

Korespondensi

Croatian International Relations Review

Journal: Croatian International Relations Review

Link: <https://cirrj.org/>

Scopus: <https://www.scopus.com/sourceid/5600155515>

Scimago: <https://www.scimagojr.com/journalsearch.php?q=5600155515&tip=sid>

ISSN : ISSN 2332-2039 (Online)

CiteScore : 1.5

SNIP : 1.278

H Index : 9

SJR : 0.181

Quartile : Q3

Author(s): Setiyowati¹

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

Volume : 28

Issue : 89

Year : 2022

Pages : 136-149

Item	Tanggal
Summary Journal	
Jurnal Profile	
Submission	30 August 2021
Peer Review Process I	13 March 2022
Resubmitted Revised Manuscript I	13 April 2022
Peer Review Process II	25 May 2022
Resubmitted Revised Manuscript II	28 May 2022
Accepted	13 April 2022
Galley Proof	22 September 2022
Publish online	26 October 2022

PDF Link : <https://cirrj.org/article-detail/?id=502>

Website Link : <https://cirrj.org/manuscript/index.php/cirrj/article/view/502/425>

Scopus Link :

<https://www.scopus.com/record/display.uri?eid=2-s2.0-85130070931&origin=AuthorNamesList&txGid=743ce70bdcf4ad1314e07c2f346c89c5>

SUBMISSION



Setiyowati
<setiyowatie.untag@gmail.com>

[CIRR] Submission Acknowledgement

Croatian International Relations Review

30 Agustus 2021 pukul

<editor@cirrj.org>

11.37

Kepada: Setiyowati <setiyowatie.untag@gmail.com>

Dear Setiyowati:

Thank you for submitting the manuscript, "Inheritance Dispute Resolution against Substitute Heirs: Analyzing Supreme Court's Decision Number 185 K/Ag/2009" to Croatian International Relations Review. With the online journal managementsystem that we are using, you will be able to track its progress through the editorial process by logging in to the journal web site:

Submission URL: <https://cirrj.org/menuscript/index.php/cirrj/authorDashboard/submission/970>

Username: setiyowatieuntag

If you have any questions, please contact me. Thank you for considering this journal as a venue for your work.

Croatian International Relations Review

[Croatian International Relations Review](#)

**MANUSCRIPT
ATTACHMENT**

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

Setiyowati

Faculty of Law, Universitas 17 Agustus 1945, Semarang, Indonesia

Email: setiyowatie.untag@gmail.com

Abstract

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.

Keyword: Dispute Resolution, Inheritance, Substitute Heirs, Case No. 185/K/Ag/2009

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.

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). 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.

Theoretical Framework

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

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/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 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; Surati 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.

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.

References

Furqan, A. A., & Haries, A. (2018). The Difference of a Child (Walad) Concept in Islamic Inheritance Law and its Implications on The Decisions of the Religious Courts in Indonesia. *Mazahib Jurnal Pemikiran Hukum*

Islam, 17(2), 119-146. doi:<https://doi.org/10.21093/mj.v17i2.1212>

Hadikusuma, B., & Hilaman. (2003). Indonesian Marriage Law, According to Customary Law and Religious Law, Bandung: 3(4). *Forward Mandar*.

doi:<https://doi.org/10.1080/07329113.2013.781447>

Holden, L., & Chaudhary, A. (2013). Daughters' inheritance, legal pluralism, and governance in Pakistan. *The Journal of Legal Pluralism and Unofficial Law*, 45(1), 104-123. doi:<https://doi.org/10.1146/annurev.so.17.080191.000411>

Jahar, A. S. (2019). Bureaucratizing Sharia in Modern Indonesia: The Case of Zakat, Waqf and Family Law. *Studia Islamika*, 26(2), 207-245. doi:<https://doi.org/10.15408/sdi.v26i2.7797>

Johnson, J. R. (1977). Inheritance Rights of Children in Virginia. *U. Rich. L. Rev.*, 12, 275.

Khosyi'Ah, S., Irfan, M., Maylawati, D. S., & Mukhlas, O. S. (2018). Analysis of Rules for Islamic Inheritance Law in Indonesia Using Hybrid Rule Based Learning. In IOP Conference Series: Materials Science and Engineering (Vol. 288, No. 1, p. 012133). doi:<https://doi.org/10.1088/1757-899X/288/1/012133>

Mamudji, d. S., & Soekanto, S. (1986). Normative Legal Research, A Brief Overview, PT Rajawali, Jakarta, 1986, p. 14-15. 6

Powers, D. S. (1993). The Islamic inheritance system: a socio-historical approach. *Arab LQ*, 8, 13. doi:<https://doi.org/10.1163/157302593X00285>

Sudaryanto, A. (2010). Aspects of the Ontology of the Division of Inheritance in Islamic Law and Customary Law, Journal of the pulpit of law Vol 22 No 3.

Termorshizen, & Marjanne. (1999). Dutch Indonesian Law Dictionary, Djambatan, Jakarta 1999, p. 311.

Islamic Law Compilation, CV. Forward Mandar, Bandung, 2009, p. 62.

Utomo, A. C. New Media Strategy by Indonesian National Board for Disaster Management's Public Relation In Delivering Disaster Message As An Effort In Countering The Spread Of Hoax. *PROCEEDING BOOK VOL. 2*, 145.

**REVIEW
PROCESS I**



Setiyowati
<setiyowatie.untag@gmail.com>

[CIRR] Revisions Required R.1

Croatian International Relations Review

13 March 2022 pukul
02.27

<editor@cirrj.org>

Kepada: Setiyowati <setiyowatie.untag@gmail.com>

Dear Setiyowati:

We have reached a decision regarding your submission to Croatian International Relations Review, "Inheritance Dispute Resolution against Substitute Heirs: Analyzing Supreme Court's Decision Number 185 K/Ag/2009". With the online journal managementsystem that we are using, you will be able to track its progress through the editorial process by logging in to the journal web site:

Submission URL: <https://cirrj.org/menuscript/index.php/cirrj/authorDashboard/submission/970>

Username: setiyowatieuntag

Reviewers have reviewed and commented on your submitted manuscript. They advise the author(s) to revise the manuscript. Their comments are attached to the email and/or to the bottom of this letter. If not, for your convenience log onto your profile to view the reviewers' comments.

Please revise and re-upload the revised manuscript and supporting documents. The author has 14 days from now to revise the manuscript.

If you have any questions, please contact me.

Thank you for considering this journal as a venue for your work.

Best regards,

Croatian International Relations Review

[Croatian International Relations Review](#)

**RESUBMITTED REVISED
MANUSCRIPT I**



Setiyowati
<setiyowatie.untag@gmail.com>

[CIRR] Revised Version Acknowledgement

Croatian International Relations Review
<editor@cirrj.org>
Kepada: Setiyowati <setiyowatie.untag@gmail.com>

13 April 2022 pukul
14.09

Thank you for submitting the revision of manuscript, , "Inheritance Dispute Resolution against Substitute Heirs: Analyzing Supreme Court's Decision Number 185 K/Ag/2009". With the online journal management system that we are using, you will be able to track its progress through the editorial process by logging in to the journal web site:

Submission URL: <https://cirrj.org/manuscript/index.php/cirrj/authorDashboard/submission/970>

Username: setiyowatieuntag

If you have any questions, please contact me. Thank you for considering this journal as a venue for your work.

Thank you,

Best regards,

Croatian International Relations Review

[Croatian International Relations Review](#)

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

Setiyowati

Faculty of Law, Universitas 17 Agustus 1945, Semarang, Indonesia

Email: setiyowatie.untag@gmail.com

Abstract

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.

Keyword: Dispute Resolution, Inheritance, Substitute Heirs, Case No. 185/K/Ag/2009

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.

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). 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 study has considered both ways; litigation and non-litigation. Nonlitigation 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 inheritance 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 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/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 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; Surati 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.

References

Callahan, J. C. (1987). On harming the dead. *Ethics*, 97(2), 341-352. doi:<https://doi.org/10.1086/292842>

Cammack, M. E., & Feener, R. M. (2012). The Islamic legal system in Indonesia. *Pac. Rim L. & Pol'y J.*, 21, 13.

Furqan, A. A., & Haries, A. (2018). The Difference of a Child (Walad) Concept in Islamic Inheritance Law and its Implications on The Decisions of the Religious Courts in Indonesia. *Mazahib Jurnal Pemikiran Hukum*

Islam, 17(2), 119-146. doi:<https://doi.org/10.21093/mj.v17i2.1212>

Hadikusuma, B., & Hilaman. (2003). Indonesian Marriage Law, According to Customary Law and Religious Law, Bandung: 3(4). *Forward Mandar*.

doi:<https://doi.org/10.1080/07329113.2013.781447>

Holden, L., & Chaudhary, A. (2013). Daughters' inheritance, legal pluralism, and governance in Pakistan. *The Journal of Legal Pluralism and Unofficial Law*, 45(1), 104-123. doi:<https://doi.org/10.1146/annurev.so.17.080191.000411>

Jahar, A. S. (2019). Bureaucratizing Sharia in Modern Indonesia: The Case of Zakat, Waqf and Family Law. *Studia Islamika*, 26(2), 207-245. doi:<https://doi.org/10.15408/sdi.v26i2.7797>

Johnson, J. R. (1977). Inheritance Rights of Children in Virginia. *U. Rich. L. Rev.*, 12, 275.

