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LEGAL DYNAMICS OF INHERITANCE ACROSS RELIGIONS BETWEEN HEIRS AND BENEFICIARIES IN INDONESIA

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Abstract

This article discusses the legal dynamics of inheritance of different religions between the testator and the heirs in Indonesia by comparing the inheritance law in the Civil Code and the Compilation of Islamic Law (KHI). The method in this article is legal research. This research is prescriptive, which is to provide an assessment of something that should be done. This research uses a case approach, namely by examining the legal reasons (ratio decidendi) used by the judge in the decision or determination. The results of this article conclude that according to inheritance law in the Civil Code, there is no recognition of religious differences as a barrier to inheritance, in other words, it is valid for people of different religions to become heirs or inherit. Whereas in the Compilation of Islamic Law (KHI), religious differences are a barrier for someone to get an inheritance from the heir. Although Islamic law and KHI do not recognize inheritance of different religions, the case of inheritance of different religions between the testator and the heir in Indonesia in several Supreme Court Decisions in Indonesia can be concluded that the Panel of Judges who decide cases regarding heirs of different religions with the testator can obtain inheritance through compulsory probate.

KEYWORDS: *Indonesian inheritance law; Interfaith inheritance; Islamic inheritance; Civil Code inheritance; mandatory wills*

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Introduction

When someone passes away, it triggers various legal events. One of the main legal events that occurs is the transfer of the deceased's assets to their family members, known as inheritance distribution. Setiyowati[1] states that inheritance law is closely tied to the span of human life because every person will experience the legal event known as death. The legal consequences arising from this event become the concern of inheritance law, which deals with how to regulate and transfer the rights and obligations of a person to their heirs.

The legal event of death carries a high potential for conflict and disputes in the distribution of inheritance. Conflicts may arise not only from the dissatisfaction of heirs over the amount they receive but also from the determination of who is entitled and who is not. In Indonesia's diverse society, where different religious beliefs coexist, inheritance disputes due to religious differences can easily emerge.

Issues surrounding inheritance often become crucial and may lead to disputes that fracture family relationships, even resulting in criminal acts such as murder in extreme cases. Apart from the heirs' limited knowledge, the complexity in determining the shares of each heir according to Islamic law further complicates the situation. Even though many people study and understand the science of inheritance, it does not necessarily mean they can calculate inheritance shares under Islamic law Islam[2]

[1] Setiyowati, "Inheritance Dispute Resolution against Substitute Heirs: Analyzing Supreme Court's Number 185 K/Ag/2009," *Croatian International Relations Review* 28, no. 89 (2022): 136–49, https://doi.org/https://doi.org/10.2478/CIRR-2022-0008.

[2] Siah Khosyi'ah et al., "Analysis of Rules for Islamic Inheritance Law in Indonesia Using Hybrid Rule Based Learning," in *IOP Conference Series: Materials Science and Engineering*, vol. 288 (IOP Publishing, 2018), 12133; Yosep Septiana, Dede Kurniadi, and Asri Mulyani, "Perancangan Program Aplikasi Faraidh Sebagai Sistem Pendukung Keputusan Pembagian Harta Waris Berorientasi Solver," *Jurnal Algoritma* 14, no. 2 (2017): 582–88; O T Kurahman et al., "The Implementation of Breadth First Search in Determining of Waris," in *IOP Conference Series: Materials Science and Engineering*, vol. 434 (IOP Publishing, 2018), 12033.

Islamic inheritance law is one of the inheritance systems applied in Indonesia, alongside customary inheritance law and national inheritance law as regulated by the Civil Code. According to Zaelani et al.[3] Van den Berg was not the first to state that Islamic law applies to Muslims in Indonesia. This recognition can be found in several provisions of the *Reglement op het beleid der Regeering van Nederlandsch Indie* (R.R.), Stbl. Number 129 of 1854 and Number 2 of 1855, particularly in articles 75-78, and article 109. During the Daendels and Raffles administrations, Islamic law was the law applicable to Indonesian Muslims.

Nugroho explains that the inheritance laws applicable in Indonesia include customary inheritance law, national inheritance law as regulated by the Civil Code, and Islamic inheritance law. Soepomo, as cited in Hayati et al.[4] defines inheritance law as a collection of legal rules that regulate the rights and obligations of an individual who has passed away, whether passed on to their heirs or other legal entities. Inheritance distribution can be handled by the District Court for heirs following national inheritance law under the Civil Code or by the Religious Court for heirs adhering to Islamic inheritance law, which applies to every individual who follows the Islamic faith.

