

Implementation of The Distribution of Rights of Substitute Heirs (Mawalli) in North Pontianak District, Pontianak City

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Abstract. The thesis discusses the Implementation of Distributive Rights for Substitute Heirs (Mawalli) in North Pontianak District, Pontianak City. The objectives of the research are to understand and analyze the application of Article No. 185 of the Compilation of Islamic Law (KHI) in North Pontianak District, Pontianak City, and to understand and analyze the implementation of the distribution of rights for substitute heirs (mawalli) in North Pontianak District, Pontianak City. The research utilized a juridical-empirical approach, gathering facts from human behavior, including verbal behavior based on informant interviews and actual behavior resulting from direct observation. It employed a qualitative research type and utilized both primary and secondary data. The research findings essentially conclude that the provisions of Article No. 185 of the KHI are not implemented, which leads to a loss of justice and legal protection in the distribution of inheritance rights for substitute heirs. The substitute heirs are often regarded as weak heirs and are blocked (hijab) from the testator because their parent passed away before their grandparent. The study found that 1) The application of Article No.185 KHI has not been executed in North Pontianak District, Pontianak City, resulting in substitute heirs never receiving their inheritance rights. 2) In the implementation of the distribution of rights for substitute heirs (mawalli), not only are they denied their rights, but their existence is often unacknowledged or rejected by the primary heirs, as they are viewed as weak heirs.

Keywords: Distribution of Inheritance Rights; Implementation; Substitute Heir.

1. Introduction

Islamic inheritance law has a meaning as a legal system or a norm. The basic rules governing inheritance are based on the Qur'an and the Hadith, both of which are sources of law that serve as guidelines for the distribution of inheritance, which have been specifically referred to in accordance with the provisions and legal basis for inheritance. Most of the previous Islamic thinkers have thought about what and how in a systematic distribution system in the distribution of inheritance but have not left the basis and guidelines for dividing inheritance. From the thoughts of the scholars who have thought before us, books or books on inheritance have been born which through ijtihad with a certain manhaj have given birth to a work of fiqh al-mawarits which is still widely used by Muslims in the world in general.¹

Pre-Islamic inheritance law was heavily influenced by the social system adopted by the existing society. Jahiliyah society, with its tribal patterns, nomadic customs, and fondness for warfare and looting, was characterized by a strong sense of belonging.² According to the Jahiliyah society, the heirs who are entitled to inherit property from their deceased family members are those who are male, physically strong, and have the ability to bear arms and defeat the enemy in every war. The interests of the tribe are highly prioritized, because it is from the achievements and existence of the tribe that a person's dignity as a member of the tribe is at stake. In the early days of Islam, inheritance has not undergone significant changes, in it there are still additions that have more strategic connotations for the interests of da'wah, or politics. Inheritance according to Islamic law is based on the holy book of the Qur'an and the hadith, where after someone dies, their inheritance can be divided among heirs, both male and female, as explained in the Qur'an, Surah an-Nisa, verse 7 as follows:

لِلرَّجُلِ التِّصِيبُ مَمَّا تَرَكَ الْوَالِدُونَ وَلِلْأُنْثَى إِنْصِيبُ مَمَّا مَاتَرَكَ الْوَالِدُونَ يَمِّمَ Allah's blessings

This means: "For men there is a right to a share of the inheritance of their parents and relatives, and for women there is a right to a share (also) of the inheritance of their parents and relatives, whether it is small or large, according to the portion that has been determined."³

The verse above explains that both boys and girls have the same right to receive inheritance, and is also an acknowledgement by Islam that women are legal subjects who have rights and obligations.⁴ Both men and women receive a share

¹ Atik Riswantoro, Application of Article 185 of the Compilation of Islamic Law (KHI) Relating to the Settlement of Inheritance Disputes, Journal of Law and Notary, Volume 4 Number 1, February 2020.

² Ahmad Rofiq, 2012, Fiqh Mawaris, RajaGrafindo Persada, Jakarta, p. 7.

³ QS An-Nisa Verse 7.