Khosyi'Ah, S., Irfan, M., Maylawati, D. S., & Mukhlas, O. S. (2018). Analysis of Rules for Islamic Inheritance Law in Indonesia Using Hybrid Rule Based Learning. In IOP Conference Series: Materials Science and Engineering (Vol. 288, No. 1, p. 012133). doi:<https://doi.org/10.1088/1757-899X/288/1/012133>

Larasati, P., Darudin, M., & Dahwal, S. (2021). Dispute Resolution Of Inheritance Distribution For The Substitute Heir In Terms Of Islamic Law. *Bengkoelen Justice: Jurnal Ilmu Hukum*, 11(1), 97-109. doi:https://doi.org/10.33369/j_bengkoelenjust.v11i1.15794

Mamudji, d. S., & Soekanto, S. (1986). *Normative Legal Research, A Brief Overview*, PT Rajawali, Jakarta, 1986, p. 14-15. 6

Powers, D. S. (1993). The Islamic inheritance system: a socio-historical approach. *Arab LQ*, 8, 13. doi:<https://doi.org/10.1163/157302593X00285>

Scott, M. W. (2003). A Look at the Rights and Entitlements of Posthumously Conceived Children: No Surefire Way to Tame the Reproductive Wild West. *Emory LJ*, 52, 963.

Siregar, G. H. P., & Handoko, W. (2021). Jurisdiction Analysis of The Distribution of Integrity Children Out of Marriage as Substitute Heritages (Study of The Supreme Court Decision Number: 784 K/Pdt/2014). *Jurnal Independent*, 9(01), 25-34. doi:<https://doi.org/10.30736/ji.v9i01.136>

Sudaryanto, A. (2010). Aspects of the Ontology of the Division of Inheritance in Islamic Law and Customary Law, *Journal of the pulpit of law Vol 22 No 3*.

Termorshizen, & Marjanne. (1999). *Dutch Indonesian Law Dictionary*, Djambatan, Jakarta 1999, p. 311.

Tisnawati, N. E., & Purwaningsih, S. B. (2021). Legal Protection Against Substitute Heirs Based on Islamic Law. *Indonesian Journal of Islamic Studies*, 4, 10-21070. doi:<https://doi.org/10.21070/ijis.v4i0.1578>

Usman, & Rachmadi. (2009). *Islamic Inheritance Law in the Dimensions of Islamic Law Compilation, CV. Forward Mandar, Bandung, 2009, p. 62.*

Utama, T. S. J. (2021). Between adat law and living law: an illusion of customary law incorporation into Indonesia penal system. *The Journal of Legal Pluralism and Unofficial Law*, 53(2), 269-289. doi:<https://doi.org/10.1080/07329113.2021.1945222>

Utomo, A. C. *New Media Strategy by Indonesian National Board for Disaster Management's Public Relation In Delivering Disaster Message As An Effort In Countering The Spread Of Hoax. PROCEEDING BOOK VOL. 2, 145.*

Yuslem, N., Harahap, M. Y., & Suarni, S. (2021). Discourse of Substitute Heirs in The Indonesian Heritage Legal Practice (Comparative Perspective). *Justicia Islamica*, 18(2), 211-226.

REVIEW

PROCESS II



Setiyowati
<setiyowatie.untag@gmail.com>

[CIRR] Revisions Required R.2

Croatian International Relations Review

<editor@cirrj.org>

Kepada: Setiyowati <setiyowatie.untag@gmail.com>

25 Mei 2022 pukul
10.06

Dear Setiyowati:

We have reached a decision regarding your submission to Croatian International Relations Review, "Inheritance Dispute Resolution against Substitute Heirs: Analyzing Supreme Court's Decision Number 185 K/Ag/2009". With the online journal managementsystem that we are using, you will be able to track its progress through the editorial process by logging in to the journal web site:

Submission URL: <https://cirrj.org/menuscript/index.php/cirrj/authorDashboard/submission/970>

Username: setiyowatieuntag

Reviewers have reviewed and commented on your submitted manuscript. They advise the author(s) to revise the manuscript. Their comments are attached to the email and/or to the bottom of this letter. If not, for your convenience log onto your profile to view the reviewers' comments.

Please revise and re-upload the revised manuscript and supporting documents. The author has 14 days from now to revise the manuscript.

If you have any questions, please contact me.

Thank you for considering this journal as a venue for your work.

Best regards,

Croatian International Relations Review

[Croatian International Relations Review](#)

**RESUBMITTED REVISED
MANUSCRIPT II**



Setiyowati
<setiyowatie.untag@gmail.com>

[CIRR] Revised Version Acknowledgement

Croatian International Relations Review

<editor@cirrj.org>

Kepada: Setiyowati <setiyowatie.untag@gmail.com>

28 Mei 2022 pukul
16.18

Thank you for submitting the revision of manuscript, , "Inheritance Dispute Resolution against Substitute Heirs: Analyzing Supreme Court's Decision Number 185 K/Ag/2009". With the online journal management system that we are using, you will be able to track its progress through the editorial process by logging in to the journal web site:

Submission URL: <https://cirrj.org/manuscript/index.php/cirrj/authorDashboard/submission/970>

Username: setiyowatieuntag

If you have any questions, please contact me. Thank you for considering this journal as a venue for your work.

Thank you,

Best regards,

Croatian International Relations Review

[Croatian International Relations Review](#)

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

Setiyowati

Faculty of Law, Universitas 17 Agustus 1945, Semarang, Indonesia

Email: setiyowatie.untag@gmail.com

Abstract

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.

Keyword: Dispute Resolution, Inheritance, Substitute Heirs, Case No. 185/K/Ag/2009

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 **Relations Review** 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. Nonlitigation 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 inheritance 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.

References

- Callahan, J. C. (1987). On harming the dead. *Ethics*, 97(2), 341-352. doi:<https://doi.org/10.1086/292842>
- Cammack, M. E., & Feener, R. M. (2012). The Islamic legal system in Indonesia. *Pac. Rim L. & Pol'y J.*, 21, 13.
- Furqan, A. A., & Haries, A. (2018). The Difference of a Child (Walad) Concept in Islamic Inheritance Law and its Implications on The Decisions of the Religious Courts in Indonesia. *Mazahib Jurnal Pemikiran Hukum Islam*, 17(2), 119-146. doi:<https://doi.org/10.21093/mj.v17i2.1212>

Hadikusuma, B., & Hilaman. (2003). Indonesian Marriage Law, According to Customary Law and Religious Law, Bandung: 3(4). *Forward Mandar*.

Holden, K. C., & Smock, P. J. (1991). The economic costs of marital dissolution: Why do women bear a disproportionate cost? *Annual review of sociology*, 17(1), 51-78.

doi:<https://doi.org/10.1080/07329113.2013.781447>

Holden, L., & Chaudhary, A. (2013). Daughters' inheritance, legal pluralism, and governance in Pakistan. *The Journal of Legal Pluralism and Unofficial Law*, 45(1), 104-123. doi:<https://doi.org/10.1146/annurev.so.17.080191.000411>

Jahar, A. S. (2019). Bureaucratizing Sharia in Modern Indonesia: The Case of Zakat, Waqf and Family Law. *Studia Islamika*, 26(2), 207-245. doi:<https://doi.org/10.15408/sdi.v26i2.7797>

Johnson, J. R. (1977). Inheritance Rights of Children in Virginia. *U. Rich. L. Rev.*, 12, 275.

Khosyi'Ah, S., Irfan, M., Maylawati, D. S., & Mukhlas, O. S. (2018). Analysis of Rules for Islamic Inheritance Law in Indonesia Using Hybrid Rule Based Learning. In IOP Conference Series: Materials Science and Engineering (Vol. 288, No. 1, p. 012133). doi:<https://doi.org/10.1088/1757-899X/288/1/012133>

Larasati, P., Darudin, M., & Dahwal, S. (2021). Dispute Resolution Of Inheritance Distribution For The Substitute Heir In Terms Of Islamic Law. *Bengkoelen Justice: Jurnal Ilmu Hukum*, 11(1), 97-109. doi:https://doi.org/10.33369/j_bengkoelenjust.v11i1.15794

Lehmann, M. (2019). Who Owns Bitcoin: Private Law Facing the Blockchain. *Minn. JL Sci. & Tech.*, 21, 93. doi:<https://doi.org/10.2139/ssrn.3402678>

Mamudji, d. S., & Soekanto, S. (1986). Normative Legal Research, A Brief Overview, PT Rajawali, Jakarta, 1986, p. 14-15. 6

Peters, P. E. (2010). "Our daughters inherit our land, but our sons use their wives' fields": matrilineal-matrilocal land tenure and the New Land Policy in Malawi. *Journal of Eastern African Studies*, 4(1), 179-199. doi:<https://doi.org/10.1080/17531050903556717>

Powers, D. S. (1993). The Islamic inheritance system: a socio-historical approach. *Arab LQ*, 8, 13. doi:<https://doi.org/10.1163/157302593X00285>

Radford, M. F. (1999). Inheritance Rights of Women under Jewish and Islamic Law. *BC Int'l & Comp. L. Rev.*, 23, 135.