Manan[5] asserts that under Islamic inheritance law, there are specific conditions that may disqualify someone from receiving inheritance. These conditions refer to circumstances where an heir may lose their right to a portion of the deceased's estate. According to Islamic scholars, there are three main conditions considered disqualifying: murder, religious differences, and slavery. However, there is no consensus among scholars

[3] Abdul Qodir Zaelani et al., "An Implementation of the Joint Inheritance Division of Ethnic Groups in Lampung, Indonesia," *Samarah: Jurnal Hukum Keluarga Dan Hukum Islam* 7, no. 3 (2023): 1373–96.
[4] Amal Hayati, Rizki Muhammad Haris, and Zuhdi Hasibuan, *Hukum Waris*, ed. M Syukri Albani Nasution (Medan: CV. Manhaji, 2015).
[5] Abdul Manan, *Aneka Masalah Hukum Perdata Islam Di Indonesia 4th Ed* (Jakarta: Kencana, 2014).

regarding whether differences in nationality should also be a barrier to inheritance.

Presidential Instruction Number 1 on the Dissemination of the Compilation of Islamic Law[6], Article 171(c) and Article 173, outlines the factors that hinder inheritance, including: 1) Non-Muslim heirs; 2) Court decisions that convict an heir of murder, attempted murder, or serious assault against the deceased; and 3) Court decisions convicting an heir of defamation after proving that the deceased committed a criminal act with a sentence of at least five years imprisonment or a heavier penalty.

The issue arises when heirs follow Islamic inheritance law, while some of the heirs hold different religious beliefs (non-Islamic). According to Islamic inheritance law, non-Muslim heirs do not inherit any portion of the estate. Non-Muslim heirs may emerge if one spouse in a marriage converts from Islam, or if the children from the marriage practice a religion other than Islam. Religious differences can occur when the deceased was Muslim, while some heirs are Muslim and others are non-Muslim, or vice versa, where the deceased was non-Muslim while some heirs are Muslim and others are non-Muslim[7]. This situation presents legal challenges, particularly regarding inheritance distribution.

Overtime, there have been increasing cases where the deceased and the heirs have different religious beliefs, with the deceased being Muslim and the heirs being non-Muslim. This situation has led judges, as representatives of the state, to allocate the inheritance of a Muslim deceased to non-Muslim heirs for the sake of mutual benefit, justice, and to prevent division within the community, particularly in families with religious differences.

[6] Republik Indonesia, "Instruksi Presiden Nomor 1 Tahun 1991 Tentang Penyebarluasan Kompilasi Hukum Islam" (1991).
[7] Muhamad Isna Wahyudi, "Melacak Illat Hukum Larangan Waris Beda Agama," *Jurnal Hukum Dan Peradilan* 10, no. 1 (2021): 155–72.

This research presents an analysis of inheritance disputes in Indonesia, particularly focusing on cases involving religious differences between the deceased and their heirs. One of the main contributions of this research is its in-depth comparison between the Civil Code and Islamic inheritance law, especially regarding how each legal system handles cases where heirs follow a different religion from the deceased. While previous studies such as those by Suwarti et .al[8] and Fahimah et al. have touched upon conflicts arising from differing inheritance systems and religious affiliations, this study distinguishes itself by offering a more thorough and focused exploration of the legal provisions that govern these situations.[9] It systematically outlines the legal consequences of death from both Islamic and national legal perspectives and discusses the specific barriers to inheritance, including religious differences.

Another key novelty lies in the critical evaluation of judicial decisions related to interfaith inheritance. The study explores how Indonesian judges have interpreted and applied legal principles such as *wasiat wajibah* (mandatory bequest) to allow non-Muslim heirs to receive a share of the inheritance left by Muslim relatives. This stands out in comparison to the works of Zubair et al.[10] and Hakim, who also examined *wasiat wajibah* but did not provide the same depth of analysis on how these interpretations vary across court cases or how they reflect the tensions between religious law and national legal principles.[11] This research addresses the growing judicial

[8] Suwarti Suwarti, Decha Khunmay, and Stepan Abannokovya, "Conflicts Occurring Due to the Application of Different Legal Inheritance Systems in Indonesia," *Legality: Jurnal Ilmiah Hukum* 30, no. 2 (2022): 214–27.
[9] Iim Fahimah et al., "Interfaith Inheritance in Muslim Families in Indonesia: Practices, Philosophy, and the Direction of National Inheritance Law Development," *AHKAM: Jurnal Ilmu Syariah* 24, no. 2 (2024): 379–96.
[10] Asni Zubair and Hamzah Latif, "The Construction of Inheritance Law Reform in Indonesia: Questioning the Transfer of Properties through Wasiat Wājibah to Non-Muslim Heirs," *Samarah: Jurnal Hukum Keluarga Dan Hukum Islam* 6, no. 1 (2022): 176–97.
[11] Muhammad Lutfi Hakim, "Between Hibah and Wasiat Wājibah for Non-Muslims: Expansive Legal Interpretation by Indonesian Religious Judges in Inheritance Cases," *Al-Ahwal: Jurnal Hukum Keluarga Islam* 17, no. 2 (n.d.).

trend of favoring principles of justice and social harmony over strict adherence to religious doctrines when settling inheritance disputes involving religious differences.

