



Analysis Of Judge's Decision Against Substitute Charities In Religious Courts Consider From Islamic Law Commission

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Abstract: The purpose of this study is to analyze the judge's decision in case number: 132/Pdt.P/2019/PA. Gtlo viewed from the Compilation of Islamic Law This research uses a normative-empirical legal research type, where an analysis of the written law is carried out with factual events in the field. In this study, the data sources used are primary data consisting of the results of interviews and field observations, the Civil Code, ILC, and judges' decisions related to the issues being discussed; and secondary data (supporting) scientific works, and other sources related to the problems discussed. The results of the study show that first, the substitute heirs proposed by the applicants in case no. 132/Pdt.P/2019/PA.Gtlo from the late. Zubaida Datau may become a substitute heir based on the provisions formulated in the Compilation of Islamic Law (ILC), provided that the plot of land is the property of the late. Saini Datau. However, if the plot of land is the property of the Almh. Kamaria Datau, then the substitute heir proposed by the applicant, must be declared not accepted by the panel of judges at the Gorontalo PA because he is prevented from becoming an heir based on the ILC formulation. Legal considerations of the panel of judges examining case No. 132/Pdt.P/2019/PA. Gtlo, where the case is declared unacceptable, is that it is unclear/fuzzy, no longer voluntary, but a contentious case, because it contains a dispute between the heirs of the deceased's heirs. Kamaria Datau, and the late. Zubaida Data.

Keywords: Substitute Heirs; Judge's Consideration; Legal Position.

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How to cite (Chicago Style):

Adam, R., Rahim, E., Tome, A. H. 2022. "Criminological Studies of Sexual Violence in Children", *Estudiante Legal Journal*. 4 (2): 60-76

1. Introduction

The existence and diversity of the inheritance law system that applies in Indonesia cannot be separated from the plurality that exists in Indonesia itself.

¹Between the Civil Code, the Islamic inheritance law system and customary law have their characteristics, with provisions such as the Civil Code for Europeans, Easterners, and indigenous people who submit themselves to the Civil Code.²

There are three types of legal systems that apply in Indonesia, namely the customary law system, civil law, and Islamic law.³ Law is a political product because the character of the content of each legal product will be largely determined or colored by the balance of power or political configuration that gave birth to it.⁴ The main characteristic of the state is the emergence of the government's obligation to realize the general welfare of its citizens.⁵ Especially for Muslims, there are also provisions for the inheritance system concerning the Compilation of Islamic Law (ILC) as a legal norm in regulating how the inheritance is distributed to those who are left behind, especially the wives, children, and relatives of the deceased heirs. The formation of legal norms is essentially a statutory regulation. ⁶Of the three types of legal systems, namely the Civil Code, ILC, and customary inheritance systems, each of these legal systems has advantages.

Based on studies conducted by Dumaria Situmorang, she stated that one of the ways that can be taken in solving inheritance problems is to summon elders, village officials, and people who have sufficient knowledge about inheritance to consult and resolve it in a familial way.⁷ However, in addition to being resolved

¹Syaikhu. 2021. *Akulturası Hukum Waris: Paradigma Konsep Ekletisisme dalam Kewarisan Adat Dayak*. Yogyakarta: K-Media. Hal. 1

²See Article 131 Indische Staatsregeling

³ Bakung, Dolot Alhasni, dan Muhtar, Mohamad Hidayat. (2020). "Determination of The Legal Protection of Right Holders to Neighboring Rights". *Jambura Law Review*. Vol 2. No 1. Hal 67

⁴ Ahmad Wijaya, Nasran Nasran. "Comparison Of Judicial Review: A Critical Approach To The Model In Several Countries". *Jurnal Legalitas*. Vol. 14, No. 2. 2021. Hlm 88

⁵Julius T Mandjo Dan Suwitno Y Imran. "Implementasi Uud Negara Republik Indonesia Tahun 1945 Pasal 27 Ayat 2 Tentang Hak Untuk Mendapatkan Pekerjaan Dan Penghidupan Yang Layak Bagi Kemanusiaan". *Jurnal Majelis*. Edisi 08. September 2020. 84.

