THE IDEAL CONCEPT OF THE PROVISION OF SUBSTITUTE HEIRS IN INHERITANCE LAW ACCORDING TO COMPILATION OF ISLAMIC LAW BASED ON THE JUSTICE VALUE

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ABSTRACT

Provisions for replacing heirs in the Compilation of Islamic Law are regulated in Article 185. However, in its implementation, these provisions create legal problems, not only in social terms where the majority of Indonesian Muslim syafi'iyah schools are based, but also in the construction of laws 185 which is very paradox because the editorial content of the material is ambiguous, unclear and indecisive, which in turn gives birth to injustice. The Ideal Concept is the provision of substitute heirs based on fair value, namely by reconstructing the provisions of Article 185 Compilation of Islamic Law. It contains clearer norms of formulation and provides legal certainty. Confirmation of the distribution of rights between direct heirs and substitute heirs, legal recognition of the existence of the husband or wife of the heirs who died earlier than the heirs and did not leave the child, and acknowledgment of the existence and firmness in granting the rights of the grandchildren.

Keywords: Substitute heirs, Compilation of Islamic Law

INTRODUCTION

Islam has regulated every aspect of human life both concerning everything directly related to Allah SWT and to fellow human beings. One of the rules of God that relates to humans is inheritance. In social life, inheritance is part of family law that plays an important role, even determines the system or form of law that applies in society[1], and relates to the rules of human life both as individual beings and in society.

In a country, one of the things that must be upheld is the legal system in the life of the community. This is not only due to the fact that this country is a legal state, but is more about the trends that will occur in the life of the Indonesian nation that develops towards a modern society. [2] In the context of inheritance, such conditions require the existence of Islamic law that is not too rigid for Muslims in Indonesia. Further, the need for *ijtihad* by *ulama* in society and judges in judicial institutions are manifested in a collection of Islamic laws concerning inheritance, which is then contained in inheritance law in Book II Compilation of Islamic Law (CIL) based on Presidential Instruction Number 1 year 1991 concerning Compilation of Islamic Law.

Compilation of Islamic Law its existence is still quite calculated. At least help the judges in finding the right source of Islamic law and can avoid the exposure of the school of law in daily practice. Specifically in dealing with inheritance cases and judges' decisions in the Religious Courts, the wonder of the contents of the CIL and its application was originally seen as a result of the new ijtihad of Indonesian Ulama. However, it turns out that Book II on Inheritance Law in CIL is indicated only by the engineering of a group of people in the CIL Team, namely by entering the legal rules they want, without confirmation with the scholars in the Inheritance Law Formulation Team. The rule of law included is about "substitute heirs", where at the time of formulation it is not agreed to be included at all, but then listed in Book II of CIL (Compilation of Islamic Law).

Furthermore, regarding the substitution of heirs in Article 841 of the Civil Code it is stated that: "Reimbursement according to the right to a person who replaces to act as a substitute, in the degree and in all rights of the person being replaced". As for Article 185 CIL, although it is not exactly the same as the Civil Code, the charge is the same. Especially in paragraph (1) the Article states that: "Heirs who died before the heir, then their position can be replaced by their children, except those mentioned in Article 173".

Nevertheless the facts that have occurred in the formulation of the CIL, the legal rules regarding substitute heirs remain the basis of reference for Religious Judges in adjudicating and deciding on inheritance issues and disputes at the trial. Over time, the decisions of the judges who tried and decided on the inheritance case based on CIL have until now become jurisprudence for other judges in the following period.

Apart from that, the writer also sees that the formulation of article 185 concerning the substitution of heirs determined by CIL still needs to be carried out a more in-depth and more comprehensive study so that the rule of law can be a rule that truly reflects the values of justice, both in the context legal justice and social justice for Muslim communities in Indonesia. Even Dr. H. A. Sukris Sarmadi, MH., Suggested that the legal rules regarding substitute heirs be maintained but it is expected that in the future there will be improvements to the concept of rules for replacing heirs regulated by the CIL. [3]

[1] Hazairin, 1974. *Hukum Kewarisan Bilateral Menurut Al-Qur'an dan Hadits*, Jakarta: Tinta Mas, page. 9.
[2] Khudzaifah Dimyati, 2004. *Teorisasi Hukum Studi Tentang Perkembangan Pemikiran Hukum DiIndonesia 1945 – 1990*, Cetakan III, Surakarta: Muhammadiyah University Press, page 9
[3] A. Sukris Sarmadi, 2012. *Dekonstruksi Hukum Progresif Ahli Waris Pengganti dalam Kompilasi Hukum Islam*, Jakarta: Aswaja Pressindo, page. 285-286.

