

# Position Replacement By Inheritee Who Refuses A Heritage According To Heir Civil Law Dan Islamic Heir Law

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## **ABSTRACT**

*This research discusses legal issues relating to the substitution of places made by the heir who previously rejected the inheritance which falls to him by comparison of the perspectives of civil inheritance law and Islamic inheritance law. Pursuant to Article 848 and Article 1060 of the Civil Code on the replacement of the place by the heirs who reject the inheritance and the notary's role as a general official in providing legal certainty to prevent the issue of inheritance according to the law of civil inheritance and the Islamic inheritance law. The purpose of this research is to know and to analyze whether or not the heirs who have rejected inheritance replace other heirs as well as to know the role of notary in giving legal certainty to prevent problems in the civil inheritance law and Islamic inheritance law. The research method used by the writer is the statue approach and comparative approach. Heirs who reject inheritance under civil law of inheritance cannot change place (plaatsvervulling) because the requirement of replacement of place according to the law of civil inheritance is derived from families of blood in the same degree and not reject the inheritance. The replacement of places in Islamic inheritance law is known as mawali however, Islamic law does not recognize the denial of inheritance only known in the law of civil inheritance.*

*Key Words: Place Replacement, Heir, Rejection of Inheritance.*

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## **INTRODUCTION**

Indonesian civil law system concerning heir is vary and plural, due to the absence of heir law unification to make it a part of Indonesian civil law system. Such situation lead to diversification of heir law into several systems, i.e adat/ custom law, Islamic heir law and heir civil law or commonly known as *Burgelijk Wetboek* (BW) or Book of Civil law. Hier system which based on civil law is different from other heir law system as it requires that the

inheritance must be distributed immediately to those who entitled. To be let undistributed must be under the concern of all inheritant. The obvious different between estate of inheritance and estate of legacy is that inheritance includes debt and other expences while legacy is not.<sup>1</sup>

As it regulated to be a personal interest, estate of inheritance often raises conflict between the heirs. Prior to the distribution, the heirs may consider possibilities as follows:

1. Excepting the estate of inheritance fully or purely (*zuivereaanvaarding*)
2. Excepting the estate of inheritance conditionally (*beneficiare aanvaarding*)
3. Refusing the estate of inheritance (*verwerpen*).<sup>2</sup>

Therefore, there is possibility to refuse the estate of inheritance. As a consequence, the refusing heir is considered not entitled on the estate. Such situation regulated in Article 1058 Book of Civil Law (KUH Perdata). Refusal is refer to releasing right is equal to disangement of rights in any form which establish due to the will pronounce toward the heirs.<sup>3</sup>

According to KUH Perdata Article 1059 dan Article 1060, the portion of refusing heir goes to other entitled heir, as if the refusee no longer lived in the time when inheritor passed away, there will be no position replacement by his descendant. If the refusee is a single heir in the line or if all heir are refusing, thus every descendant of the refuse appear to be the heirs according to their position (*vitegen hoofde*) and inherit the similar portion.<sup>4</sup> Meanwhile, in Islamic heir law, the right to refuse is not recognized. As stated by Tahir Azhary in an arcticle concerning Islamic heir law, right of denial is un-authorized. The right to refuse heir only recognized in western civil heir law. He noted that in Islam, it is forbidden to refuse the heir.

Tahir Azhary thought is inline with Al Quran and Al Hadits statement as what is known as *Ijbari* principle.<sup>5</sup> The principle stated that the diversion the passed away's estate to his heir establish automatically on the will of Allah, not depending on the will of inheritant or inheritee.<sup>6</sup>

KUHPerdata strictly regulated the heir's position replacement whereas in Al Qur'an there is no such "replacement heir" term. However, definition of heir's position obtained from the expantion of "direct heir" definition in Al Qur'an. In terms of legal relation between

<sup>1</sup> Afandi Ali.(2000). *Hukum Waris Hukum Keluarga Hukum Pembuktian*, Jakarta: Rineka Cipta, p.7.

