

ABSTRAK

Pasal 5 ayat (1) Undang-Undang Nomor 48 Tahun 2009 Tentang Pokok-Pokok Kekuasaan Kehakiman, berbunyi “Hakim dan hakim konstitusi wajib menggali, mengikuti, dan menemukan nilai-nilai hukum dan rasa keadilan yang hidup dalam masyarakat. Dalam penjelasannya hakim sesuai dengan hukum dan rasa keadilan masyarakat”. Kenyataan pula bagi hakim dalam hukum Islam, jika ada kasus yang dihadapinya belum ada hukumnya, maka Ia wajib ber*ijtihad*. Dikaitkan dengan hukum kewarisan Islam, Bidang hukum kewarisan mengalami perkembangan yang sangat signifikan, disebabkan oleh kebutuhan masyarakat yang semakin kompleks dan pemikirannya bisa berubah sesuai dengan perkembangan zaman. Diantaranya yaitu hukum kewarisan Islam mengalami perkembangan dengan adanya ahli waris pengganti. yang penerapannya di Indonesia diatur dengan Kompilasi Hukum Islam (KHI). Kenyatannya bunyi Pasal 185 Kompilasi Hukum Islam tentang ahli waris pengganti masih sangat sering diperdebatkan dan dianggap rawan multitafsir bahkan oleh para hakim-hakim di lingkungan Peradilan Agama. Kata “dapat” memungkinkan pada “*ijtihad*” atau kebebasan pendapat para hakim ketika akan memutus perkara.

Berdasarkan penelitian, Hakim Peradilan Agama dalam menetapkan ahli waris pengganti cenderung berbeda-beda, hal tersebut dipengaruhi oleh beberapa alasan dan pertimbangan dari masing-masing Hakim. Berdasarkan tugas pokok dan wewenangnya, Hakim bertugas memeriksa, mengadili, memutus dan menyelesaikan perkara yang diajukan padanya, mengaplikasikannya serta menerapkan putusan-putusan terkait perkara tertentu, khususnya perkara penetapan ahli waris pengganti. Berkaitan dengan hal tersebut maka muncul pertanyaan, bagaimana wujud *ijtihad* hakim peradilan agama dalam menerapkan putusan ahli waris pengganti ?, bagaimana metode dan pertimbangan hakim peradilan agama dalam menerapkan putusan ahli waris pengganti ? dan bagaimana eksekusi (pelaksanaan) putusan ahli waris pengganti ?.

Untuk itu, maka Penulis berkenan menjelaskan lebih lanjut dalam bentuk tesis dengan judul “*Ijtihad* Hakim Peradilan Agama dalam Menerapkan Putusan Ahli Waris Pengganti” dengan menggunakan metode pendekatan yuridis normatif.

Kesimpulannya bahwa, penerapan putusan ahli waris pengganti oleh hakim sebelum diberlakukannya Kompilasi Hukum Islam, adalah masih dipengaruhi oleh kitab fiqh klasik kewarisan Islam, sedangkan setelah diberlakukannya Kompilasi Hukum Islam, penerapan putusan hakim tentang ahli waris pengganti adalah diarahkan seragam mengikuti Pasal 185 Kompilasi Hukum Islam, walaupun masih juga menimbulkan perbedaan pendapat atau perdebatan dikarenakan bunyi Pasal 185 Kompilasi Hukum Islam yang bisa menimbulkan multitafsir.

Kata Kunci : *Ijtihad*, Peradilan Agama, Ahli Waris Pengganti

ABSTRACT

Article 5 Paragraph (1) of Law Number 48 Year 2009 Concerning Principles of Judicial Power, which reads: “Judges and constitutional judges are obliged to dig, follow. And find the values of law and sense of justice that live in society, in the explanation of judges in accordance with the law and sense of community justice. “in the fact also for Judges in Islamic law, if there is no case against him law, then he must be do *ijtihad*. Attributed to Islamic inheritance law, the field of inheritance law undergoes a very significant development, due to the increasingly complex needs of society and its thinking can change with the times, among them the Islamic inheritance law is evolving with the existence of surrogate heirs, whose application in Indonesia is regulated by of compilation of Islamic law. In fact, article 185 of the Compilation of Islamic Law on the successor heirs is still very often debated and considered vulnerable to multiple interpretations, even by judges in the religious court, the word “may” allow for “*ijtihad*” or judicial freedom when judging cases.

Based on reseach, Judges of Religious Courts in assigning surrogate heirs tend to vary, it is influenced by several reasons and considerations of each judge. Based on its principal duty and authority, the judge is charged with axamining, hearing, deciding and resolving the case submitted to him, applying it and applying certain case-related decisions, in particular cases of appointment of the successor heirs. In relation to that natter, the questions arises, how is the form of *ijtihad* judge in applying the judgment of the surrogate heirs ? how is the method and judgment of judges of religion in applying the dicision of the successor heir ? how is the excusion of the successor’s decision ?

For that, the writer is pleased to explain further in the form of a thesis with the title “*Ijtihad* Judges of Religious Courts in Applying the Judgment of Successor Heir’s” by using the method of normative juridical approach.

The conclusion that the application of the judgment of successor heirs by the judge prior to thr enactment of Compilatrion of Islamic Law is influenced by the classical fiqh book of Islamic heritage, whereas after the enacment of Compilation of Islamic Law, the application of judges ruling on replacement heirs is directed uniformly following article 185 Compilation of Islamic Law, although it also lead to differences of opinion or debate due to the siunding of article 185 Compilation of Islamic Law which could prone to multiple interpretations

Keywords: *Ijtihad*, Religious Court, Successor Heirs