Based on the description above, it is very important to examine in depth the provisions of substitute heirs in inheritance law based on Presidential Instruction No. 1 year 1991 concerning the Construction of Islamic Law which gives rise to multiple interpretations and does not fulfill the value of justice, and formulates the ideal concept of substitute heirs in Legal Compilation Islam is based on the value of justice.

RESEARCH METHODS

This research is normative juridical research. Normative legal research method is a method of literature that is a method or method carried out by examining existing library materials. [4] Normative legal research is analytical descriptive, which describes the applicable regulations which are then connected with legal theories.

The approach used in this study is a legislative approach, namely an approach using legislation and regulation[5]. Legal material in this study, namely: Presidential Instruction Number 1 year 1991 concerning Compilation of Islamic Law, Law related to inheritance along with derivative regulations, and other related references. The legal material analysis method used was normative analysis, which is a way of interpreting and analyzing dissertation research material based on legal notions, legal norms, legal theories and doctrines related to the discussion of substitution of heirs.

RESEARCH RESULTS AND DISCUSSION

The law of inheritance in CIL which regulates the substitution of surrogate experts is contained in article 185, it consists of 2 (two) verses, namely:

(1) Heirs who die earlier than the heir, then their position can be replaced by their children, except those mentioned in Article 173; and
(2) The part of the substitute heirs may not exceed the portion of the heirs equal to the substitute.

From the provisions above, as explained in the previous discussions it must be interpreted in the following 3 (three) corridors, namely:

1. Those who are substitute heirs are all descendants, heirs who die before the testator. That is to say; substitute heirs apply not only to the descendants down, but to the heirs to the side (siblings);
2. The number of parts received by substitute inheritance must not exceed (equal maximum) of the parts that should be replaced; and
3. The position of grandchildren both male and female descendants is equally entitled to replace his father's position.

Roihan A. Rasyid[6] suggested that the application of Article 185 be based on at least three considerations, namely: First, whether or not the concept of substitute heirs applies, must be based on the Judge's consideration, according to case by case, and this has been included in the Article 185 verse (can 1); Second, if the substitute of the heir is only dealing with an heir equal to the one he replaces, meaning that only between children and grandchildren (lineage down) only, there needs to be a limitation for substitute heirs, and this is covered in paragraph (2) Article 185; Third, if the one in point 2 above is also concerned with another heir, for example father, mother, wife / husband, or brother, or the like, who will become less part because of the substitution of heirs, then substitute heirs are not applies, unless there is permission / approval from other heirs whose portion will be reduced.

With regard to this, according to the researcher, the problem of substitute heirs in inheritance law in Indonesia, which is recorded in the CIL, is a very sensitive and very substantive legal rule for the Indonesian Muslim community. So, it is not enough just to give a limit to the interpretation of article 185 of the CIL. The limitation of interpretation of the rule of law has implications for justice and social values, where the principles of justice and social principles must also be considered. Therefore, the relevance and correlation between the principles of justice and socialism, Phillipe Nonet and Phillip Selznick through responsive law, places law as a means of responding to social provisions and public aspirations. In accordance with its open nature, this type of law emphasizes accommodation to accept social changes in order to achieve justice and public emancipation. Even according to Nonet-Selznick, responsive law is a program of sociological jurisprudence and realist jurisprudence. In essence, it calls for the study of more empirical law beyond the limits of formalism, the expansion of legal knowledge, and the role of policy in legal decisions. According to the notes of Nonet-Selznick, the past twenty years, is a period of revival of interest in issues in legal institutions, namely how legal institutions work, the various forces that influence them, and various limitations and abilities. [7]

On this basis, the researcher recounts Article 185 and discusses each verse, in order to find a more comprehensive understanding of the essence of legal justice and social justice from these provisions. The researcher has concerns that this issue will later become a very acute chronic disease for the development of Islamic law in Indonesia. Therefore the legal problems of

[4] Soerjono Soekanto dan Sri Mamudji, 2009. *Penelitian Hukum Normatif Suatu Tinjauan Singkat,* Cetakan ke-11, Jakarta: PT Raja Grafindo Persada, page. 13–14.
[5] Peter Mahmud Marzuki, 2010. *Penelitian Hukum,* Jakarta: Kencana, page. 93.
[6] Roihan A. Rasyid, dalam Ahmad Zahari, 2009, *"Hukum Kewarisan Islam di Indonesia",* Pontianak: FH Untan Press., page. 63.
[7] Philippe Nonet & Philip Selznick, 2003. *Hukum Responsif, Pilihan di Masa Transisi*. Penerjemah Rafael Edy Bosco, Jakarta: Ford Foundation-HuMa, page. 210.

these successor heirs must be immediately resolved and alternative solutions can be found that can be law responsive, also as legal progressive in the life of the Indonesian Muslim community.