<sup>2</sup> Suparman Usman.(1993). *Ikhtisar Hukum Waris Menurut Kitab Undang-Undang Hukum Perdata (Burgerlijk Wetboek)*, Serang: Darul Ulum Press, p.122.

<sup>3</sup> A. Pitlo, *op.cit.*, p.41

<sup>4</sup> Suparman Usman, *Op.cit.*, p.127.

<sup>5</sup> Mohammad Daud Ali.(2009). *Hukum Islam*, Jakarta: PT Raja Grafindo, p.281-282.

<sup>6</sup> A. Rachmad Budiono, *Op.cit.*, p.2.

replacement heir and direct heir as beneficiaries, either related to the acceptable portion or legal position, Allah allows men to define it.<sup>7</sup> According to inheritance conditions, if one refused the legacy, he may not substitute other people's position. However, Article 848 KUHPerdata stated that "a child who substitute his parent, inherit the right not from the parent, indeed it is allowed to non family member to be substituter as long as the child has refused the heritage.

According to an Article concerning heritage that is Article 1060 KUHPerdata which stated that "someone who refuse a heritage can not be replaced by substitution; as if all heirs are refusing then the children will forth their own position and inherit similar portion". This article stated that someone who refused a heritage may not be represented under substitution which actually different with the statement of Article 848 KUHPerdata that is allowing position substitution over a refusing heir. Heritage refusal which is un-recognize in Islamic heir law obligate the beneficiary to accept the displacement of estate of inheritance based on valid legal portion.

The existence of Indonesian heir system can not be separate from citizen's classification policy which regulated in Article 163 IS (Indische Staatregeling) dan Article 131 IS. This policy has become legal basis in the formation of further regulation concerning heir's evidence making as mandated by:<sup>8</sup>

1. The decree of internal affair department, directorate general of agraria, directorate of land registration (kadaster), dated September 20 1969, No.Dpt/12/63/12/69 concerning certificate of inheritance and citizenship manifestation.<sup>9</sup>
2. Article 111, Paragraph (1) section c, the regulation of the Ministry of agraria/ head of National Agrarian body number 3 of 1997 concerning the implementation of the government regulation number 24 of 1997 concerning land registration.

One of the possible attempt to proof heir's right is by pointing a notary as an authorize official to establish it, in an anti-discrimination manner<sup>10</sup>; serving public despite one's religion or ethnic group. According to above background, there are several research problems to be analyzed as follows: whether heir who refuse inheritance is allowed to conduct position replacement according to civil heir law and Islamic heir law and what are the roles of the

<sup>7</sup> Amir Syarifuddin.(1999). *Pelaksanaan Hukum Kewarisan Islam Dalam Lingkungan Adat Minangkabau*, Gunung Agung, Jakarta, p.86.

<sup>8</sup> Habib Adjie.(2008). *Pembuktian Sebagai Ahli Waris Dengan Akta Notaris (Dalam Bentuk Akta Keterangan Ahli Waris)*, Bandung: Mandar Maju, p. 7.

<sup>9</sup> Mengenai pembuktian kewarganegaraan sudah tidak berlaku lagi, karena sudah dicabut sebagaimana tercantum dalam Penjelasan Undang-Undang Nomor 12 Tahun 2006 tentang *Kewarganegaraan*.

<sup>10</sup> Habib Adjie, *Op.cit.*, p. 13.

noraty is providing legal certainty to prevent inheritance dispute according to civil heir law and Islamic heir law.

## METHOD

This research applied juridical-normative research method, by means of analyzing legal articles, principles and doctrines which often referred by legal scientist related to research object, particularly the process of position replacement (*Plaatsvervulling*). This research focused on existing norms of civil heir law and Islamic heir law which regulated position replacement and heir's rejection as well as the correlation between both aspects in heir's system. Besides, the notary role as public officer who authorize in the evidence of a entitled heir establishment to provide legal certainty in the field of heir law.

