Criticizing the Compilation of Islamic Law (KHI) to Resolve the Case of Grandchildren's Inheritance Right in Religious Courts

Diana Zuhroh(✉)

Faculty of Sharia, Islamic State University of Raden Mas Said Surakarta, Surakarta, Indonesia
dianazuhroh@yahoo.com

Abstract. The Islamic Law Compilation is a material law of the religious courts which has been in effect since 1991, and has been used as a reference by many court decisions, especially in the field of inheritance. However, not all of the articles in it can be understood clearly, especially those relating to articles 174 and 185 concerning heir, and successor heir. The relationship of the two articles still become controversial issue, proved to a number of inconsistent judge's decisions. This study discussed two problems, namely: *first*, why did different interpretations arise for the both articles; and *second*, how should they be interpreted proportionally by the judges. Based on content analysis of the both articles and some religious court decisions, the results of this study indicate that articles 174 and 185 are unclear. The judge made legal finding by extensive methods of interpretation to extend the meaning of the children in article 174 to the grandchildren and also did the same to extend the application of the successor heirs to the great-grandchildren in article 185. They also used the method of legal construction (*argumentum per analogium*) to establish obligatory bequest on the great-grandchildren who were domiciled as successor heirs.

Keywords: heir · successor heir · The Islamic Law Compilation · grandchildren's inheritance right

1 Introduction

The Compilation of Islamic Law was compiled to provide uniformity of the rules applicable in the religious judicial environment. The existence of The Compilation of Islamic Law should provide the same understanding among judges in deciding cases filed with religious courts. In fact, the resulting deceased may differ depending on the judge's understanding of the case at hand and his interpretation of the Compilation of Islamic Law.

One of the differences in the judges' understanding of the provisions of the Compilation of Islamic Law relates to the articles that talk about the heirs, and the successor heirs. The provisions on heirs are contained in article 174 of it. This article describes the people who are categorized as heirs, among others are father, son, brother, uncle,

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grandfather, mother, daughter, sister, and grandmother. They are related by blood relationship. Besides, that article contains widow (husband) and widower (wife) who are classified as heirs who have marital relationship [1]. However, this provision is different from the formulation of the majority of scholars who include grandfathers, grandsons in the male heir class, and grandmothers, granddaughters in the female heir class [2].

This article specifically examines the right of grandchildren in their position as heirs, as well as successor heirs. The Compilation of Islamic law does not include grandchildren in the article on heirs, but includes them as successor heirs. In fact, referring to the opinion of the majority of scholars, the granddaughter and grandson who are descendants of the sons of the deceased are categorized as aṣh}a>bul furu>d} whose rights have been established by the syara'. Moreover, the term of aṣh}a>bul furu>d} as a group of heirs is mentioned also in article 200 in the discussion of aul an radd. [1] Directly, KHI looks inconsistent, since the mention of aṣh}a>bul furu>d} is not accompanied by an explanation of what is meant by it in the general provisions of KHI.

2 Literature Review

There are several writings that discuss the concept of heirs and successor heirs. One of the articles from Hazar explains that the successor heirs are not known in the provisions of classical fiqh. That provision is the result of the ijtihad of the scholars. The existence of grandchildren is fully legitimized by The Compilation of Islamic Law as a form of legal protection of grandchildren in lieu of their parents who have died before the deceased. According to Hazar, the majority of judges in religious courts use the provision in considering their decisions in terms of inheritance [3].

Abdul Qodir Zaelani explained the provisions of successor heirs are contained in article 185 of the KHI. Regarding the successor heirs in the context of Indonesia, it cannot be separated from Hazairin's thinking. Hazairin implied that Islamic inheritance law was bilateral in style. The bilateral inheritance system has consequences for the existence of a system of replacing the position of heirs in Islamic inheritance law. The provision of the successor heir is based on the Qur'anic interpretation of surah An-Nisa verse 33 [4].

The writer criticizes the fundamental difference between Islamic inheritance law (Fiqh) and the KHI inheritance rules, especially regarding the granting of rights to heirs. Islamic inheritance law (fiqh) gives inheritance rights to those who are still alive when the deceased dies. The writer assumes that Article 171 (c) of the KHI gives the right of inheritance to the person who died first of the deceased in an attempt to legitimize the rule of the successor heir in Article 185 of the KHI [5]. This caused confusion to applicate the rules of heirs and successor heirs by the judges. Therefore, the writer suspects that there is a vagueness in the meaning of heirs and successor heirs in the KHI, including its application with regard to the inheritance rights of orphaned grandchildren.

