

## INHERITANCE RIGHTS OF THE HEIRS OF DIFFERENT RELIGION ACCORDING TO ISLAMIC HERITAGE LAW (A STUDY OF DECISION NUMBER 402 K / AG / 2013)

Novirina Dian Kusumawati  
Setiyowati

### ABSTRACT

*In Islamic inheritance law, one barrier to inheritance is the religious difference between the inheritor and heir. However, in practice, the Supreme Court judges in Decision Number 402 K / AG / 2013 confirmed the Pontianak Religious High Court's decision in Decision Number 17 / Pdt.G / 2012 / PTA.Ptk and the Sanggau Religious Court in Decision Number 176 / Pdt.G / 2009 / PA.Sgu which stipulates non-Muslim / interfaith heirs to receive a share of the inheritance of the Muslim heir through the mandatory will. The method used in this research was normative juridical with the approach of law (statute approach) and the approach of the case (Case Approach) in which the data collection was made by examining library materials or secondary data and then analyzed by qualitative descriptive analytical method. Based on the research results, religious differences between inheritors and heirs prevent the inheritance right to the heirs of different religions, while the concept of wasiat wajibah in the Islamic Law Compilation is intended only for adopted children or adoptive parents, not the heirs whose inheritance right impeded by religious differences, and the judge's consideration in making Decision Number 402 K / AG / 2013 was based on the consideration of the principle of justice even the principle of humanity so that there is no split in a family of different religions.*

Key words: inheritance rights, heirs of different religions, wasiat wajibah, compilation of Islamic law.

### A. INTRODUCTION

Islamic inheritance law is a rule that governs the transfer of property from a deceased person to his heir. This means determining who will be the heirs, the share of each heir, determine the share of inheritance and inheritance given to the heirs.<sup>1</sup>

Al-Quran and Al Hadith which are the Sunnah of the Prophet and the results of ijtihad or the efforts of leading Islamic jurists are guidelines for Islamic inheritance law. Meanwhile in the part of positive law in Indonesia applies the Compilation of Islamic Law (KHI) which has received juridical justification with Presidential Instruction No.1 of 1991 concerning the Dissemination of Islamic Law Compilation, where KHI is used as a reference for judges in the Religious Courts in handling and deciding cases.

The compilation of Islamic Law emphasizes the requirements regarding the cause of inheritance, apart from being related by blood and marital ties, the heir and heir must embrace the same religion, namely Islam. This requirement is stipulated in Article 171 letters (b) and (c) Compilation of Islamic Law.

The difference in religion that becomes an obstacle to inheritance is if the heirs and heirs are of different religions, one of which is Muslim and the other is not Muslim. Religious differences as a barrier to inheritance are taken into account when the heir dies, because that is when the inheritance rights for heirs apply.<sup>2</sup>

When there is a dispute regarding an inheritance case that between the heir and the heir of a different religion, where the heir is Muslim and the heir is a non-Muslim, the parties try to seek justice through the Religious Court. Settlement of Islamic inheritance disputes is one of the powers that the Religious Courts have as confirmed in the general explanation of Law Number 7 of 1989 concerning the Religious Courts which has been amended by Law Number 3 of 2006 concerning Religious Courts and the Second Amendment of Law Number 50 Years 2009 concerning Religious Courts.

This is what the authors found in the case of inheritance disputes in which there were heirs of different religions that occurred in Sanggau, West Kalimantan, in Decision Number 402 K / AG / 2013. In this decision, the Supreme Court rejected the appeal from the Cassation Petitioners, which means that the Supreme Court confirmed the Pontianak Religious Court's decision in Decision Number 17 / Pdt.G / 2012 / PTA.Ptk and the Sanggau Religious Court in Decision Number 176 / Pdt.G / 2009 / PA.Sgu which assigns a Muslim heir along with non-Muslim heirs consisting of father, mother and siblings of the heir to receive a share of the inheritance of an heir who is Muslim, as well as giving a third of the inheritance of a Muslim heir to the non-Muslim heir through mandatory will.

### B. LITERATURE REVIEW

#### 1. The Scope of Islamic Inheritance Law

##### a. Definition of Islamic Inheritance Law

The word inheritance comes from Arabic, namely *warasa-yarisu-legacy* which means the transfer of one's property to someone after death. As in the Al Quran, there are many words of *warasa* which mean to replace position, give or confer, and receive an inheritance. Meanwhile, *al-miras* according to the terms of the scholars, is the transfer of ownership rights from the

<sup>1</sup> Zainuddin Ali, 2008, *Implementation of Inheritance Law in Indonesia*, Sinar Grafika, Jakarta, p. 33.