The research contributes to legal scholarship by proposing specific reforms to Indonesia's inheritance laws. These reforms aim to better accommodate the legal and emotional complexities that arise when heirs practice different religions from the deceased. Unlike previous studies such as Rahman, which argues for general state intervention to protect the rights of non-Muslim heirs this article puts forward practical solutions that respect both religious norms and the principles of social justice enshrined in the national legal system.[12] These recommendations are rooted in legal analysis and contextualized within Indonesia's pluralistic legal framework. Overall, the article fills a gap in existing literature by offering a well-rounded analysis that bridges doctrinal legal theory, empirical court practices, and policy-oriented recommendations. Compared to studies by Suwarti et al., Zubair et al., Hakim, Fahimah et al. and Rahman, this research stands out through its integrated approach, highlighting not only the theoretical legal conflicts but also the judicial and social implications of inheritance disputes involving religiously diverse heirs.

Based on the above explanation, several key issues can be formulated for examination in this study. First, what are the legal provisions regarding inheritance across different religions between the deceased and their heirs according to the Civil Code? Second, what are the legal provisions concerning inheritance across different religions in Islamic law? The author then seeks to analyze the application of inheritance law in cases involving religious differences between the deceased and the heirs in Indonesia, focusing on court rulings and judicial decisions as solutions for resolving inheritance disputes between different religions, from the perspectives of

[12] Abdul Rahman et al., "Compulsory Testament: State Intervention in the Protection and Fulfillment of Human Rights of Non-Muslim Heirs," *LAW REFORM* 20, no. 2 (n.d.): 301–28.

both Islamic law and the Civil Code. This research is expected to play a crucial role in efforts to achieve legal certainty and justice in resolving inheritance disputes involving different religions in Indonesia, by applying the relevant laws and determining the appropriate forum for effective resolution.

Method

This study was a legal research project that takes a prescriptive approach, aiming to provide recommendations on what should ideally be done. The research employed a case approach by examining the legal reasoning (ratio decidendi) used by judges in their rulings or decisions.[13] The primary legal materials for this study include regulations concerning inheritance law in Indonesia, as well as court rulings and decisions involving inheritance cases across different religions.

As primary legal materials, the researcher has gathered several regulations and court rulings related to inheritance law. Meanwhile, secondary legal materials for this study have been obtained from legal books and relevant legal journals that support the research. These materials will be reviewed to provide a basis for answering the key issues in this study.

The collected legal materials will be categorized into two groups: first, cases where the deceased is non-Muslim, while the heirs are both Muslim and non-Muslim; second, cases where the deceased is Muslim, with heirs being both Muslim and non-Muslim. The researcher will then analyze the legal considerations from these primary materials and compare the inheritance laws under Islamic law and the Civil Code. The analysis will serve as the foundation for the conclusion, which will be presented as arguments that address the core issues of the research. Finally, the

[13] Peter Mahmud Marzuki, *Penelitian Hukum Edisi Revisi. Cet. 9*, ed. Kencana (Jakarta, 2014).

researcher will provide prescriptive recommendations based on the arguments developed in the conclusions.

Result and Discussions

Inheritance Across Religions According to the Indonesian Civil Code (KUH Perdata)

The Indonesian Civil Code (Burgerlijk Wetboek), derived from European inheritance law, governs the management of assets left by someone after their death, how these assets are transferred to the rightful heirs, and the impact of this transfer on the relationships between heirs and third parties[14]. The conditions for inheritance, as regulated in Book Two of the Civil Code, are: 1) Due to death, Article 830 of the Civil Code states that inheritance only occurs due to death, and this death must be a natural one; and 2) To inherit, the heir must be alive at the time the deceased passes away. Indonesia's national civil law (KUH Perdata) does not impose any restrictions on inheritance based on religious differences. However, according to Article 838 of the Civil Code, those deemed unworthy to be heirs and therefore excluded from inheritance are:

a. Those who, by court decision, are convicted of being responsible for the murder or attempted murder of the deceased;
b. Those who, by court decision, are found guilty of slanderously accusing the deceased of committing a crime punishable by at least five years in prison or a more severe penalty;
c. Those who, through force or other means, have prevented the deceased from making or revoking their will; and
d. Those who have embezzled, destroyed, or forged the deceased's documents.

[14] Abdul Manan, *Aneka Masalah Hukum Perdata Islam Di Indonesia 4th Ed* (Jakarta: Kencana, 2014).