⁴ Moh Muhibbin and Abdul Wahid, 2017, Inheritance Law, Sinar Grafika, Jakarta p. 12.

of the inheritance (which in the time of ignorance only men had the right to) as an effort to realize a fair and balanced distribution of inheritance.⁵

Based on Asbabun Nuzul, it is explained that in a history it was stated that the practice of the Jahiliyyah was not to give inheritance to female children and male children who were not yet adults. When an Ansar named Aus bin Thabit died and left behind 2 daughters and 1 small son, two of his uncle's children came, namely Khalid and 'Arfathah, who became asabah. They took all his inheritance. So Aus bin Thabit's wife came to Rasulullah SAW to explain the incident. Rasulullah SAW said: "I don't know what to say". So this verse came down (Al-Qur'an Surah An-Nisa verse 7) as an explanation of the law of inheritance in Islam.⁶

In the Indonesian context, although the majority of the population is Muslim, there are diverse practices regarding the transfer of property through inheritance. In this regard, customary inheritance law is influenced by the kinship system within the community, namely:

1. Patrilineal system, a family system that traces descent through male ancestors. In this system, the position and influence of men in inheritance law is very prominent, for example in the Batak and Lampung communities.
2. Matrilineal system, a family system that traces descent through the female line. In this family system, men do not inherit from their children. Children inherit through the female line, or mother's line, because their children are part of their mother's family, while their fathers remain members of their own family, for example in the Minangkabau community.
3. The Parental or Bilateral System is a system that traces descent from both sides, the father's and mother's sides. In this system, sons and daughters are equal in inheritance law. This means that both sons and daughters are heirs to their parents' inheritance.⁷

Furthermore, Indonesian families who adhere to religious law carry out inheritance according to their respective teachings. This inheritance law determines who the heirs are, who is entitled to a share of the inheritance, how much each person will receive, how the inheritance will be divided, and various other matters related to the distribution of inheritance.⁸

⁵ Muhammad Amin Suma, 2013, Islamic Inheritance Law Justice in a Textual and Contextual Approach, Rajawali Pers, Jakarta, p. 28.

⁶ Qomaruddin Shaleh, HAA. Dahlan, MD. Dahlan, 1987, Asbabun Nuzul, CV. Diponegoro, Bandung, p. 122

⁷ Suhairi, Heti Susanti, "Review of Sharia Economic Law", Adzkiya Journal of Sharia Law and Economics, (Metro, STAIN Jurai Siwo Metro, 2016) Vol. 4 Number 1, p. 13.

⁸ Moh Muhibbin and Abdul Wahid, Ibid p. 16.

Inheritance law in force in Indonesian society remains pluralistic, with some subject to inheritance law in the Civil Code, Islamic inheritance law, and customary law. Because Indonesian society is diverse, consisting of various ethnic groups, each has its own distinct customs and customary laws, each possessing its own characteristics, which make customary law a part of it.

Meanwhile, among the people of North Pontianak sub-district, Pontianak City, the majority of whom are Muslim, the application of inheritance distribution, especially regarding the issue of the inheritance portion of the substitute heirs (mawalli), has not yet been implemented as mandated by Article 185 of the KHI. Therefore, the purpose of this research is to provide counseling and provide understanding regarding the distribution of mawalli assets.

Meanwhile, the philosophical basis of our country's law has guaranteed justice and the rights of its citizens, as stated in Article 27 paragraph (1) of the 1945 Constitution which states: "All citizens have equal standing before the law and government, and are obliged to uphold the law and government without exception." Meanwhile, Article 28D paragraph (1) states: "Everyone has the right to recognition, guarantees, protection and certainty of fair law and equal treatment before the law."

Based on the background above, the researcher gets a clear picture of the dialectic that appears in the community so that it will later produce a product of implementing Article 185 of the KHI regarding the distribution of Mawalli assets, most of whose people still have minimal knowledge regarding the distribution of Mawalli inheritance rights, so there is a need for in-depth study and counseling regarding Article 185 of the KHI regarding the distribution of Mawalli inheritance assets. Therefore, with this phenomenon, the researcher is interested in researching this problem with the title "Implementation of the Distribution of Rights of Substitute Heirs (Mawalli) in North Pontianak District, Pontianak City".

2. Research Methods

This type of research is qualitative, namely research that prioritizes an in-depth understanding of legal phenomena occurring in society. In accordance with the type of research the researcher is conducting, the aim is to obtain as much in-depth data as possible during fieldwork. The researcher strives to act as a primary data collection tool as well as in planning, implementing, collecting, analyzing, and interpreting the data, ultimately resulting in a thesis. Qualitative research can be used in various ways, such as gathering as much information as possible from several informants in the community. In this qualitative research, the researcher systematically describes or narrates the research being studied; this research does not consist of numbers or calculations.⁹

⁹ Lexy J. Moloeng, 2013, Qualitative Research Methods, Rosdakarya Youth, Bandung, p. 3

3. Results and Discussion

3.1. Implementation of Article 185 of the Compilation of Islamic Law in North Pontianak District, Pontianak City

The existence of the status of the existence of substitute heirs in Islamic inheritance law has been regulated since 1991 through the Compilation of Islamic Law as stated in Article 185 paragraphs (1) and (2). This certainly has legal consequences, if there are heirs who are in the position of substitute heirs and the inheritance is still available as their right, then this must be given as outlined in the provisions of the KHI, especially if they (the substitute heirs) do not have any reason to prevent them from obtaining inheritance rights based on the provisions of Article 173 of the KHI.

