Al-Iftah: Journal of Islamic Studies and Society
Vol. 2, No. 1, (2020), pp. 106-124

Comparison of Substitute Herities between Civil Law and Islamic Law in Indonesia

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Abstract

This study discusses the comparison of successor heirs between civil law and Islamic law in Indonesia. This study aims at the system of substitute heirs in the Civil Code and substitute heirs in the Compilation of Islamic Law, as well as a legal comparison of the substitute heirs in the Civil Code and substitute heirs in the Compilation of Islamic Law. This research uses library research or research based on literature. The research method used is literature review, which is a study carried out to solve a problem which basically relies on a critical study of relevant library materials.. Sources of data used in this study are primary data sources, secondary data sources and tertiary data sources. The results of this study indicate, 1) Position of substitute heir in civil law (BW) This is called plaatsvervulling. The replacement of place in inheritance law is called the replacement of heirs, namely the death of a person by leaving grandchildren whose parents have died first; 2) The position of the substitute heir in the perspective of Islamic law, If we look at the provisions of Article 185 KHI paragraph 1, it can be said that a grandchild can act as a substitute heir to replace the position of his parents who have died before the heir, and 3) Comparative law regarding successor heirs that maccording to KHI law: That the child who replaces the father's position is a boy and a girl from a male line whose father died first from the heir. the rights obtained by the successor heirs are not necessarily the same as the rights of the person being replaced, and also may not exceed the share of the heirs who are equal to the one being replaced, but may be reduced. Meanwhile, according to the Civil Code law: that the child who replaces his father's position may be from a male lineage or from a female line, according to the inheritance law of the Civil Code (BW) the portion that will be obtained by the heir who replaces his father's position is exactly the same as the part that should be obtained by his father if his father was still alive from the heir.

Keywords: *Substitute Heirs, Civil Law, Islamic Law*

1. Introduction

Law is an order in life that aims to create justice and order in society. Therefore, every law that has been made must always reflect the will of the community in order to fulfill a sense of justice. We often feel that laws that have been made in the past are not in accordance with the sense of justice of today's society due to changing social conditions of society so that changes need to be made. In making a change to an order, they often

experience various kinds of clashes that force a bargain between those who want change and those who maintain it in terms of establishment.

The issue of inheritance is a very important issue and has always been one of the main topics in the main discussion in Islamic law, because this is always present in every family and this inheritance problem is very vulnerable to problems / conflicts in society due to distribution that is considered unfair or there are other parties involved. - the party who feels aggrieved. Along with the development of society's mindset, this has resulted in various advances in the field of Islamic inheritance in Indonesia which later recognizes the existence of a substitute heir, this is due to the sense of injustice experienced by the grandchildren who replace their parents and occupy the place of their parents as the son of the heir, the nephew replaces his parents and takes the place of his parents as the heir's brother.

Civil law in Indonesia is still very pluralistic because until now Western Civil Law, Islamic Law, and Customary Law are still in effect. Of the three legal systems that apply in Indonesia, each of them has regulated inheritance law wherein western civil inheritance law in Burgerlijk wetboek (BW) or the Civil Code which adheres to an individual system, namely after the testator dies, the inheritance of the testator must be immediately distributed to the heirs. The provisions governing inheritance law are regulated in book II of the Civil Code. The application of Burgerlijk Wetboek (BW) based on the provisions of Article 131 IS juncto. Staatsblad 1917 Number 129 juncto. Staatsblad 1924 number 557, juncto.(Ramulyo, 2000).

In the law on customary inheritance in Indonesia, it is strongly influenced by the principle of lineage that applies to the community and also the variety of kinship customary law from various regions. From each hereditary system has a specificity and a difference in the law of inheritance between one another. In customary inheritance law, there are three (3) inheritance legal systems, namely the individual inheritance system which is an inheritance system where the heirs inherit individually, the collective inheritance system in which the heirs collectively (together) inherit inheritance that cannot be inherited. the ownership is divided among the respective heirs, and the majority inheritance system,(Soekanto & Taneko, 2001)

Whereas in Islamic Inheritance Law commonly referred to as Faraid, it is part of the overall Islamic law which regulates and discusses the process of transferring inheritance and the rights and obligations of someone who has died to those who are still alive who adheres to the ijbari principle, namely the transfer of property of someone who dies. the world to his heirs applies automatically according to Allah's decree without being

dependent on the will of the heir or heir. The legal basis of Islamic inheritance is regulated firmly in the Qur'an, including in the word of God in QS. An-Nisa (4):7; “For men there is a right to share in the inheritance of your parents and relatives, and for women there is a right to share (also) from the inheritance from your parents and relatives, either a little or a lot according to the share that has been determined.”

