

**RECONSTRUCTION OF ISLAMIC FAMILY LAW IN THE FIELD OF  
LEGAL INHERITANCE IN RELIGIOUS PLURALISM AND ITS  
CONTRIBUTION TO NATIONAL LAW  
(*Ijtihad* Study Of Judges Of Religious Court On  
Development Of Inheritance Law In The Compilation Of  
Islamic Law)**

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**ABSTRACT**

The juridical-theological-philosophical distinction of religion is one of the obstacles of a person to be an heir. On the other hand, empirically-historically-sociologically is not so, because of the existence of *illat* or other reasons that allow a person of different religions to gain inheritance from the heirs who are Muslims by considering the factors of justice. It is an act of *makruf* constructive '*wasiatwajibah*' to the relatives in need and oriented towards human values, usefulness and benefit which need to be realized in pluralist society of diverse life. It can contribute to the national law which is the result of *ijtihad* in the form of development of compilation The Islamic Law texts (*tahrij al-ahkam 'alanash al-qanun*) as a form of legal discovery with a progressive paradigm in realizing the function of the judiciary that the judiciary is a tool of social change.

**Keywords : Reconstruction, Inheritance, Religious Pluralism, National Law.**

## I. INTRODUCTION

### A. Background

Islamic law is one aspect of Islamic teachings that occupy an important position in the view of Muslims, because it is the most concrete manifestation of Islam as a religion. It is impossible to understand Islam without understanding Islamic law<sup>1</sup>. In Islam there is a legal dimension called *shari'ah*. *Shari'a* is the most important expression space of religious experience for Muslims and it is the object of the main reflection on the Qur'an and the ideal example of Prophet Muhammad SAW. (As-Sunnah). The *Shari'ah* presented a religious value system that became the framework of reference for the conduct and deeds of every Muslim.

There are four steps in implementing the *Shariah*, namely (1) hermeneutical steps, (2) socialization step, (3) political steps, and (4) enforcement measures<sup>2</sup>. Although in practice, Islamic law has not been able to play a full role, yet it still has a great meaning for its adherents on the basis: it helps to create the values that govern their lives, at least by determining what is considered good and bad. The whole worldview of Muslims is determined by their respective responses to those values which in turn influence the choice of aspects of life that are considered important and for the way they treat their own future.<sup>3</sup>

As a consequence of a law-based state, the law applies is supported by 3 (three) main pillars, namely: (1) reliable institutions or law enforcers, (2) clear rules of law, and (3) awareness Community law<sup>4</sup>. The

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<sup>1</sup> Joseph Schacht, *An Introduction to Islamic Law*, Cet. 1 (London: The Clarendon Press, 1977), pg. 1.

<sup>2</sup> Syamsul Anwar, *Studi Hukum Islam Kontemporer*, Cet. 1 (Yogyakarta: Cakrawala Press, 2006), pg. 4-10.

<sup>3</sup> Abdurrahman Wahid, *Muslim di Tengah Pergumulan*, (Jakarta: LEPPENAS, 1981), pg. 66.

<sup>4</sup> Mohammad Daud Ali, "Hukum Islam : Peradilan Agama dan Masalahnya," di dalam Yuhaya S. Praja (ed), *Hukum Islam di Indonesia: Pemikiran dan Praktek*, Cet. 1, (Bandung: Remaja Rosdakarya, 1991), pg. 87.

three main pillars are one system that interconnect and can not be separated between the parts one another. It starts from the policy of national development in the field of law concerning legal material, legal apparatus, as well as legal facilities and infrastructure, legal culture and human rights. All of the three main pillars supporting the enactment of the rule of law as the national development policy of law are highly relevant and urgent.<sup>5</sup>

The development of the field of legal material including the material of Islamic law is directed to the realization of a national legal system that serves the national interest by preparing the legal material thoroughly, especially the preparation of new legal products or the establishment of law, the development of law, the drafting of the national legal framework as well as the inventory and the compilation of elements of the legal order Which applies to the national legal system originating from Pancasila and the 1945 Act.

