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Inheritance Dispute Resolution against Substitute Heirs: Analyzing Supreme Court's Decision Number 185 K/Ag/2009

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Abstract

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Problems arise regarding the struggle for inheritance, particularly when an heir feels that s/he has received the inheritance fairly, or there is disagreement between heirs on the inheritance law. Often grandchildren feel that their rights as substitute heirs have not been fulfilled, and they approach local Religious Court to claim their inheritance rights. The current study discusses a case of substitute inheritance where grandchildren attempt to obtain substitute inheritance for a property. The focus of the study was the Supreme Court's decision Number 185 K/AG/2009. A normative juridical approach method was used and analytical and descriptive techniques were adopted to examine the facts of this qualitative study. Secondary data sources were used to collect data from legal archives, libraries and data bases. Primary data was also collected through informal discussion with the Law officials. The study highlights how a religions court recognized grandchildren as legal heirs (substitute heirs) and permitted them to replace the previous heirs, who were their parents. The study describes how the substitute heirs made efforts to conduct initial consultations or mediation with the parties. When they did not succeed, they filed a lawsuit in the Religious Court, in accordance with Law Number 3 of 2006 and the Judge's consideration at the Supreme Court level in deciding the case Number 185/K/Ag/2009. The case was also filed with reference to Article 185 of the Compilation of Islamic Law which stated that a child can replace the position of his parents who died first as a substitute heir provided that the portion received did not exceed the share of the heirs equal to the heirs being replaced. The verdict was not accepted by the Defendants and a cassation was filed in the supreme court. This study will prove to be a good reference study and would serve as a precedence in similar cases.

Introduction

Inheritance property is a property left by a benefactor or a parent to be shared among heirs, which can be movable or immovable. The acquisition of such a property can come from husband and wife married legally and can be inherited from their parents before they get married. A joint property is governed under the customary law terms such as "innate property" and "relict property" (Hadikusuma & Hilaman, 2003; Termorshizen & Marjanne, 1999). Lexically, joint property is a compound word made on "joint" and "property" representing a single meaning, which cannot be separated after becoming one word (Utomo). The term "property" in a marriage is a term for the assets that appear in a marriage between a man and a woman (K. C. Holden & Smock, 1991). The word "property" referred to here is everything related to "wealth" and the legal relationship between family determines the law of wealth. The two words can be distinguished but cannot be separated. Concerning the property received in marriage, when the owner of the property dies, the property or joint property becomes the inheritance to be distributed among the heirs who are entitled to receive it.

Inheritance law is closely related to the span of human life because every human being will experience a legal event called death. The legal consequences that arise with the occurrence of this legal event of death is the concern of the inheritance law that deals with the issue of how to manage and continue the rights and obligations of someone who becomes an heir (Lehmann, 2019). The state of inheritance, therefore, is an event which occurs when a person's death takes place and the death has an impact on the property he left. The inheritance is complete after managing and settling the rights and obligations of someone who died. The resolution of rights and obligations adopted to transact the legal event of inheritance is called inheritance law event, which is a set of regulations that regulate the rights and obligations of heirs after a person dies (Jahar, 2019).

(Peters, 2010) describes inheritance as the process of forwarding and transferring property or distributed among heirs who have the inheritance rights. As for the inheritance, that has not been divided, each heir (in this case his children) still has the same rights over the inheritance. However, sometimes, among the heirs, there are those who have bad intentions to just get a larger share of the inheritance than the others. This is obtained by selling the inheritance that has not been divided without approval/consideration with the other heirs even though the inheritance sold is still joint property and has not been known who will receive part of the land as inheritance rights. This certainly makes other heirs feel disrespected and not considered so that feelings of irritation arise against the actions of the heirs (Radford, 1999).