<sup>2</sup> Abu Umar Basyir, 2006, *Warisan Belajar Mudah Hukum Waris Sesuai Syari'at Islam*, Rumah Dzikir, Solo, p. 68.

deceased to the surviving heirs, whether those left in the form of property, land or anything in the form of legal ownership rights in *syar'i*.<sup>3</sup>

In terms of terminology, there are several formulations regarding the meaning of Islamic inheritance, Article 171 letter (a) The Islamic Law Compilation defines Inheritance Law is a law that regulates the transfer of ownership rights to inheritance (*tirkah*) heirs, determines who has the right to become heirs and how many parts of each.

According to Prof. Dr. Amir Syarifudin, Islamic Inheritance Law can be defined as "a set of written rules based on the revelations of Allah and the Prophet's Sunnah regarding the transfer of property or tangible assets from the dead to the living, which is recognized and believed to be valid and binding for all Muslims".<sup>4</sup>

b. Legal Basis of Islamic Inheritance

The legal basis for Islamic inheritance is the Al Quran and Al Hadith which are the Sunnah of the Prophet and the results of *ijtihad* or the efforts of leading Islamic jurists, as well as laws and regulations.

c. The reasons for the existence of inheritance rights in Islamic law.

The elements that must be in Islamic inheritance law are heirs, heirs and inheritance.<sup>5</sup> The elements of inheritance can also be called pillars of inheritance, namely:<sup>6</sup>

1. *Al-Muwarrits*, that is, a person who dies or dies, either dead or death *absolutely legal* 'a death declared by a judge's decision on the basis of several reasons, even though he is not actually dead, who leaves property or rights.
2. *Al-Warits*, namely living people or children in the womb who have the right to inherit, although in certain cases this will be prevented.
3. *Al-Mauruts*, namely property that is inherited. Some scholars *Faraidh* refer to *mirats* or *IRTS*. Included in the category of inheritance are assets or rights that may be inherited, such as *qishash* (civil) rights, the right to hold goods that have not been paid for, and the right to hold pledged goods.

In Islamic law, there are three conditions so that an heir is declared to exist, so that it can give a person or heir the right to receive an inheritance, namely:<sup>7</sup>

1. The person who inherits (*muwarris*) has indeed died and can be legally proven that he has died.
2. The person who inherits (heir or heir) lives when the person who inherits dies and can be proven legally.
3. There is an inheritance relationship between the person who inherits and the person who inherits.

d. Causes of Loss of Inheritance Rights in Islamic Inheritance Law

Barriers to inheritance are actions or things that can invalidate a person's right to inherit an inheritance after there are reasons to inherit.<sup>8</sup>

*Al-hujub* according to the term is a person who prevents others from getting an inheritance, and *al-mahjub* means a person who is prevented from getting an inheritance. The definition of *al-hujub* according to *faraid* scholars is to abort the right of the heir to receive an inheritance, either in whole or in part because there are people who are more entitled to receive it.<sup>9</sup>

*Al-hujub* is divided into two, namely *al-hujub bil washfi* (character / nickname), and *al-hujub bi asy-syakhshi* (because of other people), as explained below:<sup>10</sup>

1. *Al-hujub bil washfi* means the person affected by the *hujub* is prevented from get inheritance rights in its entirety. Here it can be seen that a person can lose the right to inherit, when analyzed the causes of the loss of the right to inherit property, 2 (two) causes can be found that can invalidate this right, namely religious differences between the heir and heir, and the heir kills the heir.<sup>11</sup>
2. *Al-hujub bi asy-syakhshi*, namely the loss of one's inheritance rights due to other people who are more entitled to receive it. *Al-hujub bi asy-syakhshi* is divided into two, namely:
  - a. *Hujub hirman*, which is a barrier that aborts a person's inheritance rights.
  - b. *Hujub nuqshan* (reduction of rights) is an obstruction of a person's inheritance rights to get the largest share.

<sup>3</sup> Habiburrahman, 2011, *Rekontruksi Hukum Kewarisan Islam di Indonesia*, Kencana, Jakarta, p. 17.

<sup>4</sup> Amir Syarifuddin, 2004, *Hukum Kewarisan Islam*, Kencana Prenada Media Group, Jakarta, p 6.

