

Inheritance Laws Of Different Religions: Political Analysis of Islamic Law in Indonesia

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Abstract

The situation of the condition of differences in the religion of heirs and experts becomes a problem in itself when implementing inheritance law for Muslim communities. The book of fiqh and the Compilation of Islamic Law (KHI) as a reference for Muslims in Indonesia explain that religious differences are a barrier to inherit each other. How is the politics of Islamic law in Indonesia to address this problem in a pluralist society? As Bagir Manan said, the politics of Islamic law is the formulation, implementation and renewal of law, so Islamic inheritance law is still implemented as stipulated in the Marriage Law, the Law on Religious Courts and also the Compilation of Islamic Law, where heirs and heirs of different religions do not inherit each other, it's just that to overcome the differences in religion of heirs and heirs, Islamic law reform is carried out through the development of the concept of *mandatory* wills produced by Ibn Hazm. The politics of Islamic law on inheritance law of different religions is implemented through the legal sources of jurisprudence. The decisions of the Religious Court and the Supreme Court of the Republic of Indonesia grant inheritance to heirs of different religions through mandatory wills, not through inheritance law.

Keywords : Inheritance, Laws, Different Religion, Political Analysis, Islam

Abstrak: Situasi kondisi perbedaan agama ahli waris dan ahli menjadi masalah tersendiri ketika menerapkan hukum warisan bagi masyarakat muslim. Kitab fiqh dan Kompilasi Hukum Islam (KHI) sebagai acuan

bagi umat Islam di Indonesia menjelaskan bahwa perbedaan agama merupakan penghalang untuk saling mewarisi. Bagaimana politik hukum Islam di Indonesia untuk mengatasi masalah ini dalam masyarakat yang pluralis? Seperti yang dikatakan Bagir Manan, politik hukum Islam adalah perumusan, implementasi dan pembaharuan hukum, sehingga hukum warisan Islam tetap diterapkan sebagaimana diatur dalam UU Perkawinan, Undang-Undang tentang Pengadilan Agama dan juga Kompilasi Hukum Islam, di mana ahli waris dan ahli waris yang berbeda agama tidak saling mewarisi, hanya saja untuk mengatasi perbedaan agama ahli waris dan ahli waris, Reformasi hukum Islam dilakukan melalui pengembangan konsep wasiat wajib yang dihasilkan oleh Ibnu Hazm. Politik hukum Islam tentang hukum warisan agama yang berbeda diimplementasikan melalui sumber-sumber hukum yurisprudensi. Putusan Pengadilan Agama dan Mahkamah Agung Republik Indonesia memberikan warisan kepada ahli waris yang berbeda agama melalui wasiat wajib, bukan melalui hukum warisan.

Kata Kunci : Warisan, Hukum, Agama Berbeda, Analisis Politik, Islam

Introduction

This inheritance is a capital for the surviving heirs so that they are not miserable, difficult and fall into poverty when the *heir dies*. When the *muwarris* leave an inheritance in the form of houses, gardens, vehicles and other valuable assets as inheritance, it is unlikely that their heirs will become poor and difficult because they get a lot of inheritance from the *muwarris*, *unless they these heirs are unable to manage and carry out the inheritance left by the muwarris well done*. This is the message that existed when Allah Almighty revealed the verse Q.S. an-Nisa/4:9. According to Ibn Kasir, the above verse is a prohibition to testify to other people or parties other than heirs so that heirs become difficult and poor.¹ That is why, it is very important to maintain the integrity of the family by paying attention to inheritance. This message happened when the Holy Prophetsa forbade Saad bin Abi Waqqas to testify all or half of his property. The Holy Prophetsa only allowed a maximum will of 1/3 of the estate.²

From the explanation of the hadith above, *muwarris* should be happy and happy to leave heirs in a state of wealth so that they do not beg others. And it is even expected that they can give alms to others. This is why *sasiat* is one of the

¹Abu al-Fida' Ismail bin Umar bin Kasir, *Tafsir Alqur'an al-Az'im* (Berut: Dar al-Kutub al-Ilmiyyah, 1419 H), Juz II, h. 194.