As for the cause of the revelation of this verse, that at that time (fourteen centuries ago) especially in the Arabian Peninsula, the only heirs were men who were able to go to war and were able to get the spoils during the war, beyond that (boys who have not been able to fight and girls, even if they are orphans) who cannot get inheritance from the inheritance of their parents.(Anshori, 2004)

Then with the revelation of this verse, there was a change in the structure of the existing inheritance law, in which the position of sons and daughters is the same, that is, both become heirs of their parents regardless of whether they are capable of fighting or not. From some of the explanations mentioned above, it can be understood that the verse has stipulates that there is no difference in position between sons and daughters as heirs in the distribution of inheritance inherited from their parents to their children.(Limbanadi, 2014)

The problem of grandchildren in Indonesia to obtain inheritance from their grandfathers is sought a solution by forming the concept of substitute heirs. In the formation of the concept of successor heirs was initiated by scholars and scholars by formulating it into the Compilation of Islamic Law. Provisions on the concept of successor heirs are intended to resolve problems and avoid disputes. In this case, the emergence of the concept of a substitute heir is based on the school of thought that property in the family from the beginning is provided as the material basis for the family and its descendants.

The formulation of a concept of a substitute heir that places grand children as real heirs is in accordance with the principles of Islamic inheritance law, namely to give a sense of justice to all heirs in the inheritance of the inheritance in accordance with the provisions of the text. the concept of a substitute heir in the Compilation of Islamic Law is stated in Article 185 which reads in full: Paragraph (1): "The heir who dies before the heir, then his position can be replaced by his child, except for those mentioned in Article 173". Paragraph (2): "The share of the successor heirs may not exceed the share of the heirs who are equal to the heirs being replaced".

Based on this description, it can be understood that according to Article 185 of the Compilation of Islamic Law, a substitute heir has the position of an heir on the condition

that the person he replaces has died before the heir, and the portion he receives does not exceed what was received and is equal to the one being replaced. The concept of replacement above is basically still a problem in society because there is no clarity on Article 185 of the Compilation of Islamic Law (KHI) regarding the meaning of a substitute heir.

Substitute heirs in Islamic inheritance law to complement existing laws and also aim to seek a sense of justice for heirs. inheriting died earlier than the testator, so he had to replace his parents. Based on this background, several problems were formulated in this development research as follows: 1) What is the position of substitute heirs in civil inheritance law in Indonesia?; 2) What is the position of the successor heirs in the perspective of Islamic law?, and 3) How do the replacement heirs compare according to Islamic law and the Civil Code of BW?.

2. Research Methods

This study uses library research or research based on literature. The study method used is literature review, which is a study carried out to solve a problem which basically relies on a critical review of relevant library materials.(Sukardi, 2003). The approach used in this research is a qualitative approach. The approach uses qualitative which is intended to reveal the symptoms in a holistic-contextual manner through a collection of data from a natural setting(Mulyana, 2003). According to Sugiyono, a qualitative approach is used to obtain in-depth data in order to construct the relationship between phenomena. The object under study cannot be seen as partial and is broken down into several variables because every aspect of this research is the result of the construction of a thought (Sugiyono, 2010).

3. Results and Discussion

3.1. Position Of Substitute Heritage in Civil Law

Civil inheritance law contained in the Civil Code of Burgerlijk Wetboek (hereinafter referred to as BW) is a collection of regulations governing wealth due to the death of a person, namely regarding the transfer of wealth left by the deceased and from the consequences of this transfer for those who obtain it, both in relation to between them and third parties (Elmiyah & Sjarif, 2020). Mawaris is to replace the rights and obligations of someone who died. What is generally replaced is only the rights and obligations in the field of property law. The function of the beneficiary that is personal or of a family law nature (eg a trust) does not transfer (Elmiyah & Sjarif, 2020).

Meanwhile, another opinion says that inheritance law is part of family law which is very closely related to the scope of human life. Inheritance law is the laws or regulations that regulate whether and how various rights and obligations regarding a person's wealth at the time of his death will be transferred to other people who are still alive (Ramulyo, 1996). Because every human being will experience what is called a legal event called the event of death (Suparman, 2019).