The distribution of inheritance to them (the surviving heirs) is a right that must not be violated, as it is related to a person's economic interests, the impact on social kinship, and other factors that could negatively impact the inheritance if not distributed. Therefore, the fundamental consideration is more about the beneficial impacts, rather than the harmful effects.

However, the reality is quite the opposite. The existence of substitute heirs in the inheritance distribution process is obscured by other heirs, such as the testator's siblings or uncles, so that the substitute heirs are positioned as having a weak position in obtaining the inheritance.

Meanwhile, if seen from the side of descent or lineage, the substitute heir in this case is the heir's grandchild, who is part of the flesh and blood of the grandfather/grandmother who has a direct and undeniable relationship for any reason, only the condition that occurs is that their parents (father/mother) died before their grandfather/grandmother.

So there is no reason whatsoever to deny the absence of blood relations and inheritance relations between grandchildren and their deceased grandparents, only because of the subjective views of the main heirs, so that the opportunities and chances to obtain inheritance by the substitute heirs are hindered, so that control over the entire inheritance falls into the hands of the main heirs (uncles/aunts).

If Article 185 of the Islamic Law Compilation of Inheritance Law is implemented and used as a reference in inheritance distribution practices, it will certainly achieve justice and benefit for grandchildren or descendants whose parents (the testator's children) have died. Without Article 185 of the Islamic Law Compilation of Inheritance Law, according to classical Islamic inheritance law, the grandchildren could be prevented from inheriting by the surviving children of the testator and not inherit from their grandparents.

The presence of Article 185 of the KHI which regulates the existence and portion of the rights of substitute heirs, should be an entry point for justice and fill the legal vacuum, resulting from the non-recognition of the existence of substitute heirs based on classical fiqh, for which the state has now provided regulations to guarantee the justice of the rights of substitute heirs who have been neglected so far.

Considering the social aspects and the impact of legal certainty, if these provisions are consciously implemented, they provide guaranteed financial protection for the heir's descendants. For the family, they provide legal certainty and can minimize the potential for family conflict regarding inheritance distribution and achieve family harmony within the community. This, in turn, creates mutual benefit because justice can be distributed to those entitled to receive the inheritance, especially those classified as substitute heirs.

When the rights of successor heirs are neglected, there is no guarantee that internal family conflict will not arise in the future, threatening harmonious family relationships. This is due to the lack of equal rights and justice for certain heirs due to the dominance of others.

The situation where substitute heirs are denied their rights as stipulated in the law becomes even more apparent when the matter is never brought to the local Religious Court. Consequently, clarity about their status as heirs and the amount of assets they are entitled to is lost because the matter is not brought to the Religious Court.

Inheritance cases arising from North Pontianak District often highlight complex issues related to the rights of substitute heirs under Article 185 of the Indonesian Islamic Law (KHI). These issues go beyond mere calculations, touching on complex evidentiary aspects, social resistance, and administrative accuracy. Various reasons have been found as to why these cases (substitute heir issues) are not submitted to the Religious Court, including the need for administrative documents for the death of the testator, which must be proven by a death certificate, as these documents are sometimes not a priority for the heirs to process.

Furthermore, proof of the legal relationship between heirs requires a Family Card, Birth Certificate, and Marriage Certificate Extract to demonstrate legitimate lineage. Administrative matters are a barrier for those interested in inheritance, as they serve as a necessary requirement for bringing inheritance disputes to the Religious Court.

When discussing substitute heirs, proof is required in the form of death documents of the original heir. In this case, the parents of the substitute heir (the testator's children) who died before the testator (grandparents). Administrative

matters are the most important aspect that must be presented as documentary evidence if the matter is brought to the Religious Court.

In addition, there is the complexity of cases of deaths occurring simultaneously. For example, when the death of the testator and the heir occurs close together or in the same event (such as an accident or natural disaster), the order of death cannot be determined with certainty, so legally, the replacement heir cannot be applied.

