

# POSITION OF GRANDCHILDREN AS SUBSTITUTE HEIR BASED ON THE PROVISIONS OF THE COMPILATION OF ISLAMIC LAW

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Study This aiming For know position grandchild as expert inheritance replacement in system Islamic inheritance according to Compilation of Islamic Law and consideration Judge's law in set expert inheritance replacement in Determination Makassar Religious Court No. 55/ Pdt.P /2021/ PA.Mks . Research This implemented in Makassar City, namely Makassar Religious Court with use method study with types and sources of primary data and secondary data . The results obtained from study is (1) the application of law by judge against position grandchild as expert inheritance substitute in the Religious Court based on Compilation of Islamic Law Number 55/ Rev.P /2021/ PA.Mks is can replace the position of his parents as expert inheritance Because based on Article 185. (2) The considerations Judge's law in set expert inheritance replacement in Determination Makassar Religious Court No. 55/ Pdt.P /2021/ PA.Mks is based on the evidence presented at trial . In addition , the background behind submitted application determination expert inheritance this is also For prevent the occurrence problem later day , then required For set expert inheritance substitute . Recommendation research so that: Required existence the law that regulates about law Islamic inheritance other than Compilation of Islamic Law. Provisions in Compilation of Islamic Law on inheritance inherit must perfected to create similarity perception from circles enforcer law . For overcome constraint in implementation law inheritance especially concerning with provision expert inheritance replacement , expected to all over related parties to improve socialization about law Islamic heirs .

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### INTRODUCTION

The Republic of Indonesia is a unitary state consisting of on various type ethnic group nation , culture , religion and language . Diversity the potential cause clashes within public as consequence from existence difference interests . In order to overcome difference the needed existence regulation law that is capable arrange all over life public in frame create a sense of justice . [1]Law as an agent of change in life public should can overcome or at least has be aware all form change social and also culture that is prevalent in complex societies . Even though concepts law the No fully understood by the public , but law That Alone still exist in a more universal context . This is none other than because public general who wants or create a changes , although No accompanied with understanding comprehensive concept . [2]

In Civil Law in Indonesia there is still nature Pluralism Because until moment This Still applicable law custom , law Islam , and western/ civil law . Inheritance law based on Islamic law applies for those who embrace Islam, the law inheritance civil applicable For group citizens who come from from Chinese and European , while law inheritance customs which are law that since Formerly applicable among society . [3]One of the form the laws applied in Indonesia in frame arrange connection law between Indonesian society is Islamic Law. Islamic Law is law that originates from from the Al Quran and Al Hadith which regulate all action law for a society that adheres to Islam, one of them is about inheritance .

Islamic Inheritance Law is the law that governs all something concerning with transition rights and or obligation on treasure riches somebody after He passed away to expert his heirs . With thus , in law inheritance There is three element mutually exclusive subject related that is heir , property relics , and experts inheritance . [4]Inheritance law have very high position important . This is can understood Because problem inheritance will experienced by everyone , besides That problem inheritance is a very easy problem For cause dispute or dispute between expert heirs . The majority of Indonesian citizens being Muslim has accept Islamic law as law inheritance that has been become law positive in Indonesia. [5]In reality field inheritance experience significant development . This is due to need an increasingly diverse society complex and pattern his thoughts Can changed in accordance with development of the times. Among them law experienced Islamic heritage development with existence expert inheritance substitute , the implementation of which in Indonesia is regulated in Compilation of Islamic Law (KHI). One of the draft update law Islamic heritage in Indonesia is marked with birth Compilation of Islamic Law through Instructions President of the Republic of Indonesia Number 1 of 1991 dated 10 June 1991 concerning Compilation of Islamic Law. One of draft update law Islamic heritage in Compilation of Islamic Law (KHI) is given to him right a expert the heirs who have passed away to his descendants who are still life . Rules This listed in Article 185 of the Compilation of Islamic Law which explains that : [6]

1. Heirs of the deceased more formerly from the heir so his position can be replaced by his child , except those who are mentioned in Article 173.
2. Share section expert inheritance replacement No may exceed from part expert equal heirs .