Scott, M. W. (2003). A Look at the Rights and Entitlements of Posthumously Conceived Children: No Surefire Way to Tame the Reproductive Wild West. *Emory LJ*, 52, 963.

Siregar, G. H. P., & Handoko, W. (2021). Jurisdiction Analysis of The Distribution of Integrity Children Out of Marriage as Substitute Heritages (Study of The Supreme Court Decision Number: 784 K/Pdt/2014). *Jurnal Independent*, 9(01), 25-34. doi:<https://doi.org/10.30736/ji.v9i01.136>

Sudaryanto, A. (2010). Aspects of the Ontology of the Division of Inheritance in Islamic Law and Customary Law, *Journal of the pulpit of law* Vol 22 No 3.

Termorshizen, & Marjanne. (1999). *Dutch Indonesian Law Dictionary*, Djambatan, Jakarta 1999, p. 311.

Tisnawati, N. E., & Purwaningsih, S. B. (2021). Legal Protection Against Substitute Heirs Based on Islamic Law. *Indonesian Journal of Islamic Studies*, 4,10-21070. doi:<https://doi.org/10.21070/ijis.v4i0.1578>

Usman, & Rachmadi. (2009). *Islamic Inheritance Law in the Dimensions of Islamic Law Compilation*, CV. Forward Mandar, Bandung, 2009, p. 62.

Utama, T. S. J. (2021). Between adat law and living law: an illusion of customary law incorporation into Indonesia penal system. *The Journal of Legal Pluralism and Unofficial Law*, 53(2), 269-289. doi:<https://doi.org/10.1080/07329113.2021.1945222>

Utomo, A. C. New Media Strategy by Indonesian National Board for Disaster Management's Public Relation In Delivering Disaster Message As An Effort In Countering The Spread Of Hoax. *PROCEEDING BOOK VOL. 2*, 145.

Yuslem, N., Harahap, M. Y., & Suarni, S. (2021). Discourse of Substitute Heirs in The Indonesian Heritage Legal Practice (Comparative Perspective). *Justicia Islamica*, 18(2), 211-226.

Zein, N. (2021). Substitute Inheritance in Indonesian Family Regulations. *An-Nahl Journal*, 8(2), 63-70. doi:<https://doi.org/10.54576/annahl.v8i2.30>

**ACCEPTANCE
PAPER**



Setiyowati
<setiyowatie.untag@gmail.com>

[CIRR] Decision - Accept Submission

Croatian International Relations Review

13 April 2022 pukul
02.58

<editor@cirrj.org>

Kepada: Setiyowati <setiyowatie.untag@gmail.com>

Dear Setiyowati:

We have reached a decision regarding your submission to Croatian International Relations Review, "Inheritance Dispute Resolution against Substitute Heirs: Analyzing Supreme Court's Decision Number 185 K/Ag/2009".

Our decision is to: Accept Submission

Submission URL:

<https://cirrj.org/menuscript/index.php/cirrj/authorDashboard/submission/970>

If you have any questions, please contact me. Thank you for considering this journal as a venue for your work.

Best regards,

Croatian International Relations Review

[Croatian International Relations Review](#)

FINAL PAPER

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

Setiyowati

Faculty of Law, Universitas 17 Agustus 1945, Semarang, Indonesia

Email: setiyowatie.untag@gmail.com

Abstract

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.

Keyword: Dispute Resolution, Inheritance, Substitute Heirs, Case No. 185/K/Ag/2009

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 **Relations Review** 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. Nonlitigation 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 inheritance 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 \pm 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 \pm 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 \pm 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.

References

Callahan, J. C. (1987). On harming the dead. *Ethics*, 97(2), 341-352.
doi:<https://doi.org/10.1086/292842>

Cammack, M. E., & Feener, R. M. (2012). The Islamic legal system in Indonesia. *Pac. Rim L. & Pol'y J.*, 21, 13.

Furqan, A. A., & Haries, A. (2018). The Difference of a Child (Walad) Concept in Islamic Inheritance Law and its Implications on The Decisions of the Religious Courts in Indonesia. *Mazahib Jurnal Pemikiran Hukum*

Islam, 17(2), 119-146. doi:<https://doi.org/10.21093/mj.v17i2.1212>

Hadikusuma, B., & Hilaman. (2003). Indonesian Marriage Law, According to Customary Law and Religious Law, Bandung: 3(4). *Forward Mandar*.

Holden, K. C., & Smock, P. J. (1991). The economic costs of marital dissolution: Why do women bear a disproportionate cost? *Annual review of sociology*, 17(1), 51-78.

doi:<https://doi.org/10.1080/07329113.2013.781447>

Holden, L., & Chaudhary, A. (2013). Daughters' inheritance, legal pluralism, and governance in Pakistan. *The Journal of Legal Pluralism and Unofficial Law*, 45(1), 104-123. doi:<https://doi.org/10.1146/annurev.so.17.080191.000411>

Jahar, A. S. (2019). Bureaucratizing Sharia in Modern Indonesia: The Case of Zakat, Waqf and Family Law. *Studia Islamika*, 26(2), 207-245. doi:<https://doi.org/10.15408/sdi.v26i2.7797>

Johnson, J. R. (1977). Inheritance Rights of Children in Virginia. *U. Rich. L. Rev.*, 12, 275.

Khosyi'Ah, S., Irfan, M., Maylawati, D. S., & Mukhlas, O. S. (2018). Analysis of Rules for Islamic Inheritance Law in Indonesia Using Hybrid Rule Based Learning. In IOP Conference Series: Materials Science and Engineering (Vol. 288, No. 1, p. 012133). doi:<https://doi.org/10.1088/1757-899X/288/1/012133>

Larasati, P., Darudin, M., & Dahwal, S. (2021). Dispute Resolution Of Inheritance Distribution For The Substitute Heir In Terms Of Islamic Law. *Bengkoelen Justice: Jurnal Ilmu Hukum*, 11(1), 97-109. doi:https://doi.org/10.33369/j_bengkoelenjust.v11i1.15794

Lehmann, M. (2019). Who Owns Bitcoin: Private Law Facing the Blockchain. *Minn. JL Sci. & Tech.*, 21, 93. doi:<https://doi.org/10.2139/ssrn.3402678>

Mamudji, d. S., & Soekanto, S. (1986). Normative Legal Research, A Brief Overview, PT Rajawali, Jakarta, 1986, p. 14-15. 6

Peters, P. E. (2010). "Our daughters inherit our land, but our sons use their wives' fields": matrilineal-matrilocal land tenure and the New Land Policy in Malawi. *Journal of Eastern African Studies*, 4(1), 179-199. doi:<https://doi.org/10.1080/17531050903556717>

Powers, D. S. (1993). The Islamic inheritance system: a socio-historical approach. *Arab LQ*, 8, 13. doi:<https://doi.org/10.1163/157302593X00285>

Radford, M. F. (1999). Inheritance Rights of Women under Jewish and Islamic Law. *BC Int'l & Comp. L. Rev.*, 23, 135.

Scott, M. W. (2003). A Look at the Rights and Entitlements of Posthumously Conceived Children: No Surefire Way to Tame the Reproductive Wild West. *Emory LJ*, 52, 963.

Siregar, G. H. P., & Handoko, W. (2021). Jurisdiction Analysis of The Distribution of Integrity Children Out of Marriage as Substitute Heritages (Study of The Supreme Court Decision Number: 784 K/Pdt/2014). *Jurnal Independent*, 9(01), 25-34. doi:<https://doi.org/10.30736/ji.v9i01.136>

Sudaryanto, A. (2010). Aspects of the Ontology of the Division of Inheritance in Islamic Law and Customary Law, *Journal of the pulpit of law* Vol 22 No 3.

Termorshizen, & Marjanne. (1999). *Dutch Indonesian Law Dictionary*, Djambatan, Jakarta 1999, p. 311.

Tisnawati, N. E., & Purwaningsih, S. B. (2021). Legal Protection Against Substitute Heirs Based on Islamic Law. *Indonesian Journal of Islamic Studies*, 4,10-21070. doi:<https://doi.org/10.21070/ijis.v4i0.1578>

Usman, & Rachmadi. (2009). *Islamic Inheritance Law in the Dimensions of Islamic Law Compilation*, CV. Forward Mandar, Bandung, 2009, p. 62.