²Muhammad bin Ismail Abu 'Abdullah al-Bukhari, *Al-Jami' al-Musnad as-shabih al-Mubktasar min Umur Rasulillahi Saw wa Sunani wa Ayyamibi* (t,t: Dar at-Tawq an-Najah, 1422 H), Juz VIII, h. 156.

ways of legal action to give justice to the heirs and beneficiaries of the will that will bring such justice.³ With regard to inheritance law, one of the rules is that the *mumarris*, i.e. the deceased person and the heirs are fellow Muslims, when one of the parties is not Muslim, then in Islamic inheritance law, they do not inherit each other. This rule arose based on the hadith of the Prophet "Do not inherit a Muslim to an infidel nor (inherit) an infidel to a Muslim"

Hadis di atas menjadi dalil bahwa anggota keluarga non-muslim tidak bisa saling mewaris dengan keluarga muslim yang lain. Ini tidak hanya terdapat dalam kitab hadis Bukhari saja, akan tetapi juga terdapat di dalam hadis yang yang dikeluarkan Imam Muslim⁴ dan kitab-kitab hadis lainnya. Itulah sebabnya, menurut pendapat mayoritas ulama muslim bahwa muslim dan non-muslim tidak saling mewarisi.⁵

This is certainly a problem for the Muslim community in Indonesia, because in Indonesia in one family many consist of several adherents of different religions. Father, mother and son may have different religions, but they still love, cherish and protect each other who will not be able not to inherit each other because of these religious differences. In this matter, of course, there needs to be a study of legal politics. One of the studies of legal politics is the formulation, implementation and renewal of law. In this paper the author will examine how the formulation of inheritance law between religions in the book of jurisprudence, how it is formulated in Islamic law in Indonesia and also how to implement and update it in the decisions of religious judges as jurisprudence?

Research Methods

This research is included in doctrinal law research, where researchers will look for and examine how legal experts think about the concept of inheritance law between religions. The study was conducted on books of jurisprudence across schools and also in the laws and regulations in force in Indonesia. Furthermore, the researcher will examine from the point of study of the politics of Islamic law in Indonesia consisting of several religious communities. Legal politics according to Prof. Bagir Manan is politics that discusses and examines how the politics of law formation, legal determination, application and law enforcement. In addition, the study of legal politics according to Prof. Manan also includes how the politics of legal reform.⁶ Researchers will look at court rulings related to inheritance laws

³Samsul Hadi, *Limitation of Wills as a Form of Islamic Legal Justice* in Al-Ihwal Journal, Vol. 9 Number 2 December 2016, p.182.

⁴Muslim bin Hujjaj Abu al-Hasan al-Qusyayri an-Naisaburi, *Al-Musnad as-Shabih al-Mukhtasar bi Naql al-Adli an al-Adli ila Rasulillah Saw* (Berut: Dar Ihya at-Turas al-Arabi, t.tp), Juz III, h. 1233.

⁵Wahbah az-Zuhayli, *al-Fiqh al-Islam wa Adillatuhu* (Damaskus: Dar al-Fikr, 2010), Juz X, h. 7880.

⁶Bagir Manan, "Reform of the 1945 Constitution" in Journal of Megister Hukum Volume 2 Number 1 of 2000 and Bagir Manan "The Politics of Autonomy Law Throughout the Laws and Regulations of the Government of Daera" in Martin Hutabarat, *et.al.*, (Ed.), *Indonesian Law and*

of different religions. Researchers analyze the formulation, implementation and renewal of interfaith inheritance laws for Muslim communities in Indonesia.

Discussion And Result

Inheritance Law Differs Religion According to the Book of Fiqh

The legal relationship of inheritance for Muslim heirs and heirs has two problems, namely the *first problem is Muslim heirs and non-Muslim heirs, while the second problem is non-Muslim heirs and heirs are Muslims*. Both of these issues are concerned with the right of inheritance between Muslims and non-Muslims. Do they inherit each other or not?

The hadith of the Holy Prophetsa has very clearly emphasized that one of the conditions for mutual inheritance is that it must be one religion, that is, *muwarris* and heirs must both be Muslims. When there is a religious difference between *muwarris* and heirs then they do not inherit each other even if they are of one blood or one offspring or they are husband and wife. Therefore when the *muwarris* is a Muslim father, and he leaves a son or daughter of a different religion from him, that is, a non-Muslim then the child does not become an heir, and vice versa when the deceased is a non-Muslim child, while the heir is a Muslim father, the father does not get inheritance from his Muslim son. This is in accordance with the words of the Holy Prophet: "Indeed, the *Holy Prophet (peace be upon him) said: "Muslims do not inherit infidels, nor do infidels inherit Muslims*."