In this case, the grandchild's parents' inheritance is not counted as the testator's property, so the grandchild does not receive inheritance rights as a substitute heir. Therefore, it is necessary to seek forensic evidence or convincing witness testimony to establish the chronological order. This aims to prove the truth regarding the death of a person who subsequently becomes an heir to the assets left to the heirs.

In the provisions of the Compilation of Islamic Law (KHI), Article 185 of the KHI plays a crucial role in regulating the status of substitute heirs. This implicitly presents a view supporting the existence and implementation of Article 185 of the KHI as an effort to achieve justice and welfare in Islamic inheritance law in Indonesia.

Article 185 paragraphs (1) and (2) of the KHI, which has been in effect since 1991, expressly regulates the existence of substitute heirs in Islamic inheritance law. The existence of this regulation has clear legal consequences, namely that if there are substitute heirs and the inheritance is still available, then the assets must be given to them. This applies as long as there are no obstacles to inheritance based on Article 173 of the KHI, indicating that the KHI seeks to provide legal certainty for substitute heirs.

However, the reality on the ground often shows the opposite. The presence of substitute heirs in the inheritance distribution process is often hindered by other heirs, such as the testator's siblings or the substitute heir's uncles. In this situation, the substitute heirs' position is often weakened, making it difficult for them to obtain the inheritance rights that are rightfully theirs.

In terms of family settlements encountered in society, in cases of inheritance rights, the surviving children of the testator often settle outside the Religious Court. However, this settlement method involves denying the existence of substitute heirs. This gives the impression of forcing them to accept only voluntary compensation or gifts from the primary heirs, while the nominal or amount of compensation or gifts received by the substitute heirs is smaller or does not comply with the legal provisions outlined in existing regulations.

This situation demonstrates the lack of justice that substitute heirs should receive. From the perspective of Islamic inheritance law, the rights or share of

inheritance ownership for substitute heirs are clearly regulated, and their existence is clearly recognized in legislation. It remains to be implemented.

However, what happened was the opposite, the substitute heirs still did not receive their rights, so that injustice continued to occur in the case of substitute heirs, especially in the process of dividing inheritance assets which was carried out in a family manner, without paying attention to the existing Islamic inheritance law.

Due to the absence of injustice, there is no guarantee of inheritance rights for the substitute heirs. This gives the impression of injustice for certain groups of heirs (substitute heirs). Therefore, the substance of justice in the distribution of inheritance for substitute heirs, where from a justice perspective, there must be the ability to treat everyone according to their respective rights.

Equality of inheritance rights and not ignoring the existence of heirs who should be obtained is also not being implemented as it should. So that the divine qualities that should be realized by the main heir cannot be realized, in this case the implementation of attitudes and actions of justice for fellow heirs, especially substitute heirs, so that no particular heir considers his or her existence to be much more important than other heirs.

In addition, the legal protection that should be obtained by the substitute heirs, as well as the legal protection that should be provided to the main heirs, is not realized in the implementation of the distribution of inheritance rights. So that the human rights are increasingly violated, especially for the substitute heirs, when they are sentenced by the main heirs, as a group of heirs who no longer have any relationship with the testator, because their father/mother died before their grandfather/grandmother.

So that Legal protection, which should serve to fulfill human rights fairly and prevent unlawful behavior and arbitrary actions, is not being implemented. Instead, the rights of successor heirs are increasingly being curtailed, particularly in obtaining recognition and inheritance rights.

The public's ignorance of inheritance laws, particularly the rights and existence of substitute heirs legally recognized by the State, is the cause of the neglect of the rights of substitute heirs, so that the provisions of Article 185 of the Compilation of Islamic Law are not implemented properly, both in out-of-court settlements, especially if the case is never brought to the Religious Court. Therefore, this ignorance factor continues to occur and is considered a justification in the distribution of inheritance assets.

If Islamic inheritance issues or disputes are brought to the Religious Courts, particularly regarding the existence and rights of substitute heirs, the community will receive justice and legal protection. This is especially true for those with

substitute heir status, who will receive legal guarantees and certainty regarding their inheritance rights.

However, the opposite is true. Inheritance disputes are never brought to the Religious Court, while they continue to seek amicable resolution, and are forced to accept this by the successor heirs, who are unable to fight for their fate and inheritance rights, ensuring a fair and humane distribution of inheritance rights based on Islamic inheritance law.

