based on blood relations consist of father, son, brother, uncle and grandfather, mother, daughter, sister and grandmother, while based on marriage (widower, widow). The heir groups according to customary law consist of the father's lineage (patrilineal) and the mother's lineage (materilineal), and the father and mother's lineage (parental). [7] One type of heir that is not mentioned in the Civil Code, KHI and customary law is a substitute heir (plaatsvervulling) which is basically a class I heir because he is the child of a class I heir. According to Raihan A. Rasyid a substitute heir is a person who from the beginning was not an heir but due to certain circumstances he became an heir. In the book of Faraid, the heir who dies is replaced by his descendants. The person who has the position as a substitute heir is a descendant of a son who died before the Heir, [8] A substitute heir according to Article 185 KHI "An heir who dies before the heir can have his position replaced by his son, except those mentioned in Article 173". This provision is in line with

the provisions of Article 852 of the Civil Code. According to Hazairin, the concept of substitute heirs is based on Surah al-Nisa verse 33, which means: "For every legacy of property left by mother, father and close relatives, We make the heirs. and (if there are) those whom you have sworn allegiance to, then give them their share. Indeed, Allah witnesses everything.

" Hazairin translated the verse in Surah Annisa' verse 33 as: "And for each person I (Allah) have provided mawali for the inheritance of the father and mother and for the inheritance of the immediate family, as well as the inheritance for the tolan according to your agreement, therefore give a share -part of his inheritance".[9] Hazairin's interpretation of this verse regarding mawali is understood as a substitute heir or Plaatsvervulling in the Burgerlijk Weetboek. Mawali are people who become heirs because there is no longer a connection between them and the heir and according to him he is also included in the meaning of aqrobun.[10] According to Hazairin's interpretation, the word mawali or substitute heir is an heir who replaces someone to obtain a portion of the inheritance that was originally going to be obtained by the person who was replaced. Hazairin's principle is that the Qur'an lays down the relationship of inheritance. In the concept of substitute heirs or mawali, Hazairin actually said that the use of the word substitute heir as an equivalent to mawali is actually not very appropriate. However, the term is also used because the term substitute heir is found in customary law.[11] Regarding Hazairin's concept, according to Habiburrahman (Supreme Court Justice) Hazairin is not worthy of interpreting the provisions of substitute heirs based on customary law. According to Mukhsin Asyrof, the provisions of substitute heirs, although not mentioned in fiqh, are intended to provide justice to the heirs, while KH Azhar Basyir (leader of the meeting to compile the Compilation of Islamic Law) that the article on substitute heirs was ratified through an agreement of the scholars.

Substitute heirs are regulated in Article 185 of the Compilation of Islamic Law, namely: Heirs who die before the testator, then their position can be replaced by their children, except for those mentioned in Article 173, point, The portion of the substitute heir may not exceed the portion of the heir who is equal to the one replaced, the Compilation of Islamic Law (KHI) provides a limitation that the assets obtained by the grandson are not the entire assets that should have been obtained by the father, but only 1/3 of it. This can be understood from Article 185 paragraph (2) by stating 'may not exceed'. Which indirectly has provided a limitation on the portion received. Meanwhile, according to the Civil Code, inheritance due to replacement (plaatsvervulling) basically replaces the position of the heir who has died before the testator, so that the position of the replacement heir is to occupy the position of his deceased parents absolutely, so that all the rights and obligations of his parents regarding the inheritance are transferred to him. According to Article 841 of the Civil Code, "Substitution gives the right to the person who replaces to act as a substitute in the degree and in all the rights of the person he replaces and Article 842 Replacement that occurs in a legitimate straight line continues without end. The replacement is permitted in all cases, both if the children and the deceased become heirs together with the descendants and children who died first, or if all their descendants inherit together, one with another in a family relationship of different degrees.

