

Mandatory Wills as Protection of Inheritance Rights to Heirs Who Change Religions (Dimensions of Religious Education in the Family)

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Abstract: *Obligatory will, occurs due to legal actions by changing religions other than Islam which causes no inheritance. But still get a chance with the provisions of the obligatory will. In this study, there was a legal conflict, namely Law no. 01 of 1974, Article 42, reads that a legitimate child is a child born in or as a result of a legal marriage. This does not see, due to other legal actions when the child is an adult by changing religions other than Islam. This is contrary to Faridh Law (law of Fiqh Inheritance), Al Qur'an Surah An Nisa verses 7 to 12. Also, Child Protection Law No. 23 of 2000, Article 42; Paragraph (2) reads that every child can make his choice if the child is wise and responsible and fulfills the requirements and procedures in accordance with the provisions of the religion he embraces and the provisions of the applicable laws. To provide a solution between these legal conflicts, a court decision regarding the obligatory will appeared, in court decision Number 204/Pdt.G/2007/Pa.Jr, which was confirmed by decision Number 263/Pdt.G2007/PTA.Sby and the decision of the Religious court Tondano Number 13Pdt.G/2006/PA.Tdo, which was corrected by Decision Number 01/Pdt.G/2007/PTA.Mdo. This article will be examined using normative research methods, namely research that aims to obtain legal materials obtained through literature studies that are considered relevant to the subject matter. The results of this study are that boys and girls of different religions will still get an inheritance, but differences in the division of inheritance on the male side, the role of religious education functions to provide reinforcement in the values of Sakinah Mawaddah and Warahmah in the family, so religious education is needed. The conclusion of this study is that the obligatory will can provide strengthening of family values.*

Keywords: *Compulsory Will; Boys and Girls; Changing Religion.*

1. INTRODUCTION

Children are the successors of the family who are also heirs of their parents when they die. There are several things that cause a person to get inheritance rights to the heir's property. The two main things are kinship (nasab) and marital relations. The existence of kinship is determined by the existence of blood relations which is determined

at the time of birth (Syarifuddin, 2005) . In this case the child becomes the heir of his parents because of a family relationship. According to Article 174 of the Compilation of Islamic Law, boys and girls are included in the group of heirs according to blood relations (Ardhian & et al, 2016) .

The assets divided as inheritance are the inherited assets of the heir before the marriage took place and also part of the joint assets acquired during the marriage. Based on the explanation of Article 35 of Law no. 1 of 1974 concerning Marriage, if the marriage is broken up and the heir is Muslim, the law used is Islamic inheritance law. However, if between the heir and the heir there is a difference in religion, then the law of inheritance becomes obstructed. In other words, if one of them is not Muslim, then neither of them can inherit from each other (Somawinata, 2009) .

Religious differences between parents and children can occur because from the start the child has a different religion. This is due to the existence of interfaith marriages. In addition, religious differences between parents and children are also caused by changing religions or apostasy. It is this religious shift that hinders the right to inherit (Darmawijaya, 2015) .

A case like this occurred in 2007 based on the Decision of the Jember Religious Court Number 204/Pdt.G/2007/PA.Jr where a woman named Marsini left 7 children (2 boys and 5 girls) after her death. One of the sons then converted to Christianity and finally he received a share of the inheritance through a mandatory will *of* 1/7 (one seventh) part. The case of a girl who changed religions occurred in Manado with decision number 1/Pdt.G/2007/PTA.Mdo dated September 17 2007. The decision gave a daughter who changed religions to remain the same as her *obligatory* will with a number of values for the share of female heirs. The share of female heirs in the decision is 1/6 (one sixth) part (Iyan, 2017)

In these two cases, it can be seen that there are differences in the share of inheritance for children who change religions. However, for boys, the consideration is not the gender, but the number of children of the heir, so that the share he gets will be different from the share when he became the heir.

This consequence is of course due to the conversion of religions. This is where the need for the role of Islamic education. Islamic education that is properly instilled will certainly protect the human self from apostasy. Because the older you get, the stronger your sense of religion will be. Thus, it is impossible for someone to become apostate if he has been instilled with the values of good Islamic education from his parents (Mulyadi & Adrianto, 2021) .