The applied approach is statute approach and comparative approach. This method meant to find out the meaning of a regulation to be further analyzed, in terms of position replacement by a heir who rejected the inheritance, in order to conduct proper measure and avoid multi-interpretation toward related problems.

## ANALYSIS AND DISCUSSION

### Position Replacement According To Civil Heir Law

There are two way of law-based inheritance or known as *ab intestato* namely self-entitled inheritance based on one's position or direct inheritance and replacement inheritance (*plaatsvervulling*) or indirect. *Plaatsvervulling* is regulated in chapter II concerning material goods, from article 841 until 851 of the book of civil law (KUHPperdata). This research will focuses on the meaning of Article 848 KUHPperdata which stated that "a child who replace his/her parent, earn that right (to replace) not from the parent, it is even possible to replace other people who has refuse his/her inheritance". The word "possible" in daily basis means "can be" atau "may" accur as if someone wish for that. It is continued with a phrase that saying "someone who has refuse his/her inheritance" which means that above article allowed a position replacement appointed by an inheritee who refuses his/her inheritance. Therefore, the appointee becomes inheritee, whoever the term "other people" in the Article may rise multi-interpretation in respect to some inheritance conditions as follows:

1. The heiress must have pass away;
2. The inheritee must be blood-related person;
3. The inheritee (*waardig*) has the capacity to act legally as an inheritee:

- a. Inheritee (*onwaardig*) claim may propose when inheritance is unfold
- b. The *onwaardig* as well as *onterfa* (a person who neglected to inherit by the inheritance) or those who refuse to inherit cannot be replaced by their descendant.

Position replacement can only be conduct by blood-related family, a non family member can receive inheritance if the inheritee grants him through *legaat* or will to a person he/she think deserve it. Hence, the term “other people” actually is not accurate since it may interpreted as “other people” out side the family.

According to Article 847 KUHPperdata which stated that nobody allows to act on behalf of other people who still alive to be his/her substitute. Therefore, position replacement still can be conducted if the substitutee has pass away as he/she cannot be replaced if the inheritance unfold when he/she still alive. The refuse also regulated in Article 1058 KUHPperdata “if someone refuses inheritance, he considered no longer an inheritee, his/her right erased once he refused the inheritance”.

Based on legal certainty theory proposed by Satjipto Rahardjo which stated that legal power contained in it text. This refer to the words and sentence it used that forms certain meaning related to regulation, in order to provide legal certainty. The use of “other people” terms in Article 848 KUHPperdata seems to be inaccurate and the matter of position replacement should refer to Article 841 KUHPperdata as it regulates that replacement must conducted by a blood-related family member. Such interpretation is required in order to provide legal certainty. This statement correlating with the opinion of Henny Tanuwidjaja, a legal scientist who says that a replacer must meet the conditions of an inheritee namely<sup>11</sup>:

1. Must have alive and still alive when the heiress pass away;
2. Do not refuse the inheritance;
3. Not included as an un-eligible person to receive inheritance.

Any type of position replacements (*plaatsvervulling*) wether through straight down or side family line or legal descendant is allowed to be a replacee according to KUHPperdata. Similar statement also sounded by Henny Tanuwidjaja that a replacee shall meet the legal condition to be an inheritee one of it is do not refuse the inheritance. Thus, the conclusion of Article 848 KUHPperdata attributed with Articles concerning position replacement, expert opinion and legal certainty theory is that the inheritee must be a person who blood related in the same degree and do not refuse the inheritance.