Naskur explained in his writings that there is a very prominent difference between the provisions of the heirs in Article 174 paragraph (1) letter a of the KHI and the formulation of the earlier books of inheritance jurisprudence. The total number of heirs in the previous books of jurisprudence was 25, while the Compilation of Islamic Law (KHI) only amounted to 11 people. The difference in the number of such heirs lies in

the difference in detailing the heirs by lineage. KHI does not distinguish the lineage of paternal and maternal grandparents, and the lineages of both parties (full blood), unilateral (half blood or uterine). Meanwhile, the previous inheritance jurisprudence distinguished heirs by looking at the bloodline. Based on the difference in number and lineage, the formulation of heirs in article 174 (1)a of the Compilation of Islamic Law (KHI) can give rise to various kinds of interpretations [6].

Heirs in Arabic terms are called waraṡah. They are people who are entitled to inherit the estate of the deceased. Becoming an heir requires certain things, among which They had both blood or marital relationship with the deceased. The heirs must be Muslims, still alive at the time the deceased dies, and They has no hindrance to receiving inherited estate.

The categorization of heirs according to the views of the majority of scholars is divided into two, namely due to the existence of blood relationship, and marriage one. In the group of heirs due to the existence of blood relationship, the clerics designated 25 persons, namely: 15 from the male group, and 10 from the female one. Among those of the male sex are:

- Son
- Paternal grandson
- Grandfather or Father's deceased
- Brother by full blood
- Brother by half blood
- Uterine brother
- Nephew by full blood
- Nephew by half blood
- Paternal uncle by full blood
- Paternal uncle by half blood
- Cousin by full blood
- Cousin by half blood
- Husband
- A man who freed his slave

The 10 heirs of the female sex are:

- Daughter
- The granddaughter (son's daughter)
- Mother
- Paternal grandmother
- Maternal grandmother
- Sister by full blood
- Sister by half blood
- Uterine sister
- Wife
- A woman who freed her slave

The Compilation of Islamic Law explains the provisions of the heirs in chapter 2 of articles 172–182. Some of these provisions are: [1]

- The heir must be Muslim (article 172)
- The heir who is prevented from obtaining the estate is caused by killing the heir, attempting to kill the heir, severely persecuting the heir, slandering the heir has committed a crime that carries a penalty of five years imprisonment or more severely (article 173)
- The group of heirs of the blood relationship namely: son, father, brother, uncle and grandfather. The group of heirs of the women's class are daughter, mother, grandmother, sister. The heirs of the marital relationship are the widower, and the widow. If all the heirs are present, then those entitled to the estate are the child, father, mother, widow or widower. (art. 174)
- The obligations of the heir to the deceased's estate include taking care of funeral preparation until it is completed, paying off his debts, fulfilling his will (if any), and dividing his inheritance (article 175)
- The parts received by the heirs are contained in sections 176–182

Referring to Article 174, The Compilation of Islamic Law generalizes several heirs such as relatives, grandmother, grandfather, uncle. While the mention of grandson as heir there is no such Article 174. The right of inheritance of grandchildren is specifically described in article 185. The article contains the following provisions: [1]

- The position of the heir who died before the deceased can be replaced by his child, except for the one referred to in article 173.
- The share of the successor heirs shall not exceed the share of the heirs equal to the one who was replaced.

Although there is no explicit mention of grandchildren as heirs, but implicitly, grandchildren can replace their parents who have died ahead of their grandfathers.

Regarding to the successor heir, there is no nass{{ explaining that provision. However, the provision of a successor heir is the result of ijtihad offered by Hazairin, a figure of customary law. Hazairin argues that the concept of mawa>ly in Al Quran Surah an-Nisa verse 33 refers to orphaned grandchildren. The granting of inheritance rights to orphaned grandchildren aims to provide a sense of justice for grandchildren and ensure the preservation of their lives [7].