2. METHODS

This research is included in normative research, namely research that aims to obtain legal materials obtained through literature studies that are considered relevant to the subject matter. Appropriate sources are then described in descriptive form using a qualitative approach (Aspers & Corte, 2019) . The sources come from the applicable laws

and regulations in accordance with the subject matter

3. RESULTS AND DISCUSSION

3.1 Compulsory Wills for Heirs of Different Religions

According to law Islam, there is a number of Thing which Becomes barrier inheritance (*mawani' al-irtsi*), that is barrier implementation of inheritance inherit. In terminology cleric *faraidh*, that is something circumstances or characteristic which causing that person to be unable to receive an inheritance even though it is sufficient terms and there is an inheritance relationship. At first someone is already entitled to an inheritance, but because there is a circumstance certain which resulted he no get treasure legacy. Circumstances- circumstances that cause an heir to be unable to obtain assets legacy is:

a. Murder

Someone who kills another person who is his heir, then he is not can inherit people's property that killed. These provisions contain benefit so that people do not take shortcuts to get inheritance by killing the person who inherited it.

b. Different religion

Different religion in law Islam is where somebody which religious Islam no could bequeath his treasure to a which different religion, and vice versa. In other words that a Muslims cannot give their wealth or bequeath their wealth to people which different religion even he including class heir. Al-Qur'an letter al-Baqarah verse 221 which directly prohibits men Muslims marry polytheistic women, and vice versa, Muslim women forbidden to marry mushrik men. According to Idris Ramulyo that is the essence from the letter al-Baqarah verse 221 it is that people who are Muslims cannot inherit the inheritance of infidels and non-Muslims no can inherit property people Islam.

c. Slavery

A slave is the absolute property of his master, therefore he is not entitled for own treasure, so that he no can Becomes people which bequeath and will not inherit from anyone. A slave is seen no competent control treasure. Status family to his relatives already broke up because he becomes family foreigners (Nasution, 2012). According to Article 838 of the Civil Code (KUHPperdata), expert inheritance which inappropriate accept inheritance is:

- a. Heirs who, by a judge's decision, have been punished for being blamed kill or at least try kill heir;
- b. Heirs who, by a judge's decision, have been punished for being blamed slandered and denounced the heir, that the heir committed a crime which threatened with punishment jail four years plus;
- c. Expert inheritance which with violence has for real obstruct or prevent heir for make or interesting return letter will; and
- d. Heirs who have embezzled, destroyed, and forged letters will.

Heirs are as people who have the above needs the event of the death of a person in connection with the existence of something assets prepared to be used for needs and needs a person related to the heir. Descendants of people who died leaving the inheritance is the most important heir, because in fact they were the sole heirs, and their relatives were not heir, if the person who left the inheritance has offspring. Thing this also explained in Law custom, Law Islam and BW (Oemarsalim, 2000) .

According to Islamic law, heirs may not get part of the will. Ban will to expert inheritance which has determined distribution legacy, according to para expert jurisprudence so that no there is impression that will that show difference love Dear Among fellow expert inheritance, which on will eventually ignite discord among the heirs left behind by heir. Part cleric say can give will to expert inheritance, especially which looked at very need, as if part they are rich and some are poor, so it is appropriate for the poor besides he gets the inheritance he also gets extra by the road will, or to a child whose father has temporarily divorced his mother her mother no own member family which other besides his son it, said that the opinion followed among the Malikiyah and Zhahiriyah, namely that the prohibition on bequeathing heirs is not void by itself because of permission from other heirs. Prohibition like this is the right of God that can not fall with human willingness in Thing these are para heir. Muslim no expert inheritance and no could demand legacy from his heir. Meanwhile, in terms of Muslim heirs and non-Muslim heirs, non-Muslim heirs Muslims can become heirs and demand the distribution of inheritance from heir based muslims law Islam (Al-Amruzi, 2012) .

In order to be able to make a comparison of the provisions for inheritance through a mandatory will for boys and girls who change religions, we can look at the court decision Number 204/Pdt.G/2007/Pa.Jr, which was confirmed by decision Number 263/Pdt.G2007/PTA.Sby and the decision of the Tondano Religious court Number 13Pdt/.G/2006/PA.Tdo, which was corrected by Decision Number 01/Pdt.G/2007/PTA.Mdo. in decision number 204/Pdt.G/2007/Pa.Jr which was confirmed by decision 263/Pdt.G2007/PTA.Sby, both parents are Muslims, and their six children are of the same religion. Only one child is not Muslim, in this case a boy of a different religion based on decision Number 204/Pdt.G/2007/Pa.Jr which is confirmed by decision Number 263/Pdt.G2007/PTA.Sby. the boy who changes his religion gets a share of 1/7 (one-seventh) based on the *Obligatory will* even though according to Islamic law in the rules of knowledge of Faraidh it is 1/3 (one-third) of the inheritance.