The substitute heir in the Civil Code occupies the position of his parents absolutely, meaning that all the rights and obligations of his parents regarding inheritance are transferred to him. In the Civil Code, there are three types of replacement (representatie), namely: Replacement in a straight line down without limits, replacement in a lateral line and replacement in a deviating lateral line. The amount of inheritance that the substitute heir is entitled to receive between civil law based on the Civil Code and the KHI there is a difference in the amount, namely in Article 852 of the Civil Code (1) Children or all their descendants, even if born from other marriages, inherit from both parents, grandfathers, grandmothers, or all their blood relatives in a straight line upwards, with no difference between male or female and no difference, while in Article 176 of the KHI: If there is only one daughter, she gets half the share, if two or more people together get two-thirds of the share and if the daughter is together with the son, then the son's share is two to one with the daughter. From this background, legally between the Civil Code and the KHI there are conflicting regulations regarding the inheritance portion for substitute heirs. Therefore, the problem that will be analyzed in this study is about which legal norms are applied regarding substitute heirs.

II. METHODS

The research method used is the normative legal research method, namely research that examines law from an internal perspective with the object of research being legal norms. [12] This research uses a statute approach and a legal principle approach. The statute approach is used to analyze the occurrence of van normen conflicts. [13] Meanwhile, the legal principle approach is used to analyze the legal norms used in the distribution of inheritance for replacement heirs. Primary legal materials are all written rules enforced by the State. [14] Primary legal materials used in this research include Presidential Instruction No. 1 of 1991 concerning the Dissemination of the Compilation of Islamic Law (KHI), the Civil Code, Law No. 13 of 2022 concerning the Second Amendment to Law No. 12 of 2011 concerning the Formation of Legislation.

III. RESEARCH RESULTS AND DISCUSSION

As mentioned in the background that legal norms governing substitute heirs contain dualism of regulation, namely based on Government Regulation No. 2 of 1945 concerning the Enactment of the Civil Code (KUHP *perdata*) and Presidential Instruction No. 1 of 1991 concerning the Dissemination of the Compilation of Islamic Law (KHI). Article 1 of PP No. 2 of 1945 states that "All State Agencies and Regulations that existed until the establishment of the Republic of Indonesia on August 17, 1945, as long as no new ones have been made according to the 1945 Constitution, are still valid as long as they do not conflict with the Constitution. [15] When Indonesia first became independent, it did not have any laws and regulations, one of which was the legal norm governing inheritance law, so the legal norm applied at that time and until now is the Civil Code (*Burgerlijk wetboek*). Substitute heirs are regulated in Article 842 of the Civil Code that Replacements that occur in a legitimate downward straight line, continue without end. This is the legal basis for substitute heirs. Substitute heirs have the same rights as heirs who have died first. Substitute heirs in the Civil Code occupy the position of their parents absolutely, meaning that all rights and obligations of their parents regarding inheritance are transferred to them. In the Civil Code, there are three types of replacements (*representatie*), namely: Replacement in a straight line down without limits, replacement in a side line and replacement in a side line deviating.

The amount of inheritance that the successor heir is entitled to receive based on the Civil Code is as regulated in Article 852 of the Civil Code (1) Children or all their descendants, even if born from other marriages, inherit from both parents, grandfathers, grandmothers, or all their blood relatives in a straight line upwards, without distinction between male or female and without distinction based on birth first. The Civil Code recognizes the principle of *legitime portie* (Article 913 of the Civil Code), namely a portion of the inheritance that must be given to the heirs in a straight line according to the law, regarding which part the deceased is not allowed to determine anything, a portion as a gift between the living, or as a will. The principle of *legitime portie* is the granting of absolute rights to certain heirs over a certain amount of inheritance or provisions that prohibit the testator from making provisions such as donating a certain portion of his inheritance, therefore the recipient of the gift has an obligation to return the property that has been donated to him into the inheritance which is useful for fulfilling the absolute portion. [16] Asser Meyers stated that the purpose of the law establishing *legitime portie* is to avoid and protect children as heirs from the heir's tendency to benefit other people. *Legitime portie* is the absolute share of the heirs cannot be violated at all by a stipulation contained in a will (testament). The law regards the regulations regarding *Legitime Portie* as a limitation on a person's freedom to make a will (testament) according to his or her own wishes. [17]