Meanwhile, the KHI specifically included the provision of successor heir in article 185, where the article does not refer specifically to a particular person. The article can be interpreted that the successor heir is the heir who can replace the position of the actual heir. The reimbursement is due to the heir who was supposed to get the right of heir, having died ahead of the deceased [8].

In order to determine the cases faced in the Religious Court, there is a theory of legal finding. Legal finding is the process of forming the law by a judge who is given the task of implementing the law or applying legal regulations to a concrete event [9]. The writer adopts two methods of legal finding, they are extensive interpretation method, and argumentum per analogium one. The extensive interpretation method is a method that makes interpretation beyond the limits given by grammatical interpretations. The argumentum per analogium method is a method by which the judge must pass a judgment

in a case for which no regulations are available, but the event is similar to that provided for in the Act [10].

3 Methods

This study analyzes five Religious Court Judgments in determining heirs and successor heirs. The five ones are Judgment Number 2858/Pdt.P/2021/PA Sby, Judgment Number 1470/Pdt.P/2021/Pa.Sby, Judgment Number 0147/Pdt.P/2020/Pa.Smi, Judgment Number 121/Pdt.P/2019/Pa.Gtlo, and Judgment Number 0115/Pdt.P/2021/PA. Bks. The selection of the five Judgments is based on purposive sampling which refers to the criteria that the five ones are the determination of heirs in the last 3 years in which there are determinations of the successor heirs.

The writer uses primary materials in the form of five Religious Court Judgments, and KHI. In addition, the writer also uses information from several books, journals, websites as supporting data. The data collected from several Judgments are analyzed substantively using the theory of heirs, successor heirs and legal finding methods.

4 Result and Discussion

The Judgment Number 2858/Pdt.P/2021/PA Sby states the deceased (Tabri) left three children, two are sons, and the other is daughter. The deceased passed away in 2010. Both of the deceased's parents had passed away before. His wife and children are still alive. In 2021, one of his sons died. He has a daughter. Based on this case, all of the heirs apply for determination of heirs to Religious Courts to obtain certainty regarding the heirs who are entitled to inheritance of the deceased [11].

The judges granted the petition and determined the heirs of the deceased are wife, daughter, son, and granddaughter as the successor heir of her father who had died. The judges considered that determination of heirs refers to article 174 (2) of KHI, and Al-Qur'an Surah An-Nisa verse 7 [11].

The argument of the judges using article 174 (2) was not appropriate to appoint the granddaughter as the successor heir. The granddaughter's position is not a successor heir of her dead father, but her status is an heir of him, because her father died after the death of the deceased, not died before him. If her father died ahead of the deceased, then the granddaughter could be entitled to be the successor heir of her father. The determination of the judge is certainly contrary to the meaning of the successor heir, that is, the person who replaces the position of the direct heirs [1]. This replacement is made because the death of direct heir precedes the deceased. Thus, the daughter of the male heir (the deceased's granddaughter was who succeeded her father's position in receiving her grandfather's estate.

That article is only used to explain who falls into the criteria as direct heirs, not successor heir. Meanwhile, the provision of the successor heirs should refer to article 185 of KHI. The article states that the position of person who died precedes the deceased can be replaced by his children. In fact, the granddaughter, in that case, is a paternal granddaughter whom her father died after the deceased. The deceased died in 2010, while his son (granddaughter's father) died in 2021.

This condition is certainly different from the opinion of the majority of Muslim scholars who stated that both grandsons and granddaughters can be fully blocked (mahju>b h}irma>n) by their uncles and aunts who are the descendant of the deceased. On the contrary, KHI has made a new breakthrough by stipulating provision of successor heir which is applied not only to grandsons and granddaughters who are descendants of sons but also to those who come from the descendants of daughters.

Based on the case, The judges placed the granddaughter as the successor heir of his father. In fact, she got a share of her grandfather's estate which had not been divided into his heirs. The inheritance should be received by her father while he was alive. However, because the deceased's son had not received his rights until his death, it would switch to his daughter. In the Islamic concept of inheritance law, this kind of condition is referred to as the case of muna>sakhah. Muna>sakhah is the death of one or several heirs before distribution of the estate, so that there is a transfer of rights to the next heir [12].