Legal education and outreach regarding inheritance law are also very minimal, resulting in a lack of knowledge among the Muslim community about Islamic inheritance laws, further complicating the complexities of resolving inheritance disputes. Because inheritance issues are often case-specific and information is limited, the resolution process focuses more on familial aspects, which results in the neglect of the rights of successor heirs and the failure to implement Article 185 of the Compilation of Islamic Law (KHI). This regulation has been in place since 1991.

Simply because of a lack of information and public awareness about this issue, violations of state law are occurring. Certain groups are clearly being violated because they are not receiving their due share, or even their rights, as they should. This situation certainly requires serious attention from the competent authorities. This serves as a preventative measure to prevent family or social conflict caused by unfair rights to successor heirs.

To address this issue, further action is needed to develop a structured, accessible, and simple inheritance law literacy program. This program should specifically highlight the concept of substitute heirs and the procedures for determining heirs in Religious Courts. Only through increased legal awareness can the rights of certain groups be guaranteed, and the provisions of Article 185 of the Compilation of Islamic Law (KHI) be effectively implemented within the community.

So that in the future it is hoped that there will no longer be any particular group of heirs, especially substitute heirs who experience injustice in the distribution of inheritance, because the public's understanding and knowledge about the existence of substitute inheritance rights has been recognized based on statutory regulations, in order to guarantee fairness in inheritance rights.

3.2. Implementation of the Distribution of Rights of Substitute Heirs (Mawalli) in North Pontianak District, Pontianak City

Inheritance law is a component of civil law and, in particular, family law. Inheritance law is closely related to human life, as every human being experiences the legal event of death. This legal event has legal consequences

regarding the continuation of the deceased's rights and obligations, as well as their relationship with their family or others who have rights to their property.

Problems in family relationships generally concern inheritance. Inheritance is the inheritance left by the testator to the heirs. An heir is someone who has died. Heirs are people who have the right to receive the inheritance of the deceased (inherit), either because of family ties, marriage, or because they freed a slave.

Death is sometimes an unexpected event and often younger people leave this world first compared to older people. So, it is not uncommon for a child to die before his parents, but that child has previously married and has children/children who are grandchildren.

Death is the initial experience of loss for a family. However, beyond the initial experience, it also creates other challenges for the grieving family to face and navigate, which can have an internal economic impact on the bereaved family.

When a person dies and the deceased leaves behind an inheritance, leaving behind several heirs who are still alive, then an inheritance event has occurred, and at the right time, it is appropriate for the inheritance/heritage to be distributed to those entitled to it, but before the distribution of the inheritance is carried out, the heirs must pay attention to the things that need to be done before the inheritance is distributed to each heir.

Among the obligations of the heirs regarding the inheritance are purifying the assets by paying the prescribed zakat, then paying for medical expenses, if any, paying off death expenses, paying debts, executing a will, if any, and fulfilling the testator's mandate, if any. After that, the inheritance is distributed, prioritizing the presence of all entitled heirs without exception.

The ideal inheritance distribution process should take place after the testator's obligations have been fulfilled, and these obligations must be carried out by the heirs. However, this step is often overlooked, leading to disproportionate distribution. The principles of fairness and transparency are crucial to ensure that all parties, including successor heirs, receive their legal rights.

This is a crucial aspect of the inheritance distribution process. It aims to prevent heirs who are entitled to receive a portion of the inheritance from being excluded or excluded from the list of heirs entitled to receive a portion of the inheritance because they were not registered or summoned to participate in the distribution process.

The distribution of inheritance assets must involve all parties who fall under the category of heirs without exception. This is to ensure that no individuals who are entitled to receive the inheritance are left behind or neglected because they are

not brought together to receive their share of the inheritance during the distribution process.

If someone dies, then leaves heirs consisting of children, grandchildren, siblings, father, mother, and grandparents, then a determination will be made as to who is entitled to receive a portion of the inheritance. If there is no connection between the heir and the heirs, then it can be said that they inherit directly, such as a child inheriting from his parents, but if there is no longer a living connection between the heir and the heirs, it can be said that the heirs inherit due to replacement, for example, grandchildren whose parents died before the heir.

However, the reality encountered specifically for the substitute heirs is that in the distribution of inheritance, these substitute heirs do not receive their rights. In fact, their existence (the substitute heirs) is not considered as heirs entitled to receive the inheritance, so that the inheritance rights of the substitute heirs are lost in the eyes of the main heirs.

In reality, even if inheritance rights are granted, they are merely a small donation or a small gift from one of the heirs, who is considerate and compassionate, and then sacrifices a small portion to give to the successor heir. However, this is extremely rare, so the successor heir actually receives nothing from the inheritance.