Utama, T. S. J. (2021). Between adat law and living law: an illusion of customary law incorporation into Indonesia penal system. *The Journal of Legal Pluralism and Unofficial Law*, 53(2), 269-289. doi:<https://doi.org/10.1080/07329113.2021.1945222>

Utomo, A. C. New Media Strategy by Indonesian National Board for Disaster Management's Public Relation In Delivering Disaster Message As An Effort In Countering The Spread Of Hoax. *PROCEEDING BOOK VOL. 2*, 145.

Yuslem, N., Harahap, M. Y., & Suarni, S. (2021). Discourse of Substitute Heirs in The Indonesian Heritage Legal Practice (Comparative Perspective). *Justicia Islamica*, 18(2), 211-226.

Zein, N. (2021). Substitute Inheritance in Indonesian Family Regulations. *An-Nahl Journal*, 8(2), 63-70. doi:<https://doi.org/10.54576/annahl.v8i2.30>

**GALLEY
PROOF**



Setiyowati
<setiyowatie.untag@gmail.com>

[CIRR] Send to Production

Croatian International Relations Review 22 September 2022 pukul
<editor@cirrj.org> 01.49
Kepada: Setiyowati <setiyowatie.untag@gmail.com>

Dear Setiyowati,

Congratulations on the acceptance of your manuscript in Journal Name. Your manuscript is now being prepared for production.

Submission URL:

<https://cirrj.org/manuscript/index.php/cirrj/authorDashboard/submission/970>

In terms of supporting editorial quality and accelerating the peer review process, Journal Name's collaborates with Editing Asia for proofreading and copyediting. After they finish the work, you will get a copy of the proofreading and similarity index checking using Turnitin.

If you have any questions, please contact me. Thank you for considering this journal as a venue for your work.

Best regards,

Croatian International Relations Review

[Croatian International Relations Review](#)



Croatian
International
Relations
Review

—
CIRR

XXXX (xx) 20xx,
xxx-xxx

DOI 10.2478/
CIRR-20xx-xxxx

UDC xxx (x-x
EU:xx:xx)

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

Setiyowati

*Faculty of Law, Universitas 17 Agustus 1945,
Semarang, Indonesia*

Email: setiyowatie.untag@gmail.com

ORCID: <https://orcid.org/xxxxx-xxxxx-xxxxx-xxx>

Abstract

Key words:

Dispute
Resolution,
Inheritance,
Substitute Heirs,
Case No.
185/K/Ag/2009

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 be 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 inheritance 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/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.

References

- Callahan, J. C. (1987). On harming the dead. *Ethics*, 97(2), 341-352. doi:<https://doi.org/10.1086/292842>
- Cammack, M. E., & Feener, R. M. (2012). The Islamic legal system in Indonesia. *Pac. Rim L. & Pol'y J.*, 21, 13.
- Furqan, A. A., & Haries, A. (2018). The Difference of a Child (Walad) Concept in Islamic Inheritance Law and its Implications on The Decisions of the Religious Courts in Indonesia. *Mazahib Jurnal Pemikiran Hukum Islam*, 17(2), 119-146. doi:<https://doi.org/10.21093/mj.v17i2.1212>
- Hadikusuma, B., & Hilaman. (2003). Indonesian Marriage Law, According to Customary Law and Religious Law, Bandung: 3(4). *Forward Mandar*.
- Holden, K. C., & Smock, P. J. (1991). The economic costs of marital dissolution: Why do women bear a disproportionate cost? *Annual review of sociology*, 17(1), 51-78. doi:<https://doi.org/10.1080/07329113.2013.781447>
- Holden, L., & Chaudhary, A. (2013). Daughters' inheritance, legal pluralism, and governance in Pakistan. *The Journal of Legal Pluralism and Unofficial Law*, 45(1), 104-123. doi:<https://doi.org/10.1146/annurev.so.17.080191.000411>

- Jahar, A. S. (2019). Bureaucratizing Sharia in Modern Indonesia: The Case of Zakat, Waqf and Family Law. *Studia Islamika*, 26(2), 207-245. doi:<https://doi.org/10.15408/sdi.v26i2.7797>
- Johnson, J. R. (1977). Inheritance Rights of Children in Virginia. *U. Rich. L. Rev.*, 12, 275.
- Khosyi'Ah, S., Irfan, M., Maylawati, D. S., & Mukhlas, O. S. (2018). Analysis of Rules for Islamic Inheritance Law in Indonesia Using Hybrid Rule Based Learning. In IOP Conference Series: Materials Science and Engineering (Vol. 288, No. 1, p. 012133). . doi:<https://doi.org/10.1088/1757-899X/288/1/012133>
- Larasati, P., Darudin, M., & Dahwal, S. (2021). Dispute Resolution Of Inheritance Distribution For The Substitute Heir In Terms Of Islamic Law. *Bengkoelen Justice: Jurnal Ilmu Hukum*, 11(1), 97-109. doi:https://doi.org/10.33369/j_bengkoelenjust.v11i1.15794
- Lehmann, M. (2019). Who Owns Bitcoin: Private Law Facing the Blockchain. *Minn. JL Sci. & Tech.*, 21, 93. doi:<https://doi.org/10.2139/ssrn.3402678>
- Mamudji, d. S., & Soekanto, S. (1986). Normative Legal Research, A Brief Overview, PT Rajawali, Jakarta, 1986, p. 14-15. 6
- Peters, P. E. (2010). "Our daughters inherit our land, but our sons use their wives' fields": matrilineal-matrilocal land tenure and the New Land Policy in Malawi. *Journal of Eastern African Studies*, 4(1), 179-199. doi:<https://doi.org/10.1080/17531050903556717>
- Powers, D. S. (1993). The Islamic inheritance system: a socio-historical approach. *Arab LQ*, 8, 13. doi:<https://doi.org/10.1163/157302593X00285>
- Radford, M. F. (1999). Inheritance Rights of Women under Jewish and Islamic Law. *BC Int'l & Comp. L. Rev.*, 23, 135.
- Scott, M. W. (2003). A Look at the Rights and Entitlements of Posthumously Conceived Children: No Surefire Way to Tame the Reproductive Wild West. *Emory LJ*, 52, 963.
- Siregar, G. H. P., & Handoko, W. (2021). Jurisdiction Analysis of The Distribution of Integrity Children Out of Marriage as Substitute Heritages (Study of The Supreme Court Decision Number: 784 K/Pdt/2014). *Jurnal Independent*, 9(01), 25-34. doi:<https://doi.org/10.30736/ji.v9i01.136>
- Sudaryanto, A. (2010). Aspects of the Ontology of the Division of Inheritance in Islamic Law and Customary Law, *Journal of the pulpit of law* Vol 22 No 3.
- Termorshizen, & Marjanne. (1999). Dutch Indonesian Law Dictionary, Djambatan, Jakarta 1999, p. 311.
- Tisnawati, N. E., & Purwaningsih, S. B. (2021). Legal Protection Against Substitute Heirs Based on Islamic Law. *Indonesian Journal of Islamic Studies*, 4, 10-21070. doi:<https://doi.org/10.21070/ijis.v4i0.1578>
- Usman, & Rachmadi. (2009). Islamic Inheritance Law in the Dimensions of Islamic Law Compilation, CV. Forward Mandar, Bandung, 2009, p. 62.

- Utama, T. S. J. (2021). Between adat law and living law: an illusion of customary law incorporation into Indonesia penal system. *The Journal of Legal Pluralism and Unofficial Law*, 53(2), 269-289. doi:<https://doi.org/10.1080/07329113.2021.1945222>
- Utomo, A. C. New Media Strategy by Indonesian National Board for Disaster Management's Public Relation In Delivering Disaster Message As An Effort In Countering The Spread Of Hoax. *PROCEEDING BOOK VOL. 2*, 145.
- Yuslem, N., Harahap, M. Y., & Suarni, S. (2021). Discourse of Substitute Heirs in The Indonesian Heritage Legal Practice (Comparative Perspective). *Justicia Islamica*, 18(2), 211-226.
- Zein, N. (2021). Substitute Inheritance in Indonesian Family Regulations. *An-Nahl Journal*, 8(2), 63-70. doi:<https://doi.org/10.54576/annah.v8i2.30>

**PUBLISH
PAPER**



Setiyowati
<setiyowatie.untag@gmail.com>

[CIRR] Issue Now Open Access

Croatian International Relations Review

26 October 2022 pukul

<editor@cirrj.org>

23.54

Kepada: Setiyowati <setiyowatie.untag@gmail.com>

Dear Setiyowati:

Croatian International Relations Review has just published its latest issue at <https://cirrj.org/article-detail/?id=502> . We invite you to review the Table of Contents here and then visit our web site to review articles and items of interest.

Thanks for the continuing interest in our work.

Best regards

Croatian International Relations Review

[Croatian International Relations Review](https://cirrj.org)



Croatian
International
Relations
Review

—
CIRR

—
XXVIII (89) 2022,
136-149

—
DOI 10.2478/
CIRR-2022-0008

—
UDC 327 (4-6
EU:73:55)

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

Setiyowati

*Faculty of Law, Universitas 17 Agustus 1945,
Semarang, Indonesia*

Email: setiyowatie.untag@gmail.com

ORCID: <https://orcid.org/0000-0001-9690-4992>

Abstract

Key words:

Dispute
Resolution,
Inheritance,
Substitute Heirs,
Case No.
185/K/Ag/2009

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/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.