In the writer's opinion, KHI is not familiar with the concept of full exclusion (mahju>b h}irma>n) in the case of inheritance rights of grandchildren. Thus, even though according to fiqh the right of grandchildren were hindered by their uncle and aunt, but their rights were still given under the provisions of article 185 of the KHI. The KHI rules provide an opportunity for grandchildren in the lineage of deceased's sons as well as those who come from the descendants of the deceased's daughters to replace of the position of their parents who died preceded the deceased. KHI is not familiar with the concept of z}awil arh}a>m where the grandchildren who are the descendants of the deceased's daughter do not get their inheritance rights as long as there is aṣh}a>bul furu>d} and 'as}abah. Z}awil arh}a>m, are heirs who are related by blood to the deceased through the female lineage. The people who includes z}awil arh}a>m namely, male descendants of the deceased's daughter, female descendants of the deceased's sister, female descendants of the deceased's brother, the daughter of the uncle, the maternal uncle, the brother of the mother, and the aunt (sister of the mother) [13].

Referring to the case, the writer assumes that the judge interpreted granddaughter as an extension of the meaning of the daughter so that the legal basis used refers to article 174 (2). Unfortunately, KHI distinguishes the concept of heirs and successor heirs. In fact, Article 174 (2) is used to stipulate provision that the children are ones among several heirs who are sure to get their rights, while article 185 is used as the basis for the provision of a successor heir. Theoretically, the judge has made legal discoveries using extensive methods of interpretation. Extensive interpretation is a method of interpretation that makes a broader interpretation of grammatical interpretation [14].

The next argument used by the judge is Al Quran Surah an-Nisa verse 7 which explains that the next argument used by the judge is QS An-Nisa verse 7 which explains that the orphans get the inheritance of their parents or other relatives, they have rights and shares. Each of them will have a share that has been appointed by God. No one can take or diminish their rights. (https://quranhadits.com/quran/4-an-nisa/an-nisa-ayat-7/#tafsir-lengkap-kemenag, n.d.) The use of this verse as a legal basis is appropriate because this verse explains that both men and women are entitled to estate left by their parents and relatives. In principle, the Quran provides inheritance rights for men and women, in accordance with bilateral principles. The bilateral principle is the principle

of inheritance that provides inheritance rights for a person through the path of mother and father [15].

Therefore, the decision of the judges to determine the granddaughter as successor heir is not appropriate, but rather as his heir. Referring to the provisions of Islamic inheritance law (fiqh), the deceased death didn't cause his granddaughter to get inheritance rights because she was fully hindered by her uncles and aunts (mahju>b h}irma>n). The majority of Muslim scholars argued that the heirs who could hinder the granddaughter in receiving inheritance rights were the children of the deceased who were her uncles and aunts of the granddaughter [16].

Contrary to The Judgment Number 2858/Pdt.P/2021/PA Sby, The Judgment Number 1470 of Pdt.P/2021/Pa.Sby states that the deceased (Soemidjo) died on February 13, 2021. He left five children, three are males and the others are females. One of his daughters, passed away on January 21, 2020. She has a husband and two children. Based on the determination of heirs filed by the deceased's children, and his two grandchildren, the judges decided that the rightful heirs were children, while his two grandchildren became the successor heirs of their parents [17].

The consideration of the judges refers to article 171 b and c, article 172, and article 174 (1)a of KHI, as well as Al-Quran Surah An-Nisa verse 33. In the writer's opinion, the legal basis used by judges is generally correct. The wife who had been divorced in 2008 was not an heir of the deceased. Later, one of the daughters of the deceased (Ernawati) had died ahead of her father. The judges determined that Ernawati's position as the heir of Soemidjo was replaced by her children, namely Arief Eryanto and Amalia Dwi Eryanti [17].

The judges used article 171 b and c to explain the criteria of the deceased and the heir. Article 171 b explains that the deceased is a person who died, a Muslim, leaving heirs, and relic property. Article 171 c explains the criteria of an heir, namely having a blood or marital relationship with the deceased, Muslim, and he is legally unobstructed from becoming an heir. Article 172 is used by the judge to explain that the heirs must be Muslim, and their identity can be known through identity cards, confessions, and testimony.