This hadith according to researchers is a valid hadith, because its level of validity and authenticity is strong enough that it can be postulated.⁷ Religious equality is a condition for mutual inheritance, when heirs and heirs differ in religion then they do not inherit each other. This is as Imam as-Sarkhasi of the Hanafi School wrote, "*Religious similarities are mutually inherited, while religious differences create barriers to mutual inheritance*."⁸ Scholars seem to have agreed that religious differences lead to mutual non-inheritance between *heirs* and *heirs* even if they are related, related or married. Religious differences, according to the *fuqaha*, are *mani'* or forbidden causes to inherit each other. This is as Wahbah az-Zuhayli wrote, "*The religious difference between the muwarris and the heirs of one Muslim and the other non-Muslim, this is hindered from inheriting each other, and this is the agreement of the four schools. Therefore Muslims will not inherit infidels and infidels do not inherit Muslims, be they relatives or husband and wife*."⁹ According to Wahbah az-Zuhayli, there are two reasons the

Politics; Analytical Objectives of the Presidential Decree and Regional Autonomy (Jakarta: Pustaka Sinar Harapan, 1996), p. 142.

⁷Maimun, "*Distribution of Inheritance Rights to Heirs of Different Religions through Mandatory Wills in the Perspective of Islamic Inheritance Law*", in *Journal of Sharia Law and Economics Principles* Vol.9 No.1 of 2017, p. 6.

⁸Muhammad bin Ahmad bin Abi Sahal Syamsul A'immati as-Syarkhasi, *al Mabsut* (Berut: Dar al-Ma'rifah, 1993), Juz X, h. 100.

⁹Wahbah az-Zuhayli, *al-Fiqh al-Islami wa Adillatuhu* (Damaskus: Dar al-Fikr, 2010), Juz X, h.7719.

scholars of the madhab think so, namely heirs and heirs do not inherit each other because of religious differences. The *first* reason is the hadith narrated by Osama bin Zayd above, where it is clearly stated that the Holy Prophetsa stated that Muslims and infidels do not inherit each other.¹⁰ When one of the heirs and heirs has different religions, then they will not inherit each other. This is the meaning of *zahir* contained in the hadith. Since this is the meaning of *zahir* that can be understood directly, and there is no *ta'wil*, it must be carried out, as it is in the *book of the origin of fiqh*, that the *nas syar'iat* must be practiced which is contained in *his ikata*, *iges*, *iqthida'* and *dalalah*.¹¹

The *second* reason is the following hadith narrated by Imam Ahmad, Abu Daud and Ibn Majah: "*Indeed, the Holy Prophetsa said: "There is no mutual inheritance of two adherents of different religions at all"*". In the above two hadiths it is clearly and unequivocally stated that two adherents of different religions do not inherit each other. Muslims and infidels will not inherit each other. This provision was made law in Egypt and Syria.¹² While adherents of the same religion continue to inherit each other, pagans inherit other pagans, Jews with Jews inherit each other and Christians with Christians inherit each other as well.

Such an opinion exists in several books of *fiqh* written by scholars of various madhhabs. In the Hanafi school. Imam as-Sarkhasi explained *that we know that with this method Muslims will inherit each other with Muslims, and therefore Muslims will not bequeath their property to their infidel heirs, and in fact the inheritance is only fellow Muslims, while the infidel will not bequeath his property to the infidels*.¹³ In the view of the Hanafi school, one of the conditions for inheriting each other is that it must be one religion. Therefore Muslims will not bequeath their property to infidels. The haram of non-Muslims to obtain inheritance from Muslims is highly believed.¹⁴

The same is true in the Maliki school. In *az-Zahirah*, Imam al-Qurafi al-Maliki writes that it has been agreed that Imam Malik and other imams actually inherit each other is broken between Muslims and infidels.¹⁵ Religious differences will break the legal relationship of inheritance between heirs and heirs in the Maliki school.

In the Shafii school it is also explained that infidels, polytheists or apostates should not inherit Muslims. Imam Shafii wrote that he had told us Sufyan bin U'yaynah from Zuhri from 'Ali bin al-Husayni from 'Amri bin Uthman from Usama bin Zayd indeed the Holy Prophet said: "Muslims do not inherit infidels, and infidels do not inherit Muslims" Imam Shafii said, with this proposition we can say everyone who is different religion from Islam be it a

¹⁰*Ibid.*

¹¹Abdul Wahhab Khallaf, *Ilmu Ushulil Fiqh* (Al-Qahirah: Dar al-Qalam, 1978), h. 143.

¹²*az-Zuhayli, al-Fiqh al-Islami wa Adillatuhu...*, h. 7719.