Other legal experts put forward a very diverse definition of inheritance, for example as follows: Hazairin, uses the term "inheritance". According to Hazairin, inheritance is: "regulations that regulate whether and how various rights and obligations regarding a person's wealth at the time of his death will be transferred to other people who are still alive" According to B. Ter Haar Bzn, as follows: Inheritance law is the rules regarding how from century to century the transmission and acquisition of tangible and intangible assets from generation to generation. According to Subekti, although he did not mention the definition of inheritance law. He only stated the law of inheritance as follows: In the inheritance law of the civil law, a principle applies, that only rights and obligations in the field of property law can be inherited. Therefore, the rights and obligations in the field of family law are generally personality rights, for example the rights and obligations as a husband or a father cannot be inherited, as well as the rights and obligations of a person as a member of an association. Meanwhile, according to Mr. A. Pitlo, inheritance law is a series of provisions which relate to the death of a person, the consequences in the material sector, are regulated, namely: the result of the transfer of inheritance from a person who dies, to the heirs, both in their own relationship , as well as with third parties. And according to Wirjono Prodjodikoro (Former Chief Justice of the Supreme Court of the Republic of Indonesia), that inheritance laws are laws or regulations that regulate whether and how various rights and obligations regarding a person's wealth at the time of his death will be transferred to other people who are still alive. life (Prawirohamidjojo, 2011).

According to Raihan A. Rasyid, the term substitute heir is distinguished between people who are called "substitute heirs" and "substitute heirs". According to him, a substitute heir is a person who from the beginning was not an heir but due to certain circumstances he became an heir and received an inheritance in the status of an heir. For example, the heir does not leave a child but leaves a son or daughter of a son (Ramulyo, 1996).

In the Western Civil Code, the principle of inheritance is divided into two, namely new inheritance is open (can be inherited to other parties) in the event of a death

(Article 830 BW), there is a blood relationship between the testator and the heir, except for the husband or wife of the heir (Article 832 BW) provided that they are still bound when the testator dies (Prawirohamidjojo, 2011).

If there has been a divorce between the testator and his wife/husband, then the husband/wife is not a party that can bequeath each other. With these two principles, the inheritance cannot be distributed and owned by the heirs as long as the heir is still alive. If in the mother's share there are absolutely no heirs up to the sixth degree, then the mother's share falls to the heirs of the father, and vice versa. In Article 832 Paragraph (2) BW it is stated: "If there are no heirs entitled to the inheritance at all, then the entire inheritance falls into the property of the state. Furthermore, the state is obliged to pay off the debts of the heirs, as long as the inheritance is sufficient.

In the law of inheritance, there is also a principle that if a person dies immediately, all rights and obligations are transferred to all his heirs. This principle is contained in a French proverb which reads "lemort saisit le-vit" (the dead will be replaced by the living) while all the rights and obligations of the deceased by the heirs are called saisine (Prawirohamidjojo, 2011).

According to Article 833 paragraph 1 Burgerlijk Wetboek (BW), the legal heirs are the goods, rights, and all debts of the deceased. This is called, they (the heirs) have saisin (Prawirohamidjojo, 2011). That is, so that with the death of the heir, the heirs immediately replace the rights and obligations of the heir without requiring any particular action, even though they do not know anything about the death of the heir. So, in particular, there is no need to make an acceptance to become an heir, and without specifically taking this act of acceptance (so it doesn't mean that the heir gets the inheritance), it means that the heir loses his right to refuse the inheritance (Prawirohamidjojo, 2011).

In the inheritance system according to the Civil Code, it follows the nuclear family system with the distribution of assets individually. The principles of inheritance regulated in civil law can be seen in Article 1066 of the Civil Code, the things that are determined are: No, no one has a share in the inheritance obliged to accept the continuation of the inheritance in an undivided condition. The separation of the property can be demanded at any time, even though there is a prohibition to do so. However, an agreement can be held for a certain time do not do the separation. This agreement can be binding for five years, but after a grace period time lapse, the agreement can be renewed again (Sari, n.d.).

From the principle of self-interest, it is very clear that the heir can release himself from the responsibilities that burden or burden the heirs(Sari, n.d.). The inheritance law system in Indonesia is divided into three systems, namely the western inheritance law originating from burgerlijk wetboek (here in after referred to as BW). When discussing an issue of inheritance law, it cannot be separated from 3 (three) main elements that absolutely must exist. first element, heir *(erflater)*,namely the heir or heir is a person who dies and leaves his property to someone else.

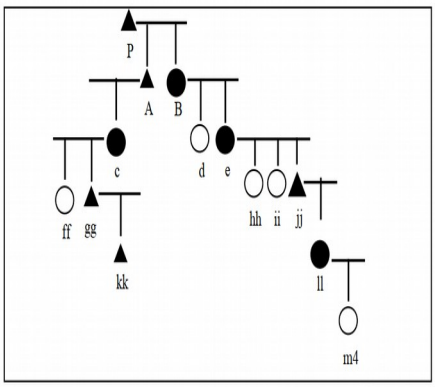
Second, (heir *(erfgenaam)*,namely the person who replaces the heir in his position with respect to the inheritance, either in whole or in part for a certain. Third is inheritance*(nalaten schap)*,namely all the assets left by the person who died in the form of all the assets of the deceased after deducting all his debts. These three elements must be met in the event of an inheritance, if one or more of these elements is not present, then the inheritance process cannot occur. The opening time for the distribution of inheritance according to the BW inheritance law system the same as the Islamic inheritance law system, namely when someone has died world. This situation is caused by inheritance and inheriting functions to replace the position of someone who has died in owning property (Moechthar, 2017).