⁶Fence M. Wantu, dkk. "Kedudukan Peraturan Desa Dalam Sistem Pembentukan Peraturan Perundang-Undangan". *Jurnal Ius Civile*. Volume 4, Nomor 2, Oktober 2020. 201

⁷Dumaria Situmorang. 2020. Analisis Yuridis Pembagian Harta Warisan Terhadap Objek Hukum Waris Adat Yang Belum Dibagi (Studi Putusan Pengadilan Negeri Medan Nomor: 653/PDT.G/2017/PN. MDN Skripsi. Universitas Sumatera Utara. Hal. 6

by kinship (customary law), inheritance can also be pursued using the judicial system.

According to the language, inheritance can be interpreted as the transfer of something from one person to another.⁸ Inheritance is one of the most frequently disputed matters by the parties, both wives, children, and relatives who have blood relations with the testator. Maimun stated that inheritance law is a regulation that regulates the transfer of property due to death. Nasrudin and Verlyta Swislyn in their book, that the death of a person will result in the transfer of rights and obligations to the heirs.⁹ It was recorded that in 2020 the number of cases resolved by the Supreme Court (MA) at the Cassation level was 45 cases, and the Judicial Review (PK) as many as 36 cases.¹⁰ This number does not include inheritance cases that are entered in court under the Supreme Court both at the first level and at the appeal level. This certainly indicates that inheritance cases are one type of dispute that deserves attention because it relates to the rights of the parties to the inheritance dispute. In general, waqf in Indonesia is used for mosques, prayer rooms, schools/foundations, meals, and orphanages, and very little waqf land is managed productively in the form of a business whose results can be used for parties in need, especially the poor.

The distribution of inheritance by the heir to the heirs has been determined by various legal norms (inheritance law system) both in the Civil Code and the Islamic inheritance law system. In the inheritance system, some principles must be obeyed by the parties, especially those who are considered heirs. In another reference, the heir is said to be a person who replaces the position of the main heir due to certain reasons.¹¹ For example, when referring to the western inheritance system (KUHPerdara), new inheritance can occur when the testator has died,¹² and those who are entitled to become heirs are those who are related by blood.¹³ As for the Islamic inheritance system, which becomes the heir of inheritance, some principles must be met, namely, first, the heirs must be Muslim. Second, never commit a crime such as killing or attempting to kill. Third, prospective heirs are those who have blood relations with the provisions

⁸ Tinuk Dwi Cahyani. 2018. *Hukum Waris Dalam Islam: Dilengkapi Contoh Kasus dan Penyelesaiannya*. Malang: Univ. Muhammadiyah Malang. Hal. 9.

⁸ *Ibid.*

⁹ Nasrudin dan Verlyta Swislyn. 2021. *Kemana Hartaku Akan Berlabuh: Harta Warisan dari Sudut Pandang Barat, Adat, dan Islam*. Jakarta: Elex Media Komputindo. Hal. 2

¹⁰ Laporan Tahunan MA tahun 2020. Hal 100-101

¹¹ Abdul Aziz. 2021. *Konsep Ahli Waris Pengganti*. Surabaya: Global Aksara Press. Hal. 9.

¹² See the provisions of 830 of the Civil Code

¹³ Article 832 of the Civil Code

stipulated in the ILC. As in another reference, it is stated that inheritance, also called a bundle, is a property that is handed over or transferred from the person (heir) to the heir.¹⁴ As for customary inheritance law. Sigit Sapto Nugroho said that customary inheritance law is influenced by kinship patterns that arise as a result of the law. ¹⁵One example of customary inheritance law in Indonesia is Balinese customary inheritance law, where the application of inheritance law is still influenced by the kinship system in Balinese customs.¹⁶

In the Civil Code, according to Pande Putu Keke Surya Dewantari, ¹⁷the distribution of inheritance to successor heirs is known as 3 distribution procedures, namely:

1. Substitution of a straight line down whose distribution has been regulated in Article 842;
2. Substitution in the line to the side whose distribution is regulated in Article 853, jo. Article 856, jo. Article 857;
3. Substitutions in the line deviating to the side whose changes are regulated in Article 861

In some cases, disputes related to inheritance also provide space for the disputing parties to seek justice. In practice, inheritance also involves parties with the status of substitute heirs. This is not a problem because, in the western inheritance law system, substitute heirs are also known. Even so, in Islamic inheritance law, there are also substitute heirs. However, regarding substitute heirs, it must be by what is formulated in the Civil Code and ILC.

A substitute heir is someone who has the right to inherit when the heir of the testator has died first. ¹⁸However, the status and legal position of the successor heirs are still subject to much debate from various circles, including judges. One of the judges who also gave an argument related to the position of the substitute

¹⁴ Irma Fatmawati. 2020. *Hukum Waris Perdata: Menerima atau Menolak Warisan oleh Ahli Waris Serta Akibat Hukumnya*. Yogyakarta: Deepublish. Hal. 1.

¹⁵ Sigit Sapto Nugroho. 2020. *Pengantar Hukum Waris Adat*. Klaten: Lakeisha. Hal. 27

¹⁶ Dinta Febriawanti dan Intan Apriyanti Mansur. 2020. Dinamika Hukum Waris Adat di Masyarakat Bali Pada Masa Sekarang. *Jurnal Media Iuris*. Vol. 3 No. 2. Hal. 130

¹⁷ Pande Putu Keke Surya Dewantari, dkk. 2018. Kedudukan Ahli Waris Pengganti Bilamana Ahli Waris Lebih Dulu Meninggal Dunia Menurut Kitab Undang-Undang Hukum Perdata. *Jurnal Kertha Semaya*. Vol. 5. No. 2. Hal. 12

¹⁸ Muhammad Amin Hamid. 2014. Tinjauan Yuridis Atas Ahli Waris Pengganti Dalam Hukum Waris. *Jurnal Legal Pluralism*. Vol. 4. No. 2. Hal. 165

heir was Shobirin. Judge Shobirin presented his argument in the form of a paper presented at the National Working Meeting of Judges of the Religious Courts in 2009.¹⁹

The right to independence and freedom is the foundation for a country in upholding the rule of law in its sovereign jurisdiction.²⁰ A debate regarding the successor heirs must be thoroughly discussed as a solution to see and find out who has the right to become a substitute heir. In addition, the discourse on substitute heirs can also open up new spaces for anyone who feels they are a substitute heir.

In principle, substitute heirs are those who are considered substitutes in inheriting property from the testator when there are no heirs. Therefore, a substitute heir can be made, but it is not yet known what the legal position of a substitute heir is when viewed from the various regulations that govern, in particular the Civil Code and the Islamic inheritance law system. However, these two regulations only provide a general description of who can become a substitute heir, and do not explain in more detail who has the right to become a substitute heir. In addition, in some cases, several substitute experts consist of the children of the heir's children.

ILC is a law that is intended to regulate the life of indigenous people who are Muslim. Because Islam cannot be separated from the long history of this nation. Therefore, it is necessary to have a kind of constitutionalization of ILC for Muslims in this country.²¹ As a formulation of legal norms, ILC is supposed to regulate and determine how Muslims live their lives, including who becomes the heirs and substitute heirs.

The Gorontalo City Religious Court (hereinafter abbreviated as PA Gorontalo) is one type of judicial institution that has also been recorded to handle inheritance cases several times, especially those relating to substitute heirs by their jurisdiction. According to the results of monitoring the directory system of

¹⁹Moch Dani Pratama Huzaini. 2019. dipublish pada hukumonline.com dengan judul artikel: Mengenal Kembali Plaatsvervulling dalam Hukum Kewarisan Nasional. (<https://www.hukumonline.com/berita/baca/1t5cf785616f9ab/mengenal-kembali-iplaatsvervulling-i-dalam-hukum-kewarisan-nasional/>) diakses pada Kamis, 02 desember 2021, pukul 13.47 wita

²⁰ Fence M. Wantu dan Usman Rasyid. "Redefinisi Kewenangan Komisi Yudisial Dalam Konstitusi: Upaya Mengharmonisasikan Putusan Pelaku Kekuasaan Kehakiman Indonesia". Jurnal Majelis. Edisi 08. September 2020.