The distribution of inheritance based on the Civil Code adheres to the principle of *legitime portie*, namely that the heirs have an absolute share of the inheritance that cannot be reduced even through a testament by the testator. In this case, the absolute share for the heirs is three-quarters of the inheritance based on Article 914 paragraph (3) of the Civil Code: three or more people or children left behind, then three-quarters is the absolute share of what each of them should have inherited in the inheritance". According to the KHI, the rights of substitute heirs based on Article 185 state that "An heir who dies before the testator, then his position can be replaced by his child". So in the KHI, substitute heirs also have the same rights as heirs who have died. As a country of law that adheres to a civil law system that emphasizes statutory regulations, the distribution of inheritance is carried out based on statutory regulations. Current legal facts

related to substitute heirs show that there is a dualism of regulations, namely based on the Civil Code and the KHI. From the two legal norms, there is a difference in terms of the number of portions for substitute heirs so that there is a horizontal external conflict of norms because based on Article 8 of Law No. 12 of 2011 in conjunction with Law No. 15 of 2019 in conjunction with Law No. 13 of 2022 concerning the Second Amendment to Law Number 12 of 2011 concerning the Formation of Legislation that PP and Inpres as the legal basis for the Civil Code and KHI are two equal legal norms. Contextually in the hierarchy system of statutory regulations, there are three basic principles known [18], namely the principle of *lex superior derogat lex inferior*, *lex specialist derogat lex generalis*, *lex posterior derogat lex priori* (Ibid). These three principles are important pillars in understanding the construction of statutory law. The principle of *lex specialist derogat lex generalis* (more specific regulations will override general regulations if they regulate the same and contradictory substance), the principle of *lex posterior derogat lex priori* (new regulations will override old regulations).

In the field of inheritance, the Civil Code and the Compilation of Islamic Law are two equal sources of law and regulate the same thing, so that the related principle is the principle of *lex specialist derogat lex generalis* (more specific regulations will override general regulations), but the Civil Code is conventional or applies generally to all Indonesian citizens, while the Compilation of Islamic Law regulates inheritance law for Muslims, so that the provisions on inheritance law for substitute heirs who are Muslims are based on the Compilation of Islamic Law. The enactment of the Civil Code and the Compilation of Islamic Law in Indonesia were both motivated by the occurrence of a legal vacuum, one of which was inheritance law. The Civil Code was implemented in Indonesia based on the Transitional Provisions of the 1945 Constitution because at that time Indonesia had just gained independence and did not yet have a law that regulated one of which was inheritance law. Meanwhile, the enactment of the Compilation of Islamic Law can be understood from the points of consideration in Presidential Instruction No. 1 of 1999 concerning the Dissemination of the Compilation of Islamic Law, namely "that Indonesian Ulama in the Workshop held in Jakarta on February 2 to 5, 1988 have received three drafts of the Compilation of Islamic Law, namely Book I on Marriage Law, Book II on Inheritance Law, and Book III on Endowment Law; b. that the Compilation of Islamic Law in letter a by Government Agencies and by the community who need it can be used as a guideline in solving problems in this field". From the philosophy behind the creation of the KHI, it can be understood that the KHI was intended to resolve legal problems for Indonesian citizens who are Muslim.

IV. CONCLUSION

1. There are differences in the regulations regarding substitute heirs based on the Civil Code and the KHI, namely that the Civil Code does not differentiate between the respective parts of men and women, whereas according to the KHI, there are differences in the parts of substitute heirs between men and women.
2. Based on the legal principle that the legal norms governing substitute heirs for Muslims are regulated based on the legal norms regulated in the Compilation of Islamic Law and the Civil Code which apply generally.

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