According to BW, the inheritance system in BW does not distinguish male and female heirs, nor does it distinguish birth order, there is only a stipulation that the first class heirs (in heirs ab intestato) if they still exist, will cover the rights of other family members in a straight line. up or to the side. Likewise, the higher-ranking group covers the lower-ranking group. While the testamentary heir is someone who is appointed through a will or testament to receive the inheritance from the testator.

The types of inheritance replacement according to the Civil Code are as follows: Replacement In a Straight Line Down. Replacement of inheritance according to Article 842 of the Civil Code, namely in a straight line and without limits. According to Article 156 paragraph (2) of the Civil Code, it is also permitted if the children of the deceased inherit together with the children of the child who died first. The straight line down "means descendants: children, grandchildren, great-grandchildren and so on. , without differentiate between boys and girls. "Infinite" means to continue downwards without restriction to any degree.

If all the children of the heir have died first so that there are only grandchildren, then they inherit on the basis of replacement. They do not inherit uit eigen hoofed (over themselves). They can inherit themselves if all the children of the heirs are inappropriate or refuse or are deprived of their inheritance rights. In this case it is not possible to replace

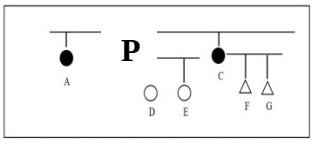
the heir because the heir is still alive, while the replacement of inheritance can only occur if the heir dies.



Ahli waris pengganti dalam garis lurus kebawah menurut KUHPerdata

Description
P = Grandpa
A = Uncle
B = Father
c = Son of A
d and e = Children of B
ff and gg = children of c
hh and ii and jj = children of e
kk = child gg
ll = son of jj
m4 = child of ll

After the death of all the brothers of the heir, then the inheritance must be divided among all the descendants of relatives who have died first, even though the descendants of the heirs are not in rank same.



Description
P = Grandpa
A = Uncle
B = Uncle
C = Uncle
D and E = children of B, nephews of A
F and G = child of C, nephew of A

3.2. Position Of Substitute Heritage In Islamic Law Perspective

According to Islamic law, the plural roseis of mirats, (irts, wirts, wiratsah, and turats, which are interpreted as mauruts) are "the assets of the deceased which are passed on to their heirs" (Ash-Shiddieqy, 2001). People who leave property are called muwarits, while those who are entitled to receive inheritance are called inheritance. Islamic inheritance

law is a rule that regulates the transfer of property from someone who dies to his heirs. This means determining who will be the heirs, the portion and share of each of the heirs, determining the inheritance and inheritance for the person who died (Ali, 2008).

The word Al-Mirats, in Arabic is the masdar form (infinitive) of the word waritsa-yaritsu-irtsan-miraatsan. Its meaning according to language is 'the transfer of something from one person to another' or from one people to another. While the meaning of al-mirats according to a term known to scholars is the transfer of ownership rights from someone who dies to his heirs who are still alive, whether what is left behind is in the form of property (money), land, or anything in the form of legal property rights according to sharia. (Ash-Shabuni, 1995). The other understanding explains that the word mirats has two meanings. First, it means eternal eternal (al-baqa), like the name attached to Allah SWT. (Suma, 2013)

So it can be concluded that inheritance in Islam is the transfer or transfer of property from the heir (the deceased) to the heirs left behind, directly in accordance with the principles of inheritance in Islam. In the view of the mazhab scholars, it has been agreed that there are three things that hinder inheritance, namely religious differences, murder and slavery. Meanwhile, other scholars who agreed with the prohibition from among the Salaf included as-Shafi'i, Ibn Qudamah, and as-Syaukani. Meanwhile, contemporary scholars who have banned it include Mustafa as-Syalabi, Ali as-Syabuni, and Sayyid Sabiq. However, among a series of opinions that forbid a Muslim to receive an inheritance from a Muslim, there are also schools that allow it, belonging to the Salaf group, including the Imamiyyah school. This school allows a Muslim to inherit a non-Muslim (Suma, 2013).

The law of inheritance of different religions in Indonesia from three sides, namely the principle of Islamic inheritance, civil inheritance and customary inheritance. In relation to inheritance in families of different religions, this shows that there are family members who are Muslim and family members of different religions when the testator dies. In Islamic law it has been determined that different religions can be a barrier to inheriting. Concretely, if between the heirs and al-muwarris, one of them is Muslim, the other is not Muslim. In Islamic law, it is a shari'a provision which is regulated clear and directed, both about who is entitled to receive his parts and how to divide them. As for other things that still require explanation or problems that arise later, and are not found in the Qur'an and Hadith, it is the duty of scholars to practice ijtihad in answering these questions (Syarifuddin, 2015).