1. Provisions in paragraph (1) Article 185 CIL

Based on the explanation of Dr. H. M. Fahmi Al-Amruzi, M. Hum said that responsive legal products are legal products that reflect a sense of justice and meet people's expectations, where the results will be responsive to the interests of all elements, both in terms of society and law enforcement. [8] So the researcher considers the provisions for replacing heirs in CIL to be responsive, where the responsiveness is also the basis of the birth of progressive law.

The law of CIL inheritance should be the law formulated by Nonet and Selznick, which is sensitive to every development of society. One prominent feature of this responsive legal theory is that it is more oriented towards justice by paying attention to the public interest. For this reason, in order to explore understanding of the substitution of heirs in the CIL, it must be based on the doctrine of paragraph (1) which is the core formulation of replacing surrogate heirs, where the verse reads: "Heirs who die earlier than the heirs, then their position can be replaced by their children, except those mentioned in Article 173".

Against the doctrine of paragraph (1), the researcher considers that the provision implicitly has provided a definition of substitute heirs, which regarding this provision Roihan A. Rasyid[9] states that Substitute heirs are, people who from the beginning were not heirs but because of circumstances and certain considerations may receive inheritance, but remain in status not as heirs (same as *plaatsvervulling* and obligatory will), for example, heirs leave children and grandchildren both men and women, whose parents die earlier than heirs, here grandchildren is a substitute for heirs. The substitute heir is, the person who from the beginning is not an heir but because of certain circumstances he becomes an heir, and receives inheritance in the status of an heir, for example the heir does not leave the child but leaves the grandson of a boy or girl of a son.

Regarding this opinion, the researcher considers that in terms of legal responsively, the substitute heirs are an answer to the injustices felt by the grandchildren, especially the grandchildren of the transmitting daughters. However, the opinion of Roihan A. Rasyid was widely challenged with one of the reasons that: First, people will tend to argue that the CIL inheritance law is unfair and discriminatory[10]. Islamic societies that are used to adhering to a patrilineal descent system will certainly accept it happily, but for Islamic societies that adhere to a descent system that is bilateral (especially matrilineal), which constitutes the majority of Indonesian Islamic society, will tend to abandon inheritance law in CIL, [11] and choose customary inheritance law or Civil Code which is considered non-discriminatory.[12]

In this context the researcher argues that if the pessimistic assumption is true, then it is clear that the compilation of Islamic law is not in line with the legal spirit that exists in our country of Indonesia. A rule or provision must be in accordance with the concept of the state of Pancasila law that reflects the principles of justice in which it adheres to the protection of human rights. Pancasila has a difference from the other basic norms, namely Pancasila which adheres to the principle of non-secular in creating certainty, justice and benefits[13]. The concept of a legal state that reflects the justice that must be adhered to by the Indonesian people is the concept of a state of Pancasila law that provides justice in the form of the principles of justice [14] based on Pancasila.

Second, determining whether or not the successor heir occupies the position of his parents as heirs, he has the right to inherit the assets together with the surviving heir's children. If it depends on judges' consideration, this will cause legal uncertainty, because at some point the judge may consider that the substitute heir in question can occupy the position of his parents, and at other times by the same judge or by another judge. It may also be considered, that the successor's heirs cannot replace or occupy the position of his parents as heirs, to the same case. If the determination depends on the permit or approval of the heir, whose portion becomes reduced by the existence of a substitute heir, it will also cause legal uncertainty, because at one time the heir may allow or approve and at other times for the same case, another heir the related does not permit or disagree.[15]

Nevertheless, Azhari Ahmad agreed with Roihan A. Rasyid, that the word "can" in Article 185 CIL was not absolute. But whether or not the substitute heirs occupies the position of his parents as a substitute heir, according to the researcher, does not depend on judges' consideration or mercy (with permission or approval) from other heirs, but is up to or depends on the substitute heir himself, whether he will occupy the position that has been provided for him or not. He, if he wants to occupy his position as a substitute heir, must not prevent or forbid him and if he does not want it, then no or no one can force him. [16]