References

- Callahan, J. C. (1987). On harming the dead. *Ethics*, 97(2), 341-352. doi:<https://doi.org/10.1086/292842>
- Cammack, M. E., & Feener, R. M. (2012). The Islamic legal system in Indonesia. *Pac. Rim L. & Pol'y J.*, 21, 13.
- Furqan, A. A., & Haries, A. (2018). The Difference of a Child (Walad) Concept in Islamic Inheritance Law and its Implications on The Decisions of the Religious Courts in Indonesia. *Mazahib Jurnal Pemikiran Hukum Islam*, 17(2), 119-146. doi:<https://doi.org/10.21093/mj.v17i2.1212>
- Hadikusuma, B., & Hilaman. (2003). Indonesian Marriage Law, According to Customary Law and Religious Law, Bandung: 3(4). *Forward Mandar*.
- Holden, K. C., & Smock, P. J. (1991). The economic costs of marital dissolution: Why do women bear a disproportionate cost? *Annual review of sociology*, 17(1), 51-78. doi:<https://doi.org/10.1080/07329113.2013.781447>
- Holden, L., & Chaudhary, A. (2013). Daughters' inheritance, legal pluralism, and governance in Pakistan. *The Journal of Legal Pluralism and Unofficial Law*, 45(1), 104-123. doi:<https://doi.org/10.1146/annurev.so.17.080191.000411>

- Jahar, A. S. (2019). Bureaucratizing Sharia in Modern Indonesia: The Case of Zakat, Waqf and Family Law. *Studia Islamika*, 26(2), 207-245. doi:<https://doi.org/10.15408/sdi.v26i2.7797>
- Johnson, J. R. (1977). Inheritance Rights of Children in Virginia. *U. Rich. L. Rev.*, 12, 275.
- Khosyi'Ah, S., Irfan, M., Maylawati, D. S., & Mukhlas, O. S. (2018). Analysis of Rules for Islamic Inheritance Law in Indonesia Using Hybrid Rule Based Learning. In IOP Conference Series: Materials Science and Engineering (Vol. 288, No. 1, p. 012133). . doi:<https://doi.org/10.1088/1757-899X/288/1/012133>
- Larasati, P., Darudin, M., & Dahwal, S. (2021). Dispute Resolution Of Inheritance Distribution For The Substitute Heir In Terms Of Islamic Law. *Bengkoelen Justice: Jurnal Ilmu Hukum*, 11(1), 97-109. doi:https://doi.org/10.33369/j_bengkoelenjust.v11i1.15794
- Lehmann, M. (2019). Who Owns Bitcoin: Private Law Facing the Blockchain. *Minn. JL Sci. & Tech.*, 21, 93. doi:<https://doi.org/10.2139/ssrn.3402678>
- Mamudji, d. S., & Soekanto, S. (1986). Normative Legal Research, A Brief Overview, PT Rajawali, Jakarta, 1986, p. 14-15. 6
- Peters, P. E. (2010). "Our daughters inherit our land, but our sons use their wives' fields": matrilineal-matrilocal land tenure and the New Land Policy in Malawi. *Journal of Eastern African Studies*, 4(1), 179-199. doi:<https://doi.org/10.1080/17531050903556717>
- Powers, D. S. (1993). The Islamic inheritance system: a socio-historical approach. *Arab LQ*, 8, 13. doi:<https://doi.org/10.1163/157302593X00285>
- Radford, M. F. (1999). Inheritance Rights of Women under Jewish and Islamic Law. *BC Int'l & Comp. L. Rev.*, 23, 135.
- Scott, M. W. (2003). A Look at the Rights and Entitlements of Posthumously Conceived Children: No Surefire Way to Tame the Reproductive Wild West. *Emory LJ*, 52, 963.
- Siregar, G. H. P., & Handoko, W. (2021). Jurisdiction Analysis of The Distribution of Integrity Children Out of Marriage as Substitute Heritages (Study of The Supreme Court Decision Number: 784 K/Pdt/2014). *Jurnal Independent*, 9(01), 25-34. doi:<https://doi.org/10.30736/ji.v9i01.136>
- Sudaryanto, A. (2010). Aspects of the Ontology of the Division of Inheritance in Islamic Law and Customary Law, *Journal of the pulpit of law* Vol 22 No 3.
- Termorshizen, & Marjanne. (1999). Dutch Indonesian Law Dictionary, Djambatan, Jakarta 1999, p. 311.
- Tisnawati, N. E., & Purwaningsih, S. B. (2021). Legal Protection Against Substitute Heirs Based on Islamic Law. *Indonesian Journal of Islamic Studies*, 4, 10-21070. doi:<https://doi.org/10.21070/ijis.v4i0.1578>
- Usman, & Rachmadi. (2009). Islamic Inheritance Law in the Dimensions of Islamic Law Compilation, CV. Forward Mandar, Bandung, 2009, p. 62.

- Utama, T. S. J. (2021). Between adat law and living law: an illusion of customary law incorporation into Indonesia penal system. *The Journal of Legal Pluralism and Unofficial Law*, 53(2), 269-289. doi:<https://doi.org/10.1080/07329113.2021.1945222>
- Utomo, A. C. New Media Strategy by Indonesian National Board for Disaster Management's Public Relation In Delivering Disaster Message As An Effort In Countering The Spread Of Hoax. *PROCEEDING BOOK VOL. 2*, 145.
- Yuslem, N., Harahap, M. Y., & Suarni, S. (2021). Discourse of Substitute Heirs in The Indonesian Heritage Legal Practice (Comparative Perspective). *Justicia Islamica*, 18(2), 211-226.
- Zein, N. (2021). Substitute Inheritance in Indonesian Family Regulations. *An-Nahl Journal*, 8(2), 63-70. doi:<https://doi.org/10.54576/annah.v8i2.30>

**DISPLAY
ON WEBSITE**

CIRRJ

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

Setiyowati

Faculty of Law, Universitas 17 Agustus 1945, Semarang, Indonesia

Abstract

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.

Keywords:

[Download PDF](#)

CIRRJ

The journal is supported by the Ministry of Science and Education of the Republic of Croatia and is published in collaboration with De Gruyter Open, the world's second largest publisher of Open Access academic content.

Quick Links

- ✓ [Submission](#)
- ✓ [Privacy Statement](#)
- ✓ [Contact](#)

✉ **Support Contact**
editor@cirrj.org



1 of 1

Download Print Save to PDF Save to list Create bibliography

Croatian International Relations Review • Volume 28, Issue 89, Pages 136 - 149 • 29 March 2022

Document type

Article

Source type

Journal

ISSN

18485782

DOI

10.2478/CIRR-2022-0008

View more

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

Setiyowati

Save all to author list

^a Faculty of Law, Universitas 17 Agustus 1945, Semarang, Indonesia

165th percentile Citation in Scopus	0.76 FWCI	26 Views count	View all metrics >
----------------------------------------	--------------	-------------------	---------------------------------------

Full text options Export

Abstract

Author keywords

SciVal Topics

Metrics

Abstract

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 religious 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

Cited by 1 document

Comparing KHI and KHES in Marital Property Grant Disputes: An Analysis of Judges' Views

Apriantoro, M.S. , Ibnu Alis, M.N. , Septianozakia, S. (2023) *Al-Istinbath: Jurnal Hukum Islam*

View details of this citation

Inform me when this document is cited in Scopus:

[Set citation alert >](#)

Related documents

Substitute Heirs in the Compilation of Islamic Law: An Overview from Gender Equality Perspective Case Study of the Religious Courts in Banjarmasin

Ideham, W. (2022) *Samarah*

Criticizing the Verdict of 18/JN/2016/MS.MBO of Mahkamah Syar'iyah Meulaboh Aceh on Sexual Abuse against Children from the Perspective of Restorative Justice

Armia, M.S. , Karim, Z.P. , Sarong, A.H. (2022) *Al-Ihkam: Jurnal Hukum dan Pranata Sosial*

Religious pluralism, personal laws and gender equality in Asia: Their history of conflict and the prospects for accommodation

Duara, J.G. (2012) *Asian Journal of Comparative Law*

View all related documents based on references

Find more related documents in Scopus based on:

Author > Keywords >

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. © 2022, Institute for Development and International Relations. All rights reserved.