The inheritance system in Islam adheres to an individual system, where after the testator dies the inheritance can be distributed to the heirs in detail, according to their rights and parts so that there are no disputes and conflicts based on al-Islam.Qur'an and Hadith. In Indonesia, prior to the enactment of Presidential Instruction No. 1 of 1991 concerning the Compilation of Islamic Law, the judges of the Religious Courts in dealing with cases concerning inheritance do not have a standard and uniform legal basis. The judges still refer to various fiqh books, so it is possible that two judges in two different places, examine and decide on the same inheritance case, but produce different decisions and generally judges still use Islamic fiqh books sourced from from the Shafi'i madhhab.

In terms of the successor heirs are known in Arabic, namely:*Mawali* which means successor heirs. What is meant is an heir who replaces someone who gets the same inheritance replace him by someone to get a share of the inheritance that would have been obtained by the person he replaced (CHOLIL, 2021). The reason is because the person being replaced is the person who should receive the inheritance if he is still alive, but in the case concerned he has died earlier than the heir. Those who become mawali are the descendants of the children of the heir, the descendants of the heir's relatives or the descendants of the person who entered into an inheritance agreement (the form may be in the form of inheritance) with the heir.

Substitute heirs in Islamic inheritance law are not the same as substitute heirs in customary inheritance law or western inheritance law (BW.), which in essence only views that substitute heirs are descendants of the heirs whose position is replaced. The definition of a substitute heir in Islamic inheritance law is an heir whose rights are open as a result of the absence of certain heirs.

The successor heirs were only known after the issuance of Presidential Instruction No. 1 of 1991 concerning the Compilation of Islamic Law whose implementation is regulated based on the Decree of the Minister of Religion of the Republic of Indonesia No. 154 of 1991. For example, Article 185 states that: (a) an heir who dies before the heir can be replaced by his son; (b) while the share for the successor heirs may not exceed the share of the heirs who are equal to the one being replaced.

Substitute heirs are basically heirs by replacement, namely people who become heirs because their parents who are entitled to the inheritance die before the heirs, so that the position of their parents is replaced by him. The child who replaces the position of his parents to inherit the inheritance by Hazairin is called Mawali. So in the inheritance law of Hazairin, there are three kinds of heirs, namely dzawil furudl, dzawil qarabat, and mawali.

In article 185 of the KHI, according to Raihan A. Rasyid, it is called a substitute heir, not a substitute heir. However, whatever it is called, what is certain in KHI is that the term substitute heir is used. In the classic Faraid book contained in the book of fiqh, it has been recognized that the heirs who died earlier than the heirs who were replaced by their descendants.

Equivalent in Article 185 paragraph (2) is equal in the sense between boys, not between boys and girls as stated in the QS. an-Nisa verse 11, Compilation of Islamic Law (KHI) Articles 176 and 182 distinguishes this. The share of the successor heirs who replaces the position of the son, thus may not exceed the share of the surviving sons of the heir, but is still greater than the share of the child women, depending on the case. This multi-interpretation, which then provides a gap for different decisions and polemics from the judges regarding the parts of the inheritance to the substitute heirs in the Religious Courts.

Islamic inheritance law in Indonesia only recognized the existence of a substitute heir after the issuance of Presidential Instruction Number 1 of 1991 concerning the Compilation of Islamic Law. If these provisions are based on the Qur'an, there is no verse that clearly regulates the issue of successor inheritance, but the Qur'an can balance every interest, situation and provide legal provisions.

According to Soepomo, the inheritance law contains regulations governing the process of passing on and passing property and tangible goods from a generation of people to their offspring. This process begins when the parents are still alive. The process does not become "acute" therefore the parents die. The death of the father or mother is an event that is very important for the process, but does not radically affect the process of passing on and passing the property.

There are many inheritance law systems that apply in Indonesia, so the application, especially in the judicial domain, will lead to a variety of applications. One of the problems that are quite tough in the discussion. Regarding inheritance in Islamic law, it is a substitute heir. This is due to the assumption that on the one hand, the successor heirs are the result of ijtihad/pure thought from Hazairin, which was adopted into the Compilation of Islamic Law in Indonesia, while on the other hand there is a current discourse that the result of pure ijtihad/thinking is of Hazairin relating to the successor heirs, still needs to be studied. If a grant of inheritance rights is based on economic factors, of course in the Qur'an limits the granting of inheritance rights only to heirs who are economically weak, while heirs who are economically strong do not need to be given rights, but in fact the Qur'an stipulates not so.