²¹ Eko Hidayat. 2017. Kompilasi Hukum Islam Dalam Tata Hukum Nasional. *Jurnal Sistemis UIN Raden Intan Lampung*. Hal. 191.

judicial institution decisions under the Supreme Court, Gorontalo PA has decided cases related to substitute heirs in as many as 12 (twelve) cases.²²

One of the decisions related to the application for replacement heirs to PA Gorontalo is case number: 132/Pdt.P/2019/PA. Gtlo. Where the case is that the parties (applicants) request in their petition to the panel of judges at the Gorontalo PA to make several names (people) to be made/determined as substitute heirs.²³ However, in their decision, the panel of judges stated that the case was unacceptable (*Niet Ontvankelijke Verklaard*).²⁴ When referring to the ILC, some provisions stipulate that replacement heirs are allowed under certain conditions. According to the provisions in the ILC, people who can become heirs are as follows:²⁴

- a) An heir who has died first, then his position can be replaced by his child, except those mentioned in Article 173 ILC.
- b) The share that will be obtained by the successor heirs must not exceed that of an equal heir.

If it refers to the case or what is argued by the applicants, the potential successor heirs are the children of the heirs. The heirs mentioned in the decision are the siblings of the heir.²⁵ However, in the case described in the decision, some of the successor heirs are said to have died.²⁶ Nevertheless, the rights and positions of the potential substitute heirs remain because they have been determined in Article 185 of the ILC. The above is also in line with the research conducted by Sarah Humairah, where in her study she stated that the substitute heirs as meant in Article 185 paragraph (1) ILC, are those (grandchildren) who are in the third degree to replace the position of their parents.²⁷

As for the decision that was declared unacceptable or *Niet Ontvankelijke Verklaard*, this refers to the Jurisprudence of the Supreme Court of the Republic of Indonesia No. 1149/K/Sip/1979, that for an object of dispute that is still unclear, the object of the lawsuit or application is deemed unacceptable by the

²²<https://putusan3.mahkamahagung.go.id/search.html?q=%22Ahliwaris%20pengganti%20%22&court=307250PA528> (diakses pada Rabu, 15 Desember 2021. Pukul 13.28 wita

²³ Lihat petitem oleh pemohon pada perkara nomor: 132/Pdt.P/2019/PA.Gtlo

²⁴ Article 185 KHI.

²⁵Lihat: Putusan Nomor:132/Pdt. P/2019/PA.Gtlo. (lihat pula ketentuan yang berhak menjadi ahli waris pengganti menurut KHI)..

²⁶ *Ibid.*

²⁷Sarah Humairah, dkk. 2021. Kedudukan Ahli Waris Pengganti Dalam Hukum Waris Islam. *Jurnal Al-Hikmah*. Vol. 2 No. 3. Hal. 556

panel of judges. However, in a decision that has permanent legal force as the results of the initial analysis, the researcher finds that the problem is quite clear.

In its decision, the panel of judges decided on the case with the number: 132/Pdt.P/2019/PA. Gtlo, the panel of judges argued that there were 2 (two) questions that arose in the decision, including whether it was true that the replacement heir as requested was entitled and proper. to accept and become a substitute heir. This of course leaves the question of the basis for the petition filed by the applicant related to the replacement heirs, and what is the basis for the judge's consideration to declare that he cannot accept the application in question.