Author keywords

Case No. 185/K/Ag/2009; Dispute Resolution; Inheritance; Substitute Heirs


SciVal Topics 

Metrics

References (25)

[View in search results format >](#)

All

[RefWorks export](#)  [Print](#) [E-mail](#) [Save to PDF](#)

[Create bibliography](#)

-
- 1 Callahan, J. C.
On harming the dead
(1987) *Ethics*, 97 (2), pp. 341-352. Cited 106 times.
<https://doi.org/10.1086/292842>
-
- 2 Cammack, M. E., Feener, R. M.
The Islamic legal system in Indonesia
(2012) *Pac. Rim L. & Pol'y J*, 21, p. 13. Cited 28 times.
-
- 3 Furqan, A. A., Haries, A.
The Difference of a Child (Walad) Concept in Islamic Inheritance Law and its Implications on The Decisions of the Religious Courts in Indonesia
(2018) *Mazahib Jurnal Pemikiran Hukum Islam*, 17 (2), pp. 119-146.
<https://doi.org/10.21093/mj.v17i2.1212>
-
- 4 Hadikusuma, B., Hilaman
(2003) *Indonesian Marriage Law, According to Customary Law and Religious Law*, 3 (4).
Bandung: Forward Mandar
-
- 5 Holden, K.C., Smock, P.J.
The economic costs of marital dissolution: why do women bear a disproportionate cost?

(1991) *Annual review of sociology*, 17, pp. 51-78. Cited 288 times.
doi: 10.1146/annurev.so.17.080191.000411

[View at Publisher](#)

- 6 Holden, L., Chaudhary, A.
Daughters' inheritance, legal pluralism, and governance in Pakistan
(2013) *Journal of Legal Pluralism and Unofficial Law*, 45 (1), pp. 104-123. Cited 15 times.
doi: 10.1080/07329113.2013.781447
View at Publisher
-
- 7 Jahar, A.S.
Bureaucratizing sharia in modern Indonesia: The case of zakat, waqf and family law
(2019) *Studia Islamika*, 26 (2), pp. 207-245. Cited 12 times.
<http://journal.uinjkt.ac.id/index.php/studia-islamika/article/view/7797/6160>
doi: 10.15408/sdi.v26i2.7797
View at Publisher
-
- 8 Johnson, J. R.
Inheritance Rights of Children in Virginia
(1977) *U. Rich. L. Rev.*, 12, p. 275.
-
- 9 Khosyi'Ah, S., Irfan, M., Maylawati, D.S., Mukhlas, O.S.
Analysis of Rules for Islamic Inheritance Law in Indonesia Using Hybrid Rule Based Learning
(2018) *IOP Conference Series: Materials Science and Engineering*, 288 (1), art. no. 012133. Cited 7 times.
<http://www.iop.org/EJ/journal/mse>
doi: 10.1088/1757-899X/288/1/012133
View at Publisher
-
- 10 Larasati, P., Darudin, M., Dahwal, S.
Dispute Resolution Of Inheritance Distribution For The Substitute Heir In Terms Of Islamic Law
(2021) *Bengkoelen Justice: Jurnal Ilmu Hukum*, 11 (1), pp. 97-109.
https://doi.org/10.33369/j_bengkoelenjust.v11i1.15794
-
- 11 Lehmann, M.
Who Owns Bitcoin: Private Law Facing the Blockchain
(2019) *Minn. J.L. Sci. & Tech.*, 21, p. 93. Cited 10 times.
<https://doi.org/10.2139/ssrn.3402678>
-
- 12 Mamudji, d. S., Soekanto, S.
(1986) *Normative Legal Research, A Brief Overview*, pp. 14-15.
PT Rajawali, Jakarta, 1986, 6
-
- 13 Peters, P.E.
"Our daughters inherit our land, but our sons use their wives' fields": Matrilineal-matrilocal land tenure and the New Land Policy in Malawi
(2010) *Journal of Eastern African Studies*, 4 (1), pp. 179-199. Cited 90 times.
doi: 10.1080/17531050903556717
View at Publisher

- 14 Powers, D.S.
The Islamic Inheritance System: A Socio-Historical Approach
(1993) *Arab Law Quarterly*, 8 (1), pp. 13-29. Cited 17 times.
doi: 10.1163/157302593X00285
View at Publisher
-
- 15 Radford, M. F.
Inheritance Rights of Women under Jewish and Islamic Law
(1999) *BC Int'l & Comp. L. Rev*, 23, p. 135. Cited 16 times.
-
- 16 Scott, M.W.
A look at the rights and entitlements of posthumously conceived children: no surefire way to tame the reproductive Wild West.
(2003) *Emory law journal*, 52 (2), pp. 963-996. Cited 2 times.
-
- 17 Siregar, G. H. P., Handoko, W.
Jurisdiction Analysis of The Distribution of Integrity Children Out of Marriage as Substitute Heritages (Study of The Supreme Court Decision Number: 784 K/Pdt/2014)
(2021) *Jurnal Independent*, 9, pp. 25-34.
(01)
<https://doi.org/10.30736/ji.v9i01.136>
-
- 18 Sudaryanto, A.
Aspects of the Ontology of the Division of Inheritance in Islamic Law and Customary Law
(2010) *Journal of the pulpit of law*, 22 (3).
-
- 19 Termorshizen, Marjanne
(1999) *Dutch Indonesian Law Dictionary*, p. 311.
Djambatan, Jakarta 1999
-
- 20 Tisnawati, N. E., Purwaningsih, S. B.
Legal Protection Against Substitute Heirs Based on Islamic Law
(2021) *Indonesian Journal of Islamic Studies*, 4, pp. 10-21070.
<https://doi.org/10.21070/ijis.v4i0.1578>
-
- 21 Usman, Rachmadi
(2009) *Islamic Inheritance Law in the Dimensions of Islamic Law Compilation*, p. 62.
CV. Forward Mandar, Bandung, 2009
-

- 22 Utama, T.S.J.
Between adat law and living law: an illusion of customary law incorporation into Indonesia penal system ([Open Access](#))

(2021) *Journal of Legal Pluralism and Unofficial Law*, 53 (2), pp. 269-289. Cited 4 times.
<http://www.tandfonline.com/action/journalInformation?show=aimsScope&journalCode=rjlp20#.VyoSmlSyNBc>
doi: 10.1080/07329113.2021.1945222

View at Publisher
-

- 23 Utomo, A. C.
New Media Strategy by Indonesian National Board for Disaster Management's Public Relation In Delivering Disaster Message As An Effort In Countering The Spread Of Hoax
PROCEEDING BOOK, 2, p. 145.
-

- 24 Yuslem, N., Harahap, M. Y., Suarni, S.
Discourse of Substitute Heirs in The Indonesian Heritage Legal Practice (Comparative Perspective)
(2021) *Justicia Islamica*, 18 (2), pp. 211-226.
-

- 25 Zein, N.
Substitute Inheritance in Indonesian Family Regulations
(2021) *An-Nahl Journal*, 8 (2), pp. 63-70.
<https://doi.org/10.54576/annah.v8i2.30>
-

🔗 Setiyowati, ; Faculty of Law, Universitas 17 Agustus 1945, Semarang, Indonesia;
email:setiyowatie.untag@gmail.com

© Copyright 2022 Elsevier B.V., All rights reserved.

About Scopus

[What is Scopus](#)

[Content coverage](#)

[Scopus blog](#)

[Scopus API](#)

[Privacy matters](#)

Language

[日本語版を表示する](#)

[查看简体中文版本](#)

[查看繁體中文版本](#)

[Просмотр версии на русском языке](#)

Customer Service

[Help](#)

[Tutorials](#)

[Contact us](#)

ELSEVIER

[Terms and conditions ↗](#) [Privacy policy ↗](#)

Copyright © Elsevier B.V. ↗. All rights reserved. Scopus® is a registered trademark of Elsevier B.V.

We use cookies to help provide and enhance our service and tailor content. By continuing, you agree to the use of cookies ↗.



SIMILARITY CHECK

cirr-vol-28-setiyowati-final-to- print-136-149

by Setiyowati Cirr

Submission date: 13-Sep-2023 08:20PM (UTC-0700)

Submission ID: 2165624951

File name: cirr-vol-28-setiyowati-final-to-print-136-149_1.pdf (261.15K)

Word count: 6455

Character count: 32826



19
Croatian
International
Relations
Review

CIRR

—
XXVIII (89) 2022,
136-149

—
DOI 10.2478/
CIRR-2022-0008

—
UDC 327 (4-6
EU:73:55]

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

5
Setiyowati

*Faculty of Law, Universitas 17 Agustus 1945,
Semarang, Indonesia*

Email: setiyowatie.untag@gmail.com

ORCID: <https://orcid.org/0000-0001-9690-4992>

Key words:

Dispute
Resolution,
Inheritance,
Substitute Heirs,
Case No.
185/K/Ag/2009

Abstract

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.

¹ 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? ¹⁸
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 inheritance 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).

9
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 backhouse) 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).

¹¹ 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.

¹⁵ 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; Surati 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.

³ 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.