The judges also applied article 174 (1) a, to describe the group of heirs based on blood relationship, which are derived from the male class i.e. father, son, brother, uncle and grandfather. Meanwhile, the female heirs according to article 174 (1) b, are mother, daughter, sister, and grandmother. The mention of article 174 (1)a is relevant to the case, since the rightful heirs are the son and daughter of the deceased.

Furthermore, the judges cited QS An-Nisa verse 33 as the legal basis that Allah has established heirs for men and women to inherit the property left by their parents and relatives. (Department of Religion: 1990) This verse is a postulate used by the judges to determine the rights of successor heirs. This refers to the postulate put forward by Hazairin about the concept of mawa>ly. The term of Mawa>ly is plural form of mawla. Mawla is successor heir, that is, an heir who replaces a person's position to get a share of the inheritance that he should have received if he were still alive. The person who is replaced is the link between the successor heir and the heir.

According to Hazairin, mawa>ly are people who become heirs because there is no longer a link between them and the deceased [18]. In case Number 1470

Pdt.P/2021/Pa.Sby, the writer assume that the use of the articles of KHI was ignored by the judge because those do not explicitly state that the grandson is a successor heir. The judge prefers to use the above verse as his legal basis because it can be interpreted in general terms that everyone has his heirs, thus, the determination of the successor heirs under Al-Qur'an Surah An-Nisa verse 33 is not bound to the death of the heirs whether before or after the deceased. As long as there is no link between the deceased and the grandchildren, then they are domiciled as the successor heir.

The judges did not refer to article 185 of the KHI, but preferred to use Al-Qur'an Surah An-Nisa verse 33 as their source of material law. Basically, article 185 is more specific to explain that a successor heir is applied to the case of a person who dies ahead of the deceased, then his position can be replaced by his children. Those children who are called the successor heirs. Referring to the above case, the judge was right in determining that the grandson and granddaughter became the successor heirs of their dead parents, but unfortunately the judges did not use article 185 of the KHI. Supposedly, article 185 of the KHI as a material law of the Religious Court is more appropriately used in the above case than to use a postulate of a very general meaning.

It is said generally, the judges interpreted the Hazairin's thinking of Al-Qur'an Surah An-Nisa verse 33 can be used in two contexts, firstly the death of the heir occurs before the death of the deceased, and secondly, it occurs after the deceased died. The opinion of Hazairin and the provision of KHI are different from the formulation of the major Muslim scholars where grandsons and daughters who come from female descendants do not belong to heirs. In Muslim scholars majority's view, the grandchildren were categorized as z{awil arham, whose inheritance rights could only be obtained after there was no aṣh}a>bul furu>d} and 'as}abah [2]. In the writer's opinion, it means that the rule of the grandchildren as the successor heirs in the KHI equalizes the right between the grandchildren who comes from the male descendant of the heirs and those who comes from the female descendant of them, on the condition that the parents of grandchildren were died ahead of the deceased (grandchildren's grandfather).

Furthermore, In Case Number 0147/Pdt.P/2020/Pa.Smi, the judges determined that the heirs of Tjoetjoe were the surviving daughter (Itje Hendrawati), her grandchildren who were descendants of her sons and daughters (Petitioners II, III, IV, V,VI,VIII, IX,X,XI, XII, as well as her great-grandchildren (Petitioners XIII, XIV, XV). Referring to its legal considerations, the determination of the heirs is based on Al-Qur'an Surah An-Nisa verses 11 and 12, article 171 c, article 173, article 174 (2), Article 185 (1) and (2) of KHI [19].

Al-Qur'an Surah An-Nisa verse 11 explains the inheritance rights of children, where the daughter's share is a half of son's one [20]. The judges' decision to establish the daughter's share (Itje Hendawati) as an heir is appropriate, this is in line with that verse. The Verse 12 describes the inheritance rights of husbands, wives, uterine brothers and sisters. That verse used by the judges is irrelevant to establish the right of heirs, since no heirs are from the surviving spouse, (husband), and uterine brother and sister of the deceased.

The judge's consideration of using article 171 c to explain the criteria for heirs is appropriate, namely Islam, still alive, having a blood or marital relationship with the heir, and not legally hindered from inheriting (KHI: 1991). Meanwhile, article 174 (2) as a

legal basis to establish the right of inheritance of children to the property of their parents. Petitioner I as a biological daughter is entitled to the estate of her mother (Tjoetjoe).