In addition to the cases above, in 2018 there was also the same case, namely case number 0271/Pdt.P/2018/PA. Gtlo, where the applicant submitted in his case that 3 (three) people were to be determined by the panel of judges at PA Gorontalo. In its decision/determination, the panel of judges then determined that several of them, the 3 people who were proposed as substitute heirs, had been determined by the panel of judges as substitute heirs. ²⁸In this case, the panel of judges in their decision/stipulation refers to the existence of a peace agreement between the two parties. In addition, the basis for the decision or determination of the judge in the case is also by what has been regulated in the ILC. The case differs in the results of the judge's determination when compared to case No. 132/Pdt. P/2019/PA.Gtlo.

In another case, there is also a similar case, namely case No. 0266 Pdt.P/2018/PA. Gtlo. In the decision on the case, the panel of judges at the Gorontalo PA granted and decided that one of the people in the application submitted by the applicant was designated as a substitute heir. Based on the judge's consideration, the panel of judges has complied with what according to ILC and other laws. In addition, in this case, the decision determined by the panel of judges was by the formulation of norms in Article 185 of the ILC. According to the provisions of Article 185 of the ILC, a person may be appointed as a substitute heir to replace an heir who was previously deemed to have died to become an heir due to certain reasons. In addition, the provisions regarding replacement heirs as formulated in the ILC are clear that the heirs who previously had to die to be replaced by substitute heirs who are children of the heirs.

The principle is that as long as there are legal provisions governing the right to inheritance, then a person may inherit an inheritance that according to law is

²⁸Lihat pada amar putusan perkara No. 0271/Pdt.P/2018/PA.Gtlo

permissible to inherit. There is even one research conducted by Sugiri Permana, where in the conclusion of his research, he states that men and women have the same rights and positions individually.²⁹

2. Method

This research uses normative-empirical legal research. This type of research will examine and analyze the law that has been written with what is applied according to factual law or its implementation in the field. The principle is that the normative-empirical research method will look at the application of law in society or the field.³⁰The type of approach used by the researcher is a conceptual approach and a statutory approach. This approach is intended to examine a norm that exists in written legal provisions (positive law). The data collection method used is by conducting observations, interviews, and documentation, as well as by using library techniques related to the issues being discussed. What is used as a method for analyzing data is by providing arguments with a perspective approach about the truth specified in the formulation of the norms of legislation, about the problems being faced/discussed.³¹

3. Analysis of Judge's Decision Regarding Substitute Heirs in the Case Number: 132/Pdt.P/2019/PA.Gtlo Judging from the Compilation of Islamic Law

In the ruling on case number 132/Pdt.P/2019/PA. Gtlo the panel of judges stated that the case was declared unacceptable with several legal considerations that were also included in the decision. However, the most interesting thing is related to the request for a replacement heir which was also declared unacceptable in its entirety. According to the provisions of the Compilation of Islamic Law, the concept of a substitute heir does exist with certain conditions that must be met.

In the decision by the panel of judges in case No. 132/Pdt.P2019/ PA. Gtlo, which made the case unacceptable because there were 2 (two) main issues that were questioned in the legal considerations, namely:

1. Is it true that Saini Datau bin Yaudin Datau and Rabia Ali have died?

²⁹Sugiri Permana. 2018. Kesetaraan Gender Dalam Ijtihad Hukum Waris Di Indonesia. *Jurnal Asy-Syari'ah*. Vol. 20. No. 2. Hal. 129

³⁰Muahimin.2020. *Metode Penelitian Hukum*. Mataram: Mataram University Press. Hal. 115.

³¹ Mukti Fajar & Yulianto Achmad. 2010. *Dualisme Penelitian Hukum Empiris dan Normatif*, Yogyakarta: Pustaka Pelajar Hal 222.

2. Is it true that the successor heirs have the right and should be the successor heirs of their parents?

In addition to the main points above, the panel of judges also considered their legal considerations, the main content of which was based on the fact the trial was still questioning the status and position of the applicants who were asked to become substitute heirs for their parents. Meanwhile, if referring to the provisions in Article 185 of the ILC, the legal position of the parties who volunteer to become substitute heirs is allowed.