This study has discussed problems that arose during the struggle for inheritance when a heir felt that s/he had not received the inheritance fairly, or when there was disagreement between each heir on the law they will use in dividing the inheritance. Human nature who likes property often makes someone justify various ways to get the property, including the inheritance of his own heir. This fact has existed in the history of mankind until recently. The occurrence of inheritance lawsuits in courts, both the Religious Courts and the District Courts shows this phenomenon. Based on the above background, the problems in this paper are as follows:

1. How do the substitute heirs try to obtain inheritance in an inheritance dispute?
2. What was the judge's consideration in making the decision of the Supreme Court Number 185 K/AG/2009?

Theoretical Framework

The theoretical framework of the current study is based on a verdict given by the Supreme Court of the Republic of Indonesia in the case number 185 K/AG/2009 in which a parent left an inheritance in the form of two plots of land on which a house was built, and the heirs consisting of three people/children, one of whom had died and his position as an heir was replaced by his four biological children who were the grandchildren of the

person who had left this inheritance property. Based on this, the number of heirs were: two biological children (one had died) and four biological grandchildren (biological children of the heir who died). The dispute arose when the two biological children of the parent wanted to have full control of the inheritance which comprised several portions of land and a house. They felt that they were the rightful heirs while the four grandchildren were not the heirs.

The grandchildren, who felt that their rights as substitute heirs were not fulfilled, filed a lawsuit to the local Religious Court to claim their inheritance rights. The supreme court's verdict was based on the provisions stated in Article 185 of the Compilation of Islamic Law, which clearly stated that an heir can be replaced by his biological children, or the grandchildren of a parent. The Law states that grandchildren are considered heir of the same level as they have blood relations down to the heir (L. Holden & Chaudhary, 2013; Zein, 2021). This study also examined how inheritance disputes can be resolved according to the Islamic law.

The study has considered both ways; litigation and non-litigation. Non-litigation dispute resolution is a dispute resolution process carried out outside the court or often referred to as alternative dispute resolution. Non-litigation dispute resolution is also an act of mediation which the disputing parties negotiate with each other to find a way out of the problems they face with the assistance of a mediator. The main purpose of mediation is to reach an agreement that is acceptable to the disputing parties, so a mediator must be fair, neutral, and impartial to either party. On the other hand, a litigation dispute resolution is a dispute resolution process through the courts, in which the parties who feel they do not have their rights file a lawsuit to the local court.

The case 185/K/AG/2009 is the object of discussion in this paper, where the resolution of inheritance disputes between parties came under the jurisdiction of the Religious Courts as the heirs were Muslims. The Islamic Law, Article 172, states: "Heirs are considered to be Muslim if it is known from an Identity Card or confession or practice or testimony, while for a newborn baby or child who has not been an adult, his religion refers that of to his father or the environment". In the event of a dispute, the Article 18 of Islamic Law also states that: "The heirs either jointly or individually can submit a request to the other heirs to distribute the inheritance. If any of the heirs do not agree to the request, the person concerned can file a lawsuit through the Religious Courts for distribution of the inheritance."

Method

The current research comprehensively analyzed the existence of substitute heir concept in Indonesia. This research used normative research design supported by socio-legal approach. Data comprised material collected from archives, databases, legal libraries and informal meeting and discussions with the law officials, (Mamudji & Soekanto, 1986). The secondary data

were obtained through documentation study and legal materials related to substitute heirs.

Literature Review

- *The concept of substitution*

The term of substitution although accepted in the Indonesian Civil Code (Yuslem, Harahap, & Suarni, 2021; Zein, 2021) is not recognized in Islamic jurisprudence because theoretically the Islamic law (Sharia Law) is silent on the concept of substitute heirs (Furqan & Haries, 2018). The Quran and the Hadeeth only rigidly define who the heirs are and what would be the share of inheritance to each rightful heir. Several Islamic scholars have discussed this issue (Larasati, Darudin, & Dahwal, 2021; Tisnawati & Purwaningsih, 2021; Usman & Rachmadi, 2009). There is a consensus among Islamic scholars that there is no substitute heir in the act of inheritance. (Cammack & Feener, 2012) states that a male grandchild (from a son) can be a substitute for his father if his father has passed away before the deceased. A male grandchild can only be a substitute to his father if the deceased does not have any living male son at the time of his death. Unlike the Islamic Law, the customary law and western civil law recognize the substitute heirs (Cammack & Feener, 2012). If a person dies, the child replaces his father for the estate owned by his grandparents (Utama, 2021).