The writer assumes that, in addition to the above juridical considerations, the opinion of the judges is also sourced from article 185 (1) and (2) to establish the inheritance rights of her grandchildren and great-grandchildren of the deceased. Although the judges did not specify who were entitled as successor heirs in their determination, but drawn from their legal considerations, the judge designated grandchildren and great-grandchildren as successor heirs. That is to say that, daughters are domiciled as heirs, and grandchildren and great-grandchildren are domiciled as successor heirs to their parents. This is because their parents have died ahead of the deceased.

The determination of grandchildren and great-grandchildren as successor heirs with reference to the article 185 of the KHI is not appropriate. Supposedly, the criteria for successor heirs are those who replace the position of their parents who died precede of the deceased. While, in the above case, the grandchildren are supposed to be the heirs of their parents, not the heirs of their grandmother, because, their parents died after the death of the deceased. Their parents who are supposed to be heirs have not received the right to the deceased's estate, so then the estate will pass again to their children. In the concept of fiqh, this kind of condition is called the case of muna>sakhah. Muna>sakhah is the death of several heirs before receiving the estate of the deceased and the process of transfer their estates to their heirs [2].

Referring to KHI article 185 (1), the provision of the successor heir only can be applied if the heir who is supposed to inherit the estate of the deceased has died preceding the deceased. In case Number 0147/Pdt. P/2020/Pa.Smi, the deceased had only one surviving daughter. Another five children have died several years after the death of the deceased. Similarly, the granddaughter (Fitri Torani) should be the heir of her father (Halif Rukayat), not as his successor heir. That is, the judges interpreted the provision of a successor heir not in the context of a person who replaces the position of the dead direct heir who died preceding the deceased. The judge understood the provision of a successor heir as a person who replaces the position of the deceased without being associated with his death whether before or after the death of the deceased. In this case, the judges misunderstood the intent of the successor heir rule. According to the writer, the judge should have used another legal basis, namely Al-Qur'an Surah An-Nisa verse 33 which has more appropriate meaning.

In addition to the three determinations above, case Number 121/Pdt.P/2019/Pa.Gtlo on the determination of heirs, the argumentations of judges were correct in determining the heirs of the deceased (Bakari Labodu) were his two children namely Hasan Bakari and Apipa Bakari and their grandchildren. The reason why the judges designated them as heirs was because they died after the death of the deceased. The judge's consideration used section 171b and c. Article 171b describes the criteria for an heir, while article 171c describes the criteria for becoming an heir. Article 174 (1)a of the KHI is used by the judge to explain the direct heirs who have rights to come from blood relationship namely the children of the deceased. This article is appropriately used as an argument for establishing the children as the heirs. For, in essence, the children are the direct heirs who entitled to the estate of the deceased based on the criteria that they are Muslims, still alive, have a blood relation with the deceased and are not legally hindered from

becoming heirs as described in section 171c. Meanwhile the right of inheritance of the wife is contained in article 174 (2) b [21].

In the context of the case, Rostin Hasan died ahead of her father, Hasan Bakari. In her position towards the deceased, Hasan Bakari is his son who is also the direct heir, while Rostin Hasan is his granddaughter. However, since Hasan Bakari died before obtaining the inheritance from his father, his rights should have passed to his descendants. One of Hasan Bakari's daughters who had descendants was only Rostin Hasan. She died ahead of her father (Hasan Bakari), her right to receive the deceased's estate was replaced by her descendants, namely Andika Ndau, Rifki Nur, and Siti Luwija Nur. Her three great-grandchildren were heirs to Rostin Hasan (their mother) who had died ahead of Hasan Bakari (their grandfather). The three children of Rostin Hasan are the great-grandchildren to Bakari Labodu (deceased).

The interesting thing from the above determination is the provision of obligatory bequest to Andika Ndau, Rifki Nur, and Siti Luwija Nur (descendants of Rostin Hasan) where they were the great-grandchildren of Bakari Labodu (deceased). On the one hand, the judges mentioned that the great-grandchildren were successor heirs in their legal considerations. But on the other hand, judges established their share through obligatory bequests [21].