In law Islamic heritage exists expert inheritance substitute , namely namely given to him right somebody expert the heirs who have die to his successor who is currently This Not yet died , like child heir who was succeeded by his grandson . Rule about matter the has listed in provision Article 185 of the Compilation of Islamic Law. Article 185 can lift position someone who originally No worthy to obtain treasure inheritance , next Can positioned into the group expert the heirs who have Already experience death more moreover formerly from the heir . [7]

## **METHOD**

Types of research used is study law or Legal Normative (Legal Research ) , [8] research conducted to find truth coherence , namely give thanks implementation from rules law , legal norms as well as principles then applicable law in connection with the problem that becomes issue law . Using approach study that is Laws and approaches conceptual shift from view as well as the developing doctrine in discipline knowledge law . Source law that is understand , check in matter This to browse documents and literature that can give information or The information required is in the form of primary legal materials and secondary legal materials.

## **DISCUSSION**

### **APPLICATION OF LAW BY JUDGES TOWARDS THE POSITION OF GRANDCHILDREN AS SUBSTITUTE HEIR IN THE MAKASSAR RELIGIOUS COURT**

Article 2 of the Law Number 7 of 1989 concerning Religious Courts as has changed with Constitution Number 3 of 2006 concerning Religious Courts and change second Constitution Number 50 of 2009 concerning Religious Court Explains that Religious Courts are one of the implementation power judiciary for the people seeking religious justice Islam about case civil certain regulated in Constitution This . As for the duties and authorities religious court is check , decide and complete matters at the level First between religious people Islam in the field marriage , inheritance , wills , gifts , zakat, infaq , waqf , and sadaqah . From some of duties and authorities the religious court , which became object study is in the field of inheritance , especially case expert inheritance substitute at the Makassar Religious Court . In Civil Procedure Law , in addition to case lawsuit Where there is party plaintiff and defendant , there is the things that are called application submitted by a person applicant or more in a way together . [9] Difference lawsuit with application is that case lawsuit is dispute or conflict that must be resolved resolved and decided by the court , while in matter application No There is dispute . In case this is just a judge give his services as a state administrator. The judge then emit a determination or normal called decision declaratory , namely decisions that are of a nature set or to explain only . In the matter of this judge is not decide a conflict like as it is in case lawsuit . Against decision declaration or determination effort law that can done is cassation . [10]In the determination Makassar Religious Court Number 55/ pdt.P /2021/ PA.Mks , which was determined as expert Andi Sukang and Tommi's heirs are his children and 4 ( four ) grandchildren who replaced him place his father . Based on application from applicant , the panel of judges at the Makassar Religious Court then set treasure inheritance in the form of land , filed with reasons so that in the future between expert inheritance or the abandoned parties No happen dispute in share existing assets .

Children respective heirs are determined as expert inheritance *dziwwul furudh* is expert the heir who gets part treasure certain from people who have there is nothing with amount appropriate part with the provisions of the Qur'an and As-Sunnah. After part expert inheritance *dziwwul furudh* This issued , the rest new shared to expert the heir who receives part remainder ( *ashobah* ). With thus , then Makassar Religious Court determines that grandchild heir direct accept their respective parts which come from from parent section they . This is as judge's consideration in apply position grandchild as expert inheritance the substitute in question in Decision that :

Considering , that based on the facts the connected with provisions of Article 174 paragraph (1) letter a and Article 185 of the Compilation of Islamic Law, then can formulated that the Applicants is child from The late Andi Makkarumpa Daeng Parani and Andi Sukang Dg. Tommi, along with four grandchildren , are can each other inherit .

Article 174 of the Compilation of Islamic Law states that :

Groups expert inheritance consists of from : [11]

According to connection blood : type man consists of from : father, son man , brother men , uncles and grandfathers . And the group Woman consists of from : mother and child woman , sister Woman from grandma .

According to connection marriage consists of from : widower or Widow .

If all expert inheritance there is , then the right one get inheritance only : children , father, mother , widow or widower .