Furthermore, in decision number 13Pdt/.G/2006/PA.Tdo which was corrected by decision number 01/Pdt.G/2007/PTA.Mdo, it gives the share of girls who change religions by means of a mandatory will, the value of the share of female heirs is not even carried out first and will be carried out simultaneously with the distribution of heirs to other heirs.

3.2 Compulsory Wills as a Solution to Obtaining Rights from Heirs

A new law which is written in the decision of the Supreme Court Number 368.K/AG/1995 is the matter of obligatory wills for heirs of different religions. Based on the decisions of the Supreme Court, at least 3 (three) legal lines can be drawn which

have never before happened in the world of justice and are applied among the Indonesian Muslim community, except for this first legal line (Soleh, 2013) , namely:

- a. For heirs of different religions, they do not receive inheritance rights from the inheritance of the deceased Muslim heir;
- b. Heirs of different religions, because they do not get inheritance rights from the inheritance of Muslim heirs, a solution is sought for them so that they still get a share, namely through a mandatory will; and
- c. The amount of obligatory testament obtained by non- Muslim heirs from the heir's inheritance is as much as he would have obtained if he were a Muslim.

Muslim heirs by the Jakarta Religious High Court, the share taken from the inheritance of the Muslim heir is $\frac{3}{4}$ of the share of the female heir. The important question is what is the consideration of the Judge of the Jakarta High Court, thereby giving a non - Muslim female heir a share of $\frac{3}{4}$ of the share of a Muslim female heir. This is not clear, because the decision did not find legal reasons/considerations from the judge who decided, thus giving a non- Muslim daughter a share of $\frac{3}{4}$ of the share of a Muslim female heir taken from the inheritance of her Muslim parents.

Based on this, when the Jakarta Religious High Court Judge's decision was appealed to the Supreme Court, the Supreme Court Panel of Judges amended the decision of the Jakarta Religious High Court which determined that the share of a non-Muslim daughter was $\frac{3}{4}$ of the share of Muslim women's heirs. The result of the correction by the Panel of Supreme Court Justices is that the share of a non- Muslim daughter is the same as that of a Muslim female heir, which is taken from the inheritance of a Muslim heir.

Facing cases in the case of granting a mandatory will to heirs of different religions, as in the case in this study, there were differences in decisions between the Panel of Judges at the three levels of the judiciary, namely Religious Court Judges (First Level), not giving a share to biological children who are apostates, Court Judges Religious College (Appeal Level) gives a smaller share than the share of heirs with the smallest share ($\frac{3}{4}$ for daughters), while the Cassation Judge at the Supreme Court gives the same share as for daughters (because in this case the non-Muslim child is a daughter).

The results of the decision of the Supreme Court of the Republic of Indonesia Number 368.K/AG/1995 actually raised doubts about similar problems in granting a mandatory will to heirs of different religions, especially in the portion or portion given by the cassation judge to the daughter of the heir of a different religion. The cassation judge gives a part of the obligatory will to heirs of different religions based on that the heirs of different religions are the heir's daughters, so the judge gives the same share to the daughters of the heirs who are Muslim. The judge does not rely on the size of the obligatory will, which has been determined to be a maximum of $\frac{1}{3}$ of the total inheritance. If the Supreme Court gives the portion of the obligatory will to the heirs of different religions based on the portion of the non-Muslim heir while still a Muslim, then the number of obligatory wills obtained will exceed the specified maximum amount of obligatory wills, namely

amounting to 1/3 and this is precisely not in accordance with the rules for the maximum portion of the obligatory will in the hadith of the Prophet Muhammad SAW and KHI Article 209. The division of inheritance according to the opinion of judges at the appellate level and cassation level can be interpreted that non-Muslims are entitled to inheritance, even though the will obligatory obligatory, as if the obligatory testament had removed the clerical agreement that non-Muslims are not entitled to inheritance from Muslim heirs. In the objective of Islamic inheritance law in accordance with the concept of maqasid shari'ah, its operational aim is to maintain property and offspring. Inheritance property may not be given to other than the heirs, granting a mandatory will to the heir's biological children who are apostates is not only contrary to the law of inheritance, but also contrary to the purpose of the sharia itself, namely to preserve the soul and protect the mind, and even completely ignores the purpose of preserving religion.