[8] M. Fahmi Al-Amruzi, 2012. *Rekonstruksi Wasiat Wajibah dalam Kompilasi Hukum Islam,* Yogyakarta: Aswaja Pressindo, page. 106-107.
[9] Roihan A. Rasyid, dalam Ahmad Zahari, 2009, *Loc.cit.*
[10] Yeti N. Soelistijono, *"Peraturan Perundang-undangan yang Bias Diskrimasi"*, Jurnal Dua Bulanan Mimbar Hukum, No. 65 Tahun XIV Nopember – Desember 2004, Jakarta: Al Hikmah DITBINPERA, page. 73.
[11] Jalaluddin Rahman, *"Perumusan Ulang Hukum Waris Islam: Sebuah Pendekatan Pembaharuan"*, Mimbar Hukum Aktualisasi Hukum Islam-Jurnal Dua Bulanan, No. 63 Tahun XV Maret-April 2004, Jakarta: Al Hikmah & DITBINPERA Islam, page. 88-89.
[12] Muhammad Daud Ali, 2007, *Hukum Islam Pengantar Ilmu Hukum dan Tata Hukum Islam di Indonesia*, Jakarta:PT. Raja Grafindo Persada, page. 295-296.
[13] Ferry Irawan Febriansyah, 2016, *Konsep Pembentukan Peraturan Perundang-Undangan di Indonesia*, Jurnal *Perspektif* Volume XXI No. 3 Tahun 2016 Edisi September, page. 227.
[14] *Ibid.*
[15] *Ahmad Zahari, Op.Cit.*, page. 328.
[16] *Ibid*., page. 63.

Furthermore, clear provisions that become the source of problems in the doctrine of paragraph (1) according to the researcher are the editorial verses that use the word "can". Roihan A. Rasyid stressed that the word "can" listed in Article 185 paragraph (1) is not absolute (can always be replaced), but what is meant is "may be replaced" and "may not be replaced", it is up to the judge's consideration according to case by case, and not according to law in general regulating functions.

Furthermore, the editorial "can" in the verse shows that the theory of substitute heirs in the CIL seems to be not generalized as a theory that applies thoroughly and comprehensively, because with the word "can" consequently the use of the theory of substitute heirs is alternative or not a necessity to be implemented, the implementation is left to interested parties adjusted to the characteristics of the case itself.

If we see the provisions of the paragraph as a positive legal provision, then according to the researcher, the word "can" can injure the substance of the law both formally and materially, because the word "can" implicitly describes the doubt in its formulation, in other words the word contradicts legal certainty which is one of the principles that absolutely must be owned by one legal provision or article of a regulation. The researcher needs to emphasize that the principle of clarity in the formulation of the substance of legislation is a basic concept in establishing good legislation and the last is the openness of legal concepts regulated in the laws and regulations is known and recognized by all people who are the subjects of law. [17]

With these doubts, of course the direction to be achieved will be unclear so that this is very contrary to the principle of clarity of purpose. The principle requires that every Establishment of Legislation must have clear objectives to be achieved. In addition, the establishment of good legislation must be guided by the State fundamental norm, namely Pancasila. The basis of the establishment of legislation adopts the principles and values of Pancasila in order to realize justice for all the people of Indonesia, namely the protection of human rights in obtaining justice. [18] With the formulation that was born out of a sense of doubt will give birth to a sense of injustice, so that it clearly injures the values of justice mandated by Pancasila as a source of law in the country of Indonesia.

The establishment of good regulations will follow the basic ideals of the rule of law, namely Pancasila. If the Pancasila is linked to the division of formal and material principles, then the division can be concluded as formal principles in accordance with Pancasila covering the principle of clear objectives. The principle of the need for regulation, the principle of the right organ or institution, the principle of material content, principles can be implemented, and principles can be recognized. While the material principles cover the principles in accordance with the ideals of Indonesian law and the fundamental norms of the country, the principles are in accordance with the basic laws of the country, the principles in accordance with the principles of the state based on the law, and principles in accordance with the principles of constitutional government. [19]