References

- Callahan, J. C. (1987). On harming the dead. *Ethics*, 97(2), 341-352. doi:<https://doi.org/10.1086/292842>
- Cammack, M. E., & Feener, R. M. (2012). The Islamic legal system in Indonesia. *Pac. Rim L. & Pol'y J.*, 21, 13.
- Furqan, A. A., & Haries, A. (2018). The Difference of a Child [Walad] Concept in Islamic Inheritance Law and its Implications on The Decisions of the Religious Courts in Indonesia. *Mazahib Jurnal Pemikiran Hukum Islam*, 17(2), 119-146. doi:<https://doi.org/10.21093/mj.v17i2.1212>
- Hadikusuma, B., & Hilaman. (2003). Indonesian Marriage Law, According to Customary Law and Religious Law, Bandung: 3(4). *Forward Mandar*.
- Holden, K. C., & Smock, P. J. (1991). The economic costs of marital dissolution: Why do women bear a disproportionate cost? *Annual review of sociology*, 17(1), 51-78. doi:<https://doi.org/10.1080/07329113.2013.781447>
- Holden, L., & Chaudhary, A. (2013). Daughters' inheritance, legal pluralism, and governance in Pakistan. *The Journal of Legal Pluralism and Unofficial Law*, 45(1), 104-123. doi:<https://doi.org/10.1146/annurev.so.17.080191.000411>

- Jahar, A. S. (2019). Bureaucratizing Sharia in Modern Indonesia: The Case of Zakat, Waqf and Family Law. *Studia Islamika*, 26(2), 207-245. doi:<https://doi.org/10.15408/sdi.v26i2.7797>
- Johnson, J. R. (1977). Inheritance Rights of Children in Virginia. *U. Rich. L. Rev.*, 12, 275.
- Khosyi'Ah, S., Irfan, M., Maylawati, D. S., & Mukhlas, O. S. (2018). Analysis of Rules for Islamic Inheritance Law in Indonesia Using Hybrid Rule Based Learning. In IOP Conference Series: Materials Science and Engineering (Vol. 288, No. 1, p. 012133). . doi:<https://doi.org/10.1088/1757-899X/288/1/012133>
- Larasati, P., Darudin, M., & Dahwal, S. (2021). Dispute Resolution Of Inheritance Distribution For The Substitute Heir In Terms Of Islamic Law. *Bengkoelen Justice: Jurnal Ilmu Hukum*, 11(1), 97-109. doi:https://doi.org/10.33369/j_bengkoelenjust.v11i1.15794
- Lehmann, M. (2019). Who Owns Bitcoin: Private Law Facing the Blockchain. *Minn. J. L. Sci. & Tech.*, 21, 93. doi:<https://doi.org/10.2139/ssrn.3402678>
- Mamudji, d. S., & Soekanto, S. (1986). Normative Legal Research, A Brief Overview, PT Rajawali, Jakarta, 1986, p. 14-15. 6
- Peters, P. E. (2010). "Our daughters inherit our land, but our sons use their wives' fields": matrilineal-matrilocal land tenure and the New Land Policy in Malawi. *Journal of Eastern African Studies*, 4(1), 179-199. doi:<https://doi.org/10.1080/17531050903556717>
- Powers, D. S. (1993). The Islamic inheritance system: a socio-historical approach. *Arab LQ*, 8, 13. doi:<https://doi.org/10.1163/157302593X00285>
- Radford, M. F. (1999). Inheritance Rights of Women under Jewish and Islamic Law. *BC Int'l & Comp. L. Rev.*, 23, 135.
- Scott, M. W. (2003). A Look at the Rights and Entitlements of Posthumously Conceived Children: No Surefire Way to Tame the Reproductive Wild West. *Emory Lj*, 52, 963.
- Siregar, G. H. P., & Handoko, W. (2021). Jurisdiction Analysis of The Distribution of Integrity Children Out of Marriage as Substitute Heritages (Study of The Supreme Court Decision Number: 784 K/Pdt/2014). *Jurnal Independent*, 9(01), 25-34. doi:<https://doi.org/10.30736/ji.v9i01.136>
- Sudaryanto, A. (2010). Aspects of the Ontology of the Division of Inheritance in Islamic Law and Customary Law, *Journal of the pulpit of law* Vol 22 No 3.
- Termorshizen, & Marjanne. (1999). Dutch Indonesian Law Dictionary, Djambatan, Jakarta 1999, p. 311.
- Tisnawati, N. E., & Purwaningsih, S. B. (2021). Legal Protection Against Substitute Heirs Based on Islamic Law. *Indonesian Journal of Islamic Studies*, 4, 10-21070. doi:<https://doi.org/10.21070/ijis.v4i0.1578>
- Usman, & Rachmadi. (2009). Islamic Inheritance Law in the Dimensions of Islamic Law Compilation, CV. Forward Mandar, Bandung, 2009, p. 62.

- Utama, T. S. J. (2021). Between adat law and living law: an illusion of customary law incorporation into Indonesia penal system. *The Journal of Legal Pluralism and Unofficial Law*, 53(2), 269-289. doi:<https://doi.org/10.1080/07329113.2021.1945222>
- Utomo, A. C. New Media Strategy by Indonesian National Board for Disaster Management's Public Relation In Delivering Disaster Message As An Effort In Countering The Spread Of Hoax. *PROCEEDING BOOK VOL. 2*, 145.
- Yuslem, N., Harahap, M. Y., & Suarni, S. (2021). Discourse of Substitute Heirs in The Indonesian Heritage Legal Practice (Comparative Perspective). *Justicia Islamica*, 18(2), 211-226.
- Zein, N. (2021). Substitute Inheritance in Indonesian Family Regulations. *An-Nahl Journal*, 8(2), 63-70. doi:<https://doi.org/10.54576/annahl.v8i2.30>

ORIGINALITY REPORT

10%

SIMILARITY INDEX

7%

INTERNET SOURCES

5%

PUBLICATIONS

2%

STUDENT PAPERS

PRIMARY SOURCES

1 ijssers.org Internet Source 1%

2 scholar.unand.ac.id Internet Source 1%

3 ojs.serambimekkah.ac.id Internet Source 1%

4 sinta.ildikti6.id Internet Source 1%

5 e-jurnal.pnl.ac.id Internet Source 1%

6 www.eajournals.org Internet Source 1%

7 ejournal.unib.ac.id Internet Source <1%

8 Nuriyanti Santili. "Empire Juridic Analysis in Coconut Plantation Land Dispute Case", Estudiante Law Journal, 2022
Publication <1%

9

Submitted to UniSadhuGuna International
College

Student Paper

<1 %

10

bircu-journal.com

Internet Source

<1 %

11

journal.universitaspahlawan.ac.id

Internet Source

<1 %

12

M. Bahtiar Tahir, Sahabuddin Sahabuddin,
Marzuki Marzuki. "Juridical Review on
Confirmation of Unregistered Marriage (A
Case Study of Palu Religious Court)",
INTERNATIONAL JOURNAL OF
CONTEMPORARY ISLAMIC LAW AND
SOCIETY, 2019

Publication

<1 %

13

Afrilinda Afrilinda, Edra Satmaidi, Iskandar
Iskandar. "The Implementation Of
Administrative Bureaucracy Reform At
Bengkulu Regional Office Of The Ministry Of
Law And Human Rights Based On Presidential
Regulation Number 81 Of 2010 Concerning
The Grand Design Of Bureaucracy Reform Of
2010-2025", Bengkoelen Justice : Jurnal Ilmu
Hukum, 2022

Publication

<1 %

14

Iqbal Alan Abdullah. "The Comparative of
Arbitration Performance and Public Court on

<1 %

Settlement of Civil Disputes in Indonesia", Academic Journal of Interdisciplinary Studies, 2023

Publication

15

lib.ui.ac.id

Internet Source

<1 %

16

Latifatul Fajriyyah, Alfitri Alfitri. "Hearsay Evidence Admissibility: Due Process and Evidentiary Rules in Muslim Marriage Legalization (Isbat Nikah)", *Fiat Justisia: Jurnal Ilmu Hukum*, 2022

Publication

<1 %

17

Submitted to Leiden University

Student Paper

<1 %

18

Jelinda Dwi Oktaviani, M. Darudin, Akhmad Muslih. "Judge's Considerations In Imposing A Decision On Divorce Lawsuit On Early Marriage Cases In Bengkulu", *Bengkoelen Justice : Jurnal Ilmu Hukum*, 2022

Publication

<1 %

19

cirr.irmo.hr

Internet Source

<1 %

20

garuda.kemdikbud.go.id

Internet Source

<1 %

21

. Ridwan. "Resolution of Disputes Regarding Unlawful Acts by the Government in the Administrative Justice System in Indonesia",

<1 %

Academic Journal of Interdisciplinary Studies,
2021

Publication

22

Andre Birawa, Liliana Tedjosaputro.
"CRIMINAL LAW ENFORCEMENT POLICY ON
MINERAL AND COAL MINING BUSINESSES",
MAGISTRA Law Review, 2020

Publication

<1 %

23

cybercrimejournal.com

Internet Source

<1 %

24

etheses.dur.ac.uk

Internet Source

<1 %

25

jurnalius.ac.id

Internet Source

<1 %

26

worldwidescience.org

Internet Source

<1 %

27

La Ode Husen, Salle Salle, Arri Abdi Syalman,
Abd. Kahar Muzakkir. "Safeguard of the Police
Intelligence Against Court Decisions
Regarding the Object of the Dispute",
Sovereign: International Journal of Law, 2020