It can be understood that giving a mandatory will to biological children who have converted away from Islam has damaged faith, because they deny the verses of the Al-Qur'an and the Sunnah of the Prophet Muhammad. In fact, some judges in religious courts have forced this into their decisions, and sometimes ignore the provisions of the Koran which regulate inheritance. The legal provisions for giving inheritance to substitute heirs, adopted children, and heirs of different religions in KHI are not only contrary to the principles and principles of Islamic inheritance law, but also contrary to the objectives of the Shari'a. In addition, this provision is not a manifestation of the *ijtihad* of Indonesian scholars to justify laws that are wrong to become correct, those that are unlawful become lawful, and those that are *makruh* become permissible. (Usman, 2009)

This may be the result of erroneous *ijtihad*. Moreover, when examined from the perspective of Islamic legal thought, the inheritance law rules in the KHI can be seen as a manifestation of the *ijtihad* of scholars in Indonesia. The Compilation of Islamic Law should prioritize *maslahah al-ummah* (problems for the ummah) and not justify illicit goods, and not forbid halal goods, or dig up things that can bring true, real, and public benefits. Borrowing a term that is widely used in Islamic legal thinking, justifying wrong law becomes right, what is unlawful becomes lawful, and what is *makruh* becomes permissible. Regarding inheritance for non-Muslim heirs, there are no provisions in the Compilation of Islamic Law (KHI), but the existence of a legal void in a case does not mean that the case will never occur in the midst of people's lives. In this case, judges are required to be able to provide justice and make rules through legal discovery. In connection with the judge not being a mouthpiece for the law, the judge is required to explore sources of law so that a sense of justice in society can be fulfilled. In the context of distributing the inheritance of Muslim parents to their children who are not entirely Muslim, another source of law that can be explored is Islamic law, as well as legal values that live in society. (Sharif & Elmiyah, 2005)

In Surah Al-Baqarah, verse 141, as well as the Hadith narrated by Bukhari-Muslim and the Hadith narrated by Ashab As-Sunan, as well as the opinion of the imams of the four schools of thought (Maliki, Hambali, Hanafi and Shafi'i) it is stated that different religions between heirs with the heir is an obstacle that makes the heir lose his inheritance rights. Moreover, if the heir belongs to the category of apostates, apart from not being

able to inherit, he also does not have the right to pass on his property to his heirs. It has been agreed by the scholars (ijma') that religious differences (Muslims and non-Muslims) are one of the barriers to inheritance. With regard to religious differences, what these scholars agree on is that non-Muslim heirs, either because they were not Muslim from the start (kafir) or left Islam (apostates), cannot inherit Muslim heirs (Az-Zuhaili, 1989) .

Muslim siblings . In fact, the obligatory will in KHI is analogous to adopted children and adoptive parents, while religious differences remain one of the barriers to mutual inheritance. The consideration of the Supreme Court in granting this obligatory will is to seek a positive step by not limiting the understanding of inheritance law so far. In the law of inheritance, it has been explained that a person who leaves the Islamic religion is not entitled to inherit from his Muslim relatives. It is the same as a Muslim who may not inherit from a non-Muslim (Jarchosi, 2020)

According to Azhar Basyir in his book *Islamic Inheritance Law*, it says that different religions between heirs and heirs are a barrier to inheritance, but if a husband and wife have different religions, for example the husband is Muslim, while the wife is Christian, then the husband or wife after one of them dies the world can enjoy his inheritance, and this can be done through a will. The Supreme Court made a big step through a mandatory testament for non- Muslim family members on the basis that Islam is not a discriminatory religion, but Islam is a religion that embraces all people in the world. Regardless of the choice of the individual to embrace their respective religions and beliefs, and to understand that Islamic law is not rigid. Islamic law turns out to be able to provide protection and a sense of justice even to non-Muslims (Sharif & Elmiyah, 2005)

The granting of the obligatory will in this case does not seem to be seen from the religion of the person being given it, but from the closeness of the testator to the recipient of the obligatory will. In this case, the heir as the biological child of the heir is a close person of the heir who is analogous to the position of an adopted child or adoptive parent, who in KHI is entitled to a mandatory will. When viewed from the aspect of Islamic law, the obligatory will is not appropriate if it is intended for heirs who are hindered because of different religions. The Panel of Judges at the Supreme Court is of the opinion that heirs who are non- Muslims with heirs, can obtain inheritance through the obligatory will, while the texts of wills with inheritance, apply only temporarily. When the legal verses mentioned in the script can bring benefit and create security and welfare for the community, then the law applies again (Shahr, 2016)