2. Provisions in paragraph (2) Article 185 CIL

Furthermore, the doctrine found in paragraph (2) of Article 185 CIL says that: "The substitute heirs must not exceed the equal heirs of the heirs' share" this is about the concept of equal and parts concepts. Therefore, towards this problem, the researcher is more likely to describe Dr. H. A. Sukris Sarmadi, MH., In outlining article 185 of the CIL, where he in his book entitled: "Progressive Legal Deconstruction of Substitute Heirs in CIL", has concluded that: [20]

a. Provisions for heirs who die earlier than the heirs, so that their position can be replaced by their children, is good for the purpose of justice and benefit but less than perfect. The lack of clarity about how the fard distribution system of heirs makes this article allows for many problems to arise. As explained above, this ambiguity in the doctrine of article 185 is also not in line with the principle of clarity in the formulation of the substance of legislation.
b. The provisions of Article 185 CIL still cannot answer whether the substitute heirs also apply to those who die first (the siblings) can be replaced by their children. And on the upward line, is there a change to the top. While such cases require problem solving system calculations. Not to mention the issue of the hijab of wonder, is the successor's heirs, the grandchildren emitting men the same degree as hijab him with the grandchildren of the women? What is the amazing hijab system.
c. Article 185 CIL does not have the firmness of the meaning of a real change, namely the negligence of the person being replaced will be replaced by the substitute (substitute heir). Likewise, the woman who is replaced will be replaced by the substitute (substitute heir). This is because restrictions on the acquisition of their rights may not exceed the share of equals.
d. In general, the understanding of article 185, substitute heirs only get the remaining part of the fard from a simple person who is replaced (direct heir). This understanding confuses and obscures the calculations of substitute heirs, giving rise to new problems in the calculation of heirs. If the successor's heirs are entitled to the remaining assets, then how many parts of the son are direct heirs? There is no explanation to calculate this distribution, including in article 185 of the CIL.
e. Based on the progressive law about substitute heirs, it no longer contain confusion or problems of justice and wealth. The calculation is certain by carrying out the principle of change, guaranteeing justice and benefit,

[17] Ferry Irawan Febriansyah, *Op.cit*, page. 224.
[18] *Ibid*., page. 227.
[19] Mahendra Kurniawan, dkk, 2007. *Pedoman Naska Akademik PERDA Partisipatif*, Cet. ke-1, Yogyakarta: Kreasi Total Media, page. 225.
[20] Ahmad Surkris Sarmadi, *Op.Cit.*, page. 254-261.

and not contradicting the inheritance verses. There are no unrepresented parts except obtaining parts with part 2: 1 systems that are definite and formatted, can be calculated and ascertained legal fard.

f. Especially regarding the hijab and the mahjub, the heirs have the same function as the position of the hijab of the wonder of the children directly to the heir. If based on the CIL system, namely in Article 174 paragraph (1) and paragraph (2), both boys and girls will use a total amount of hijab which results in the siblings not obtaining any inheritance rights. This is different from the Sunni inheritance system which stipulates that only heir sons can veil the brothers. Whereas girls are only *nuqsan* (not total or only partially) unless they are two or more people. Then the legal system of substitute heirs must follow the purpose of article 174 which means to dissuade the brothers as when their parents live.
g. If there are no other inheritance except the grandchildren who emit male and female transmitters, then they together get the *ashobah* section, the grandchildren of the women who follow the part of the grandchildren who emit men, which is two to one.
h. The descendants of the heirs, whether or not two or more have the right to share 2: 1 of their fellow citizens. Likewise the descendants of daughters get what their mothers get and share 2: 1 if they are some.
i. The substitute heirs only get the remaining portion of the heirs directly to be distributed based on the proportion of men and women who are balanced 2: 1.
j. If there is a direct male child, an estimate is made as if there is a brother who lives while using balanced principles 2: 1.
k. Substitution theory cannot be traced (tawassu; expansion) to the line go down and sideways because their side has its own line.

Based on the description above, and on the basis of consideration of the ideal construction urgency in the provisions of the concept of substitute heirs, in this paper the norm reconstruction of the provisions of substitute heirs in inheritance law will be carried out based on Presidential Instruction No. 1 year 1991 concerning CIL. The researcher considers that the thing that underlies the need for renewal of the rules for replacing substitute heirs is the existence of values that have not yet been implemented and values that still cannot be realized in the provisions of substitute heirs in the CIL inheritance law. In principle, a rule of law must be based on the values contained in the norms that exist in people's lives, in this case the Indonesian Muslim community, both social norms and juridical norms.