The Qur'an in determining an inheritance right is not only limited to poor heirs, but also to rich heirs. Even though the heir's parents are rich, while the heir's children are very poor, because the Qur'an has established rights for the heir's parents. Likewise, vice versa, even though the children of the heirs are rich while their parents are very poor, the Qur'an still gives rights to the children of the heirs.

This proves that the Qur'an in determining the granting of inheritance rights to a person is not dependent on his economic condition alone, but is based on his position as a member of a relative. As for the economic factor, as stated by Raihan, it is only a reinforcement because of the need to give rights to substitute heirs. For example, a grandson of a son inherits with eight daughters. If a grandson occupies the position of a substitute heir and is given the same position as a son, then the part he receives is 2/10 (origin of the problem 2+8=10), while if he is given a share that cannot exceed his aunt's share, then the part he receives will be more. small, i.e. at most 1/9 (origin problem 1+8=9).

The share of grandchildren will be greater if the grandchildren occupy their position as ashabah, which is to get a 1/3 share, while the 2/3 share is for eight daughters as zawil furudl. If the grandson is given the freedom to choose, of course, the grandson will choose to occupy his position as ashabah.

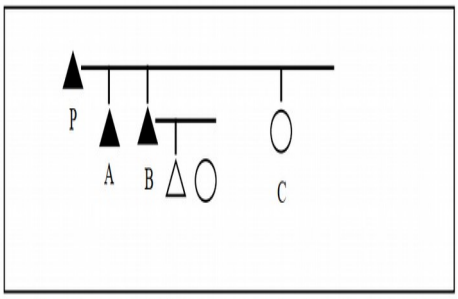
The ability to choose like this is certainly considered unfair by girls, because if only their brother (the son of the heir) had not died first, then they would jointly occupy the position of ashabah bil ghair so that the share of the son was only 2/10 and girls 1/10. Placing grandchildren as ashabah by receiving a 1/3 share is certainly unfair, because the share received is much larger than the father's share if he is still alive, which is 2/10. Therefore, the option rights put forward by Ahmad Zahari that a substitute heir may choose between placing or not placing himself as a substitute heir can cause injustice in addition to causing legal uncertainty.

Article 185 paragraph 2 of the Compilation of Islamic Law M. Yahya Harahap interprets that the largest share of the successor heirs is the same as that of the equal heirs being replaced. This means that the maximum portion that can be claimed by the successor heirs is at least the same as the portion received by the direct heirs. Where Article 185 paragraph (2) of the KHI does not justify the occurrence of a larger number of distributions for replacement heirs, when compared to that received by direct heirs.

This opinion is the same as the concept of Hazairin's mawali. Meanwhile, in understanding the editorial of article 185 paragraph (2) of the KHI, Roihan A. Rasyid stated that, paragraph (2) is very precise so that the direct heirs are guaranteed their

position because they will not feel disadvantaged. However, this paragraph (2) will only come into effect and be effective if based on the judge's consideration that the replacement heirs are reasonable and entitled to a share of the inheritance. The illustration of paragraph (2) is as follows:

are as follows:



Description
P = Grandpa
A = Uncle
B = Father
C = Uncle/Aunt
D and E = Children of B / Grandsons of P

3.3. Comparison Of Substitute Herities According To Islamic Law And Bw Civil KUHP

In Indonesia, until now still using the provisions contained in the Civil Code / Civil Code (Burgerlijk Wetboek / BW). In the Civil Code, the law of inheritance is part of the property law, so that the regulation on inheritance law can be found in Book II of the Civil Code on Objects. Substitute heirs in BW are known as plaatsvervulling which comes from the Dutch language which means replacement of place. Property law is the legal regulations that regulate human rights and obligations that are worth money.

In the Western Civil Code, the principle of inheritance is divided into two, namely: New inheritance is open (can be inherited to other parties) in the event of a death (Article 830 BW), there is a blood relationship between the testator and the heir, except for the husband or wife of the heir (Article 832 BW) provided that they are still bound when the testator dies.

Based on blood relations there are four groups of heirs, namely: the first group: the family in a straight line down, including children and their descendants along with the husband or wife who is left behind or who has lived the longest. The husband or wife who was left / lived the longest was only recognized as heirs in 1935, whereas previously husband / wife did not inherit each other. The size of the share of the group is the same (1:1). The second group: the family in a straight line up, including parents and siblings,

both male and female, as well as their descendants with an equal distribution of inheritance. However, for parents there is a special regulation that guarantees that their share will not be less than 1/4 (quarter) of the inheritance, even though they inherit together with the heirs. The third group: includes grandfathers, grandmothers, and ancestors, and then upwards from the heirs with an equal share of the inheritance after the cloving (division of inheritance into two parts; one part from the mother's line while the other part from the father's line). Fourth group: family members in a sideways line and other relatives up to the sixth degree with equal distribution of propertyor even.