### **Position replacement according to Islamic heir's Law**

<sup>11</sup> Henny Tanuwidjaja, *Loc.cit.*

It has explained above that position replacement according to civil heir's law called *plaatsvervulling*, differ from the term used in Islamic heir's law which is called "mawali". According to the verse of holly Qur'an (Annisa:7) which translation as follows:

*"...for men there is a portion of his father-mother and relatives inheritance and for women there is (also) a portion of her father-mother and relatives inheritance in the amount of which has regulated"*

This verse instructed to grants a portion of inheritance to those who entitle, including relatives or closest family member. Further, *mawali* mentioned in Surah An nisa: 33 concerning inheritee through replacement. *Mawali* term is adverb of *muntaha al-jam'iy* which similar to *mafa'ila* which means a person who deserves or entitle.<sup>12</sup> *mawali* mentioned in Surah An nisa: 33 concerning inheritee through replacement. The "maula" term refer to existence and used to describe a downward or upward family line in terms of inheritee or those who entitle to receive inheritance according to Al Qur'an's provisions.<sup>13</sup>

Surah An-Nisa:33 stated that:

*"To each inheritance leaves by mother, father and relatives, we form its inheritees and (if any) persons you sworn to be loyal to, then grant them their portion, verily Allah watch everything"*

*Mawali* is an inheritee who replaced someone to receive a portion of inheritance which formerly will be granted to replacee or someone who supposed to receive inheritance as the person still alive, but if he pass away prior to the heiress<sup>14</sup>, *mawali* divided into:

- a. *Mawali* for son of daughter belong to father or mother side;
- b. *Mawali* for mother and *mawali* for father in terms of the inheritee not in a higher position compare to them.

*Mawali* occurs when someone who suppose to be an inheritee pass away, so that his/her right goes to a person who blood related to him/her to replace his/her position.<sup>15</sup>

In the compilation of Islamic law, Article 185 which regulates that inheritee who pass-away earlier than inheritor, inheritee position can be replaced by his/her children. Portion of the replacer is not allowed to overamount the inherit he/she replaced<sup>16</sup>. According to Article 185 verse 1 and 2 the existence of replacer in Islamic heir's law is clearly acknowledge. To

<sup>12</sup> Muhammad Darwis dan Agusnidar, Analisa Pemikiran Hazairin Tentang Mawali, *Hukum Islam, Vol. XIV No.1, Juni 2014*, Fakultas Syariah dan Hukum Universitas Islam Negeri Sultan Syarif Kasim, Riau, p. 83.

<sup>13</sup> *Ibid.*

<sup>14</sup> *Ibid.*

<sup>15</sup> Abdul Ghofar Anshori, *Op.cit.*, p.24.

<sup>16</sup> Pasal 185 ayat 1 dan 2 Kompilasi Hukum Islam.

that extent, in the matter of position replacement, eventhough it rarely occurs must refer to Surah An-Nisa verse 33, Hadist Ibnu Abbas and Article 185 compilation of Islamic Law.

Basically *mawali* is similar to *plaatsvervulling* in terms of condition that the replacee must have pass away. *Mawali* categorized as bilateral heir based on Surah An-Nisa:33. *Mawali* in Islamic heir law emerged opinion disparities among Islamic law expert which eliciting some *ijtihad*, as Surah n-Nisa:33 refered inheritee as grand children. There are several experts who denied the existence of position replacement in Islamic heir law which led to the obligation to make wasiat wajibah (will) to overcome above disparity.

Article 185 verse 1 and 2 of compilation of Islamic law stated that if the inheritee pass-away earlier than inheritor may be replaced by his/her children and the portion not allowed to be overamount the replacee. The term “may be” in above article indicates that it is not an obligation to refer to this article in all inheritee’s position replacement. The Article exists to provide legal certainty in terms the inheritee unable or not entitle yet to receive his/her inheritance, meanwhile he/her has a very close family relation to the inheritor, perhaps the grand children of inheritor. It is because a grand children Islamic heir law is allowed to inherit if the children pass-away. It means that someone can be a replacer if the replacee pass away earlier that the inheritor and as long as the replacer does not legally obstructed to inherit as mentioned in Article 173 of compilation of Islamic law.