On the other hand, case No. 132/Pdt.P2019/PA is no longer considered a voluntary case but has become a contentious case, based on the fact that based on the statements of the Petitioners it contains the Plaintiff and the Defendant and is not pure as a voluntary case, there is a legal reason for the Petitioners' petition. declared unacceptable (Niet Ovantkelijke Verklaard).

In the legal considerations contained in decision no. 132/Pdt.P/2019/PA. Gtlo there are 2 (two) main issues regarding the petition by the petitioners, namely first whether Saini Datau bin Yaudin Datau and Rabia Ali have died, and second is whether it is true, that the successor heirs have the right and should be the successor heirs of their parents. Because the focus of the study is to see how the substitute heirs should be determined and linked to ILC as a reference which is also used by the panel of judges in case No. 132/Pdt.P/2019/PA.Gtlo.

ILC provides space for children or their descendants from heirs to become substitute heirs provided that the heir dies before the heir, then the position of the heir can be replaced by his child, except for those mentioned in Article 173 ILC.³² Here, the share of the substitute heirs may not exceed that of the equal heirs being replaced. ³³Therefore, it is also appropriate to explore and examine who deserves to be given the right to become a substitute heir in case No. 132/Pdt.P/2019/PA. Gtlo, where several people were asked to serve as replacement heirs.

Every applicant who applies is certainly a person who has a position or interest in what is being applied for, because, if not, then the application submitted by the applicant without interest can be declared unacceptable by the panel of

³²Article 185 KHI.

³³ *Ibid*

judges in its decision.³⁴ Therefore, the applicants as mentioned above in case No. 132/Pdt.P/2019/PA. Gtlo must be a person who has an interest in the case being submitted/requested. As one of the requirements, the legal interest of the applicant is sufficient to reinforce the applicant to continue the case.

Referring to the provisions referred to in Article 171 of the ILC, the heir is a person who has been declared dead and is Muslim and has an inheritance to be inherited. Therefore, referring to the case in question, the prospective heir in the case is mentioned as the late Alm. Saini Datau bint Yaudin Datau. As for the principal of the petition, the applicant proposes that the heirs of the late. Saini Datau is the late. Kamaria Datau. Furthermore, the heirs of the late. Kamaria Datau are Ety Muchsin and Kadir Muchsin. On the other hand, the applicant also submitted the determination of the heir of the deceased. Zubaida Datau is the late. Stin Ismail, Eri Ismail, Ardjuan Ismail, and Arni Ismail. In addition, the applicant also proposed the determination of a replacement heir from the late. Stin Ismail is Ucon Rahim and Trijanti Rahim. However, the subject of the next issue is in the main petition in case No. 132/Pdt.P/2019/PA. Gtlo, it is not stated what the price of the inheritance will be inherited by the heir.

According to the provisions of Article 171 of the ILC, inheritance is property left by the testator along with his rights. Whereas what is meant by Hari's property is inherited property added to joint property which after being used for purposes during the heir is sick until he dies. Therefore, in case No. 132/Pdt.P/2019/PA. Gtlo, it can be concluded that the application for the determination of heirs and replacement heirs is a plot of land owned in the name of the late. Saini Datau. However, in the case being filed, it is not explained what is the basis for applying determination of heirs and substitute heirs.

In an application or lawsuit filed by the parties, it must be clear what is the subject of the problem, the identity of the parties, and other matters to see what should be decided by the panel of judges. This is to avoid an application being declared unacceptable or may be rejected by the panel of judges. Although there is little clarity about whether the object in question is a piece of land, as a course, it

³⁴I Gusti Agung Ketut Bagus Wira Adi Putra. 2020. Gugatan Tidak Dapat Diterima (*Niet Ontvankelijke Verklaard*) Dalam Gugatan Cerai Gugat Di Pengadilan Agama Badung. *Jurnal Konstruksi Hukum*. Vol. 1. No. 2. Hal. 307.

cannot fully be interpreted as a case that is submitted without fighting another party (volunteer).³⁵