If in the mother's share there are absolutely no heirs up to the sixth degree, then the mother's share will fall to the heirs of her father, and vice versa. In Article 832 Paragraph (2) BW it is stated: "If there are no heirs entitled to the inheritance at all, then the entire inheritance will fall and become the property of the state. Furthermore, the state is obliged to pay off the debts inherited from the heir, as long as the inheritance is still sufficient.

According to Islamic Law in Article 185KHI, an heir who dies earlier than the heir, then his position can be replaced by his child, except for those mentioned in Article 173KHI. the part of heirs The inheritance law system in the Compilation of Islamic Law as stated in Book II is in the form of only the main points. This is because the legal lines compiled in the "yustisia documentation" are only guidelines in resolving cases in the field of marriage, inheritance and waqf law. Its development is left to the judge (Religious Court) and what is required to pay close attention to the values that live in society, so that the decision is in accordance with the sense of justice itself, in accordance with Article 229 of the KHI.

Inheritance law in Islam regulates the transfer of property from someone who has died to the living. This rule regarding the transfer of property is called by various names. In an Islamic legal literature found several terms to name an inheritance law such as: Faraid, Fiqh Mawaris, and hukmal-inheritance. This difference in naming occurs due to the difference in direction which is used as the main point in the discussion. However, the word commonly used is faraid as used by an-Nawawi in the book Mihaj al-Thalibin.

At the beginning of development and growth in Islam, the Prophet Muhammad was the ideal idol to solve a problem in the law of inheritance because he occupied the most privileged position, he functioned to interpret and explain the laws based on the revelation that came down to him. Then he is also authorized to make inheritance laws outside of revelation. (Parman, 2006) So that the hadith was born as a word from him, about the things, experiences, and taqrir of the Prophet Muhammad SAW after he died (Ismail, 1988).

Inheritance law in Islam is a set of rules that govern transfer of ownership rights and property from the heir to the heirs, which implementation after the testator dies (Basyir, 1985). Inheritance law occupies an important position in Islamic law, because it is directly related to property, where this property is very risky for disputes. Therefore, Islamic law based on the Qur'an and Al-Hadith and Ijtihad has explained in detail about the rescue or distribution of inheritance.

In the Compilation of Islamic Law, substitute heirs are in several respects different from the replacement of heirs (plaatsvervulling) in the inheritance law of the Civil Code. Book II Article 171 letter (a) Compilation of Islamic Law defines: Inheritance law is the law that regulates the transfer of ownership rights to the inheritance (tirkah) of the heirs, and determines who is entitled to be the heirs and how much of each. The legal basis of inheritance in Islam is regulated firmly in the Qur'an, including in the word of Allah in Surah An-Nisa verse 7 which reads: "For men there is a share of the inheritance of the mother and father and their relatives, and for women there is a share right (also) of the inheritance of the parents and their relatives, either a little or a lot according to the predetermined portion.

Inheritance will be carried out after someone dies leaving assets and there are heirs who are entitled to the inheritance, as Article 830 of the Civil Code states that inheritance only takes place due to death (Perangin, 2013). The inheritance system according to the Civil Code follows the nuclear family system with the distribution of assets individually. The principles of inheritance regulated in civil law can be seen in Article 1066 of the Civil Code. In fact, the inheritance sector has experienced significant development, due to the increasingly complex needs of society and the pattern of thought can change according to the times.

Among them are Islamic inheritance law which has developed with the existence of substitute heirs, whose application in Indonesia is regulated by the Compilation of Islamic Law (KHI). In Article 185 paragraph 1 KHI it is stated that an heir who dies earlier than the heir can be replaced by his child, except for those mentioned in Article 173. Substitute heirs in Islamic inheritance law to complement existing laws and also aim to seek a sense of justice for the heirs. Substitute heirs are basically heirs because of replacement, namely people who become heirs because their parents who are entitled to inherit died before the testator, so he appears to replace him.

In principle, the substitute heir in the sense of the two laws is the same, namely someone who replaces the position of the heir who died earlier than the heir who should have obtained the inheritance, and the replaced heir is a liaison between someone who

replaces the heir, and is present at the time of the heir. died like a child who took the place of his parents.

Equality of Successor Heirs according to Legal Compilation Islam and the Civil Code. Regarding the matter of replacement of place, it can only occur if after death it means that the person who is still alive cannot be replaced. This has been explained in Article 847 of the Civil Code which states: reads: "No one is allowed to act for people" who is still alive as it is his successor." (Subekti & Tjitrosudibio, 1999) In the Compilation of Islamic Law, this provision is in Article 185 paragraph (1) which reads: "Heirs who die before the heir can be replaced by their children, except those mentioned in Article 173".