- *Substitute Heirs in Obtaining Inheritance in Inheritance Disputes*

The inheritance should meet some other requirements such as at least one heir should be alive at the time of the deceased's death and there should no obstacles to receive the inheritance (Callahan, 1987). The heirs who live at the time of the death of the deceased are entitled to the heritance left by the deceased. However, this death should be proved before a judge who would then bequeath the inheritance to the rightful heirs based on their eligibility (Scott, 2003; Siregar & Handoko, 2021).

Article 49 of Law Number 3 of 2006 concerning Amendments to Law Number 7 of 1989 concerning Religious Courts states: "The Religious Courts have the duty and authority to examine, decide, and resolve cases at the first level between people who are Muslim in the fields of marriage; inheritance; will; grant; waqf; zakat; infaq; sadaqah; and sharia economics (Khosyi'Ah, Irfan, Maylawati, & Mukhlas, 2018). Similarly, Article 50 states that in the event of a dispute over property rights or other disputes as referred to in Article 49, the court within the General Court of Justice must decide the object of the dispute. If there is a dispute over property rights as referred to in paragraph (1) whose legal subject is between people who are Muslim, the object of the dispute will be decided by the religious court together with the case as referred to in Article 49.

Before the resolution of inheritance disputes is carried out through a lawsuit to the Religious Court, the parties can conduct deliberations as a

peaceful effort to resolve inheritance disputes. Deliberation is carried out as an act of easing disputes between the disputing parties so that the case does not need to proceed to the Court and the parties can be reconciled. A lawsuit to the Religious Courts is the last resort if the peaceful way does not find any gaps in solving the problem. Disputing parties can file a lawsuit to the Religious Courts because inheritance cases are the authority of the Religious Courts. Inheritance claims are submitted to the Religious Courts whose jurisdiction covers the object of the inheritance dispute. If the object of the dispute is more than one and is located in several areas of the Religious Courts, then the disputing party can choose in one of the areas where the object of the dispute is located. Inheritance disputes that have been entered in the Religious Courts have been mediated first by the parties by the judge. Mediation is an obligation for the judge before the inheritance dispute lawsuit is examined. Mediation can be done outside the court session and the third party is someone other than a judge (Johnson, 1977).

Results

In the case under study related to the Supreme Court's Decision Number 185 K/AG/2009, it was important to understand the Judges' Considerations behind the sentence given. This inheritance dispute, which has been rolled up to the Cassation level, with the decision number 185/K/AG/2009, began with a lawsuit filed by the Plaintiff as a substitute heir in the Religious Court with the contents of the lawsuit as follows: (i) Requesting the Court's decision to declare the Plaintiffs as the substitute heirs of late Rasmi, eligible to replace Supartono's position, who was the biological father of the Plaintiffs and who had died earlier than Rasmi; (ii) requesting to sue the Defendants for having controlled all the inheritance of the late Rasmi, particularly two uncles of the Plaintiffs (who were Defendants in this case) as heirs of late Rasmi and hand over the part of the inheritance to the Plaintiffs in accordance with the Court's decision.

The Judge decided on the case Number 514/Pdt.G/2007/PA.Bla by stating that: (i) All of Rasmi's inheritance is joint property and original assets/dispute of inheritance had never been divided by inheritance and both the Plaintiffs and Defendants were heirs of late Rasmi and were are entitled to receive it; (ii) the Plaintiffs were legitimate as substitute heirs to replace Supartono's position as biological father of the four and therefore all four were entitled to inheritance of late Rasmi. This case with the decision number No. 514/Pdt.G/2007/PA.Bla ended with the Judge's decision stating that the Plaintiffs were legitimate and substitute heirs to replace Supartono's position as the biological father of the four and therefore all four were entitled to the inheritance from Rasmi.