Such incidents or events clearly demonstrate an unfair attitude towards substitute heirs. Therefore, far from receiving inheritance rights in accordance with existing provisions, their existence is not even recognized by the main heirs, resulting in the substitute heirs being excluded from the inheritance distribution process. This is due to the lopsided and unbalanced conditions. This lopsided situation only benefits the main heirs and disadvantages the substitute heirs. Consequently, there is no sense of benevolence as fellow human beings because there is no attitude and behavior of justice among fellow heirs.

Injustice occurs because substitute heirs are not considered successors to their deceased parents' rights. However, Article 185 of the Compilation of Islamic Law (KHI) stipulates that grandchildren can replace their parents in receiving inheritances. This difference in understanding demonstrates a gap in legal knowledge within society, and low legal literacy has led to the suboptimal implementation of Islamic law.

The existence of a substitute heir for another heir is seen as an heir in a weak position. The existence of grandchildren is hindered/hijabed by uncles and aunts who are in fact siblings of the parents (children who act as substitute heirs). So the existence of replacement heirs does exist, but in practice the distribution of inheritance is considered non-existent.

In the case of grandchildren who are in the position of substitute heirs, they are part of the testator's descendants, where during the testator's lifetime the existence of these grandchildren was never differentiated, because they come from the testator's biological children, then of course the existence of grandchildren also has a strong position to receive inheritance property even though their parents died before their grandparents.

Grandchildren can fully replace their parents as heirs. Furthermore, grandparents, both paternal and maternal, can also replace their children as substitute heirs. Grandchildren can replace their deceased parents even if the testator has surviving children, regardless of whether the grandchildren are male or female.

The position of alternate heirs in society is not uncommon. However, in some communities, this position is often ignored by the primary heirs, because if these heirs are considered to exist and have the right to inherit jointly, it will result in the original heirs receiving a reduced portion of the inheritance, or a smaller portion than they should receive.

Viewing substitute heirs as weak, ineligible to inherit from deceased grandparents, constitutes discrimination against certain groups in inheritance law, specifically the discrimination experienced by substitute heirs. This easily creates conditions of injustice perpetrated by the primary heirs against the substitute heirs.

Moreover, if the substitute heir is an only daughter, this further diminishes her position and portion of inheritance rights. This is because the primary heirs view daughters whose parents died first as very weak heirs, due to gender factors that prioritize sons.

The inheritance relationship that makes grandchildren heirs is based on the blood relationship between the testator and the surviving family members. Therefore, the relationship between a child and his/her grandchildren is the relationship between the testator and his/her descendants through his/her deceased child. Therefore, the existence of grandchildren as substitute heirs should not be a problem.

In reality, a grandchild even questioned his inheritance rights, realizing that he had to receive them as a substitute heir. However, the primary heirs deliberately delayed the distribution of the inheritance, even for years. It was even discovered that some of the inheritance had been sold by one of the primary heirs, the eldest son.

So, let alone the successor heirs, even the main heir, who is the sister, only receives a small portion of her due share. However, this situation cannot be

resolved in the Religious Court; instead, the remaining inheritance is settled and divided internally within the family, leaving the remaining heirs disappointed.

Various reasons were put forward by the primary heir who assumed a dominant role, particularly as the eldest son, in exercising control over the testator's inheritance. The neglect of the rights of the primary heir and the rights of the alternate heirs demonstrates a disregard for the legal rules governing inheritance distribution, particularly the exclusion of other heirs.

The concept of alternate heirs is an important legal mechanism. Its purpose is to provide justice for the descendants of the heir. Heirs should have received the inheritance directly from the testator, but they died before the death. This rule prevents the termination of inheritance rights simply because of the chronology of death. Its implementation in Indonesia is regulated by two main systems: the Compilation of Islamic Law and the Compilation of Islamic Law.

The substitute heirs stipulated in Article 185 of the Compilation of Islamic Law (KHI) provide a legal basis for grandchildren to succeed their parents. Because their parents died before them, Article 185 of the KHI plays a role in ensuring fair inheritance rights for substitute heirs.

Based on Article 185 KHI, grandchildren can inherit together with sons and daughters. They are not separated by sons, because they have the status of replacing their father or mother who has died first. For example, if someone dies, among the heirs are grandchildren whose father or mother died before the testator. The heir also left sons and daughters. These grandchildren can replace the position of their deceased father or mother to receive inheritance from their grandfather or grandmother.