In principle, the meaning of a substitute heir in the two legal systems is the same, namely they both replace the position of the heir who has died earlier than the heir in which the position of the father is replaced by his son. Similarities regarding the successor heirs according to the Compilation of Law in Islam and the Civil Code are also found in Article 173 KHI and Article 838 of the Civil Code. Which is in Article 173 KHI which reads: "A person is prevented from becoming an heir if by a judge's decision which has permanent legal force, he is punished because: To be blamed for committing a murder or torturing the heirs so heavily. Was guilty of slander and had filed a complaint that the testator had committed a crime punishable by 5 years in prison or a heavier sentence."

As for Article 838 of the Civil Code, it is stated that people who deemed undeserved to be an heir because they are excluded from inheritance are as follows: Those convicted of being blamed for killing or attempting to kill the deceased. Those who were convicted by a judge's decision of slandering the deceased by filing a complaint had committed a crime with a prison sentence of five years or a heavier sentence. Those who by force or action have prevented the deceased from making or revoking his will. Those who have embezzled, tampered with, or falsified the deceased's will. What is contained in Article 173 of the KHI and 838 of the Civil Code explains the obstruction of the opportunity for inheritance that will replace the substitute heir. These things can invalidate a person's right to become an heir due to the causes or conditions of inheritance.

Inheritance through replacement of place (Bij Plaatsvervulling) is regulated in Article 841 to Article 848 of the Civil Code. Change of Place is one way of inheritance in which a person (eg C) becomes the heir of A because it takes the place of another person who is suppose to inherit, and if that person is still alive at the time of A's death. In other words, if at the time A dies B is still alive, so the heir is B. However, because B has died earlier

than A, then C replaces B as the heir. Inheritance through the replacement of this place cannot occur without fulfilling some strict conditions.

According to Islamic Law in Article 185KHI, an heir who dies earlier than the heir can be replaced by his son, except for those mentioned in Article 173KHI. Article 185 paragraph (2) KHI, the share of replacement heirs may not exceed the share of heirs who are equal to the person being replaced.

Basically, inheritance law in Islam does not recognize the term substitute inheritance. Islamic inheritance law in Indonesia only recognized the existence of a substitute heir after the issuance of Presidential Instruction Number 1 of 1991 concerning the Compilation of Islamic Law. If these provisions are based on the Qur'an, there is no verse that clearly regulates the issue of successor inheritance, but the Qur'an can balance every interest, situation and provide legal provisions for all events by not leaving the shari'a. at and its objectives. According to the Civil Code, the transfer to the heirs of a person who dies includes all the rights and obligations of the deceased. Thus, it is natural that the Civil Code recognizes three kinds of attitudes from the heirs to the inheritance.

Conclusion

The position of the heir as a substitute in civil law (BW) This is called plaatsvervulling. The replacement of place in inheritance law is called the replacement of heirs, namely the death of a person by leaving a grandson whose parents have died first. This grandson takes the place of his deceased parents to get an inheritance from his grandparents.

The position of the substitute heir in the perspective of Islamic law, at first the substitute heir was not known in the concept of inheritance law in Islam which was in the books of fiqh which was then considered to cause a sense of injustice for the substitute heirs, so on this basis it was then carried out use ijtihad to solve various new problems that have arisen including replacement heirs.The position of successor heirs in the perspective of Islamic law, If we look at the provisions of Article 185 of the KHI paragraph (1), it can be said that a grandchild can act as a substitute heir to replace the position of his parents who have died before the heir. From the sentence "can replace the position" the author argues that grandchildren are also entitled to the share that should be received by their parents if they are still alive. However, in the Compilation of Islamic Law, the share of substitute heirs is limited, it cannot exceed the share of heirs who are equal to the heirs being replaced.

Comparative law regarding successor heirs that maccording to KHI law: That children who replace their father's position are sons and daughters from male lineages

whose fathers have died first from the heir, while boys and girls from female lineages are not entitled to replace their mother's position to obtain property from his grandfather. According to Islamic inheritance law, the opinion of the experts of Al-Sunnah and Hazairin, the rights obtained by the successor heirs are not necessarily the same as the rights of the person being replaced, and also may not exceed the share of the heirs who are equal to those being replaced, but may be reduced. Meanwhile, according to the Civil Code law: that the child who replaces his father's position may be from a male lineage or from a female lineage, the most important thing is that the person being replaced has already died from the heir and he (the person being replaced) is the liaison between his son (who replaces his father) with the heir. According to the inheritance law of the Civil Code (BW) the portion that will be obtained by the heir who replaces his father's position is exactly the same as the portion that his father would have received if his father were still alive from the heir.

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