<sup>5</sup> Neng Djubaedah dan Yati N. Soelistijono, 2008, *Hukum Kewarisan Islam di Indonesia*, second edition, Badan Penerbit Fakultas Hukum Universitas Indonesia, Depok, pp. 13-14.

<sup>6</sup> Komite Fakultas Syariah Universitas Al-Azhar, Mesir, 2004, translated by H. Addys Aldizar, dan H Fathurrahman, *Ahkumul-Mawarits fil-Fiqhil-Islami (Hukum Islam)*, Senayan Abadi Publishing, Jakarta, p. 27.

<sup>7</sup> Amin Husein Nasution, 2014, *Hukum Kewarisan*, Rajawali Pers, Jakarta, p. 71.

<sup>8</sup> Ahmad Azhar Bazhar, 1990, *Hukum Waris Islam*, Universitas Islam Indonesia, Yogyakarta, p. 16.

<sup>9</sup> Muhammad Ali Ash-Shabuni, *Pembagian Waris Menurut Islam*, <https://media.isnet.org/kmi/islam/Waris/Penghalang.html>, accessed on 25 September 2019

<sup>10</sup> Muhammad Ali Ash-Shabuni, *Pembagian Waris Menurut Islam*, <https://media.isnet.org/kmi/islam/Waris/MacamHujub.html>, accessed on 25 September 2019

<sup>11</sup> Amir Syarifuddin, 2004, op.cit., p. 38.

## 2. Scope of a will

### a. in Islamic law

Inheriting a tasharruf (release) of an inheritance carried out after a person's death. According to the origin of law, a will is an act that is performed with the will of the heart under any circumstances. Therefore, there is nothing in the Islamic law a will that must be carried out by way of a judge's decision.<sup>12</sup> Another opinion says that a will is the last message from a person who is approaching death, it can be a message about what the recipients of the testament should do with his inheritance or other messages outside the inheritance.<sup>13</sup> Regarding wills set out in the Koran, among others, in the letter Al-Baqarah, Al-Maidah, and An-Nisaa. In the realm of Islamic inheritance law, there is no known legacy.

### b. Wasiat in the Compilation of Islamic law

#### 1. Wasiat`

Wasiat in the Islamic legal system in Indonesia is regulated by a compilation of Islamic law as contained in Presidential Instruction No. 1 of 1991 which is in Chapter V, Article 194 to Article 209 and in the books of Islamic Jurisprudence.

#### 2. Wasiat Wajibah

Wasiat wajibah started in Indonesia in the 90s, along with the birth of the Islamic Law Compilation, as a manifestation of the consensus of Islamic jurisprudence in Indonesia. Wills are regulated in Article 209 Compilation of Islamic Law, where the article limits people who are entitled to receive this obligatory will only to adopted children and adoptive parents who do not receive a will is given a mandatory will, a maximum of one third of the inheritance.

## 3. Religious Courts

The existence of the Religious Courts is formulated in article 2 of Law Number 07 of 1989 concerning the Religious Courts as amended firstly by Law 3 of 2006 and secondly by Law Number 50 of 2009, which reads: The Religious Courts are one of the perpetrators judicial power for people seeking justice who are Muslim regarding certain cases as referred to in this Law.

The main duties of the Religious Courts currently refer to Article 49 of Law Number 03 of 2006 which is an amendment to Law Number 07 of 1989 concerning the Religious Courts, which reads: The Religious Courts have the duty and authority to examine, decide and resolve cases at the first level between persons. those who are Muslim in the field; (a) marriage; (b) inheritance; (c) wills; (d) grants; (e) waqf; (f) zakat; (g) infaq; (h) shadaqah; (i) shari'ah economy.

## 4. Compilation of Islamic Law

The applicability of the Compilation of Islamic Law (KHI) is based on Presidential Instruction (INPRES) No.1 of 1991 concerning Dissemination of Islamic Law Compilation. Therefore, the Compilation of Islamic Law has been accepted by the Indonesian Islamic community at large, the Compilation of Islamic Law is seen as a law that lives in the midst of the Indonesian Islamic community (*Living Law*), a law whose effectiveness exceeds positive law, so that it can be used as applied law by the Religious Courts.<sup>14</sup> The regulation regarding Islamic inheritance is contained in Book II: Inheritance Law which consists of VI CHAPTER, 44 Article.