On the other hand, the application requested by the parties with the principal application to the Gorontalo PA panel of judges to determine the heirs and substitute heirs to the parties on behalf of:

1. To stipulate that the successor of the deceased heirs. Zubaida Datau bint Yaudin Datau are:
 - a. late. Stin Ismail bint Bakari Ismail (daughter of the deceased);
 - b. Eri Ismail bint Bakari Ismail (daughter of the deceased);
 - c. Ardjuna Ismail bint Bakari Ismail (daughter of the deceased);
 - d. Arni Ismail bin Bakari Ismail (son of the deceased)
2. To stipulate that the successor of the deceased heirs. Stin Ismail bint Bakari Ismail is:
 - a. Ucon Rahim bin Nurdin Rahim (son of the deceased);
 - b. Trijanto Rahim bin Nurdin Rahim (son of the deceased);

When referring to the ILC, those who are allowed to become heirs are those who are related by blood or marriage to the heir and are Muslim. The provisions regarding who is meant by heir if referring to ILC Article 171 letter c, then the applicants as above are considered people who have a relative relationship with the late. Saini Datau. Furthermore, the application submitted by the applicant is also quite well-founded because of the late. Saini Datau (whose name is listed on the land certificate) and his wife have no children. This is also based on the provisions of Article 181 and Article 182 of the ILC, where the stipulation is that if a person dies without a father and children, then he may bequeath his property to brothers and sisters of the same mother. Therefore, referring to the family tree, the parties mentioned above, namely the late Almh. Zubaida Datau has a blood relationship with the heir (the late Saini Datau). So according to ILC Article 171 letter c, the late. Zubaidah Datau has the right to be the heir of the late. Saini

³⁵Lihat pula pada fakta persidangan yang diuraikan dalam putusan perkara No. 132/Pdt.P/2019/PA.Gtlo

Datau. Then, Alm. Stin Ismail, Eri Ismail, Ardjuna Ismail, and Arni Ismail are the sons of the late. Zubaida Datau.

Due to the heirs in the name of the late. Kamaria Datau has passed away, so his son can replace his position.³⁶ Likewise with Alma. Zubaida Datau had passed away first, so according to the provisions of Article 185 of the ILC, the late. Zubaida Datau can be replaced by his son consisting of the late. Stin Ismail, Eri Ismail, Ardjuna Ismail, and Arni Ismail. In addition, all proposed heirs and substitute heirs are Muslims as stated in the identity of the case decision no. 132/Pdt.P/2019/PA.Gtlo.

Due to the heirs in the name of the late. Kamaria Datau has passed away, so his son can replace his position. Likewise with Alma. Zubaida Datau had passed away first, so according to the provisions of Article 185 of the ILC, the late. Zubaida Datau can be replaced by his son consisting of the late. Stin Ismail, Eri Ismail, Ardjuna Ismail, and Arni Ismail. In addition, all proposed heirs and substitute heirs are Muslims as stated in the identity of the case decision no. 132/Pdt.P/2019/PA.Gtlo.

In the application submitted, the applicant also asked the panel of judges that the successor heirs of the deceased. Stin Ismail is Ucon Rahim and Tirjanto Rahim, because the late. Stin Ismail has passed away. Referring to the provisions of Article 185 of the ILC, the two people, namely Ucon Rahim and Trijanto Rahim, are eligible to become substitute heirs of the late. Stin Ismail. It is certainly understandable that the heirs and substitute heirs requested to be determined by the assembly can be granted if the land which is the object belongs to the late. Saini Datau.

In the facts of the trial that was held, it was found that the land was in the name of the late Alm. Saini Datau is the property of the late. Kamaria Datau. This of course indicates that the application submitted can not be continued because there is a dispute in it between the heirs of the deceased. Zubaidah Datau and the late. Kamaria Datau. This is also cained case No. in 132/Pdt.P/2019/PA. Gtlo. The point s, if the plot of land referred to is the property of the late. Kamaria Datau, then those who are entitled to become heirs are the children of the late. Kamaria Datau, namely Etty Muchsin Datau bint Kasim Muchsin (daughter of the deceased); Kadir Muchsin bin Kasim Muchsin (son of the late).