Then Article 185 of the Compilation of Islamic Law states that :

Heirs of the deceased more formerly from the heir so his position can replaced by his son , except those who are mentioned in Article 173.

Expert section inheritance replacement No may exceed from part expert equal heirs with the one

replaced . If looking at Article 185 Paragraph (1) of the Compilation of Islamic Law, then applicable provision that must the expert deceased heir moreover formerly For Then can replaced his position by expert inheritance substitute ( children) expert heir / grandchild heir ). Heirs substitute / Grandson will to obtain part inheritance as big as the portion received by his parents if they Still alive . If he replace child man so He will get part inheritance as big as part child men , if Woman so He will get part as big as part the woman he change said . If the expert inheritance replacement the there are two people or more so they will share equal above part assets acquired by experts the heir that he replace If all men , but if one of them There is Woman so the division with provision man get double the share Woman or with comparison of 2:1 (two to one ) . Religious court judges do not let go from the word of Allah ( verse) the Quran ) and the words prophet or hadith hadith which concerning link with position a as expert inheritance or expert inheritance the substitute explained in surah An Nisa verses 11 and 176 whose translation is is as following :

#### Verse 11

God has set distribution treasure inheritance your children , for a child man The same with part two children woman .

#### Verse 176

If they There is some brothers men and women , then part For a child man as much as part two women .

In the Compilation of Islamic Law as regulated in article 185 paragraph ( 2) which states that expert inheritance replacement No may exceed from part expert equal heirs with the one replaced . for example a grandchild as expert inheritance replacement , part grandchild No may exceed part inheritance received by uncle or her aunt .

As narrated by Bukhari from Zaid bin Thabit , as following :

Grandson and granddaughter woman from descendants men , equals with child If No There is child a man who is still live , then part grandchild man the like with child men . While grandchild woman like as it is with child women . They wear the hijab like as it is child . With based on the Hadith said , then grandchild the the heirs (Andi Irfan, Andi Thaufan , Andi Akbar, Andi Sirajuddin) can domiciled as expert inheritance replacement with provision that parents they (Andi Oddang Makka Bin Andi Makkarumpa Dg. Parani) are more formerly die from the heir . In case Here , they are the ones replacing position expert heirs , each to obtain equal parts because all various sex men . Which one treasure This originate from the part that should be accepted by his parents . Position wife in case This No Can become expert inheritance Because connection the family that was created with the heir No connection blood , but connection Because marriage . The wife also does not Can act become expert inheritance replacement Because His wife is not either descendants from Andi Oddang Makka Bin Andi Makkarumpa . Based on provisions of Article 174 of the Compilation of Islamic Law, his wife only get inheritance from Andi Oddang Makka Bin Andi Makkarumpa but in context case here he is No get the part that comes from from his in-laws ( heirs ) . If we look at Article 171 letter c of the Compilation of Islamic Law where explained that "The heirs is a person who at the time died have connection blood or connection marriage with heir , Muslim or not obstructed Because law For become expert inheritance " . In the context of this is his wife No enter in category expert heir . Even though Article 171 letter c is specified that expert inheritance is the one who has connection marriage , but connection the marriage in question is his position as husband / wife . In case this is his wife from Andi Oddang Makka Bin Andi Makkarumpa or son-in-law from heir so that He hindered by children and grandchildren from heir .

In context group expert heir , wife of course No Can domiciled as expert inheritance . [12] He only Can become expert inheritance from Andi Oddang Makka Bin Andi Makkarumpa Dg. Parani, that is as heir heirs . the sababiyah is expert heirs who have connection inheritance with heir Because

existence connection marriage with heir . If examined with thorough editorial of Article 185 of the Compilation of Islamic Law, especially in Paragraph (1) , then in a way textual can understood that No There is obligation law For apply chapter the to all case replacement expert inheritance . That article only nature optional ( not mandatory ) This is can understood from editorial “... can replaced ...”, this word hinting that chapter the is not a imperative nature imperative .