### **Inheritance Refusal According To Civil Heir Law**

Refusal or refusing inheritance is one of the three possible options of inheritee prior to distribution of inheritance, where inheritee may choose his stands, which are:

1. Accepting all inheritance including the heir’s debt<sup>17</sup>.
2. Accepting with the condition that the items must be detailed which means that the dept of inheritor will be paid as long as the inheritance is sufficient<sup>18</sup>.
3. Refusing inheritance because the inheritee do not know about the management of the inheritance.<sup>19</sup>

Prior to choose his stand, inheritee also granted his right to time to consider (*recht van beraad*) as regulated is Article 1023 until 1029 KUHPperdata. Along the given time, inheritee obliged to manage inheritance and if there is any item that cannot keep long or considered unuseful, inheritee may report in to the head of district court so that there will be a saving

<sup>17</sup> Henny Tanuwidjaja, *Op.cit.*, p. 65.

<sup>18</sup> *Ibid.*

<sup>19</sup> *Ibid.*

action taken. According to Article 1024, KUHPPerdata that consideration time is within 4 months counted since description submitted to district court's clerk.<sup>20</sup>

Inheritance refusal is further arranged in Article 1057-1065 KUHPPerdata. The refusal must be revealed firmly by presence and give statement to the office of the district court's clerk where the inheritance is located and stated his/her stand and the clerk will make a refusal deed. If the refuse cannot present on his/her own, he/she can be represented by other people under a notarial attorney as stated in Article 1057 KUHPPerdata.<sup>21</sup> Emerging legal consequences are that the refuse consider as not an inheritee as his/her share goes to another person who supposed to receive the inheritance once the refusee absence at the moment the inheritance in unfold.<sup>22</sup> The other one is that descendant of the refusee, cannot inherit through position replacement because one cannot replace the position of an inheritee who still alive.<sup>23</sup>

Satjipto Rahardjo's theory of legal certainty can be use as an analytical guidance particularly related to the meaning of Article 1060 and 848 KUHPPerdata. The use of term "not all" in Article 1060 means not allowing replacement once the refusal is announced. This article refers to another Article that regulated someone who refuse inheritance considered as never inherit and therefore not entitle to be a position replacer.

### **Inheritance refusal according to Islamic heir law**

In Islamic heir system, the right to refuse is not recognized. This claim can be based on the opinion of Tahir Azhary that stated Islamic heir law does not recognize the right to deny as right to refuse only exist in western civil heir law. Further, in Islamic heir inheritee not allowed to refuse the inheritance. Azhary's thought in line with Islamic heir law's principle reflecting from Al Qur'an and Hadits namely the *ijbari* principle. This principle stressed out that the inheritance of a pass away person is automatically toward his/her inheritee regulated by Alloh not depend on the willing of inheritee.<sup>24</sup>

It is possible for inheritee to declare that he/she will not claim his/ her share and then give it away to another inheritee, such measures known as "resignation" or *takharuj*.<sup>25</sup> At *takharuj* means an act of reconciliation taken by an inheritee to not claim his/her share. If

<sup>20</sup> *Ibid.*, p.66.

<sup>21</sup> *Ibid.*

<sup>22</sup> Pasal 1058 dan 1059 Kitab Undang-Undang Hukum Perdata.

<sup>23</sup> Pasal 1060 Kitab Undang-Undang Hukum Perdata.

<sup>24</sup> Moh. Muhibbin dan Abdul Wahid, *Op.cit.*, p. 23.

<sup>25</sup> Muhammad Ali Ash-Shabumi.(1996). *Pembagian Waris Menurut Islam*, Jakarta: Gema Insani Press, p. 141.

inheritees agreed to exclude an inheritee from his/her right by granting him/her certain amounts of share.<sup>26</sup> Resignation is arranged in Article 183 of compilation of Islamic law which stated that “the inheritees can agree a reconciliation to share their inheritance once they realize their portion”. However, it must be under mutual approval. Then, it must be explained that inheritees either together or individually is allowed to proposed inheritance sharing if there is any disagree one, as he can file a lawsuit to religious court.<sup>27</sup>

In analyzing the inheritance refusal in Islamic heir law, I apply the theory of justice of Aristotle. According to this theory justice in term of fairness is in accordance with law. Justice which refers to act of pursuing happiness individually or for others is justice in tems of values. Justice and values seems to be similar but own different essence, as relationships among people refer to justice, while particular attitude without qualification refer to value. Therefore, one of the attempts to provide justice within inheritance sharing among inheritee by applying takharuj which regulated ini Article 183 of compilation of Islamic law.