## 5. Law Discovery by Judges

Legal discovery is the process of forming a law by judges or other legal officers who are assigned the task of implementing the law on concrete legal events. So that in legal discovery, apart from judges there are also other elements who can find law, one of which is legal scientists.<sup>15</sup>

## 6. Jurisprudence

Judges' decisions that are commonly used as a basis for consideration of other judges are often referred to as jurisprudence. Jurisprudence is one of the sources of law in Indonesia.

<sup>12</sup> Hasbi Ash-Shiddieqy, 2001, *Fiqh Mawaris*, Pustaka Rizki Putra, Semarang, p. 273.

<sup>13</sup> Anwar Sitompul, 1984, *Fara'id, Hukum Waris Islam Dalam Waris Islam Dan Masalahnya*, Al Ikhlas, Surabaya, p. 60.

<sup>14</sup> Drs. H. Abd. Salam, SHMH, *Asas Hukum Kewarisan Islam Dalam Kompilasi Hukum Islam (KHI)*, [https://www.pamataram.go.id/index.php?option=com\\_content&view=article&catid=37%3Aartikel&id=435%3Aasas-hukum-kewarisan-islam-dalam-kompilasi-hukum-islam-khi&Itemid=87](https://www.pamataram.go.id/index.php?option=com_content&view=article&catid=37%3Aartikel&id=435%3Aasas-hukum-kewarisan-islam-dalam-kompilasi-hukum-islam-khi&Itemid=87), accessed on 27 September 2019

<sup>15</sup> Jaenal Aripin. 2008, *Peradilan dalam Bingkai Reformasi Hukum Indonesia*, Kencana, Jakarta, p. 467.

## C. RESEARCH RESULTS AND DISCUSSION

### 1. The Right to Inherit Heirs of Different Religions in Islamic Inheritance Law

Islamic inheritance law regulates who is included in the category of heirs who are entitled to receive an inheritance, and who are heirs who are not entitled / prevented from receiving it, as well as how much of the inheritance they receive.

There are several things that become a barrier to inheritance (*mawani 'al-irts*), namely a barrier to the implementation of inheritance. In the terminology of the ulama *faraidh*, that is a condition or characteristic that causes the person not to be able to receive an inheritance even though the conditions are sufficient and there is an inheritance relationship.<sup>16</sup>

In the science of *faraidh*, the barrier to inheritance is taken from the Arabic word called *dal-hujub*. As for the definition of *dal-hujub* in sharia, according to *faraid* scholars, is to abort the right of the heir to receive an inheritance, either in whole or in part because there are people who are more entitled to receive it. According to Taqiyyuddin Abu Bakr bin Muhammad Al-Hishni Ad-Dimasyqi in *Kifayatul Akhyar*, the things that can be a barrier for a person to inherit an inheritance are broadly divided into two types, namely:<sup>17</sup>

1. *Al-hujub bil washfi*, because of nature, means people who are subject to *hujub* is prevented from obtaining inheritance rights in its entirety, such as slaves, people who kill their heirs and different religions or apostates. Their inheritance rights are nullified or prevented.

Al-Quran surah al-Baqarah verse 221 which directly prohibits Muslim men from marrying idolatrous women, on the other hand, Muslim women are prohibited from marrying idolatrous men. According to Idris Ramulyo, the essence of surah al-Baqarah verse 221 is that people who are Muslim cannot inherit the assets of infidels and non-Muslims cannot inherit the assets of Muslims.<sup>18</sup>

Religious differences are the cause of the loss of inheritance rights as emphasized in the hadith of the Prophet Muhammad from Usamah bin Zaid, narrated by Bukhari, Muslim, Abu Dawud, At-Tirmizi, and Ibn Majah that a Muslim does not receive an inheritance from non-Muslims and non-Muslims do not receive an inheritance from a Muslim.<sup>19</sup>

The Islamic Law Compilation also emphasizes that the heir and the heir must embrace the same religion, namely Islam. This requirement is stipulated in Article 171 letters (b) and (c) Compilation of Islamic Law.

2. *al-hujub bi asy-syakhshi*, namely the loss of one's inheritance rights due to other people who are more entitled to receive it. *Al-hujub bi ash-shakhshi* is divided into two: *hujub hirman* and *hujub nuqshan*.