¹³Muhammad bin Ahmad bin Abi Sahal Syamsul Aimmah as-Sarkhasi, *al-Mabsut* (Berut: Dar al-Ma'rifah, 1993), Juz X, h. 101.

¹⁴*Ibid.*, Juz XI, h. 48.

¹⁵Abu al-Abbas Syihabuddin Ahmad bin Idris bin Abdurrahman al-Maliki al-Qurafi, *az-Zahirah* (Berut: Dar al-Gharbi al-Islami, 1994), Juz XIII, h. 21.

member of the book or a polytheist or an apostate, All these people should not inherit Muslims as the hadith of the Prophet above.¹⁶

Non-Muslims should not inherit Muslim property, be it because of the Bible, or polytheism or apostasy. None of this should be inherited from a Muslim. In the Hambali school it is also written "It has been ijma the scholars of the infidel will not pass on the Muslims. Jumhur Sahabat and fuqaha said: Muslims do not inherit infidels. This is narrated from Abu Bakr, Umar, Uthman, Ali, Usama bin Zaid, Jabir bin Abdullah may Allah Almighty please them all, and this opinion also comes from Amru bin Uthman, Urwah, Zuhri, Atha', Thaus, Hasan, Umar bin Abdul Aziz, Amru bin Dinar, Sauri, Abu Haneefa and his disciples, Malik, Shafii and in general the fuqaha'.¹⁷ Ibn Qudamah of the Ibn Hanbal School argues that Muslims will not bequeath their property to infidels, and this is the opinion of the companions and the number of scholars and fuqaha. This is not only the opinion of the Ibn Hambal School, but it is already the opinion of jumhur fuqaha and ahlul ilmi.

The next question that arises is what if *the muwarris are non-Muslims, while the heirs are Muslims, are these Muslim heirs entitled to inherit property from non-Muslim muwarris* ? This situation still has differences of opinion among scholars. In the book *az-Zahirah* by al-Qurafi of the Maliki school it is explained that according to Umar, the jumhur of the companions, Muawiyah, Muaz bin Jabal where they argue that if *the muwarris is an infidel ahlul Kitab while the heirs are Muslims, then Muslim heirs can receive inheritance from muwarris* who disbelieve ahlul the book, and not vice versa. Non-Muslim heirs cannot inherit the inheritance left by Muslim heirs . This is where the religion of Islam is important, as Muslims can marry non-Muslim women, but non-Muslims cannot marry Muslim women.¹⁸ In the book of *Sunnah Fiqh* written by Sayyid Sabiq, he asserts that Muslims can actually be heirs of infidels, but infidels cannot be heirs to Muslims. This is just as it is permissible for a male Muslim to marry a female infidel, but a male infidel may not marry a Muslim woman.¹⁹ Thus it can be concluded that in the book of jurisprudence that the majority of the Companions and Fuqaha hold that Muslims should not bequeath their property to their non-Muslim heirs, while Muslims still have Companions and fuqaha who allow him to receive inheritance from non-Muslim heirs as described above. Ibn Taymiyyah explains that Muslims can receive inheritance from *the Kafir Zimmi* but not vice versa. This is because the infidel *zimmi* does not hinder kinship with Muslims, nor does the apostate who is killed and his inheritance belongs to his Muslim heirs. Ibn Taymiyyah wrote that if an apostate is killed for his apostasy or dies then his property is given to his

¹⁶ Abu Abdullah Muhammad bin Idris as-Syafii bin Ababas bin Usman bin Syafi' bin Abdul Muthalib bin Manaf, *al-Umm* (Berut: Dar al-Ma'rifah, 1990), Juz IV, h. 87-88.

¹⁷ Abu Muhammad Muwaffiquddin Abdullah bin Ahmad bin Muhammad bin Qudamah al-Hanbali, *al-Mughni li Ibni Qudamah* (al-Qahirah: Maktabah al-Qahirah, 1968), Juz VI, h.367.

¹⁸ Abu al-Abbas Syihabuddin Ahmad bin Idris bin Abdurrahman al-Maliki al-Qurafi, *az-Zahirah* (Berut: Dar al-Gharbi al-Islami, 1994), Juz XIII, h. 21.

¹⁹ Sayyid Sabiq, *Fiqh as-Sunnah* (Berut: Dar al-Fikr, 1983), Juz III, h. 427.