Therefore, before reconstructing juridical norms, this paper also discusses social norms. As we know that the social life of the Indonesian Muslim community, in this case is in the context of community religiosity, that there is a fiqhiyah paradigm that is thick with the syafi'iyyah mindset. On the other case, the concept of substituting heirs is not the result of ijtihad from Syafi'iyah priests. With such a mindset and the fact that the majority of the Indonesian population are Muslims who practice syafi'iyyah, then to ground the law on inheritance of CIL in Indonesia, in this case the law of substitute heirs must be preceded by reconstructing social-religious norms that live in society Indonesian Muslims themselves.

The construction of the Indonesian Muslim mindset is not an easy thing to do, it even takes a relatively long time, and the step that must be taken is to strengthen the legal position of substitute heirs in inheritance law based on CIL. The strengthening is, of course, done by reconstructing the position of inheritance law in CIL. It was originally only based on legal instruments in the form of Presidential Instruction, becoming legal instruments that are recognized and regulated in the hierarchy of laws and regulations as Law Number 12 year 2011 concerning Establishment of Legislation. In the sense that Inheritance Law in Indonesia must be carried out again, where inheritance law in CIL is issued and reconstructed into an Inheritance Act, so that with the legal instruments this law will be easier to reconstruct social norms related to the position of substitute heirs in Muslim community life Indonesia.

The researcher's social norms mean the norm that develops in religious customs in the life of the Indonesian Muslim community, where the views and recognition of the Indonesian Muslim community towards the concept of substitute heirs are still not grounded in the midst of the life of the Indonesian Muslim community.

Furthermore, in the aspect of juridical norms, then as we discussed earlier, the provisions for replacing substitute heirs stipulated in article 185 paragraph (1) and Paragraph (2) CIL still have many weaknesses including the editorial article which gives rise to polemics or debates so that it becomes a legal problem. This is started from the concept of unclear provisions regarding substitution of heirs.

According to the Researcher, Article 185 Paragraph (1) and Paragraph (2), if seen as a legal instrument, it is clear that the content of the material is not in accordance with the principles of the establishment of legislation. The most prominent thing is that the provisions are separated from the provisions of the principle of clarity of formulation, in which this principle means that every statutory regulation must meet the technical requirements for the preparation of legislation, systematics, choice of words or terms, and clear and easy legal language understood so that it does not cause various kinds of interpretations in its implementation.

With such innate nature and legal problems caused by it, the provisions of the successor heirs certainly will not be able to realize the principle of usefulness, where the principle requires that each legislation is made because it is really needed and useful in regulating community life, nation and state. Thus, the reconstruction of the provisions for substitution of heirs in this dissertation study is to reconstruct Article 185 Paragraph (1) and Paragraph (2), which reads:

Paragraph (1): "Heirs who die earlier than the testator, then his position can be replaced by his son, except those mentioned in Article 173. "[21]

With respect to paragraph (1), the researcher provides the following responses:

1. The word "can" leads to the justification of different mindsets regarding the substitution of heirs. This word can be interpreted that there is no absolute necessity, thus opening the opportunity to do or not to do, which in the end gives multi interpretations and creates a polemic of inheritance law for substitute heirs. Therefore, the word "can" must be omitted;
2. Paragraph (1) does not reflect the concept of justice and good legality if it has not been able to provide legal certainty which ultimately cannot be applied properly. According to Hans Kelsen, the legal regulation must have the binding capacity of the material contained in the law itself, conditions such as this, the value of justice in the concept of justice and legality can be realized;
3. The word "can" has not fulfilled the principle of clarity in the formulation of legislation, laws and regulations must meet the technical requirements for the preparation of legislation, systematics, choice of words or terms and legal language that is clear and easy to understand so as not to cause various kinds of interpretations in the implementation. Besides that, it is also a guarantee of legal certainty in the process of replacing heirs; and
4. In the context of progressive law, substitute inheritance law is a representation of rules and behavior, where there is a balance and correlative in the implementation, which is not found in the provisions of this paragraph, because the ambiguity of the editorial concept gives rise to multiple interpretations, according to the researcher paragraph (1) this must be corrected.

Paragraph (2): "Part of the substitute heirs may not exceed the proportion of heirs equal to the substitute."