### 2. Arrangement of Wasiat Obligations in the Compilation of Islamic Law

The term *wasiat* is not found in classical *fiqh* books, it is only found in contemporary *fiqh* books, especially after the promulgation of wills in the Compilation of Islamic Law in 1991 through a Presidential Instruction. Sayyid Sabiq in *Fiqh al-Sunnah* includes a mandatory will at the end of his book after discussing inheritance and *takharruj*, by taking article 71 of the Egyptian Will Law 1365 H / 1946 AD. Meanwhile, Wahbah al-Zuhaily in *al-Fiqh al-Islamy*, includes the mandatory will after discussing will comparatively and the Compilation of Islamic Law in article 209 and only intended for children and adoptive parents.<sup>20</sup>

*Wasiatajibah* was originally a system implemented in the Islamic Law Compilation (KHI) to provide a share of the inheritance between the parties involved in adoption. It turns out that the Supreme Court of the Republic of Indonesia uses this compulsory will to give non-Muslims a share of the inheritance from the Muslim side.<sup>21</sup>

A will is a will that is imposed by a judge so that a person who has passed away, who has not voluntarily made a will, can be taken to give to a certain person in certain circumstances as well.<sup>22</sup> Meanwhile, a will is called a mandatory will, due to several things:

- a. The loss of the element of endeavor for the person giving the testament and the emergence of an element of obligation through legislation or a decree without depending on the willingness of the person with the will and the consent of the recipient of the will.
- b. There are similarities with the provisions for the distribution of inheritance in terms of receiving men 2 (two) times the share of women.<sup>23</sup>

Some scholars argue that a will for both parents or relatives who do not receive an inheritance is mandatory, if the deceased does not have an will for them, the heirs are obliged to remove a certain amount of assets from the assets of the deceased and provide a mandatory will to them, this opinion is expressed.<sup>24</sup>

<sup>16</sup> Amin Husein Nasution, 2014, *Ibid.*, p 78.

<sup>17</sup> Neneng Maghfiro, 9 Februari 2019, *Dua Macam Penghalang Hak Waris*, <https://bincangsyariah.com/ubudiyah/dua-macam-penghalang-hak-waris/>, accessed on 25 September 2019

<sup>18</sup> M. Idris Ramulyo, 1994, *Perbandingan Pelaksanaan Hukum Kewarisan Islam dengan Kewarisan Menurut Kitab Undang-undang Hukum Perdata*. Sinar Grafika, Jakarta, p. 111.

<sup>19</sup> Muhammad Mustafa Salaby, 1978, *Ahkam Al-Mawaris Baina Al-Fiqh wa Al-Qanun*, Dar An-Nadafat At-Tarbiyah, Beirut, p. 88.

<sup>20</sup> Ahmad Rofiq, 2000, *Hukum Islam di Indonesia*, cet. 4, PT Raja Grafindo Persada, Jakarta, p. 462.

<sup>21</sup> Asep Saepuddin Jahar, 2013, *Hukum Keluarga, Pidana dan Bisnis*, Kencana Prenada Media, Jakarta, p. 94.

<sup>22</sup> Ahmad Rafiq, 2000, *op.cit.*, p. 462.

<sup>23</sup> Umar Said, 1997, *Hukum Islam di Indonesia tentang Waris, Wasiat, Hibah, dan Wakaf*, Cempaka, Surabaya, p. 146.

<sup>24</sup> Erik Sumarna, 2004, *Wasiat Wajibah terhadap saudara kandung*, Program Pasca Sarjana IAIN Sumatra Utara, Medan, p. 456.

With regard to religious differences, what the scholars agreed on was limited to non-Muslim heirs, either from the beginning who were not Muslim or leaving Islam (murtad), unable to inherit a Muslim heir, based on the Hadith of the Prophet SAW, narrated by Bukhari and Muslims from Usamah bin Zaid, which means: "people who are Muslim cannot receive an inheritance from people of other religions (kafir), and vice versa".<sup>25</sup>

### 3. Consideration of Judges in Decision Number 402 K / AG / 2013

The Supreme Court rejected the appeal from the Cassation Petitioners in Decision Number 402 K / AG / 2013, which means that the Supreme Court confirmed the decision of the Pontianak Religious High Court in Decision Number 17 / Pdt.G / 2012 / PTA.Ptk and Sanggau Religious Court in Decision Number 176 / Pdt.G / 2009 / PA.Sgu which assigns a Muslim heir along with non-Muslim heirs consisting of father, mother and siblings of the heir to receive a share of the inheritance of an heir who is Muslim, as well as giving a third of the inheritance of a Muslim heir to the non-Muslim heir through mandatory will.