Feeling the judge's decision was unfair, the Defendants (hereinafter referred to as the Petitioners) filed an appeal to the Semarang Religious High Court with the contents of the lawsuit stating that they still believed that Suyatini, Suratmi, Suyatmin, and Suhari (hereinafter referred to as the

Appellant) are not part of the heirs. The petitioners still insisted not to share the inheritance with the four plaintiffs. However, even at this level of appeal, the case with case number No. 158/Pdt.G/2008/PTA. Smg stated that Suyatini, Suratmi, Suyatmin, and Suhari were legal and substitute heirs. The court gave the verdict to the cassation that Muji and Mukijan's (Petitioners) actions in controlling the inheritance were against the law. The judge's decision at the appeal level was still deemed unfair by the Petitioners so they filed another cassation in the Supreme Court, with the following points in the lawsuit: (i) All official inheritances are joint assets and original assets/inheritance/inheritance assets that have never been divided by inheritance; (ii) Rasmi's inheritance was obtained from her second marriage, so Supartono was not entitled to a share of the inheritance because he was not a child resulting from the second marriage; (iii) The Appellants who were descendants of Supartono were not the heirs of Rasmi, because apart from Supartono not being the biological child of Rasmi's second husband, Supartono has died.

The court also identified the official inheritance, which was in the form of 2 plots and 2 houses. The first plot of yard/housing land had an area of approximately 0.60 da/600 M2 C, in village no. 384 on behalf of Kartorejo bin Sukar, Persil 26 Class I, located in Seso Village, Jepon SubDistrict, Blora Regency. The second plot of land had an area of 0.298 da/2980 M2 C Village No. 384 on behalf of Kartorejo bin Sukar, Persil 28 Class II located in Seso Village, Jepon District, Blora Regency. The first house was in the form of bekuk lulang, teak wood frame, with a width of approximately 7 meters and a length of approximately 12 meters, walls of teak wood planks, tiled roof, standing on land C Village No. 384 on behalf of Kartorejo bin Sukar, Persil 26 Class I, located in Seso Village, Jepon District, Blora Regency (front house). The second house was in the form of bekuk lulang, teak wood frame, with a width of approximately 7 meters and a length of approximately 12 meters, walls of teak wood, tiled roof, standing on land C Village No. 384 on behalf of Kartorejo bin Sukar, Persil 26 Class I, located in Seso Village, Jepon District, Blora Regency (back house). This was the inheritance of the late Rasmi and the Petitioners were claiming their right as legal heirs on this inherited property.

The petitioners for the cassation still insisted that the inheritance of Rasmi was entirely the inheritance rights of the Petitioners. In their cassation, the Petitioners explained the reasons for refusing to share the inheritance with the Respondents, i.e. a plot and a house. The plot of land with an area of 84.1 M2 was a part of land with a total area of 149.5 M2 (13 x 11.5M), and was located in Seso Village, Jepon Sub-District, Blora Regency with the northern boundaries of the land owned by RM. Selera; east of Muji's land; south of the land belonging to Seno and west of the land belonging to Warsidi. It was not a joint property of Rasmi with Kartorejo because the land was bought by Kartorejo before marrying Rasmi so that the land was Karto's inheritance and not joint property in his marriage to Rasmi. The second property was a house in the form of bekuk lulang, teak wood frame, with a width of approximately 7 meters and a length of approximately 12

meters, walls of teak wood, tiled roof, standing on the village land of C No. 384 on behalf of Kartorejo bin Sukar, Persil 26 Class I, located in Seso Village, Jepon Sub-District, Blora Regency (front house and back house) are not joint assets as stated by the Respondents of Cassation/Plaintiffs, but the goods were obtained from the purchase of Kartorejo. It was difficult when the money to buy the house came from Muji (Cassation Petitioner I/Defendant I). At that time, Muji (Cassation Petitioner I/Defendant I) in 1993 sold his bull for IDR 150,000 (one hundred and fifty thousand rupiah) and the house of IDR 250,000 (two hundred and fifty thousand rupiah).