According to author , thing This means that Article 185 of the Compilation of Islamic Law may used in matter certain only , namely if There is expert the heirs are seen No Can to obtain treasure inheritance or Not yet entitled to obtain treasure inheritance , while the person concerned is very close connection kinship ( relationship) blood ) with heir , for example grandchild from the heir . In case like This 2 (two ) opinions emerged , some said they can replace expert heir and some say they No can replace expert heir . A telling look that grandchild heir viewed No entitled get treasure inheritance Because Still There is group expert inheritance dzawwul furudh that covers it . However Thus , the most important provision is that expert inheritance replacement can replace position expert inheritance dzawwul furudh throughout expert inheritance dzawwul furudh which is more Formerly died from the heir .

With using Article 185 as base in consideration law , then part expert inheritance the can just to obtain part maximum , namely like supposedly will accepted by his parents as long as it is concerned No obstructed For come on stage become expert inheritance as mentioned in Article 173 of the Compilation of Islamic Law. In article those that are obstructed become expert inheritance is expert the heirs who have was convicted by the court and has been powerful law still Because reason murder , or try do murder , or persecute heavy heir , or slander heir . According to Muh. Yunus, Judge of the Makassar Religious Court , that children the heir considered No effective Again For immature or cover expert inheritance others , in matter This grandchild men and women from child Woman the the heir who has die moreover formerly so that they set to obtain the part that comes from from part of his parents . Grandchildren of each heir was appointed his position as expert inheritance effective For replace the position of his parents who have die more formerly from .

In Western Civil Inheritance Law, there are 2 (two) known methods inherit , namely inherit in a way direct and inherited in a way No directly . [13] Inherit in a way direct that is inherit Because himself itself ( uit eigen hoofde ) , whereas inherit in a way No direct or inherit with method replace ( bij plaatsvervulling ) is inherit for people who have die moreover formerly than the heir , he replace position expert the heirs who have die moreover formerly from the heir . inherit Because himself itself ( uit eigen hoofde ) in Civil Code set up in Article 852 where his rights is his rights He Alone Where each and every expert inheritance accept the same part the size of . Inherit with method replace ( bij Plaatsvervulling ) in Civil Code set up in Articles 841-848 replacement here No only replace in matter inherit , but also replace right like the life of the person who was replaced . With thus can understood that position expert inheritance substitute in principle is replace right the life of the person he replaced That is not limited in matter inherit . According to author , replacement place in Compilation of Islamic Law in principle The same with replacement place in law inheritance western civil as as described above replacement place No only in matter inherit , but also rights the life of the person he replaced that . Andi Irfan, Andi Thaufan , Andi Akbar, Andi Sirajuddin in case This is grandchild from the heir . Grandchildren are straight line descent to under which his position That equated with child , he entitled become expert inheritance and even in matter certain He become expert inheritance simultaneously with child the heir . However Thus , the position grandchild as expert inheritance No set up in a way Details in the Quran so that there is difference opinion among experts about position grandchild as expert inheritance , is it only grandchild man and grandson Woman from child man or including grandchildren man and grandson Woman from child Woman .

According to School Syafi'i , there are 3 types expert inheritance , namely : [14]

1. Dzawwil Furudh , namely expert heirs who have part certain .

2. ' Ashabah , namely expert heirs who have part , but If No There is expert inheritance dzawwil furudh The same once , then they accept all over treasure legacy . If there is any expert inheritance dzawwil furudh so expert heir ,, ashabah accept the rest .

3. Dzawwil Arham, namely expert heirs who have connection family with heir but No enter expert inheritance dzawwil furudh and ' ashabah . Heir dzawwil arham new get part inheritance after expert inheritance dzawwil furudh and ' ashabah No There is .

If you see draft School Shafi'i This Can it is said that system the adopted inheritance is nature partilineal Because law his family draw lineage from the male line or paternal line so that only child a man who can become connector . According to teachings Sunni heritage , in matter changeover place , the rightful grandson inherit just grandchild man and grandson Woman from child man heir , while grandchild man and grandson Woman from child Woman heir No can inherit . Sayuti Thalib to mean teachings This to within the legal lines as following : [14]

a. Grandson through child man occupy place child man if No There is child male and not There is child girl . grandson This inherit and veil The same like child man .

b. Granddaughter through child man occupy place child Woman if No There is child male and not There is child girl . Granddaughter This inherit and veil The same like child Woman .

c. Grandson through child man No inherit If There is child man .

d. If an expert inheritance consists of from a child woman and one grandchild men , then child Woman That get 1/2 of the treasure legacy whereas grandchild man through child man That get remainder .