³⁶Diana Zuhroh. 2017. Konsep Ahli Waris Dan Ahli Waris Pengganti: Studi Putusan Hakim Pengadilan Agama. *Jurnal Al;Ahkam*. Vol. 27. No. 1. Hal. 50

The substitute heirs as proposed may not become substitute heirs because they are hindered by a direct relationship with the heir, namely the late. Kamaria Datau. Because of the heirs of the late. Kamaria Datau (land owner) still has children who become direct heirs. Because, according to the provisions of Article 174 of the ILC, those who may become heirs are the male group consisting of father, son, brother, uncle, and grandfather. As for women, they are mother, daughter, and grandmother's sister.

Referring to Law no. 5 of 1960 concerning Agrarian Principles, a land certificate is legal proof of a person's ownership of a piece of land. In addition, referring to PP No. 24 of 1997 concerning Land Registration, land certificates can be used as concrete evidence in the event of a dispute in the future. Therefore, if you look at the facts, the plot of land that is requested to be determined by the applicants regarding who is the heir and substitute heir, the panel of judges when examining the case should call the relevant parties such as from the National Land Agency (BPN) to be asked for information or testimony to assess whether it is true that the registered land belongs to the late. Saini Datau or the late. Kamaria Datau.

The principle is that land certificates have a clear position to be used as evidence as stated in Article 19 of the Logga. Furthermore, the validity of the land certificate can also be determined by the judge as the party examining a case concerning land and its certification. Therefore, it is important for parties interested in presenting witnesses from the BPN to resolve the problems that occur, especially in cases with No. 132/Pdt.P/2019/PA. Gtlo.

The Gorontalo PA judges who examined and tried case No. 132/Pdt.P/2019/PA.Gtlo, which stipulates that the case cannot be accepted with legal reasons and considerations in the case, one of which is whether the substitute heir is entitled and appropriate to replace the position of his parents, needs to be studied more deeply. Because, if you refer to the genealogy of the applicant's family, and it is related to the provisions and formulations contained in the ILC, this question should not be used as an excuse because it is clear that the successor heirs consist of the children and grandchildren of the deceased. Zubaida Datau is the rightful person (heir) of the late. Saini Datau according to the provisions of ILC Article 171 letter c.

Silver application with No. 132/Pdt.P/2019/PA. Gtlo submitted by the applicants should no longer be allowed to continue because it is no longer by the nature of the voluntary type case. After all, there are disputes in it. Therefore, if

the parties wish to proceed about who is entitled to become heirs and substitute heirs, then the applicants can file a new to see and find out who is entitled to become heirs and substitute heirs of the land disputed by the applicants.

Even so, the reason for the panel of judges to declare the case as intended cannot be accepted. There is a dispute in it, the panel of judges who examine the case should still consider the position of the parties who want to be asked for as replacement heirs, because according to the provisions in the ILC, the proposed parties may become substitute heirs.

4. Conclusion

Based on the results of the above discussion, it can be concluded that the replacement heirs proposed by the applicants in case no. 132/Pdt.P/2019/PA.Gtlo from the late. Zubaida Datau may become a substitute heir based on the provisions formulated in the Compilation of Islamic Law (ILC), provided that the plot of land is the property of the late. Saini Datau. Legal considerations of the panel of judges examining case No. 132/Pdt.P/2019/PA. Gtlo, where the case is declared unacceptable, is that it is unclear/fuzzy, no longer voluntary, but a contentious case, because it contains a dispute between the heirs of the deceased's heirs. Kamaria Datau, and the late. Zubaida Datau. The suggestion to be submitted by the researcher is that the panel of judges in each PA who wants to examine and adjudicate the case referred to (substitute heir dispute), should refer to which article in the ILC, and must be made clear in the decision that formulates that a person may or may not be a successor.

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