Article 35 of Law Number 1 of 1974 concerning Marriage, states that (i) property acquired after marriage becomes a joint property; and (ii) inherited property of both husband and wife and property obtained by each as a gift or inheritance, are under the control of each as long as the parties do not specify otherwise. The petitioners, including Karto, their father and Rasmi's husband, explained in the contents of their cassation that they objected to the distribution of inheritance over the official inheritance, one of them, due to the purchase of the land and the residential house using the personal money of the Petitioners. They felt that the land and the house belonged to them.

Based on Article 35 of Law Number 1 of 1974 concerning Marriage above regarding the explanation of joint property in marriage, it can be concluded that even though the land and residence that were the object of this dispute were purchased with the money belonging to the Petitioners, but because they were in the name of Kartoredjo and this was done when Kartoredjo was married to Rasmi, the land and the house were legally the joint property of Kartoredjo's marriage with Rasmi. Therefore, with Karto's death, the land and the house became Rasmi's right as the widow of Karto. After Rasmi died, the plot of land and the residence became one of the assets of Rasmi's inheritance which was the right of her heirs, including the Respondents of Cassation who were the grandchildren of Rasmi to replace the position of his father who had died first.

The judge's considerations or reasons in deciding the case 185/K/AG/2009 above were: (i) The Appellant, who was previously the Defendant, felt that he had not received justice, so he continued the case to the Cassation level, henceforth referred to as the Petitioners. (ii) The late Rasmi had married twice in her life: first, with a man named Karmo and a son named Supartono was born; second, with a man named Kartorejo Sukar and has 2 (two) children named: Muji bin Kartorejo Sukar (Defendant I) and Mukijan bin Kartorejo Sukar (Defendant II) (iii) Supartono had passed away before Rasmi, his mother, and had left four children, as follows: Suyatini (Plaintiff); Letter (Plaintiff); Suyatmin (Plaintiff); and Suhari (Plaintiff). When she died, Rasmi left the heirs, as follows: Muji bin Kartorejo Sukar (Defendant I) as a child; Mukijan bin Kartorejo Sukar (Defendant II) as a child; Suyatini binti Supartono (Plaintiff) as grand-daughter; Suratni binti Supartono (Plaintiff) as grand-

daughter; Suyatmin bin Supartono (Plaintiff) as grandson; and Suhari bin Supartono (Plaintiff) as grandson.

It is evident that the object of the dispute over the inheritance of the late Rasmi had never been distributed by the heirs of the late Rasmi, and since the death of the deceased Rasmi the object of the dispute over the inheritance of the late Rasmi had only been controlled by Muji bin Kartorejo Sukar and Mukijan bin Kartorejo Sukar (the Petitioners for Cassation) ignoring the rights and interests of the Cassation Respondents who are also the heirs of the late Rasmi, so the Plaintiffs (who later became the Respondents) asked the Head of the Blora Religious Court to immediately distribute the assets of the deceased Rasmi mentioned above. Before the case was carried out in Court, the Respondents as the heirs of the late Rasmi had tried to peacefully ask the Petitioner, who was originally the Defendant, to be willing to make an inheritance distribution of the assets of the late Rasmi. However, the Plaintiffs' efforts were unsuccessful, so the Plaintiffs filed a lawsuit at the Blora Religious Court.

The Respondents had the concerns that the Petitioners would try to transfer the object of the dispute over the inheritance of the late Rasmi to another party other than the Plaintiffs so that the contents of the decision in this case are not in vain. Then, the Plaintiffs asked the Blora Religious Court to place a confiscation of collateral (*conservatoir beslag*) to the object of the dispute. In the case of 185/K/AG/2009, the judge decided the case with the following stipulation: To determine according to the law that the heirs of the late Rasmi are: Muji bin Kartorejo Sukar (Defendant I) as a child; Mukijan bin Kartorejo Sukar (Defendant II) as a child; Suyatini binti Supartono (Plaintiff) as grand-daughter; Surati binti Supartono (Plaintiff) as grand-daughter; Suyatmin bin Supartono (Plaintiff) as grandson; and Suhari bin Supartono (Plaintiff) as grandson.