Grandchildren through child women , good man and also Woman new entitled come on stage as expert inheritance If it is already No There is ashab furudh (the person who is entitled) inherit ) or ashabah The same once . Ashabul furudh that inherits together with dzawwil arham that's one of them husband wife , then one of them husband wife take its part more first , then Then the rest accepted to them . The rest of it No can be radd - kan to one of them husband wife during Still There is dzawwil arham . Because me- radd - kan remainder more to one of them husband wife later than to accept to dzawwil arham . With thus can understood that law Sunni heritage in the relation with expert inheritance replacement its nature discriminatory and limited . [15] The discrimination referred to here is that in law inheritance this is what can become expert inheritance replacement just grandchildren through the male line / children men , while grandchild from the female line No entitled accept inheritance Because He is dzawwil arham . Limited It means is that grandchild man from child man only will accept his legacy If heir No have child another man who is still alive , in progress grandchild Woman new will accept inheritance If heir No have child man or two children women who are still life .

Apart from Sunni teachings or teachings School Syafi'i , Hazairin also has teachings about expert inheritance replacement . Replacement position according to Hazairin Actually Already enclosed in the letter An Nisa verse 33 which means "and for Each of us made a mawali ( waris substitute ) from what has been abandoned by mother his father and relatives closeness and the person who binds promise with you so give they its part " . According to Hazairin , meaning stage expert inheritance For the so and so is that part the so and so who will obtained if he life from treasure legacy that , shared to the mawali That is not as expert his heir but as expert heir-expert inheritance Mother or his father left treasure that . Based on Exposure mentioned above can understood that position grandchild can replace the position of his parents in a way full as expert heir . Apart from that , position Grandpa and Grandma , both from father's side and from party Mother can also replace position his son as expert inheritance substitute . Grandchildren can replace position his father who had died more formerly although heir have child another man who is still alive . The grandson No differentiated whether He man or women , good from child man and

also from child women . According to author , teachings inheritance as stated by Hazairin This is For fight for right inheritance for expert the heir left behind dead more first by his parents or expert the inheritance that connects them . The teachings This different with Sunni teachings that place grandchild as dzawwil arham as has been exposed previously . With teachings as stated by Hazairin this , then a abandoned child died by his parents can to obtain part inheritance in accordance with the part that was supposed to be will accepted by his parents when his parents the Still life .

Expert theory inheritance replacement Hazairin can also viewed as breakdown problem justice and avoidance discriminatory to group expert inheritance certain types sex women , so that with thus group expert the named heir dzawwil arham can lifted as expert the true heir , as long as they allow can displayed as expert inheritance , because No You're welcome inherit with the people above him or No there is prohibition sharia that hinders reception right inheritance . [16]In case civil , which is prioritized is How then the parties to the dispute can make peace . The judge always strive for peace between to both sides parties to the dispute and if there is a case the still continued , then the judge tried a decision that is a win-win solution so that No There is the party who feels harmed . Such a thing That No except in case inheritance . Provisions about expert inheritance replacement in Article 185 of the Compilation of Islamic Law it must be can applied optimally for realize justice as one of the objective law . With give treasure inheritance to expert previous heirs viewed No entitled For Then replace the position of his parents is a very commendable act in the sight of Allah SWT at once as adhesive in family For look after connection friendship so that familiarity still intact . Beside that , thing it is also intended as expression of humanity , especially matter the Already become the consensus of scholars throughout Indonesia.

In the Koran, surah al-Nisa verse 8 as following :

And if time distribution That present relatives , children orphans and the poor, then give treasure from they that ( just ) and say it to they good words .