The considerations of the Supreme Court Judges in Decision Number 402 K / AG / 2013 regarding the determination of the heirs and the distribution of the late SUDIRMAN's inheritance were stating that the Faraidh carried out by the *judex facti* of the Pontianak Religious High Court was correct and correct, according to the respective portion is entitled to be received by the heirs, including those who obtain the mandatory will.

Meanwhile, the Judges of the Religious High Court in Decision Number 17 / Pdt.G / 2012 / PTA. Ptk stated that because the Plaintiff / Appeler (Vennie Arianie) had been able to prove that the heir (Sudirman) from January 8, 2003 until the end of his life was still Muslim, thus the Defendant / Appellant (Tjahaja Fuktono's) exception regarding absolute competence as stated in the Interval Judgment of the Religious Court. Sanggau Number 176 / Pdt.G / 2009 / PA.Sgu dated May 6, 2010 must also be rejected, and the Sanggau Religious Court has given proper and correct considerations according to the facts of the incident and legal facts, so that the consideration is taken over and made into its own consideration by the Panel of Judges The appeal in the decision was to strengthen 176 / Pdt.G / 2009 / PA.Sgu.

The judgments of the Sanggau Religious Court justified by the High Religious Court Judge and then the Supreme Court Judge relating to the determination of the heir of different religions to obtain the mandatory will are as follows:

Because the Defendants are non-Muslim, the Panel of Judges will consider it as follows:

- a. Considering, that Some of the scholars of jurisprudence argue that there are three things that can prevent mutual inheritance, namely slavery, murder and religious differences, but in addition there are some other scholars who argue like Ibn Hazm, At-Tabari and Muhammad Rasyid Ridla that non-Muslim heirs will get the inheritance of the Muslim heir through the mandatory will, as stated in *Al Fiqhul Islami wa Adillatuhu* Juz VIII p. 122 which later the Panel of Judges took over and made it the opinion of the panel, because if the legal system that applies to non-Muslim citizens of a Muslim can inherit a non-Muslim heir, and vice versa, it is a fair and humane attitude if non-Muslim heirs are granted mandatory will from his Muslim heir (if he does not have a will) so that there is no social shock between those of different religions, because the principle of justice, even the universal humanitarian principle that humans are all the same in terms of humanity, and the benefit which is the goal of law are elements constitution of Islamic law as meant by the Koran in surah *al-Baqarah* verse 180. Thus, it must be stated that the Defendants are the rightful heirs of the obligatory will, the amount of which will be considered later.
- b. Considering, that for non-Muslim heirs, the Panel of Judges needs to determine the part of the mandatory will to cover 1/3 (one third) of the total inheritance of the late SUDIRMAN as stipulated in article 195 paragraph (2) of Presidential Instruction Number 1 of 1991 concerning the Compilation of Islamic Law.

The judge's consideration used the opinion of a minority of scholars Ibn Hazm, At-Tabari and Muhammad Rasyid Ridla that non-Muslim heirs will get the inheritance of Muslim heirs by means of a mandatory will based on QS. Al Baqarah verse 180 contradicts the opinion of the majority of scholars who state that the verse has become *mansukh*, meaning that it is no longer enforced because of the revelation of verses known as *ayatul-Mawarist*, namely, Surah An-Nisaa, which regulates the distribution of inheritance in detail, which contains values of justice and humanity.

Muslims only give inheritance to fellow Muslims, if the deceased is a Muslim while the heir is not a Muslim, then he is not entitled to inheritance, based on the hadith of the Prophet Muhammad which was narrated by Bukhari and Muslim which reads:

لا يَرِثُ الْمُسْلِمُ الْكَافِرَ ، وَلَا يَرِثُ الْكَافِرُ الْمُسْلِمَ  
It means, "Muslims cannot inherit unbelievers (and vice versa) infidels cannot inherit Muslims," (Bukhari and Muslim).

The judge also stated in his consideration that it was a fair and humane attitude if a non-Muslim heir was given the mandatory will of his Muslim heir (if he did not have a will) so that social unrest between those of different religions would not occur, because of the principle of justice, even the principle of humanity. , where this cannot be justified in Islamic law because it is not in accordance with the text and the provisions of Islamic inheritance law which has established inheritance rules in a very regular and just form, in which property rights are determined for every human being, both male and female. in a legal manner as contained in *ayatul-Mawarist*.