As for this paragraph (2), the researcher described the response as follows:

1. Editorial paragraph (2) above, according to the researcher, is a paradox that will surely cause confusion for the community, especially for people who have an attachment to the legal doctrine, namely the Religious Judges. In fact, the fact that the paragraph (2) doctrine was applied from the start and even now it is a paradoxical rule in the application of inheritance law in Indonesia. With the condition of the paradox legal doctrine, according to the researcher it is natural that it will lead to legal polemics that will not end. Editors who are clearly very paradoxical are "not to exceed parts" and "equal to those replaced". The two editors in turn gave birth to ambiguity which gave birth to many different interpretations or multiple interpretations of the doctrine of verse (2). Ambiguity in a legal device or product will ultimately give birth to injustice in its application.
2. The lack of clarity of the editorial in the paragraph doctrine (2) above, the researcher considers as something very fatal, the lack of clarity of the editor in fact has violated the principle of clarity in the substance of the legislation constituting the basic concept in shaping good legislation.
3. An unclear concept in general is born on the basis of uncertainty about what will be addressed and / or what will be achieved with the concept. In other words, according to the researcher that Paragraph (2) Article 185 of the CIL is compiled and formulated without the clarity of the objectives of the formulation of the paragraph, so that this is clearly contrary to the principle of clarity of purpose, the principle of which requires that every Establishment of Legislation have clear goals to be achieved.
4. With the editorial concept paragraph (2) which is paradoxical as mentioned above, then to realize the progressive legal paradigm, where substitute legal heirs as the teachings of liberation, substitute law should relieve themselves of types, ways of thinking, principles and legal theories legalistic-positivistic. The law of substitute heirs must be based on "social propriety logic" and "logic of justice". Thus, the provisions for replacing heirs in Paragraph (2) above must be refined, both in the editorial and in the substance.

Based on the description above, the researcher considers that the two verses above cannot be maintained anymore, the status quo of the legal regime must be immediately released from the provisions of the two verses above, so that the researcher offers the ideal construction concept as follows:

1. Paragraph (1), reads: "Heirs who die earlier than the testator, then their position is replaced by their children, except those mentioned in Article 173."

Construction of Paragraph (1) is an ideal concept by removing the word "can" which is a stigma in the doctrine of verse (1) and is the source of polemics in the interpretation of Paragraph (1). By freeing Paragraph (1) from the uncertainty of the word "can", the substance is that there is an obligation to do so replacement of heirs as provided for in paragraph (1).

2. Paragraph (2) reads: "Part of the successor heirs replaces half of the part of the heirs who are replaced."

Construction Paragraph (2) of the results of the reconstruction above, according to the Researcher is as an alternative solution in resolving legal polemics regarding the substitute heirs. Where in the editorial paragraph (2) beforehand, it is unclear what the meaning of using the editor "does not exceed the part", so for that the researcher ventured to give a clear boundary about the part of the successor heir namely half of the portion of the heir replaced.

The construction of paragraph (2) of the Researcher formulates in the spirit of the values of justice which in fact is not the same between the heirs of the deceased and the heirs who succeeded him. Whether it's from its position, its existence or its benefits. However, as an award and fulfillment of justice for the heirs of the deceased and in recognition of the person who replaces his position as an heir, it is fair if the heirs of the deceased are given to the person who replaced him as the heir.

[21] Article 173 Compilation of Islamic Law, reads: a person is deterred from being an heir if the decision of a judge who has permanent legal force is punished for: (a) being blamed for killing or trying to kill or severely torture the heir. (b) blamed slanderously for filing a complaint that the heir committed a crime that was threatened with a sentence of 5 years imprisonment or a more severe sentence.

However, according to the researcher is that the principle and substantive thing is that if all aliases of the successor substitute are the same or even more than direct heirs. It will give birth to injustice to the direct heirs. Therefore, as progressive law contains humanitarian values and justice, the part of the heirs who die must be given to the heirs who replace them with clear boundary provisions, which must not exceed or may not be equal to the direct heirs' share, so that the limits " half "of the replaced heirs is a legal application that is responsive to human values and justice.