Muslim heirs, this is the narration of Imam Ahmad and is a very famous opinion of the Companions.²⁰

Furthermore, the question that arises is whether it is possible for non-Muslim heirs to obtain a share of the estate from the heir other than by means of inheritance law? In the books of fiqh it is explained that there is still a possibility for heirs to be able to get inheritance from *muwarris* through *mandatory wills*. In order for heirs or relatives to get inheritance property can be obtained by means of *mandatory wills*, where *the heir* or testator wills so that relatives who cannot get inheritance property or are prevented from obtaining inheritance property can still get inheritance property.

One of the fuqaha who discusses this is Ibn Hazm. In al-Muhalla, Ibn Hazm argues that the will is obligatory for every Muslim, especially to his relatives who are prevented from obtaining inheritance rights, even more broadly than that according to Ibn Hazm if the heir does not leave a will for his relatives who do not get the inheritance, then the judge must act as a *muwarris*, That is to give part of the inheritance left by the heir to the hindered relative. This is a mandatory will for them. Ibn Hazm writes that it is obligatory upon every Muslim to testify to his relatives that they cannot inherit property, either because of slavery or because of disbelief (religious differences).²¹

From the above it is clear that according to Ibn Hazm that relatives who are prevented from obtaining inheritance can obtain inheritance by will. Relatives, such as children, fathers and/or wives who are prevented from obtaining inheritance property because non-Muslims can still get inheritance property by means of mandatory wills. This is the opinion found in the books of fiqh. In terms of inheritance law, the fuqaha have agreed that relatives or heirs who are prevented from obtaining inheritance property cannot obtain inheritance property from heirs or *muwarris* if it is based on inheritance law or *fara'id law*, but they can obtain inheritance property based on *mandatory wills*.

Inheritance Law of Different Religions in the Compilation of Islamic Law (KHI) in Indonesia

In Indonesia there are three legal systems that apply to regulate this inheritance law, namely the Islamic legal system for adherents of the Muslim religion, the existing civil law system regulated in the Civil Code for non-Muslim communities and subject to it and the customary law system for those who are subject to customary law. The three legal systems regulate the law of inheritance and are obeyed by the people who follow the legal system. This means that these three inheritance legal systems are still alive in Indonesia.

²⁰Taqiyuddin Abu al Abbas Ahmad bin Abdul Halim bin Abdussalam bin Abdullah bin Abil Qasim bin Muhammad Ibnu Taimiyyah al-Hanbali ad-Dimasqi, *al-Fatawa al-Kubra li Ibni Taimiyyah* (Berut: Dar al-Kutub al-Ilmiyyah, 1987), Juz V, h. 445.

²¹Abu Muhammad Ali bin Ahmad bin Said bin Hazm, *al-Muhalla bi al-Asar* (Berut: Dar al-Fikr, 1999), Juz VIII, h. 350.

In the Civil Code, it is explained that a person gets inheritance property obtained in two ways, namely *first* he gets inheritance property because it is regulated by law. People who become heirs to an estate are because they are prescribed by law to obtain the estate (*ab intestato*). *The second* is to obtain inheritance based on the will of the deceased person that the party receiving the will is entitled to receive the estate of the deceased (*testamentair*). Therefore, the persons entitled to inherit the estate are the ones who are governed by law and/or he receives the will of the deceased.²²

In the Civil Code, it is explained that the first heirs who are most entitled to inheritance are the first group of heirs, namely children. As long as the heirs of the first group are still there, the heirs of the second, third and fourth groups will not obtain the inheritance. The child is the heir who is most entitled to inherit the property because he is in the first group. Sons and daughters are equal in terms of the right to acquire inheritance, without any difference. All of them sons and daughters have an equal share of the estate left by their parents. As long as the heirs of this child exist, be it sons or daughters, then the father and mother (grandparents) do not get inheritance from their children, because there are children from the mayyit. The father of the heir is the heir of the second group so he is hindered by the first group of heirs.²³

The reason the heir is prevented from receiving the inheritance property is because he is not eligible to receive the inheritance property. Impropriety to receive inheritance is due to four reasons, namely *first*, an heir who by a judge's decision has been convicted of murder or attempted to kill the deceased. *Second* an heir who has embezzled, destroyed or forged a will or; *Third*, an heir by force or threat has prevented the deceased from making a will according to his will, and *fourth*, the heir denies receiving the estate.²⁴ Religious differences between heirs and deceased do not prevent a person from receiving inheritance. In civil law, if the deceased is Muslim and the child is non-Muslim, then this will not prevent the heirs from receiving inheritance from the deceased even though they are of different religions, and vice versa. Religious differences do not preclude the right to inherit each other.²⁵

In Batak customary law, inheritance law is also regulated. In Batak inheritance law, that heirs are only in the male line, while daughters are not heirs. Daughters do not get inheritance from their fathers, because only sons are entitled to inherit them. This is inseparable from the family system that exists in the Batak tribe, namely the patrilineal kinship system. In the patrilineal kinship system,

²²Subekti, *Pokok-pokok Hukum Perdata* (Jakarta: Intermedia, 1985), h.95.