Challenges in implementation also arise from diverse societal understandings. Some indigenous peoples or specific communities may still hold differing views regarding inheritance rights, which sometimes contradict the Compilation of Islamic Law (KHI). Minimal legal education leads people to choose not to use formal legal mechanisms, so local-level resolutions often lack strong legal certainty.

Local settlements are limited by references and standard Islamic inheritance rules. Consequently, the resulting decisions often do not reflect a sense of justice, especially when new heirs (replacement heirs) are introduced, demanding justice regarding their inheritance rights. This inevitably leads to a return to the customs of previous societies.

This line of thinking, based on previous societal patterns, has been adapted to the current context, particularly regarding the position of substitute heirs, who are excluded from the distribution of inheritance. This has become a principle

that has been maintained over time, on a case-by-case basis, in addressing and resolving inheritance rights for substitute heirs.

Substitute heirs are a progressive legal instrument that protects the rights of descendants. Essentially, it guarantees fair inheritance rights for those entitled to them. Optimal implementation requires better legal outreach and consistent enforcement to address disparities in judicial decisions and sociological barriers within society.

In the North Pontianak District community, the veiling of a substitute heir's right to receive a share of an inheritance is commonly referred to as "patah titi," which severs the relationship between the heir and the heirs in order to ascend to the throne and obtain what is rightfully theirs. Based on this term, in every inheritance distribution, if there is a group of substitute heirs, they are guaranteed to receive no share of the inheritance.

The term "patah titi" (broken titi) describes the social reality that the relationship between grandchildren and grandparents is considered severed if the grandchild's parents have died first. In this context, customary law remains highly influential; the concept of "patah titi" originates from the patrilineal kinship system, which rejects intergenerational inheritance, contrary to Islamic principles of justice.

To this day, this terminology and labeling is still widely believed, especially in inheritance matters. It signifies the absence of any relationship between a person and the testator, or even the inheritance itself, so that the rights that should have been acquired become dominant rights for the primary heir, thus eliminating the existence of a successor heir.

The loss of the rights of substitute heirs with the mention of this term indicates that, in the inheritance distribution system, discrimination still occurs and only prioritizes the main heirs, dominating inheritance rights without paying attention to existing regulations so that there is no certainty of inheritance rights for substitute heirs as long as the settlement route is not taken in the Religious Court, there is no certainty of the end of the loss of inheritance rights for substitute heirs.

In practice in North Pontianak, social pressure from primary heirs hinders the rights of alternate heirs. They often dominate decisions about the distribution of assets, claiming that grandchildren have no direct rights. This phenomenon demonstrates a power imbalance within the family. The dominance of certain parties in the distribution of inheritance often leads to violations of sharia rights.

This case reflects a common social problem that occurs in various regions in Indonesia, where customary norms are often more dominant than formal laws such as the KHI in Islamic inheritance law in Indonesia, the inconsistency

between custom and positive law is the root of the problem of discrimination against grandchildren as substitute heirs.

The importance of understanding the legal aspects of Islamic inheritance, especially regarding inheritance rights for substitute heirs, is expected to be able to reflect justice in terms of Islamic religious teachings, because the principle of prioritizing fair inheritance rights is to maintain the stability of family harmony and harmony.

The public's lack of awareness of Islamic inheritance laws, particularly regarding the rights and existence of substitute heirs, contributes to injustice for one group of heirs in the distribution of inheritance. Meanwhile, the rules regarding the existence of substitute heirs are legally recognized by the state through the Compilation of Islamic Law (KHI).

Furthermore, customary law-oriented behavior prioritizes the customs of our ancestors (before 1991), where the class of substitute heirs was unknown, thus denying them inheritance rights. However, times have changed, and regulations have changed. The state's efforts to realize and guarantee justice in Islamic inheritance have been established in state regulations.

Pressure and even dominance from primary heirs also play a role in amputating the inheritance rights of substitute heirs. Other heirs who are the testator's biological children (and still living) often wield significant dominance and influence. They, either individually or collectively, can suppress or even deny the claims of substitute heirs (grandchildren), arguing that the grandchildren no longer own or have any direct connection to the inheritance.

The level of emotional connection also hinders inheritance rights for substitute heirs. If the relationship between the grandchild (substitute heir) and the grandparent (heir) is not very close, it will impact their inheritance claim, which will be easily rejected by other heirs. This attitude reflects the subjectivity of the primary heir toward the substitute heir.