A little the amount the part that will be accepted expert inheritance replacement determined from type sex expert the heirs who were replaced as intended accept treasure inheritance from heir . If in case expert the heirs who were replaced That women ( eg. child the woman who died more formerly from heir ), then the given part to expert heir who replaces him That in accordance with the amount due will accepted child woman heir the although expert inheritance replacement That men . With method like that , then expert inheritance effective other No feel disadvantaged his rights .

Heir substitute basically is expert inheritance Because replacement , namely people who become expert inheritance because his parents are entitled get inheritance dead more Formerly from the heir so that the position of his parents replaced by him . So, Article 185 of the Compilation of Islamic Law means besides replacement place , also means degrees and rights without differentiate from the lineage man or women . The degree in question here is that expert heir to succeed position child man to obtain same degree with child male , expert heir to succeed child Woman so He will to obtain same degree with child the woman he replaced . While the rights in question is that if the person is replaced by an expert inheritance replacement the to obtain inheritance so expert inheritance the substitute is also entitled accept legacy . If he replace position child men , then He will get part inheritance as big as part child men , if Woman so He will get part as big as part the woman he change said . If the expert inheritance replacement the there are two people or more so they will share equal above part assets acquired by experts the heir that he replace with provision man get double the share Woman as arranged in Surah An Nisa verse 11.

The Compilation of Islamic Law provides limitation about the part accepted by the expert inheritance replacement as set up in Article 185 paragraph (2) of the Compilation of Islamic Law which states that part expert inheritance replacement No may exceed from part expert equal heirs with the one replaced . Based on Article 185 of the Compilation of Islamic Law, then writer to argue

that position grandchildren in the case This can replace the position of his parents as expert inheritance . Based on Article 185 paragraph (1) of the Compilation of Islamic Law, a person can inherit Because replacement place is : [\[17\]](#)

1. The person who is replaced by his child the must Already died more formerly from heir .
2. The person who is replaced by his son the is expert inheritance if only He Still life .

Condition First it's very clear the sound , while For condition second must seen sound the provisions stated in Article 173 of the Compilation of Islamic Law. Article 173 of the Compilation of Islamic Law regulates that somebody obstructed become expert inheritance if there is the judge's decision that has been have strength fixed law , punished Because :

1. Blamed has kill or try kill or persecute heavy heir .
2. Blamed in a way slander has submit complaint that heir has do threatened crime with 5 (five) years sentence prison or more punishment heavy .

conditions that although No written in a way firm in Compilation of Islamic Law but must considered There is is that which is replaced That must is Muslim because a grandchildren whose parents religious besides Islam and has die more formerly than heir ( grandfather) or grandma the grandchildren ) even though grandchild the are Muslim, then He No can inherit in a way replacement place because of if the old man the Still life indeed He No can become expert inheritance . This is as the words of the Prophet as narrated by HR. Muttafaq Alaih which means "Muslims do not can inherit not even the wealth of disbelievers and disbelievers can inherit property of Muslims".

Based on Article 185 of the Compilation of Islamic Law , grandchildren can become expert inheritance substitute and replace the position of his parents . If his parents domiciled as the zawil furudl so He will become dzawwil furudh too, likewise if his parents domiciled as ' ashabah so he also became ' ashabah . Grandchildren will get part inheritance as big as the portion received by his parents if He Still life .

In general normative , division inheritance only Can done in accordance with the provisions stated in a way concrete in the Qur'an and the Sunnah. However in in reality , society often do distribution inheritance in a way peace . This is happen Can just Because in the reality expert the heir who receives part big in a way economy has sufficient temporary expert the heir who receives part A little Still shortcomings . The Compilation of Islamic Law accommodates distribution inheritance in a way peace where Article 183 explains that "the experts inheritance can agreed do peace with distribution treasure inheritance after each realized its part ". The Compilation of Islamic Law requires that the division of inheritance with method peace this , the experts inheritance understand their respective rights and shares . If There is expert inheritance that is economy lack and gain part a little bit , then there are also experts the heir who receives part Lots sincere For give to others, then matter That can justified For done .