The Law stipulates that the joint assets and original assets/ inheritance of the late Rasmi that had never been divided by inheritance, and the Plaintiffs and Defendants as the heirs of late Rasmi were entitled to receive them. According to the law, the heirs mentioned above were entitled to the inheritance of the late Rasmi with the following distribution. Suyatini binti Supartono, Surati binti Supartono, Suyatmin bin Supartono and Suhari bin Supartono as grandchildren/substitute heirs collectively got the following parts which included land area of 28.03 M²; one third of the estate of the late Rasmi; a rice field area of ± 200 M² (one third of the inheritance of the late Rasmi in the form of rice field area of 600 M²); one-third of one-eighth of the wooden house which initially was Kartoredjo Soekar's possessions; and one third part of a wooden house which initially was from Rasmi's property.

As a result of the verdict, Muji bin Kartoredjo Soekar received a share in the form of a land area of 28.03 M²; one third of the estate of the late Rasmi; a rice field area of ± 200 M² (one third of the inheritance of the late Rasmi in the form of rice field area of 600 M²); one-third of one-eighth of the wooden

house which initially was Kartoredjo Soekar's possessions; and one third part of a wooden house which initially was from Rasmi's property. Mukijan bin Kartoredjo Soekar received a share in the form of a land area of 28.03 M²; one third of the estate of the late Rasmi; rice field area of ± 200 M² (one third of the inheritance of the late Rasmi in the form of rice field area of 600 M²)' one-third of one-eighth of the wooden house which initially was Kartoredjo Soekar's possessions' one third part of a wooden house which initially was from Rasmi's property.

These findings reveal that the position of the respondents as substitute heirs was in accordance with Article 185 of the Compilation of Islamic Law which explained that the position of grandchildren who were not originally heirs can become heirs to replace their parents who died earlier than the heirs provided that the share received by the substitute heirs may not exceed the share of the heirs equal to the one being replaced. Based on this, the Judge decided that the grandchildren as substitute heirs got a share of the inheritance collectively or together with the amount of the inheritance that was previously part of the inheritance from their father, while the Petitioners or previously the Defendants got a share of the inheritance with a calculation for individual or themselves.

Discussion

With reference to the decision Number 185/K/AG/2009, the case findings revealed that the Plaintiffs had previously tried amicably to ask the Defendants to be willing to carry out an inheritance distribution of the assets of late Rasmi, but the Plaintiffs' efforts were unsuccessful. Hence, the Plaintiffs had to file a lawsuit in the Religious Court. The Plaintiffs were concerned about the Defendants that they will try to transfer the disputed object of inheritance of late Rasmi to a party other than the Plaintiffs. In their lawsuit, the plaintiffs stated the reasons for suing, among others namely: (i) whereas the object of the inheritance of the late Rasmi had never been distributed among the heirs of late Rasmi and since the death of late Rasmi on Saturday, December 4, 2004, the object of the dispute over the inheritance of the late Rasmi had only been controlled by Defendant I, Muji bin Kartorejo Sukar and Defendant II, Mukijan bin Kartorejo Sukar, regardless of their rights and the interests of the Plaintiffs who were the heir apparent of the late Rasmi.

The Plaintiffs request the Head of the Blora Religious Court to give a verdict to immediately distribute the inheritance of the late Rasmi to its right heirs. (ii) secondly, whereas the Plaintiffs as heirs of the late Rasmi have tried to peacefully ask Defendant I (Muji bin Kartorejo Sukar) and Defendant II (Mukijan bin Kartorejo Sukar) to be willing to carry out an inheritance distribution of the assets of the late Rasmi, but the Plaintiffs' efforts were unsuccessful, hence the Plaintiffs were forced to file a lawsuit in the Religious Courts. (iii) thirdly, whereas the Plaintiffs were concerned that Defendant I (Muji bin Kartorejo Sukar) and Defendant II (Mukijan bin Kartorejo Sukar) will try to transfer the object of the dispute over the

legacy of the late Rasmi to a party other than the Plaintiffs. Hence, in order that the contents of the verdict do not go in vain, the Plaintiffs sought the Religious Courts to place a confiscation of the collateral (*beslag conservatory*), the object of the dispute.