The judges' considerations of establishing obligatory bequest were due to the position of the three as successor heirs. The judges argued that the three great-grandchildren of the testator were no longer included as petitioners and were not required to be designated as heirs of the deceased. This argumentation is in line with Supreme Court Jurisprudence Number. 368/K/AG/1995 Jo. Supreme Court Decision Number. 51/K/AG/1999 Jo. Supreme Court Decision Number.16/K/AG/2010 [21].

In the writer's opinion, the determination of the obligatory bequest by the judges to the great- grandchildren who were domiciled as successor heirs were not based on the rules of the KHI. Because by rule, there is no obligatory bequest provision for great-grandchildren in the KHI. It's just that, the judge also stipulated that they are the successor heirs. Unfortunately, the judges did not use article 185 of the KHI as a legal consideration to legitimize the rights of successor heirs. It means that the judges recognized the concept of successor heirs but they were not precise in determining their shares. Supposedly, the share of the successor heirs must not exceed the shares of equivalent heirs to the replaced ones [1].

The judges set obligatory bequests for the great-grandchildren whose position were as successor heirs. The provisions on successor heirs and obligatory bequest are two different rules of enactment. The rule of successor heir is applied when the direct heir has died preceding the deceased, then his position is replaced by his children, while the will is obligatory for those who are legally not to obtain the estate. Furthermore, the share of the successor heir is equal to the share of the heir replaced, but it shall not exceed the share of the heir equal to the superseded. Meanwhile, the part of the will must be limited to a maximum of 1/3 of the inheritance [1].

In the theory of legal finding, at least the judge has carried out legal construction of cases for which there is no legal provision. The legal construction method is a method that judges use to find legal provisions of the case they are handling. Many cases of inheritance rights that are not written in the KHI require legal certainty. Therefore, the

judges can use other rules outside the KHI to answer the issue of the right of inheritance of the great-grandchildren. The judges have the right to carry out legal considerations in accordance with their level of understanding of the existing rules. The Religious courts are prohibited from refusing to examine, try, and decide on a case filed under the pretext pf that the law does not exist or is unclear but rather obligated to examine and prosecute him [22].

Then, the judges determined the share of the great- grandchildren through obligatory bequests, despite their status as successor heirs. The writer assumes that the judges, in the case, have applied the methods of legal construction, especially argumentum per analogium method. This method is used by judges to pass determination in a case for which there are no rules available, however, the events are similar to those stipulated in the law [14].

The judges analogized the granting of obligatory bequest to great-grandchildren to the case of non-Muslim heirs for which there was no legal provision. Non-Muslim heirs are not heirs of the Muslim deceased, but they are entitled to the deceased's estate through obligatory bequest. This provision was adopted by the judges to establish it on the great-grandchildren who in the above case were not the petitioners and were not asked for an appointment as heirs.

The last is The Judgment Number.0115/Pdt.P/2021/PA. Bks on the determination of the heirs filed by the petitioners namely two children, the grandchildren of the deceased. The judges set case Number.0115/Pdt.P/2021/PA. Bks namely: the heirs of Balok bin Dapet are Gana bin Balok (son), Unoh bin Blok (son), Yain bin Penin (grandson), Kaing bin Penin (grandson), Iyam bin Idup (grandson), Iwan Mohlana bin Idup (grandson), Ida Rosyida binti Ropah (granddaughter), Iis Rojanah binti Ropah (granddaughter), Sulaeman bin Rosyadi (great-grandson) and Andi Hermawan bin Rosyadi (great-grandson) [23].

The judges argued using article 171c to establish the criteria of heir i.e. Muslim, has a blood relationship with the deceased, and the heir is in a living condition. KHI is in line with the classical concept of inheritance of Muslim scholars where the requirement for a person to become an heir is Muslim, still alive when the deceased dies, has a blood or marital relationship, and has no barrier to inherit [2]. Then, the judge also used article 174 (2) which essentially explains that when all the heirs are present, the child is one of the parties who must have got his rights, besides the father, mother, husband, and wife.

According to the judges' considerations, the existence of the grandson and granddaughter in The Judgment Number. 0115/Pdt.P/2021/PA Bks were positioned as the second heirs of the deceased. Because of these conditions, the Judges used the provision on heirs in section 171c to explain that they meet the criteria as heirs i.e. Muslims, they have a blood relationship with the deceased, and they are not legally hindered from becoming heirs. The judges also used article 174 (1)a and b which mentions the class of heirs due to blood relationship. There are no grandchildren as the heirs of blood relationships mentioned in that article. There are only sons and daughters, brothers and sisters, fathers, mothers, grandmothers, uncles, and grandfathers.