Apart from that, with the conditions of legal construction inherent in Paragraphs (1) and Paragraph (2) the results of the reconstruction above, a legal vacuum will occur which therefore reconstruction of the provisions for replacing the heirs in this dissertation study is also by completing the reimbursement provisions the heirs, namely by providing additional new legal norms in the form of proposals for new verses in article 185 CIL, as follows:

1. Paragraph (3) reads: "Substitute heirs do not prevent other heirs from getting a part".

This norm in the proposed Paragraph (3) embodies the affirmation of legal certainty and justice in the form of the inheritance for the heirs, which is not hampered by the presence of a granddaughter who is a substitute heir. In order for the application to not cause a difference, it is necessary to affirm the explanation of the article for this paragraph that the calculation is as follows;

1) In the condition that the testator leaves the child and father, the calculation of the successor's heirs is with the direct heirs, assuming the heirs being replaced are still alive;
2) In the condition that the heir leaves the father, the calculation of the heir is based on the remaining happiness of the direct heirs; and
3) In the condition that the heir does not leave the child and father, then the heir of the calculation is based on the remainder of the division.

2. Paragraph (4) reads: "if the testator leaves the child, the substitute heir does not receive the remainder of the heir's portion".

The norm contained in the proposed Paragraph (4) is in the context of realizing legal certainty towards a sense of justice for direct heirs, in which the substitute heirs aside from half of the heirs he replaces, he will not get another part, so that the portion is not will exceed the share of direct heirs.

Thus, substitution of heirs does not and makes Dzawil arham become ashabah who always spends the rest of the part. In the sense that, the substitute heir under certain conditions he can spend the rest of the part, but in certain other conditions he cannot spend the remaining portion ie when there is an heir child or uncle / aunt of the successor's heir.

3. Paragraph (5) reads: "when the heirs who have died earlier than the heir leave only the husband or wife, then his position as a substitute heir".

The proposed Paragraph (5) according to the researcher needs to be formulated because the rights of the deceased heirs will be lost and not beneficial to the family of the deceased heirs if the husband or wife is not given a position as a substitute heir.

Therefore, in addition to human values, the norms contained in the proposed verse are also a manifestation of the values of justice for the deceased heirs.

4. Paragraph (6) reads: "if there is only a child from the heir who first dies from the testator, then the position and the size of the portion as Article 176".[22]

In this norm, it is hoped that justice and law will be responsive and progressive, namely when the heir leaves only the grandchildren of the female emancipator or together with the emancipation of men and women, the division is adjusted to the provisions of article 176 CIL. This is formulated so that the inheritance's inheritance can be a real right and can provide the greatest benefit for the grandchild or grandchildren.

Regarding the rules of reconstruction mentioned above, the researcher asserts that the position of substitute heirs is the same as the heirs he replaces, in the sense that the existence of a substitute heir is regarded as the heir as he lives, therefore in his calculations the position of heirs the deceased is considered to be still present and handed over to the successor heirs, only the portion is only half of the heirs who are replaced.

CONCLUSION

In realizing the legal norms of substitute heirs that are based on the values of justice, humanity, social and fulfill the principles of the formation of progressive legislation, the researchers make changes to the content material in Article 185 of Presidential Instruction No. 1 year 1991 concerning CIL as follows:

[22] Article 176 reads: A girl if only one person gets half a part, if two or more people together they collect two-thirds, and if a girl is with a boy, then the share of a boy is two compared one with girls.

1. Paragraph (1) the results of the reconstruction read: "Heirs who die earlier than the testator, then their position is replaced by their children, except those mentioned in Article 173". This reconstruction contains the norms of clarity of formulation and legal certainty in the concept of substitution of heirs.
2. Paragraph (2) the results of the reconstruction read: "Part of the successor substitutes half of the portion of the heirs who are replaced". This reconstruction contains the norms of clarity of formulation and legal certainty in limiting the part of substitute heirs.

Apart from that, to complete the legal construction of Paragraph (1) and Paragraph (2) of the reconstruction results above, the Researcher gives additional new legal norms, as follows:

1. Proposed Paragraph (3), reads: "Substitute heirs do not make other heirs obstructed from getting a part". This reconstruction contains norms that embody the values of justice towards the heir brothers.
2. Proposed Paragraph (4) reads: "If the testator leaves the child, the substitute heir does not get the remainder of the heir's portion". This reconstruction contains the norms for affirming the distribution of rights between direct heirs and substitute heirs.
3. Proposal Paragraph (5) reads: "when the heirs who died earlier than the testator only left the husband or wife, then his position as a substitute heir". This reconstruction contains the norms of legal recognition of the existence of a husband or wife of a substitute heir who does not leave the child and he is no longer married.
4. Proposal Paragraph (6) reads: "if there is only a child from the heir who dies first from the testator, then the position and the size of the portion as Article 176". This reconstruction contains the norms for recognizing the existence and firmness in granting the rights of grandchildren.

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