Based on the provisions of the articles above, it can be understood that religious differences in civil law do not prevent individuals from inheriting from one another. Therefore, in matters of inheritance, if none of the conditions mentioned above are present, according to civil law, heirs are still entitled to inherit the property of the deceased. This shows that civil law acknowledges the right to inheritance even when the parties involved follow different religions. Concerning the above, civil law also recognizes bilateral inheritance, even if the parties differ in religion. Bilateral inheritance refers to inheritance rights being distributed between both paternal and maternal family lines. The Civil Code contains several articles that outline the bilateral inheritance system, including:

Article 850: "Any inheritance, whether in whole or in part, that is available for the benefit of the relatives in a direct ascending line or in a collateral line, must be divided into two equal parts, one part for all the relatives in the paternal line, and the other for all the relatives in the maternal line."

Article 853: "If the deceased leaves no descendants, spouse, or siblings, the inheritance must be divided into two equal parts: one part for the family in the direct paternal line, and the other part for the family in the maternal line."

In Article 840 of the Civil Code, it is explained that "A person who has been declared an heir" grammatically refers to a judge's declaration. Therefore, unworthiness (onwaardigheid) does not need to be explicitly stated, but the declaration of unworthiness must be presumed to be valid as stipulated in Articles 85 and 1446 of the Civil Code. The issue that arises is whether this unworthiness applies automatically. In other words, if the conditions outlined in Article 838 of the Civil Code are met, does the person in question immediately lose their right to inherit, or is a court ruling required to first declare the person unworthy?

Article 856: "If a person dies without leaving descendants, a spouse, and both their father and mother have predeceased them, the entire inheritance shall go to the brothers and sisters of the deceased" (Subekti & Tjitrosudibio, 2013).

Based on the formulation of several articles mentioned above, it can be understood that Indonesia's national civil law (KUH Perdata) recognizes a bilateral inheritance system, where parties receive inheritance from the deceased as long as they do not violate the provisions of Article 838 of the Civil Code.

Thus, it can be concluded that civil law does not recognize religious differences as a barrier to inheritance. In other words, it is perfectly legal for people of different religions to inherit from one another, which is one of the key differences from Islamic inheritance law. However, there is a similarity between the concept of inheritance in Islamic law and the Civil Code, which lies in the prohibition of inheritance for those who have committed murder. Both Islamic law and the Civil Code state that a person who murders a deceased individual is not entitled to inherit from them.

Inheritance Across Religions According to Islamic Law and the Compilation of Islamic Law (KHI)

Religious differences in Islamic law have a significant impact on an individual's inheritance rights. If the heir and the deceased follow different religions, the heir, according to prevailing rules, is not entitled to the inheritance. Although this rule is not explicitly mentioned in the Qur'an, the Prophet Muhammad SAW's Hadith, narrated by Imam Bukhari and Imam Muslim, clearly states: “A Muslim does not inherit from a disbeliever, nor does a disbeliever inherit from a Muslim.” Another Hadith reinforces this

by stating: “Two people of different religions do not inherit from each other”[15]

According to Sheikh Abdurrahman Al-Juzairi in Kitabul Fiqihi Ala al-Madzahib al-Arbaah and Wahbah Al-Zuhaili in Fiqih Al Islam Wa Adillatuhu, the conventional fiqh concept, based on the opinions of the majority of scholars from the four legal schools (madhabs) in Islamic jurisprudence—Imam Abu Hanifah, Imam Malik, Imam Ash-Shafi'i, and Imam Ahmad bin Hanbal—states that a Muslim cannot inherit from a non-Muslim, and vice versa. The determination of whether an heir is barred (mahjub) from inheritance depends on the status at the time of the deceased's death. If the heir was non-Muslim before the death of the Muslim decedent, they lose their right to inherit. Even if the non-Muslim heir converts to Islam after the Muslim decedent's death, they remain barred from claiming their inheritance[16]

Inheritance across religions has become a modern issue in contemporary Islamic legal thought. On one hand, the Qur'an does not specify inheritance rights for heirs of different religions, and the Hadith does not grant any portion of inheritance to non-Muslim heirs. On the other hand, societal demands and conditions increasingly call for a more flexible approach. With time, non-Muslim heirs may have greater opportunities to seek justice in the distribution of inheritance from a Muslim decedent. In this context, the judge (ulul ‘amri), as a representative of the state, is empowered to perform ijtihad based on the Qur'an and Hadith, while taking into account the social implications for the family and society.

[15] Arif Zunzul Maizal, Yusnita Eva, and Syaiful Marwan, “Kewarisan Beda Agama Dalam Putusan-Putusan Hakim Di Indonesia,” *Al-Qisthu: Jurnal Kajian Ilmu-Ilmu Hukum* 20, no. 2 (2022): 143–55.
[16] Ahmad Baihaki, “Penerapan Wasiat Wajibah Dalam Putusan Penyelesaian Sengketa Waris Beda Agama Ditinjau Dari Perspektif Hukum Islam,” *Krtha Bhayangkara* 15, no. 1 (2021): 117–42.