Publication

<1 %

28

Moh. Thariq Godal, Syarif Hasyim,
Musyahidah Musyahidah. "Method of Sharing
Marriage Properties in the Religious Court,
Palu", INTERNATIONAL JOURNAL OF

<1 %

CONTEMPORARY ISLAMIC LAW AND SOCIETY, 2020

Publication

29

Siah Khosyiah, Ayi Yunus Rusyana.
"Inheritance settlement of descendants of children and siblings in Islamic law with local wisdom in Indonesia", Cogent Social Sciences, 2022

Publication

<1 %

30

ejournal.uinib.ac.id

Internet Source

<1 %

31

O T Kurahman, Y A Gerhana, F A Perdana, U Syarifuddin, S Khosyiah, N Lukman, I Taufik.
"The Implementation of Breadth First Search in Determining of Waris", IOP Conference Series: Materials Science and Engineering, 2018

Publication

<1 %

32

eprints.umm.ac.id

Internet Source

<1 %

Exclude quotes On

Exclude matches Off

Exclude bibliography On

JOURNAL PROFILE

ISSN: 13311182

(CIRR)
**CROATIAN INTERNATIONAL
RELATIONS REVIEW**

An interdisciplinary academic journal published in English since 1995 and focuses on political science, sociology, law and economics. Each issue includes scholarly, double-blind peer reviewed articles, and book reviews.

Make Submission



Vol. 29 No. 92 (2023)

The Development of US-Russian Relations Since 2001-2016

Ahmed Jasim Saber ,Abbas Sadoon Refat

View More

Assessment of Association between the Indian Epic "Ramayana" and International Relations

Le Thi Bich Thuy

View More

The Political and Strategic Predictions of the Battle of Ain Jalut

Fatima Salim Al Tarawneh

View More

Penitentiary Legal Management: Perceptions of Criminal Law

Andi Kurniawan

View More

Comparison of Political Systems between Chinese Mainland and Hong Kong

DengChangbo ,Muhammad Ali Ridha Norman ,Che Mohd Aziz Yaacob

View More

The Practice and Exploration of Democratic Management in China: Opportunities and Challenges

Chen Zhaoyi

SCIENTIFIC AREAS

- Political Science
- Sociology
- Law
- Economics

FREQUENCY

- Biannually
- Summer
- Fall and Winter
- Spring

INDEXING

- ESCI
- Scopus
- Erih Plus
- EconLit
- Proquest Social Science Premium Collection

APC: 2000 GBP

New Publisher:
Oxbridge Publishing House

Old Publisher: Institute for
development and
International relations (IRMO)

[View More](#)

Vietnam Opportunities from Indo-Pacific Economic Framework for Prosperity as Regional Economic Integration: A Moderating Role of International Relations

Thanh Quang Ngo

[View More](#)

Expatriates Job Satisfaction and Performance: Examining the Effects of Emotional & Cultural Intelligence, Cross-cultural Adoptability & Competency and Interpersonal Social Network

Nadir Aliane ,Ahmad Zakariya

[View More](#)

Political Fragmentation, Labour Mobility, and Voter Turnout Decline in Border Areas (Batam Island) in Indonesia

Diana Fawzle ,Af Sigit Rochadi ,Ganjar Razuni ,Sastra Tamami ,Martius Martius

[View More](#)

Vietnam Opportunities from Indo-Pacific Economic Framework for Prosperity as Regional Economic Integration: A Moderating Role of International Relations

Thanh Quang Ngo

[View More](#)

Legal Protection for Creditors in Bankruptcy Law: Implementing the Bankrupt Boedel Execution

Daniel Hendrawan ,Deny Haspada ,Demson Tiopan

[View More](#)

Improving the work effectiveness of bhabinkamtibmas police in disruptive scenarios: analysing the impact of behaviour and competence, with adaptation as an intervening variable

Ariefaldi Warganegara ,Mohammad Adam ,Zunaidah ,Yuliani

[View More](#)

CIRRJ

The journal is supported by the Ministry of Science and Education of the Republic of Croatia and is published in collaboration with De Gruyter Open, the world's second largest publisher of Open Access academic content.

Quick Links

- ✓ [Submission](#)
- ✓ [Privacy Statement](#)
- ✓ [Contact](#)

✉ [Support Contact](mailto:editor@cirj.org)
editor@cirj.org

Source details

Croatian International Relations Review

Scopus coverage years: from 2013 to Present

Publisher: Institute for International Relations

ISSN: 1331-1182

Subject area: Social Sciences: Political Science and International Relations

Source type: Journal

[View all documents >](#)

[Set document alert](#)

[Save to source list](#) [Source Homepage](#)

CiteScore 2022

1.5



SJR 2022

0.181



SNIP 2022


1.278



[CiteScore](#) [CiteScore rank & trend](#) [Scopus content coverage](#)

i Improved CiteScore methodology

CiteScore 2022 counts the citations received in 2019-2022 to articles, reviews, conference papers, book chapters and data papers published in 2019-2022, and divides this by the number of publications published in 2019-2022. [Learn more >](#)

CiteScore 2022 

$$1.5 = \frac{106 \text{ Citations 2019 - 2022}}{72 \text{ Documents 2019 - 2022}}$$

Calculated on 05 May, 2023

CiteScoreTracker 2023 

$$1.8 = \frac{141 \text{ Citations to date}}{77 \text{ Documents to date}}$$

Last updated on 05 September, 2023 • Updated monthly

CiteScore rank 2022

Category	Rank	Percentile
Social Sciences		
Political Science and International Relations	#258/652	60th

[View CiteScore methodology >](#) [CiteScore FAQ >](#) [Add CiteScore to your site !\[\]\(a8b8e6110119081f2a49c0124d55e305_img.jpg\)](#)

About Scopus

[What is Scopus](#)

[Content coverage](#)

[Scopus blog](#)

[Scopus API](#)

[Privacy matters](#)

Language

[日本語版を表示する](#)

[查看简体中文版本](#)

[查看繁體中文版本](#)

[Просмотр версии на русском языке](#)

Customer Service

[Help](#)

[Tutorials](#)

[Contact us](#)

ELSEVIER

[Terms and conditions ↗](#) [Privacy policy ↗](#)

Copyright © Elsevier B.V. ↗. All rights reserved. Scopus® is a registered trademark of Elsevier B.V.

We use cookies to help provide and enhance our service and tailor content. By continuing, you agree to the use of cookies ↗.



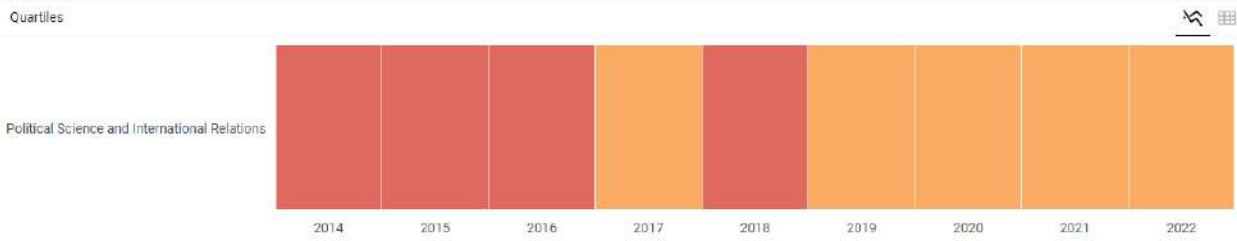
Croatian International Relations Review 

COUNTRY Croatia  	SUBJECT AREA AND CATEGORY Social Sciences Political Science and International Relations	PUBLISHER Institute for International Relations	H-INDEX 9
PUBLICATION TYPE Journals	ISSN 13311182	COVERAGE 2013-2022	INFORMATION Homepage How to publish in this journal cirr@irmo.hr

SCOPE

The Croatian International Relations Review (CIRR) is an interdisciplinary academic journal published in English since 1995 and focuses on political science, sociology, law and economics. Each issue includes scholarly, double-blind peer reviewed articles, and book reviews. CIRR is a member of COPE – Committee on Publication Ethics – and is published electronically by the Institute for Development and International Relations (IRMO) in Zagreb. The journal is supported by the Ministry of Science and Education of the Republic of Croatia and is published in collaboration with De Gruyter Open, the world's second largest publisher of Open Access academic content. CIRR is indexed by 40 scholarly databases, including ESCI, Scopus, Erih Plus, EconLit and Proquest Social Science Premium Collection. Articles reflect the views of their authors only.

 Join the conversation about this journal

FIND SIMILAR JOURNALS options 



Croatian International Relations Review

Q3 Political Science and International Relations
best quartile

SJR 2022
0.18

powered by scimagojr.com

Show this widget in your own website

Just copy the code below and paste within your html code:

```
<a href="https://www.scimagojr.com" data-bbox="255 400 355 415">
```

SCImago Graphica

Explore, visually communicate and make sense of data with our **new data visualization tool.**



Metrics based on Scopus® data as of April 2023