²³H.F.A. Vollmar, *Introduction to Civil Law Studies* (Jakarta: Rajawali Pers, 1992), p. 390.

²⁴Subekti, *Trees of the Law of Perdata...*, p.96-97.

²⁵Moh. Ariq Fauzan and Dewa Gde Rudy, "The Right to Inherit Children of Different Religions with Heirs Based on the Compilation of Islamic Law" in Acta Comitas Journal of Notarial Law Vol.06 No. 01 April 2021, p. 217.

people prioritize male lineage over female offspring because of the position of sons as successors to their father's descendants.²⁶

Likewise, the wife is in customary law that the wife is not an heir, so she is not entitled to inherit property from her husband. This is the original Batak inheritance law, but nowadays there has been development and change in society, where there are daughters and wives who get inheritance with certain conditions. Wives and daughters will obtain inheritance from their father or husband with the results of deliberation among family members.²⁷

Batak inheritance law has undergone changes and developments in society. But it's just that the so-called heirs are only sons, because they assume that it is the son who will carry on the bloodline, not the daughter. The question arises, Is it that in Batak inheritance law, a daughter and her offspring will never get property from her father?

The daughter will never get property from her father even if not through the Batak inheritance law system. Indeed, the daughter and her offspring will never inherit from their father. However, he once obtained property from his father when he married. When a daughter has been married to another man by custom, the father will usually give a piece of land to the married daughter. This piece of land is called *pausageang* or land of gift. The daughter who gave birth to the first grandchild will also be given a piece of land, because she has raised the status of her father and grandfather. With the grandson, the father changed his name with the name *amang di si*, and could no longer be called his name, nor was the grandfather, so he was named *opung di si aba.....* With the lair of the first grandchild of this daughter then she was entitled to a piece of land called *indaban arian* (rice for lunch). Father's gift to daughters and daughters' grandchildren is a memento to keep her daughters and grandchildren in mind. This gift is called *ulos na sora buruk* (a blanket that will not be damaged). This means that the daughter and child will still get property from their father even though it is not in the form of inheritance.

Basically, sons and daughters are equal in the view of the Batak people. It's just that the difference is in the position of continuing the bloodline. The son will continue the lineage and clan while the daughter will continue the lineage from her husband. This difference in position and role causes the son to get inheritance, while the daughter does not get inheritance, but the husband will get inheritance from her father. Because the son is to continue the lineage, the son is given property by his father, because the daughter will one day go to the house of another clan to continue the descendants of another clan.

From the explanation above, it is very clear that for the Batak people, the problem of religious differences is not a barrier to inheriting each other. For the Batak people, it is not religion that is the problem, but the son that is the problem.

²⁶Laksana Arum Nugraheni, *Dynamics of Customary Inheritance Law in the Patrilineal Kinship System; Heir to Daughter* in Untidar Journal Vol 5 No. 1 of 2021, p. 2.

²⁷H.P. Pangabebean and Richard Sinaga, *Dalihan na Tolu Customary Law on Inheritance Rights* (Jakarta: Dian Utama dan Kin, 2007), pp. 102-115.

The son will still get the inheritance from his father even though he is already Muslim. Continuing the clan is the most important factor in Batak inheritance law. Religious differences between *muwarris* and *heirs* will not prevent each other from inheriting each other in the perspective of Batak inheritance law.

Islamic inheritance law in force in Indonesia is regulated in Law Number 1 of 1974, the Compilation of Islamic Law in Indonesia and also in Jurisprudence. Law No. 1 of 1974 concerning Marriage mentions very little about inheritance law, because inheritance law cannot be separated from marriage. Marriage is one of the reasons for mutual inheritance between husband and wife. In Chapter VII Articles 35 to 37 are regulated regarding property in marriage. Article 35 states that there are two kinds of property in marriage, namely joint property and congenital property. Inherited property includes gifts or inheritance. Only this chapter mentions inheritance.