Some scholars allow Muslim heirs to inherit from non-Muslims. For instance, Ibn Qayyim Al-Jauziyah argues that a Muslim can inherit the wealth of a non-Muslim, as it can bring significant benefits to both the Muslim community and Islam itself. He asserts that this form of inheritance is legitimate, as it is grounded in the principle of mutual assistance (maslahah). This view is echoed by Sheikh Yusuf al-Qardhawi, a prominent contemporary scholar, who states that the rationale behind inheritance lies in the spirit of cooperation rather than religious differences.[17]

In Indonesia, Islamic inheritance law is regulated by the Compilation of Islamic Law (KHI). The KHI is a collection of Islamic legal provisions consisting of three books, 30 chapters, and 229 articles. It includes provisions on Islamic marriage law, which is covered in 9 chapters and 170 articles, as well as inheritance law, including wills and grants, which is detailed in 6 chapters and 43 articles. The KHI also contains other regulations outlined in 5 chapters and 12 articles, along with one concluding article[18]

The Compilation of Islamic Law (Kompilasi Hukum Islam or KHI) is a collection of opinions from classical and contemporary Islamic legal scholars, resulting from comparative studies conducted in various Islamic countries that have codified and unified family law, such as Egypt, Morocco, and Turkey. Within the KHI[19], especially in inheritance law, there are several reformative provisions, including substitute heirs, the bilateral inheritance distribution system, obligatory bequests (*wasiat wajibah*) for

[17] Chamim Tohari, "Rekonstruksi Hukum Kewarisan Beda Agama Ditinjau Dari Al-Ushūl Al-Khamsah," *Mazahib*, 2017, 1–17.
[18] Mursyid Djawas, "The Construction of Islamic Inheritance Law_ A Comparative Study of the Islamic Jurisprudence and the Compilation of Islamic Law," 2022.
[19] Andi Sukmawati Assaad et al., "Gender Equity in Inheritance System: The Collaboration of Islamic and Bugis Luwu Customary Law," *AL-IHKAM: Jurnal Hukum & Pranata Sosial* 17, no. 2 (2022): 458–79.

adopted children and foster parents, and the collective inheritance of agricultural land smaller than two hectares[20]

Article 171 (c) of the Compilation of Islamic Law/Presidential Instruction of the Republic of Indonesia No. 1 states that: "Heirs are individuals who, at the time of death, have a blood relation or marital relationship with the decedent, are Muslims, and are not legally barred from inheriting." This article indicates that the KHI does not explicitly emphasize religious differences between heirs and decedents as a barrier to inheritance, but rather requires the heir to be a Muslim at the time of the decedent's death.

Article 172 of the KHI clarifies: "An heir is considered Muslim if it is known through identification, recognition, practice, or testimony, while a newborn or minor child follows the religion of their father or community." In this context, religious differences act as a barrier to inheritance between individuals of different faiths, as stated in the Hadith narrated by Imam Bukhari and Imam Muslim, as mentioned earlier: "A Muslim cannot inherit from a non-believer, and a non-believer cannot inherit from a Muslim."

Based on the analysis of the articles in the Compilation of Islamic Law (KHI) and the provisions of Islamic law, it is clear that there is no inheritance for parties of different religions within a family. The KHI shows that Islam applies a bilateral inheritance system, where there is mutual inheritance between both the paternal and maternal sides, as well as among the relatives from both sides, reflecting the values of justice and balance

[20] Nur Saniah, Nawir Yuslem, and Hasan Matsum, "Analysis of MaqÄ Shid SharÄ «â€TM a on Substitute Heir in Compilation of Islamic Law (KHI)," Al-'Adalah 20, no. 1 (2023): 35–60.

between both parties. However[21], this does not apply[22] to parties of different religions[23].

In contrast, Article 173 of the KHI[24] opens a possibility for inheritance across different religions. This article states that a person is barred from being an heir if, by a court ruling with permanent legal force, they are convicted for: (a) Being found guilty of killing or attempting to kill or committing severe physical assault on the deceased; (b) Being found guilty of falsely accusing the deceased of committing a crime punishable by five years in prison or a more severe penalty.

These provisions reveal an inconsistency in the Compilation of Islamic Law (KHI) regarding inheritance across different religions. Articles 171 and 172 suggest a prohibition for heirs of different religions, stating that both the heir and the deceased must be Muslim. However, Article 173 indicates a different perspective, implying that if religious differences are not considered a barrier to inheritance, then logically, individuals of different religions could inherit from each other.[25]

The gap between public perceptions of justice and Islamic inheritance law regarding heirs of different religions is addressed through inheritance distribution before the death of the testator or through bequests. The Supreme Court has sought to bridge this gap by granting *wajibah* bequests to relatives of other religions in Supreme Court Decision No. 16