In the Islamic Inheritance Law, there are various opinions regarding the presence or absence of substitute heirs, who can replace the position of their parents who have died. In such a case, it was necessary to consider closely the exact position of a substitute heir and the position of heir's inheritance ([Powers, 1993](#)) under the following factors: (i) That the heir has actually died or is declared dead by a judge's decision; (ii) That the heir is actually still alive when the testator dies; (iii) Whether it is possible to know the cause of inheritance to the heirs or, in other words, whether it can really be seen that the heir concerned has the right to inherit; and (iv) that there should be no inheritance barrier.

The requirement that the heir must be alive rules out the possibility of a substitute heir. However, if the actual heir has died, there will be a replacement by a substitute heir recognized as the heir. The position of grandchildren as substitute heirs is not regulated in detail in the Koran or the Hadith so there are differences of opinion among experts regarding the position of grandchildren as substitute heirs. An argument is given that the substitute heirs should receive a share equal to the share of the heirs replaced. If a substitute heir replaces the position of a son, he should get a share equal to the share of the male child. If he replaces the position of a daughter, then his share is equal to that of a female child; and if there are two or more heirs, they will share equally the share of the heirs they replace, provided that the male heir gets twice the share of the female heir and so on ([Sudaryanto, 2010](#)).

Conclusion

Based on the case mentioned above, the only factor that caused inheritance dispute was that there was no clear division of inheritance when the heirs were still alive. This is coupled with the ignorance of the heirs and the unilateral control of one of the heirs. Efforts made by the Plaintiffs as substitute heirs to obtain inheritance rights were in accordance with applicable legal regulations, namely conducting family deliberation first to find a way out of the inheritance problems they faced. These efforts made by substitute heirs in inheritance distribution disputes to conduct deliberations or mediation first with the parties. When this does not find a solution, the parties can file a lawsuit to the Religious Courts, in accordance with Law Number 3 of 2006 concerning Amendments to Law Number 7 of 1989 concerning the Religious Courts which states that the Religious Courts have the duty and authority to settle cases of the first degree between people who are Muslim; one of which is inheritance cases.

However, the Defendants remained adamant in their stance and refused to grant the Plaintiffs' inheritance rights so that in the end the Plaintiffs took

the last resort, to take this inheritance dispute to the Religious Courts in accordance with Law Number 3 of 2006 concerning Amendments to Law Number 7 of 1989 concerning the Religious Courts which states that the Religious Courts have the duty and authority to settle cases (one of which is inheritance cases) of the first degree between people who are Muslims. The legal provisions given by the substitute heirs were based on Articles 841-848 of the Civil Code and 185 of the Compilation of Islamic Law. These articles recognized the position of substitute heirs in the Indonesian law and provided that the substitute heirs were entitled to get a share in the inheritance same as heirs.

The judge's consideration in deciding the case Number 185/K/Ag/2009 was based on Article 185 of the Compilation of Islamic Law which stated that a child can replace the position of his parents who have died first as a substitute heir provided that the portion received does not exceed that of the heirs and is equal to the one being replaced so that the substitute heirs get the inheritance collectively or jointly with their equal siblings. It has been explained in previous studies regarding the heirs who became Hijab or cover/barrier of someone from getting an inheritance. The position of grandchildren as heirs is sometimes hindered by the presence of their parents who are the children of the heirs or referred to as *Hijab hirman*, which is totally blocking. The inheritance rights of the grandchildren are completely covered by the presence of heirs who apply the hijab. Then, after their parents died, the inheritance barrier is opened so that the grandchildren may replace his parents' position to receive the inheritance from the heir.

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