Furthermore, Islamic law on inheritance in force in Indonesia is explained in somewhat more detail in the Compilation of Islamic Law in Indonesia. In Book II of the Compilation of Islamic Law in Indonesia Chapter II concerning heirs article 178 it is explained that heirs who are prevented from obtaining inheritance property by the decision of a judge who has permanent legal force are only two, namely *the first* heir who is accused of murder or attempted affix or severely molested the heir. If the heir has committed these acts and he has received a verdict from a court that has permanent legal force, he will be prevented from obtaining inheritance from the heir. *Both* heirs concerned have committed slander that the heir has committed a crime punishable by 5 years imprisonment or a harsher sentence, and such slander has been filed by the heirs concerned with the competent authorities.

Article 173 does not explain that religious differences between heirs and heirs can hinder the process of mutual inheritance between heirs and heirs. This rule on religious differences only exists in Article 171 in point c, where at that point it is clearly stated that the heir is a person who at the time of death has a blood relationship or marital relationship with the heir, is Muslim and is not hindered by law from becoming an heir. In this article it is explained that the requirement of heirs must be a legal relationship between the heir and the heir. The legal relationship in question is blood relationship and marital relationship. The second heir requirement is that the heir must be Muslim. The heir has a legal relationship with the testator, but because he is not Muslim, he does not become the heir of the heir. The third requirement is that the heir is not hindered from becoming the heir. The barrier to becoming the heir of the testator is regulated in article 173 above.

Article 171 point b states that the heir is a person who at the time of his death or was declared dead based on the decision of the Muslim Court, leaving heirs and relics.²⁸ This shows that in Islamic law in Indonesia, heirs and heirs must

²⁸Ahmad Rofiq, *Islamic Civil Law in Indonesia* (Jakarta: Rajawali Pers, 2015), pp. 318-321.

both be Islamic even though they are regulated in different articles. If the heir and heir are not both Muslims, then they do not inherit each other according to Islamic law. Because in Islamic law in Indonesia, it is explained that the law of inheritance is a law that regulates three things, namely *first* the transfer of ownership rights of the heir's estate (*tirkah*), *the second* thing determines who is entitled to become the heir and *third* how much each share. Because in this Compilation it has been explained that the heirs and heirs must be Muslims, then that is when Islamic inheritance law can be applied.

Islamic Inheritance Law According to Jurisprudence

The discussion of inheritance for non-Muslim family members is discussed in classical books of jurisprudence as well as in the writings of modern Muslim thinkers. Based on the conclusions obtained, there are three opinions regarding inheritance law for non-Muslim family members. The *first* opinion, and is the majority opinion, is that Muslim and non-Muslim family members will not inherit each other. Non-Muslims in the hadith are called infidels and apostates. When a Muslim dies, the core members of his family will not inherit from the *muwarris* if he is a non-Muslim or apostate. This opinion is the opinion that exists in the Hanafi, Maliki, Shafii and Hanabila schools. Second Opinion, *non-Muslim family members do not* get inheritance property if the deceased (*muwarris*) is Muslim, but on the contrary if the deceased is a non-Muslim while the family member left behind is Muslim, then the Muslim family member who is left behind, he will get inheritance property. This opinion exists within the Shi'a school. The third opinion is that Muslim and non-Muslim religions will inherit each other. Religious differences are not a barrier to inheriting each other. This third opinion emerged from Muslim thinkers in the recent century, namely in the IX century, such as Abdullah Ahmed an-Naim and Asgar Ali Engineer.²⁹

This difference in the opinions of modern scholars and thinkers seems to have been endorsed by several judges in the Religious Courts. An example of the existence of non-Muslim family members from the estate is the presence of Decision Number 0140/Pdt.P/2012/PA. Sby and Decision Number 218 K / Ag / 2016 which gives a mandatory will to a non-Muslim. Furthermore, the Supreme Court Decision Number 331 K / Ag / 2018 decided to give mandatory wills to non-Muslim heirs and this has also become jurisprudence for religious judges in religious courts. Therefore, the political role of Islamic law in Indonesia influences legal decisions on how heirs and *muwarris* of different religions have a legal relationship in inheritance matters.