Supposedly, in that case, the grandson and granddaughter are positioned as the successor heirs of his parents. Why? Because their parents (the deceased's descendants)

have died before deceased. The deceased died on March 18, 2020, while his descendants died earlier. In fact, the criteria as successor heir refers to article 185 of the KHI, which the judges did not use as their legal consideration. The writer assumes that the judges has carried out an expansion of the interpretation of the meaning of the child including grandchildren. This is because the grandchildren are also the sons and daughter of the deceased's children. According to the theory of legal finding, judges have used a broader interpretation of the existing rules by extensive methods of interpretation.

The content of article 174 (1) a is certainly different from the concept of major Muslim scholars which very clearly includes grandsons and daughters who are descendants of the deceased's children into the group of heirs of aṣh}a>bul furu>d}. Meanwhile, the grandsons and granddaughters who are descendants of their daughters are categorized as z{awil arh}a>m. Z{awil arh}a>m will only receive inheritance rights when there are no aṣh}a>bul furu>d} and 'as}abah.

In addition to the use of KHI as its legal basis, the judges also referred to Al-Qur'an Surah An-Nisa verse 33 to establish the inheritance rights of two great-grandchildren. The verse explains that God has made a substitute for each person for the property left by his parents and relatives. The determination of two great-grandchildren as heirs is correct, because in reality, they inherited the estate that their parents should have received. Their father who are the grandson of the deceased should have acted as heirs. But because he has died, then these two great-grandchildren have replaced his position.

Although the verse has a very general meaning, but the point is that every man and woman has an heir. This is what Hazairin said that mawa>ly in that verse meant successor heirs. Mawa>ly are the heirs due to reimbursement. Those who should have been heirs have died before the deceased. The changeover occurred due to the absence of direct heirs. The familial relationship that arises between the deceased and his mawa>ly is in the form of a blood relationship of the line down or line to the side or line up [18]. One of his grandsons, Rosyadi bin Penin, was supposed to be the successor heir of his father Penin bin Blok who died before the deceased. However, because His father died, his position was replaced by his children who were great-grandchildren of Balok bin Dapet (Deceased). In this case, the judges designated the great-grandchildren as the successor heirs. The judges did not refer to article 185 on successor heirs. There is not a single article in the KHI that explains the inheritance rights of grandchildren or great-grandchildren and their parts. Various opinions arose regarding the limitations on the application of the successor heirs. Article 185 of the KHI also applies to successor heirs whose personnel restrictions are also less clear, whether the successor heirs include the heirs of the lineage downwards, sideways or whether they include heirs outside of them.

The writer argues that the Judges' consideration using Al-Qur'an Surah An-Nisa verse 33 refers to Hazairin's opinion. According to Hazairin, the verse underlies the existence of successor heirs through the word mawa>ly. The meaning of mawa>ly is the heir who replaces a person to obtain the share of inheritance that the person he is supposed to replace, but the person who is replaced has died first from the deceased. This person who is replaced is the link between the one who replaced the deceased [3].

5 Conclusion

The differences of judges' interpretations to the two articles in the KHI are caused by the absence of grandchildren's mention as heirs or successor heirs, so that some judges sometimes use articles 174 on heirs to determine grandchildren as successor heirs. Even though, that article should be used to specify direct heirs who have blood or marital relationship. Likewise, the judges use article 185 to determine the heirs, even though that is used to determine successor heirs. It means that the two articles are unclear.

The judges should find the law from the method of extensive interpretation and that of argumentum per analogium. The method of extensive interpretation is applied by the judges to expand the meaning of children as heirs in article 174 to grandchildren, and to extend the application of the successor heirs to the great-grandchildren in article 185. The judges used the method of legal construction especially argumentum per analogium to establish obligatory bequest on the great-grandchildren who were domiciled as successor heirs. The analogy is based on the Supreme Court's jurisprudence on the granting of obligatory bequest to non-Muslim heirs who are not legally the heirs of Muslim deceased.

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