## **LEGAL CONSIDERATIONS BY THE JUDGE IN DETERMINING SUBSTITUTE HEIR IN THE DETERMINATION OF THE MAKASSAR RELIGIOUS COURT NUMBER 55/Pdt.P/2021/PA.Mks**

Determination expert inheritance this is basically is For made into base in transaction sell buy Because treasure inheritance in the form of land the will for sale . Determination This Makassar Religious Court later become base when later day a claim has occurred from expert inheritance that he who has the right on land treasure inheritance said . As far as This can observed that among that's all Lots device regulation legislation in force in Indonesia, the apparatus Islamic law

which is still Not yet popular in society , especially about law Islamic inheritance . This is influenced by Indonesian culture own one who has understanding that Islamic law is based on the provisions in the Qur'an and Hadith. Apart from the Qur'an and Hadith , there should be emphasized Again with regulation legislation as derivative from the Qur'an and Al Hadith.

According to Muh. Yunus, Judge of the Makassar Religious Court , one of the obstacles faced by practitioners law , in matter this is the judge, in effort implementation provision law Islamic inheritance is regulation the law Not yet perfect . Judge 's guideline to drop decision in matters law Islamic inheritance only based on the Compilation of Islamic Law and Jurisprudence outside the Qur'an and Hadith. As far as this , not yet There is product law new to regulate in a way explicit about law Islamic inheritance (31 January 2023).

According to author , cause the occurrence dispute inheritance more Lots caused by the presence of habit public No quick share treasure his legacy moment after heir died , so cause various the problem that causes expert possible heirs more entitled like expert inheritance replacement No to obtain his rights . Besides that , there is also an assumption that grandchild heir No entitled to obtain treasure inheritance Because has disconnected the relationship with heir ( parents) has die more formerly from heir ) with the term " broken footbridge" and p the No There is the terms and conditions in the Qur'an so that they don't either entitled become expert inheritance .

In the world of courts , actually only There is One matter the main thing that justialbalance ( searchers) are looking for justice ) namely Judge's Decision . For birth A decision required a number of procedure of course , and there is various type the decision that will be born from the world of justice . Thesis This will to describe in a way short about Miscellaneous the judge's decision and the execution process .

Decision that is decision court on case lawsuit based on existence a dispute or dispute , in the sense of a decision is product court in matters contentiosa , namely product the real court . It is called jurisdiction contentiosa , because the existence of 2 (two) opposing parties in case ( plaintiff and defendant ) .

As for what is meant with determination is decision court on case ( volunteer ) application , for example determination in case marriage dispensation , marriage permit , guardian adhal , polygamy , guardianship , marriage confirmation , and so on . Determination is a foreign exchange jurisdiction ( not real trial ) . Because in the determination only There is applicant No There is against law . In the determination . The judge does not using the word " judge " , but Enough with using the word " determine " .

## **CONCLUSION**

Position grandchild as expert inheritance replacement in system Islamic inheritance according to Compilation of Islamic Law based on Determination Makassar Religious Court Number 3/ Pdt.P /2011/ PA.Mks is can replace the position of his parents as expert inheritance Because based on Article 185 paragraph (1), a person can inherit Because replacement place is the person who was replaced by his son the must Already died more formerly from heir as well as people who are replaced by their children the is expert inheritance if only He Still life . In addition , the most important requirement is that Good the real heir and also expert inheritance replacement must are Muslim. Considerations Judge's law in set expert inheritance replacement in Determination Makassar Religious Court No. 3/ Pdt.P /2011/ PA.Mks Already according to , in to drop decision in matters law Islamic inheritance only based on the Compilation of Islamic Law article 185 and Jurisprudence outside the Qur'an and Hadith. In implementing provisions of Article 185 of the Compilation of Islamic Law concerning expert inheritance replacement should done in a way careful and cautious Because can cause different perceptions . Required existence the law that regulates about law Islamic inheritance other than Compilation of Islamic Law. Provisions in Compilation of Islamic Law on inheritance inherit must perfected to create similarity perception

from circles enforcer law .

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