Furthermore, in the Fatwa of the Indonesian Ulema Council Number 5 / MUNAS VII / MUI / 9/2005 concerning Inheritance of Different Religions, namely: *first*, the law of inheritance does not provide the right to inherit between people of different religions between Muslims and non-Muslims. *The gift of*

²⁹M. Syaff'ie, "Non-Muslim Rights to Inheritance: Islamic Inheritance Law, KHI, and CLD-KHI in Indonesia", in Jurnal al-Mawarid, Vol. XI, No.2 Sept-Jan 2011, pp. 190-191.

inheritance between people of different religions can only be done in the form of grants, wills and gifts.³⁰ The third rule pertaining to heirs and heirs of different religions is jurisprudence. In Indonesia there have been two very clear rulings deciding disputes about heirs and heirs of different religions. The decisions are the Decision of the Salatiga Religious Court with case register number 0413/Pdt.G/2011/ARTICLE and the Bandung Religious Court Decision with case register number 04/Pdt.P/2013 PA.Bdg. In these two cases have similar cases, namely parents and children of different religions. In the decision of the Salatiga Religious Court, it is explained that different religions are also heirs, while according to the Bandung Religious Court Decision, that religious differences between heirs and heirs cannot inherit each other based on inheritance law. Therefore, the heir cannot get the inheritance from the testator through inheritance law, but he can get the inheritance property from the testator through a mandatory will and he is willing to obtain inheritance rights. Furthermore, in the Decision of the Supreme Court of the Republic of Indonesia number 51 / K / AG / 1999 and No. 16 / K / AG / 2010, where it is explained that a person is an heir even though he is different in religion from the heir still gets an inheritance through *a mandatory will and* obtains inheritance and the part of who will inherit is the same as the heir of the same degree but the share is not more than one-third of the inheritance property.³¹

Actually, there have been many religious court rulings that provide a share for heirs who are not Muslim, be it children or wives. What is very interesting is that the heirs of non-Muslims in Supreme Court Decision No. 51/K/AG/1999 are not heirs but he receives inheritance based on a mandatory will, while according to the Salatiga Religious Court Decision considers non-Muslim heirs to be heirs. Although the position of heirs is different religions to get inheritance from Muslim heirs, namely as heirs and as obligatory testamentary recipients, but through this jurisprudence it can be understood that non-Muslim heirs still get inheritance property.³²

Conclusion

Religious differences are a barrier to inheriting each other according to Islamic law, while blood and emotional relationships greatly affect the implementation of the distribution of inheritance for the people of Indonesia. Religious differences in one family are very common in Indonesian society, and even in some tribes in Indonesia there are several families who adhere to different religions. They love each other, love each other and also protect each other even though they have different religions and beliefs, as happened to the Batak people,

³⁰Leviticus Shalehah, "*Inheritance of Different Religions; Analysis of the Decision of Different Religious Cases in Supreme Court Decision 16/Kag/2018.*", in al-Manhaj Journal; Journal of Indonesian Islamic Family Law No. 2 Edition 1, Year 2020, p. 43.

³¹Yanti and Mulyadi, "*Distribution of Inheritance to Heirs of Different Religions and Their Legal Consequences*", in Diponegoro Law Journal, Vol 5 Issue 3 Year 2016, pp. 1-12.

³²*Ibid.*,h. 10.

and some eastern communities in Indonesia. Is it possible that this situation forces us not to inherit each other just because of religious differences? This is where the politics of Islamic law in Indonesia comes into play. Based on the explanation above, there are three ways taken in solving this problem. *First*, the law of inheritance remains in force as stated in hadith and books of jurisprudence, where religious differences are a barrier (*mani'*) to inheriting each other. This law has not been disturbed nor changed. Islamic jurists in Indonesia do not change the Islamic inheritance law contained in the books of jurisprudence. *Second*, since inheritance law is not interfered with, the second step is to apply the obligatory will as written by Ibn Hazm for heirs of different religions. In Article 209 of the IHL, only mandatory wills are regulated for children and adoptive parents. This concept was expanded as an elaboration of what was written by Ibn Hazm. This was realized in the Fatwa of the Indonesian Ulema Council with its fatwa Number 5/MUNAS VII/MUI/9/2005 concerning the Heritage of Different Religions. This fatwa does not change the law of inheritance, but it carries out a new formulation of the concept of mandatory wills in Article 209 of the KHI, where heirs of different religions can get inheritance through wills, and even in point 3 it is explained that religious differences can be regulated through jurisprudence. The third legal policy is that heirs of different religions can get inheritance through jurisprudence, namely the Bandung Religious Court Decision with case register number 04/Pdt.P/2013 PA. Bdg and Decision of the Supreme Court of the Republic of Indonesia number 51/K/AG/1999 and No. 16/K/AG/2010 and other jurisprudence.

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