### **Role of the notary in granting law certainty toward inheritance issue**

Transferred matter from inheritor to inheritee not only property and goods but also include his/her debts. To that extent, one needs a certificate of inheritance as a proof that he/she entitles to the inheritance which content who are entitled and their portion of share. The inheritance deed made several authorized namely notary, beaureau of legacy or self-made by inheritor witnessed by the head of the village and strengthen by the head of the district.<sup>28</sup> Certificate of Inheritance based of provision of Article 111 verse 1 letter c of regulation of the ministry of agrarian affairs/ the head of the national land office number 3 of 1997 concerning provisions on the implementation of the government regulatin number 24 of 1997 concerning land registration.

Notary’s authority regulated on Act no.2 of 2014 concerning amendment of Act no 30 of 2004 concerning notary’s position. Related to the making of inheritance certificate is no longer based on the provision of Article 14 verse 1 and 3 *Grootboeken der Nationale* as it amended by Article 111 verse 1 letter c no.4 of the regulation of the ministry of agrarian affairs/ the head of national land office no.3 of 1997 concerning implementation of the Government regulation no 24 of 1997 concerning land registration. However, according to

<sup>26</sup> *Ibid.*

<sup>27</sup> Pasal 188 Kompilasi Hukum Islam.

<sup>28</sup> Fardatul Laili, *Analisis Pembuatan Surat Keterangan Waris Yang Didasarkan Pada Golongan Penduduk (Berdasarkan Undang-Undang Nomor 40 Tahun 2008 Tentang Penghapusan Diskriminasi Ras Dan Etnis)*, Malang: Jurnal Pascasarjana Fakultas Hukum Universitas Brawijaya, p. 2.

Herlien Budiono, above legal basis are inaccurate since the decision was made by state ministry who was not in charge in one particular department and therefore only valid internally in terms of not publicly binding.<sup>29</sup> Thus, to make an inheritance certificate must accordance to Article 15 verse 1 of Act No.30 of 2004 concerning Notary's authority as follow:

“Notaries authorized to make authentic deed concerning every aspect of agreement and establishment required by regulations and/or required by concerned party to be stated in an authentic deed, guarantee the certainty of deed making date, retain the deed, granting grosse, copy and quote of the deed, all of it as long as the making not assigned of excluded to other officer or person by the law”.<sup>30</sup>

Above article becomes legal basis on the making of inheritance certificate by notary for those who subject to civil heir law or other heir laws.<sup>31</sup> According to the provision, a notary is allowed to make inheritance certificate/ certificate of inheritee entitlement which forced equally to all Indonesian citizens. It means any citizen's differentiation or classification leads to discrimination is not accepted as it against Article 4 point a of Act No. 40 of 2008 concerning eradication of racial and ethic discrimination and Article 28 I paragraph 2 the constitution of the Republic of Indonesia 1945.

In this discussion, the possibility of a notary to make a certificate rely on the provisions of Article 38 of Notary's position Act, yet such certificate is not a form of deed and therefore not one of the Notary's authority. Eventhought an acknowledgement toward legal power of certificate of inheritance as authentic evidence to claim inherited land came from circular letter established by legal development agency of directorate generale of agrarian, it consider less powerfull. In terms of Law hierarchy, a circular is under an Act, which mean, the circular is a valid regulation but compare to an Act it is under-powered. However, in terms of certificate of inheritance functioned as authentic evidence rely on stronger law (an Act) so it be powerfull as well.