There are two ways in the development of national law, namely through the establishment of legislation and through judges or jurisprudence decisions. At this time, in any legal system the judge's decision (jurisprudence) occupies a very important place, because in the judge's decision (jurisprudence) one can find the form of concrete legal rule. In addition, in accordance with the function of the judge, through jurisprudence is possible the adjustment of the rule of law with the demands of change, both changes in circumstances and changes in sense of justice. In the forms of adaptation, the interpretation of a rule of law may no longer have an effective meaning. In such circumstances, the

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<sup>5</sup>National Law Development Policy in State Policy Guidelines (TAP No.II / MPR / 1993) concerning legal matter, legal apparatus and legal facilities and infrastructure. It is also stated in GBHN 1989 drawn up and adopted by the MPR in the March 1998 general assembly in the field of law under the target subtitles relating to legal, apparatus and law enforcement materials, the development of legal facilities and infrastructure, legal culture and human rights.

legal system of a society or state will be more reflected by a series of judicial decisions (jurisprudence) than by a series of laws and regulations.

The fourth step in implementing *shari'a* is "enforcement". In Islamic law the inheritance of religious difference is one of the obstacles of a person to become an heir. Thus non-Muslims will not be inherited as the heirs of their Muslim family.

In the pluralist life is not possible in a family consisting of members of different religion. To fulfill the sense of justice as one of the principles of Islamic inheritance law, non-Muslims are actually entitled to get a share of the estate by using "construction of wills" (*wasiatwajibah*) if the deceased does not make a will for them.

The will construction is an alternative means of supplementing the means of completion of inheritance for those who do not have inheritance, but they have close kinship with the heir. The legal aspect of this will is the existence of the factor of the recipient, such as to improve the system or economic condition on the basis of kinship, the existence of juridical factors that prevent it, but on the other hand can be pursued, and the existence of justice factor.

In understanding the Compilation of Islamic Law, especially the law of inheritance as an applied law in the Religious Courts in its enforcement, there are different interpretations made by religious judges, namely placing Compilation of Islamic Law especially inheritance law with text approach, dogmatist stagnant so unable to answer the problems. The issue of Islamic law is increasingly dynamic and complex. In addition, there is another approach in interpreting Compilation of Islamic Law especially inheritance law by taking the core, essence and spirit contained in it and then trying to apply it in accordance with the demands of place

and time. There is an offer of approaches in other paradigms of understanding: "theological-philosophical and historical-sociological".<sup>6</sup>

To answer the gap between the *solen* and *sein* between the inheritance laws contained in the Compilation of Islamic Law and the reality through the verdict or *ijtihad* of the Religious Court judges that raises the above issue. It is important to do research to get the answer in solving the problem by doing "*ijtihad*". Based on the background of the above problems, it is deemed necessary to conduct a study on: "law enforcement on Islamic family laws of inheritance in religious pluralism and its contribution to national law (study of judges of religious courts on legal development of inheritance in the compilation of Islamic law)".

## **B. Problem Formulation**

Starting from the background description of the problem mentioned above, then the main issues that the researcher discussed in this study are as follows.

1. Reconstruction and Legal Consideration of Judges of Religious Courts on Law Enforcement of Islamic Family Legal Field Inheritance in Religious Pluralism.
2. Methods and Roles of Religious Judges on Law Enforcement of Islamic Family Laws of Inheritance in Religious Pluralism.
3. Contribution to the National Law of *Ijtihad* Religious Judges on Law Enforcement of Islamic Family Laws of Inheritance in Religious Pluralism.

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<sup>6</sup>Akh.Minhaji, *Hukum Islam: Antara Sakralitas dan Profanitas (Perspektif Sejarah Sosial)*, (Yogyakarta: Universitas Islam Negeri Yogyakarta, 2004), pg. 3-8.

## **II. RESEARCH METHODS**

### **A. Research Specification**

The specification of this research is analytical descriptive, so the resultant research is expected to provide a clear, detailed and systematic description of the development of Islamic legal science, especially the knowledge of Islamic civil law on the law of inheritance, seen from the point of application (enforcement) of Islamic law inheritance law Religion by looking at the facts and events behind the case (dispute) that must be proved in the Religious Courts.