[21] Suqiyah Musafaah, Hammis Syafaq, and Nur Lailatul Musyafa'ah, "Hazairin's Interpretation of Inheritance Verses In The Qur'an And Its Influence on The Compilation of Islamic Law," *Journal of Indonesian Islam* 17, no. 1 (2023): 147–68.
[22] Chamim Tohari, "Sistem Kewarisan Bilateral Ditinjau Dari Perspektif Hukum Islam," *Istinbath: Jurnal Hukum* 15, no. 1 (2018): 63–90.
[23] Reni Nur Aniroh, "Mempertegas Ide Kesetaraan Gender Dalam Sistem Kewarisan Bilateral: Sistem Waris Bilateral Pasca Hazairin," *Al-Ahwal: Jurnal Hukum Keluarga Islam* 13, no. 2 (2020): 119–38.
[24] Republik Indonesia, "Instruksi Presiden Nomor 1 Tahun 1991 Tentang Penyebarluasan Kompilasi Hukum Islam" (1991).
[25] R Rohmawati, "Progresivitas Hukum Kewarisan Beda Agama Di Indonesia Berbasis Keadilan Dan Maṣlahah," *International Journal Ihya''Ulum al-Din* 20, no. 2 (2018): 217–40.

K/Ag/2010.[26] Additionally, in Supreme Court Jurisprudence No. 1/Yur/Ag/2018, the provision of *wajibah* bequests to non-Muslim heirs was reaffirmed.[27]

This Supreme Court jurisprudence establishes that *wajibah* bequests should be granted to heirs of different religions, as well as to adopted parents, adopted children, and stepchildren. According to the Supreme Court's rulings on *wajibah* bequests, heirs who adhere to a religion different from that of the deceased must be provided with a bequest, which will be executed after the death of the testator.

Comparison Between the Compilation of Islamic Law (KHI) and the Civil Code (KUH Perdata) Regarding Inheritance Across Religions

The inheritance system according to the Civil Code (KUH Perdata) does not differentiate between sons and daughters, or between husband and wife. All are entitled to inherit equally, with the portion for a son being the same as that of a daughter, and the portion for a spouse (husband or wife) being equal to that of a child. In terms of lineage, the Civil Code adopts a bilateral system, where an individual is connected to both paternal and maternal lineage. This means that an heir is entitled to inherit from the father upon his death and from the mother upon her death, which shows a similarity with Islamic law.

The similarity between the system in the Compilation of Islamic Law (KHI) and the inheritance system according to the Civil Code lies in the adoption of an individual inheritance system. Both the Civil Code and Islamic inheritance law follow a system where once inheritance is opened

[26] Nurhadi Abdul Gani, "336WASIAT WAJIBAH SEBAGAI PENEMUAN HUKUM OLEH HAKIM DALAM PERKARA WARIS BEDA AGAMA (STUDI KASUS PUTUSAN MAHKAMAH AGUNG NOMOR 16 K/AG/2010)," *Jurnal Hukum Dan Peradilan* 6, no. 2 (2017): 317–36.
[27] Ajeng Nabila Zulfa and Muhammad Yogi Galih Permana, "Yurisprudensi MA No. 1/Yur/Ag/2018 Tentang Pemberian Wasiat Wajibah Kepada Ahli Waris Non Muslim Perspektif Hukum Islam," *Islamika: Jurnal Ilmu-Ilmu Keislaman* 23, no. 1 (2023): 32–44.

(upon the death of the deceased), the estate can be divided and ownership distributed to the heirs. Each heir has the right to claim their respective portion of the inheritance. Thus, the inheritance system in the Civil Code is an individual bilateral inheritance system.[28]

However, the difference lies in the process following the death of the deceased. In Islamic inheritance law, the distribution of the estate must first account for certain obligations, such as whether zakat has been paid, debts settled, and funeral expenses covered. Only then can the remaining estate be distributed among the heirs. In contrast, the Civil Code inheritance system does not recognize these obligations. Another distinction is in the size of the portions received by each heir. According to the Civil Code, all heirs receive equal portions, regardless of whether they are children, siblings, or parents. Meanwhile, in Islamic law, the portions vary depending on the relationship to the deceased, following the Qur'an, Hadith, and the Compilation of Islamic Law.

Supreme Court Rulings Regarding Inheritance Cases Involving Heirs of Different Religions in Indonesia

Supreme Court Decision No. 368.K/AG/1995. In this ruling, a biological daughter of a different religion from her Muslim parent was eventually awarded an inheritance equal to that of the Muslim heirs. Initially, in the first court decision, the daughter of a different religion received no inheritance at all. As a result, she filed an appeal. The Jakarta Religious High Court then decided that she was entitled to a wasiat wajibah (mandatory bequest) of ¾ of the portion that a Muslim daughter would have received. However, this decision lacked clear reasoning or justification from the judges. When the case was brought to the Supreme Court, the earlier decision was revised, and the daughter of a different religion was granted an