Giving part of the obligatory will for non-Muslim family members does not just happen, especially in Indonesia there are hundreds of ethnic groups living in separate territorial areas with different languages, socio-cultural systems (Pasamai, 2011: 67), but needs to be considered that non-Muslim heirs after all are husband/wife or heir children, then of course it is natural to expect to receive a share of the heir's assets, although formally non-Muslim heirs are not domiciled as heirs, the Religious Court or the Religious High Court places they are the beneficiaries of the obligatory will, the reason is because the obligatory will is that there is a very close blood relationship between the parents and the child/husband/wife, therefore it is very natural that they get a share from their parents or husband/wife who is Muslim through a mandatory will (Shamsuddin, 2011) .

3.3 Islamic Education as a Solution to Preventing Religious Transfers

Islamic education is a conscious effort of mature Muslims to direct and guide the growth and development of human beings based on their nature through Islamic teachings towards the maximum point of growth and development. Islamic education is not only seen in theory, but rather in the sense of "feeding" the souls of students so that they get spiritual satisfaction (Priatmoko, 2018)

Seeing the broad role of Islamic education above, of course the issue of faith is the main thing. In other words, people who have received Islamic education will not easily leave their religion or change religions. Moreover, the punishment for apostates is to be killed (Nurkhalis, 2018) . Prophet Saw. said: *"Whoever changes his religion (from Islam to another religion) then kill him."* (Narrated by Bukhari).

That is why in the concept of Islamic education there is the term early learning. The implementation is by looking at the many traditions of the Prophet Muhammad. about education from childhood. The hope is that when education is carried out from childhood, the potential for changing religions will be small or even non-existent. One of the hadiths of the Prophet Muhammad. regarding this education are as follows.

Amen وَسَلَّم: مُرُوا أَوْلَادَكُمْ بِالصَّلَاةِ وَهُمْ أَبْنَاءُ سَبْعِ سِنِينَ وَاضْرِبُوهُمْ عَلَيْهَا وَهُمْ أَبْنَاءُ عَشْرٍ سِنِينَ، وَفَرِّقُوا بَيْنَهُمْ فِي الْمَضَاجِعِ.

Meaning: *From Abdullah Amr bin Syu'aib from his father, from his grandfather he said Rasulullah SAW. said, "Instruct your children to pray while they are seven years old, and beat them if they leave it while they are ten years old. And separate them from their beds"* (Al-Albani, 2006)

In Islam, it is known as *al-maqashid asy-shari'ah*, and the objectives of *al-maqashid asy-shari'ah* are 1) to protect and maintain religion, 2) to protect and protect the soul, 3) to protect and maintain reason, 4) protecting and caring for offspring and 5) protecting and maintaining assets. One that is part of the religious teachings above is the call to protect and maintain religion. If matters of Shari'a are ordered to be guarded like prayer, for example, then more than that religion must be guarded more so that the potential for apostasy does not arise.

This is where the need for Islamic education as a media brake and deterrent. It is only natural that Islam applies the principles of prevention from an early age. Even before educating children until the child is born, education when the child is in the womb has been alluded to in Islam. Educating a child in the womb is a very important thing to know, understand and practice by every parent, especially young couples who are still at dawn and newlyweds who have been authorized and approved to enter a new cycle of their lives, namely the life of husband and wife, household. and have children and are responsible for the welfare of themselves, the household and the education of their offspring. This urgency is very clear because every human being, after marriage, wants offspring that are good and useful for humans and humanity (Baihaqi, 1996) .

4. CONCLUSIONS

Obligatory will is a formal law on the outcome of the decision of the Supreme Court of the Republic of Indonesia Number 368.K/AG/1995 which is a solution in the family regarding inheritance law. The consideration of the Supreme Court in granting this obligatory will is to seek a positive step by not limiting understanding of the law legacy so far. In the law of inheritance, it has been explained that a person who leaves the Islamic religion is not entitled to inherit from his Muslim relatives. As for the research, the position between boys and girls remains the same in obtaining rights in this obligatory inheritance, but there is only a difference in the distribution of obligatory inheritance between boys and girls, if the boys are of different religions then they will get 1/7 (one-seventh) is no longer one-third, while women get the same distribution between those who have the same religion or not. Islamic education provides clarity that family ties will continue to exist even though there are differences in religion, the relevance of religious education and this obligatory testament is to provide an affirmation of the unbroken family relationship despite different religions. Especially between parents and children.

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