### **B. Research Materials**

The subject of this research was the Islamic civil law especially Islamic inheritance law which is the absolute authority of Religious Court. Islamic inheritance law including Islamic family law, how its enforcement in religious pluralism and its contribution to national law is seen from the result of *ijtihad* of Religious Court judges about the development of inheritance law in Compilation of Islamic Law. As for what is used to understand this research material is "case law", not in the understanding of a neutral, "rule function governing" approach, regardless of context and events.

### **C. Research's Location**

Location of research was in the Supreme Court of the Republic of Indonesia, through the jurisprudence of the Supreme Court of the Republic of Indonesia as the peak of the justice seeker in the cassation effort. It is hoped that the findings obtained with the availability of qualified cases that can finally be used as a reference for solving the legal

case in the future. In this case the Supreme Court has two functions according to law and function according to the Law.<sup>7</sup>

The function of the Supreme Court according to law is related as the top of the judiciary, namely the function of legal engineering or means of renewal and development of law. The function according to the law is the guidance of prevailing law unity and has the authority to supervise the good judicial proceedings.

#### **D. Data Collection Technique**

The primary source of this research was the religious judge's ruling on inheritance law which has a permanent legal force and becomes jurisprudence, namely the Supreme Court decision on inheritance law which has had a permanent legal force and the verdict has been followed by the judiciary below it. Secondary data sources were obtained from the role-holders, ie the organizers of Islamic law enforcement in the Religious Courts, especially the religious judges who served in the Religious Courts, the High Religious Courts, and the Supreme Court.

#### **E. Data Handling Technique**

This type of research is normative, data collection techniques were done through literature studies, document studies and interviews. The first step was to study the literature to the better understand of the concept of Islamic inheritance law, both from the Qur'an, as-Sunnah, the opinions of Islamic jurists in various books of fiqh called *faraidh*, the Law of Religious Court, Compilation of Islamic Law, Decisions of the Religious Courts, High Religious Courts, and Supreme Court decisions relating to this research.

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<sup>7</sup>Bustanul Arifin, *Pelebagaan Hukum Islam di Indonesia: Akar Sejarah, Hambatan dan Prospeknya*, Cet. 1 (Jakarta: GemaInsani Press, 1996), pg. 111.

## F. Data Analysis

In an effort to systematize and construct data in the frame of analysis, both primary and secondary data had been collected analyzed using qualitative analysis. Because this research is based on its nature is qualitative research using "normative juridical" approach is also called "doctrinal" legal research while the analysis is done in the form of qualitative normative analysis.<sup>8</sup>

### III. RESULT OF DISCUSSION AND DISCUSSION

#### 1. The Realization of Reconstruction and Judicial Consideration of Religious Judge on Law Enforcement of Islamic Family Inheritance in Religious Pluralism.

Position Case<sup>9</sup>: The background of the problem is as follows, "the inheritance of the Islamic Heir, as for the sons of Heirs composed of Muslims and non-Muslims". The decision of the Supreme Court states: "The sons of a non-Muslim (*Nasrani*) legal status are not heirs, but they are entitled to a share of the estate of the deceased's parents based on" *mustah's* will "which is equal to the child's share (Female) heirs of his father and mother".

The case of his position is as follows: that a Muslim family, consisting of husband and wife (father-mother) and 6 (six) children consisting of 5 children of Islam and 1 (one) child (the fourth kid) is non Islam (Christian). Both parents embraced Islam by leaving their inheritance and 6 (six) sons. 5 (five) children are Muslim and 1 (one) is

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<sup>8</sup>Ronny Haniyo Soemitro, *Metodologi Penelitian Hukum*, Cet. 1 (Jakarta: Ghalia Indonesia, 1982), pg. 9.

<sup>9</sup>*Putusan Pengadilan Agama Jakarta Pusat*: No. 377/Pdt.G/1993/PA-Jk. Tanggal 4 Nopember 1993 M, bertepatan dengan tanggal 19 Jumadil Awal 1414 H. Jo. *Putusan Pengadilan Tinggi Agama Jakarta*: No.14/Pdt.G/1994/PTA-JK, tanggal 25 Oktober 1994 M, bertepatan dengan tanggal 20 Jumadil Awal 1415 H. Jo. *Putusan Mahkamah Agung RI*: No. 368.K/AG/1995, tanggal 16 Juni 1998.