This subjective view or assessment is the primary reason for the primary heir to obtain dominant rights over the inheritance, ignoring the existence of nephews as substitute heirs, based on the assessment of the grandchildren's closeness to their grandparents while they were still alive. Meanwhile, from a humanitarian perspective, grandparents basically never see any difference between one grandchild and another.

Emotional factors play a role in obstructing the rights of successor heirs. Personal closeness between grandchildren and grandparents is often cited as a reason for accepting or rejecting inheritance rights. This demonstrates the strong subjectivity in inheritance practices at the family level, a deviation from the principle of "adl" (justice) in Islamic law.

Internal family mediation is often an alternative way to resolve inheritance disputes in the North Pontianak District. This process involves community and religious leaders as mediators, with the goal of preventing family divisions and maintaining harmony and peace, without any problems arising from kinship ties between family members.

However, the aspect of justice is neglected when dispute resolution processes are conducted within families, as they don't address the essential issue of granting the rights of substitute heirs. Therefore, there is concern that inheritance issues will accumulate in the future if the distribution of the rights of substitute heirs is not carried out properly.

Family mediation is often a peaceful solution to avoid conflict. However, this type of resolution often neglects the substance of legal justice. Because there is no formal legal basis, the outcome of mediation is usually only moral, not legal. Successful mediation without legal equality often only perpetuates discrimination against the weaker party.

Injustice in inheritance distribution is not only a violation of civil and Islamic law, but also a violation of human rights. The state has recognized the rights of alternate heirs through the Compilation of Islamic Law (KHI), but weak enforcement and public awareness often result in these rights being ignored. Protection of alternate heirs is part of the state's efforts to ensure social justice for all citizens.

The lack of inheritance rights for substitute heirs, where certain heirs dominate, adds to the discrimination, due to the lack of legal protection from the status of existence as an heir that has been recognized by statutory regulations, to the point of not being granted rights to the inheritance left by the testator. The neglect of Human Rights in this case is certainly not in line with the spirit of the existence of Islamic law, especially in the matter of inheritance. Because Islam strongly protects the rights and status of every human being, especially the existence and inheritance rights of every person who is entitled to receive it.

Even though there are problems behind the method of dividing inheritance, specifically for the problem of the existence of a group of substitute heirs (mawalli), the process and method of resolution prioritizes the path of family deliberation, so the result is that there are substitute heirs who are not given any rights whatsoever to the inheritance of the testator, even though these substitute heirs are clearly the grandchildren of the testator.

Then there is also a group of substitute heirs whose rights are limited to gifts, and the amount of gifts received is far from the required amount. Therefore, what is given is nothing more than a show of mercy, assumed to be out of pity, considering that these substitute heirs are the children of other heirs' siblings, whose parents (the substitute heirs) have already died.

However, the reality found in the majority of communities is that the substitute heirs receive no rights whatsoever. This is despite the fact that during the inheritance distribution deliberations, they (the substitute heirs) have demanded or proposed their existence and questioned the status of their rights. This is because their parents died first, and then their grandparents died several years later.

The implementation of the rights of alternate heirs in North Pontianak still faces structural and cultural obstacles. Legal education strategies, strengthening the role of religious leaders, and consistent law enforcement by religious courts are needed to truly realize the principles of Islamic justice. The implementation of inclusive and equitable Islamic inheritance law can serve as a social instrument to strengthen family solidarity and prevent discrimination against future generations.

Injustice and the lack of inheritance rights and legal protection for successor heirs are ongoing phenomena in society. There is concern that this will become a major problem in the future, requiring the readiness of all parties involved to provide solutions and speak out about the truth regarding Islamic inheritance law for the common good.

4. Conclusion

Based on the description in the previous chapter, the following conclusions will be presented as a conclusion: 1. The implementation of Article 185 of the Compilation of Islamic Law (KHI) concerning substitute heirs (mawalli) in North Pontianak District, Pontianak City, has not been implemented in accordance with existing provisions. Therefore, to date, in cases that have occurred, substitute heirs have never received their inheritance rights. Even if substitute heirs do receive rights, these rights are limited to a modest grant from one or a combination of several primary heirs. 2. The implementation of the distribution of the rights of substitute heirs (mawalli) in the North Pontianak District, Pontianak City, is that in the distribution, apart from them (substitute heirs) their rights are not given, in fact their existence is often not recognized or rejected by the main heirs, because they are seen as weak heirs, no longer considered to have a relationship with the inheritance because their existence was cut off since their father/mother died before their grandfather/grandmother.

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