[28] R Subekti and R. Tjitrosudibio, *Kitab Undang-Undang Hukum Perdata (Burgerlijk Wetboek): Dengan Tambahan Undang-Undang Pokok Agraria Dan Undang-Undang Perkawinan* (Jakarta: Pradnya Paramita, 2013).

equal share to that of a Muslim daughter, based on the *wasiat wajibah*. The cassation judge granted the *wasiat wajibah* to the non-Muslim heir, reasoning that as a daughter of the deceased, it was fair that she receive the same share as the Muslim female heirs.[29]

Supreme Court Decision No. 51.K/AG/1999 stated that non-Muslim heirs are entitled to inherit through a *wasiat wajibah* with the same portion as Muslim heirs Islam.[30] The panel of judges explained that under Islamic inheritance law, non-Muslim heirs cannot inherit directly. However, since Islamic inheritance law in Indonesia has an egalitarian nature, relatives of different religions with a blood relationship to the deceased can still receive an inheritance through a *wasiat wajibah*, provided that their share does not exceed that of the equivalent Muslim heir. According to Rohmawati[31], although this ruling contradicts the scriptural texts (nash)—the Qur'an (Al-Baqarah: 180) and Hadith—methodologically, the ruling is considered necessary for the greater good. Its aim is to maintain family unity by fostering mutual respect and understanding. Furthermore, the decision considers Indonesia's ethnic and religious diversity and seeks to address the sense of justice for all parties involved.

Supreme Court Decision No. 16.K/AG/2010 ruled that a non-Muslim wife is entitled to an inheritance through *wasiat wajibah* (mandatory bequest). She received ¼ of the estate in addition to half of the shared assets. Meanwhile, the Muslim heirs received 1/5 of the estate. The shares allocated to the brothers and sisters were distributed with a 1:2 ratio

[29] Muhammad Rinaldi Arif, "Pemberian Wasiat Wajibah Terhadap Ahli Waris Beda Agama," *De Lega Lata: Jurnal Ilmu Hukum* 2, no. 2 (2017): 351–72.
[30] Agus Hermanto, Arif Fikri, and Imam Nur Hidayat, "Menyoal Tentang Perkawinan Beda Agama Dan Akibatnya Terhadap Hak Waris Di Indonesia," *Mutawasith: Jurnal Hukum Islam* 5, no. 1 (2022): 68–83.
[31] R Rohmawati, "Progresivitas Hukum Kewarisan Beda Agama Di Indonesia Berbasis Keadilan Dan Maṣlahah," *International Journal Ihya''Ulum al-Din* 20, no. 2 (2018): 217–40.

between male and female heirs.[32] According to Gani[33], this decision marked a significant breakthrough in granting inheritance rights to non-Muslim heirs. Previously, in the practice of Religious Courts, non-Muslim heirs were typically excluded from inheriting from their Muslim parents, based on the Prophet Muhammad's (PBUH) statement: "A Muslim does not inherit from a non-Muslim, and a non-Muslim does not inherit from a Muslim." This ruling was often viewed as unjust for non-Muslim heirs. However, the new ruling aimed to address the sense of justice by reinterpreting the *nash-nash syar'iyyah* (Islamic legal texts) related to inheritance, allowing non-Muslim heirs to receive assets from their Muslim spouses.

Supreme Court Decision No. 721.K/AG/2015 also addressed inheritance involving different religions. In this case, the deceased was a Muslim, and among the heirs, only the plaintiff was a Muslim. The deceased's non-Muslim children were not recognized as heirs, but they were granted rights through a *wasiat wajibah*. The deceased left behind a Muslim wife and two non-Muslim children. The Supreme Court ruled that the Muslim wife was entitled to half of the shared assets and 7/24 of the remaining estate. Meanwhile, the two non-Muslim children received a *wasiat wajibah* amounting to 17/24 of the remaining estate after all the deceased's debts were settled.[34]

Supreme Court Decision No. 331.K/AG/2018 ruled that non-Muslim heirs are entitled to ¼ of the deceased's estate through *wasiat wajibah* (mandatory bequest). This decision underscores that despite the religious

[32] Agus Hermanto, Arif Fikri, and Imam Nur Hidayat, "Menyoal Tentang Perkawinan Beda Agama Dan Akibatnya Terhadap Hak Waris Di Indonesia," *Mutawasith: Jurnal Hukum Islam* 5, no. 1 (2022): 68–83.
[33] Nurhadi Abdul Gani, "336WASIAT WAJIBAH SEBAGAI PENEMUAN HUKUM OLEH HAKIM DALAM PERKARA WARIS BEDA AGAMA (STUDI KASUS PUTUSAN MAHKAMAH AGUNG NOMOR 16 K/AG/2010)," *Jurnal Hukum Dan Peradilan* 6, no. 2 (2017): 317–36.
[34] Arif Zunzul Maizal, Yusnita Eva, and Syaiful Marwan, "Kewarisan Beda Agama Dalam Putusan-Putusan Hakim Di Indonesia," *Al-Qisthu: Jurnal Kajian Ilmu-Ilmu Hukum* 20, no. 2 (2022): 143–55.