Christian. The inheritance has never been distributed inheritance to the heirs. One of the deceased sons as Plaintiff filed a lawsuit to the Religious Court to his sibling by arguing that his mother's father's inheritance had never been inherited. By mutual consent, except for the 4<sup>th</sup> child (non-Muslim) they wish that the inheritance be divided according to Islamic law.

The Plaintiff stands in his claim that one of the non-Muslim children is not entitled to inherit the property of his parents who embrace Islam. In the trial of the Religious Court between the Plaintiff and the Defendant present in the hearing and provide an answer justifying the arguments of the Plaintiff's lawsuit. While participating in Defendant II, a non-Muslim child is not willing to attend the trial of the Religious Courts, and provide an answer letter essentially, that Article 1, 2, 3 of Law no. 7 Year 1989 on Religious Courts, is a forum of justice for people who are Muslims. Because he embraced the Christian religion, objections to being tried by the Religious Courts which are not a forum of justice for Christians should be to the District Court. In that case he argues that, the claiming of an inheritance lawsuit in the Religious Court by his Muslim brothers with the intention to isolate/inherit the right of inheritance as his father-mother heirs.

In this case the Religious Courts consider and decide: "Whereas according to Article 171 (c) the Court of the Faith believes that the participant of the Christian Defendant II, according to Islamic law, is not the heir of his deceased father who is Muslim. Whereas according to Article 176 and Article 180 Compilation of Islamic Law, the heirs of the deceased father are the children of Islam, with their respective magnitude paying attention to the QS. An-Nisa '(59): 11.

The Religious High Court differs in view of the above case which has been decided by the Religious Courts. Because of the Christian

Defendant II rejected the verdict of the Religious Court and he appealed. The decision of the Religious Court of Appeal does not agree with the decision of the Religious Courts, it is necessary to give its own consideration, in which the participant of Defendant II (non-Muslim child) can also get a share of the inheritance left by the Heir. Thus the decision of the Religious Court which states that those who get a share of the estate of the Heir is only a child who is Muslim alone can not be maintained.

The Jakarta High Council of Religious Courts is essentially as follows: "Judging, reversing the Jakarta Religious Court Judgment, and adjudicating itself, in the exception of rejecting the exception of responder II (a non-Muslim child) and in the principal matter of granting a partial lawsuit, granting a legitimate heir of the deceased are his children who are Muslims. The non-Muslim child is entitled to a share of the estate of the deceased, based on "*mustah's* will" for  $\frac{3}{4}$  (three quarters) of a daughter of the deceased's heir.

The Supreme Court of the Republic of Indonesia sees the above case differing from the perspective of the Religious Court and the High Court of Religion. The Plaintiff and Defendant rejected the decision of the High Religious Court above and filed a cassation appeal by raising several objections in the memory of his appeal. All appeals made by the appellant of the cassation shall be declared unfeasible by the Supreme Court Assembly because of the objection concerning the assessment of the result of a proof of appreciation of a fact which can not be considered in the appeal of the cassation. Nevertheless, according to the Supreme Court Assembly the decisions of the Religious High Court should be corrected, since the "*mustah*" part for the Defendant II (non-Muslim child) should be equal to the inheritance part of the girl. Thus, the above Supreme Court

ruling can be explained as follows: Five Muslim children are designated as the heirs of both his father and his deceased mother and each child has a share of the estate of both parents. The boys section is two parts of a girl. While the daughter of a non-Muslim (Nasrani) her legal status is not an heir, but she is entitled to a share of the estate of her deceased parents based on "mustah's will" which is equal to the daughter of the father's heir and her deceased mother.