## D. CLOSING

### 1. Conclusion

From the explanation of the chapters above, the writer can draw the following conclusions:

- a. In Islamic inheritance law there is a discussion of the causes of inheritance and the barriers to it. The cause of inheritance rights is due to kinship relations or usually called *nasab* relations is determined by the existence of blood relations and marital relations. The emergence of the right to inherit must also be based on the pillars of inheritance, which is something that must exist to create part of the inheritance where the share of the inheritance will not be found if there are no pillars.

<sup>25</sup> Imam Malik Ibn Anas, 1999, *Al Muwatta Imam malik ibn Anas*, PT Raja Grafindo Persada, Jakarta, p. 276.

There are three pillars for inheriting: *Al-Muwarrits*, *Al-Warits*, *Al-Mauruts*, if one of these pillars does not exist, inheritance cannot be implemented. The conditions for the implementation of Islamic inheritance law are found 3 (three) conditions, namely (1) certainty of the death of the person who owns the property, (2) certainty of the life of the heir when the heir dies, and (3) knowing the causes of their respective status. each heir.

Meanwhile, the barrier to inheritance rights is called *al-hujub*. *Al-hujub* is divided into two, namely:

1. *Al-hujub bil washfi*(character / nickname) means that the person affected by the hujub is prevented from obtaining the inheritance rights as a whole, namely the religious difference between the heir and the heir, and the heir kills the heir.
2. *Al-hujub bi asy-syakhshi*, namely the loss of one's inheritance rights due to other people who are more entitled to receive it.

This is in line with Article 171 letter c of the Islamic Law Compilation, which reads: An heir is a person who, at the time of his death, has a blood relationship or marital relationship with the heir, is Muslim and is not impeded by law from becoming an heir. So it can be concluded that an heir who has sufficient conditions and there is an inheritance relationship may not be able to receive an inheritance because of a condition or nature that causes the person to be deprived of his inheritance rights, one of which is the religious difference between the heir and the heir.

- b. The arrangement of wills in Article 209 Compilation of Islamic Law is to resolve problems between the heir and his adopted children and vice versa, the adopted children as heirs and their adoptive parents, not for heirs who are prevented from inheriting due to religious differences. There is no explanation regarding the religion professed by the heir in this article, but referring to Article 171 letter c of the Islamic Law Compilation which requires the heir to be the same religion as the heir, then the provision of a mandatory will should be given to the heir with his adopted son and vice versa the adopted child as heir with adoptive parents who are both Muslim.

The decision of the Supreme Court judge in Decision Number 402 K / AG / 2013 which strengthens the position of non-Muslim heirs so that they have the right to inherit based on compulsory will is incorrect, because it is not in accordance with Article 171 letter c and Article 209 paragraph (1) and paragraph (2) Compilation Islamic law.

- c. Judges' considerations in the decision Number 402 K / AG / 2013 where the Supreme Court Judge confirmed the decision of the Pontianak Religious High Court in Decision Number 17 / Pdt.G / 2012 / PTA.Ptk and the Sanggau Religious Court in Decision Number 176 / Pdt.G / 2009 / PA.Sgu in stipulating the heirs of different religions to obtain a mandatory will is based on the consideration of a fair and humane attitude so that there is no social unrest between those of different religions, and benefits which are the goal of the law so that there is no split in a family of different religions actually cannot be justified because it is not in accordance with the text and the provisions of Islamic inheritance law.

## 2. Suggestion

- a. All judges in the Religious Courts in Indonesia should be more proactive in reviewing and considering the science of *faraidh* which is derived from the Al Quran and Al Hadith as the main legal basis and does not only refer to existing jurisprudence in making decisions in inheritance disputes, especially in inheritance cases involving non-Muslim / interfaith heirs.
- b. Government officials and policy makers at the legislative, executive, and judicial levels should compile a Draft Law on Islamic inheritance based on the Al-Quran and Al-Hadith which is further stipulated as material law for the Religious Courts and Muslims in Indonesia.