differences between the heirs and the deceased, the rights of non-Muslim heirs to inheritance are still respected. The main consideration in this ruling was the close and harmonious relationship between the appellant and the deceased during their lifetime. The appellant, as the loyal spouse, had provided dedicated care, even accompanying the deceased to China for medical treatment. Taking these factors into account[35], the court determined that the non-Muslim appellant deserved ¼ of the estate through *wasiat wajibah*.[36]

According to Gani[37], a former Supreme Court judge, judges are not strictly bound by the Compilation of Islamic Law (KHI) when making decisions. They have the authority to consider various legal bases and may refer to fiqh (Islamic jurisprudence) opinions regarding heirs disqualified due to religious differences. Thus, judges are not limited to the KHI alone but can also look to jurisprudence to ensure fairness for all parties involved.

The differences in the portions of inheritance given to non-Muslim heirs through *wasiat wajibah* across several rulings show that the determination of the portion heavily depends on the judges' considerations. Wahyudi[38] highlights that while there is a legal principle that *wasiat wajibah* cannot exceed one-third of the estate, the allocation to non-Muslim heirs still carries a degree of discrimination. This stems from the lack of clarity regarding the exact portion of inheritance and the unequal standing of non-Muslim heirs compared to Muslim heirs. Such discrepancies would not

[35] Liana Noviyanti, "Penerapan Wasiat Wajibah Terhadap Ahli Waris Non Muslim Dari Prespektif Kompilasi Hukum Islam (KHI)(Suatu Analisis Dari Putusan Mahkamah Agung Nomor 331/K/Ag/2018/MA)," *UNES Law Review* 6, no. 1 (2023): 4027–33.
[36] Pamungkas Raharjo and Elok Fauzia Dwi Putri, "Analisis Pemberian Wasiat Wajibah Terhadap Ahli Waris Beda Agama Pasca Putusan Mahkamah Agung Nomor 331 K/Ag/2018," *Jurnal Suara Hukum* 1, no. 2 (2019): 172–85.
[37] Nurhadi Abdul Gani, "336WASIAT WAJIBAH SEBAGAI PENEMUAN HUKUM OLEH HAKIM DALAM PERKARA WARIS BEDA AGAMA (STUDI KASUS PUTUSAN MAHKAMAH AGUNG NOMOR 16 K/AG/2010)," *Jurnal Hukum Dan Peradilan* 6, no. 2 (2017): 317–36.
[38] Muhamad Isna Wahyudi, "Melacak Illat Hukum Larangan Waris Beda Agama," *Jurnal Hukum Dan Peradilan* 10, no. 1 (2021): 155–72.

occur if judges took into account the legal reasoning (*'illat hukum*) behind the hadith prohibiting inheritance between people of different faiths. As long as there is no enmity or wrongdoing between the heirs and the deceased, there should be no obstacle for Muslims and non-Muslims to inherit from each other through *wasiat wajibah*.

Conclusion

Inheritance law in the Civil Code (KUH Perdata) regarding the inheritance rights of individuals of different religions, as stated in Article 832 of the KUH Perdata, affirms that the rightful heirs are blood relatives, whether legitimate or illegitimate and the surviving spouse. This implies that the KUH Perdata does not recognize religious differences as a barrier to inheritance. In other words, it is perfectly legal for someone of a different religion to either inherit or bequeath. Conversely, in the Compilation of Islamic Law (KHI), religious differences serve as a barrier for someone to receive inheritance from the deceased. This is reflected in Article 171 (c) of the KHI, which states that heirs are those who, at the time of the deceased's death, had a blood or marital relationship with the deceased, are Muslim and are not legally disqualified from being an heir. This concept is reinforced by a Hadith of the Prophet Muhammad SAW, narrated by Imam Bukhari and Imam Muslim.

Although Islamic law and the KHI do not recognize inheritance between individuals of different religions, in practice, cases of interfaith inheritance between the deceased and heirs in Indonesia, as shown in several Supreme Court rulings, indicate that judges have allowed heirs of different religions to receive the deceased's estate through the mechanism of *wasiat wajibah* (mandatory bequest), rather than through inheritance. The application of *wasiat wajibah* for non-Muslim heirs is intended to create harmony and peace, particularly within the family. This aligns with the principle of Islamic law, which states that a leader's policies towards their people should

prioritize public welfare (*maslahah*). Based on this principle, judges have granted *wasiat wajibah* to heirs of different religions in several cases, considering factors such as the closeness of the heir to the deceased during the deceased's lifetime, the quality of the relationship between the deceased and the heir or other relatives, the economic situation of the non-Muslim heir, and the facts presented during the trial.

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