According to Rawls' theory of justice, every man's classification based on race, color, religion and other primordial differences must be omitted. Public-oriented justice enforcement program shall having regard to two main justice pirnciples namely: firstly, grants widely equal rights and opportunity to access basic freedom to each and everyone. Secondly, be able to re-manage emerging economic and social gap in order to provide reciprocal benefit. Hence,

<sup>29</sup> Herlien Budiono, *Op.cit.*, p.98-99.

<sup>30</sup> Article 15 ayat 1 Undang-Undang Nomor 2 Tahun 2014 tentang Perubahan atas Undang-Undang Nomor 30 Tahun 2004 tentang Jabatan Notaris.

<sup>31</sup> Herlien Budiono, *Op.cit.*, P.100.

the making of certificate of inheritee or deed of inheriting rights imposed equally to all Indonesian citizens without any kind of discrimination.

Certificate of inheritee explain who's inherit to whom and howis the structure of the inheritee to be legalize by notary. The amount of share and each detailed rights depends on which heir law they apply. The rights of share ifself can be separately arrange in a rights of inheritance certificate which subject has enacted in the certificate of inheritee. The inheritance will be shared based on the heir law they choose and their agreement.

As if the inheritance refusal letter made by or in the presence of a notary, it consider as legally powerless or void. It because the only authorized institution to make legalize above certificate is the court not a notary. The parties are allowed to abrogate the certificate of refusal and for that abrogation certificate will be made.

Reflecting above description, Rawls' statement can be refered, that aim of the law or law making is not only to provide justice but also legal certainty and legal expedience. These aims also expected from Article 15 paragraph 1 Act No2 of 2014 concerning amendment of Act no 30 of 2004 concerning notary's position. It is clear that notary's authority is to make authentic deed not certificate. Notary's authorities related to deed making are:<sup>32</sup>

1. Legalize the signature and date of the informal deed by registering it in particular book, named *legalisasi*
2. List the informal deed by registering in particular book, named *waarmerking*
3. Make copy of the informal deed which contain description as written and explained in the original version, named *copy colationie*
4. Legalize identicity of photocopy and original version or known as *legalisir*

## CONCLUSION

Inheritee who refuses the inheritance is not allowed to act as a replace (*plaatsvervulling*) according to civil heir law. Article 1058 KUHPerdata stated inheritee who has refused his/her inheritance consider as not an inheritee, since conditions of position replacement according to this law is blood related family and not refusing the inheritance. In Islamic heir law position replacement is known as *mawali*, it mentioned in surah An-Nisa verse 33 and compilation of Islamic law Article 185 paragraph 1 and 2. Islamic law do not recognize refusal of inheritance but it recognize *takharuj* or resignation.

Making inheritance certificate is actually not notary's authority. Their authority is

<sup>32</sup> Pasal 15 ayat 2 huruf a, b, dan c Undang-Undang Undang-Undang Nomor 2 Tahun 2014 tentang Perubahan atas Undang-Undang Nomor 30 Tahun 2004 tentang Jabatan Notaris.

making deed under certain term and condition as regulated in Article 38 of Act No.2 of 2014 concerning amendment of Act No.30 of 2004 concerning notary's position. Whereas, inheritance certificate do not meet the conditions of deed formation and therefore cannot made by notary. However, notary allowed to established deed of inheritee of deed inheriting rights based on Article 15 paragraph 1 Act No.2 of 2014 concerning amendment of Act No.30 of 2004 concerning notary's position and Article 4 point a Act No.40 of 2008 concerning eradication of racial and ethnic discrimination juncto Article 28 I paragraph 2 of the Constitution of the Republic of Indonesia 1945. Besides, notary not allowed to establishing deed of inheritance refusal since the authorized institution is dictrict court. In the discussion of informal deed, notaries authorized to take the act of *legalisasi*, *waarmerking*, *copy colationie* and *legalisir*.

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