## REFERENCES

### BOOKS:

- Abu Umar Basyir, 2006, *Warisan Belajar Mudah Hukum Waris Sesuai Syari'at Islam*, Rumah Dzikir, Solo.
- Ahmad Azhar Bazhar, 1990, *Hukum Waris Islam*, Universitas Islam Indonesia, Yogyakarta.
- Ahmad Rofiq, 2000, *Hukum Islam di Indonesia*, cet. 4, PT Raja Grafindo Persada, Jakarta.
- Amin Husein Nasution, 2014, *Hukum Kewarisan*, Rajawali Pers, Jakarta.
- Amir Syarifuddin, 2004, *Hukum Kewarisan Islam*, Kencana Prenada Media Group, Jakarta.
- Anwar Sitompul, 1984, *Fara'id*, *Hukum Waris Islam Dalam Waris Islam Dan Masalahnya*, Al Ikhlas, Surabaya
- Asep Saepuddin Jahar, 2013, *Hukum Keluarga, Pidana dan Bisnis*, Kencana Prenada Media, Jakarta.
- Erik Sumarna, 2004, *Wasiat Wajibah terhadap saudara kandung*, Program Pasca Sarjana IAIN Sumatra Utara, Medan.
- Habiburrahman, 2011, *Rekonstruksi Hukum Kewarisan Islam di Indonesia*, Kencana, Jakarta.
- Hasbi Ash-Shiddieqy, 2001, *Fiqh Mawaris*, Pustaka Rizki Putra, Semarang.
- Imam Malik Ibn Anas, 1999, *Al Muwatta Imam malik ibn Anas*, PT Raja Grafindo Persada, Jakarta.

Jaenal Aripin. 2008, *Peradilan dalam Bingkai Reformasi Hukum Indonesia*, Kencana, Jakarta.

Komite Fakultas Syariah Universitas Al-Azhar, Mesir, 2004, penerjemah H. Addys Aldizar, dan H Fathurrahman, *Ahkumul-Mawaarits fil-Fiqhil-Islami (Hukum Islam)*, Senayan Abadi Publishing, Jakarta.

M. Idris Ramulyo, 1994, *Perbandingan Pelaksanaan Hukum Kewarisan Islam dengan Kewarisan Menurut Kitab Undang-undang Hukum Perdata*. Sinar Grafika, Jakarta.

Muhammad Mustafa Salaby, 1978, *Ahkam Al-Mawaris BainaAl-Fiqh wa Al-Qanun*, Dar An-Nadafat At-Tarbiyah, Beirut.

Neng Djubaedah dan Yati N. Soelistijono, 2008, *Hukum Kewarisan Islam di Indonesia*, cet. 2, Badan Penerbit Fakultas Hukum Universitas Indonesia, Depok.

Umar Said, 1997, *Hukum Islam di Indonesia tentang Waris, Wasiat, Hibah, dan Wakaf*, Cempaka, Surabaya.

Zainuddin Ali, 2008, *Pelaksanaan Hukum Waris di Indonesia*, Sinar Grafika, Jakarta.

#### **LAWS:**

Law Number 7 of 1989 concerning the Religious Court

Law Number 3 of 2006 concerning Amendments to Law Number 7 of 1989 concerning Religious Courts

Presidential Instruction Number 1 of 1991 concerning Dissemination of Islamic Law Compilation

#### **INTERNET**

Drs. H. Abd. Regards, SHMH, *Principles of Islamic Inheritance Law in the Compilation of Islamic Law (KHI)*, [https://www.pamataran.go.id/index.php?option=com\\_content&view=article&catid=37%3Aarticles&id=435%3Aasas-Hukum-inheritance-islam-in-compilation-law-islam-khi&Itemid=87](https://www.pamataran.go.id/index.php?option=com_content&view=article&catid=37%3Aarticles&id=435%3Aasas-Hukum-inheritance-islam-in-compilation-law-islam-khi&Itemid=87), accessed on 27 September 2019.

Muhammad Ali Ash-Shabuni, *Distribution of Inheritance According to Islam*, <https://media.isnet.org/kmi/islam/Waris/Penghalang.html>, accessed on 25 September 2019.

Muhammad Ali Ash-Shabuni, *Distribution of Inheritance according to Islam*, <https://media.isnet.org/kmi/islam/Waris/MacamHujub.html>, accessed on 25 September 2019.

Neneng Maghfiro, 9 February 2019, *Two Kinds of Inheritance Barriers*, <https://bincangsyariah.com/ubudiyah/dua-macam-penghalang-hak-waris/>, accessed on 25 September 2019

Novirina Dian Kusumawati  
*Student of Master of Notary Program University 17 Agustus 1945 Semarang*

Setiyowati  
*Lecturer of Faculty of Law University 17 Agustus 1945 Semarang*