The above Supreme Court ruling is different from the legal norms contained in the Qur'an, as-Sunnah and in the Compilation of Islamic Law. The majority clerical agreement says that the different religions that become inheritors are inherited if the heirs and al-muwaris one of them is Muslim and the other is not. The legal basis is QS. An-Nisa '(4) verse 141 is declared: "And Allah will never give a way for the unbelievers (to rule over the believers)". Further, QS. Al-Maidah (5): verse 48 is declared: "Every people among you, We make rules and ordinances (individually). Thus Imam Malik and Ahmad expressed the opinion that the difference of religion which is neither Islam remains an inherited rally."<sup>10</sup>

Another legal basis is expressed in the Sunnah of the Prophet which is mutafaq 'alaih, narrated by Imam Bukhari and Muslim declared: "Muslims do not inherit the property of infidels, and unbelievers do not inherit the property of Muslims (mutafaq' alaih)". The legal basis in the Compilation of Islamic Law that religious differences constitute one of a person's raising to become an heir, stated in Article 171 letter (c): "Heirs are persons at the time of death having blood relation, or marriage relationship with heir are Muslim and are not hindered by the law to become an heir ".

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<sup>10</sup> Ahmad Rofiq, *FiqhMawaris*, Cet. Keempat (Jakarta: PT. Raja GrafindoPersada, 2002 ), pg. 38.

The legal considerations of the judges' judgment (jurisprudence) mentioned above are scientifically based on the teachings in the Qur'an that have been described to the recognition of religious freedom and pluralism. The Qur'an emphasizes the freedom of religion and belief of tolerance and respect for other religions into Islamic teachings. The Qur'an teaches the notion of religious plurality. It does not necessarily mean directly acknowledging the truth of all religions in a real form in everyday life. The teachings of religious affirmation emphasize the basic notion that all religions are given the freedom to live, with the risks that followers of their respective faiths will be subjected to. As for the principles offered by al-Qur'an in relation between fundamental religions, there are at least three basic principles which become reference in guidance relationship between Muslim and non Muslim, that is purity of tauhid, equality, justice and peace.

## **2. The Method and Role of Religious Judges on the Law Enforcement of Islamic Families in the Division of Inheritance in Religious Pluralism.**

In order to enforce the law and justice, the main duty of Religious Court judges, which is authorized to examine, decide and resolve cases between people of Islam one of them inheritance. Seeing the normative basis of the duties of the judge above, the main duty of the judge lies in the key word, namely to enforce: "law and justice" as duties and obligations. A judge in making a decision must remain grounded and be in the corridor of the law. While justice, is an implication of the existence of law enforcement. A judge in performing his duties should not be discriminatory. With the enforcement of these laws means automatically uphold justice, because the main nature of the law is justice.

From the case of the above positions, the contents of the Supreme Court decision, namely: the inheritance of the Islamic heir, as for the children of the heir consisted of Islam and non-Islam. The judgment of the Supreme Court declares: "the sons of a non-Muslim (Nasrani) legal status are not heirs, but he is entitled to share in the estate of his deceased parents on the basis of" mustah's will "which is equal to the part of the child (girl) The heirs of his deceased father's father. The judgment of the Supreme Court of the Republic of Indonesia is as contradictory to the Compilation of Islamic Law (COMPILATION OF ISLAMIC LAW ) which states that: "the heirs shall be persons at the time of death having blood relation or marriage relationship with the Heir, Moslem ..." (Article 171 (c).

Looking at the case above position there is a difference between the legal norms contained in the Compilation of Islamic Law with the legal norms contained in the Supreme Court decision as the culmination of the judgment of law and justice regarding the dispute of Islamic inheritance law. Indeed such a thing is possible, because Islamic law has a fundamental law that is the third source of Islamic law, namely: "al-ra'yu" (thought) with ijthihad method that can answer the challenges of the times and can meet the expectations while maintaining the spirit ( spirit) of Islam, because among the Islamic legal character is harakah or dynamic, where Islamic law has the ability to move and develop, have the power of life and can also shape themselves in accordance with the times. The form of inheritance law development in Compilation of Islamic Law is a breakthrough, namely giving part of inheritance to non-Muslim children who had never been done or known in practice in Religious Courts because as opposed to al-Qur'an, as-Sunnah and Compilation of Islamic Law.

The method of ijthihad judges of Religious Courts in deciding cases of position above can not be released with the theory of "maqashid al-

syari'ah", namely ta'lili illumination style with "istihsan" method and ta'lili style of ta'lili method in "maslahat" method. Besides relating to the task of the judge is to decide the case submitted to him, then he apply or apply the law in certain cases, then the form of ijihad is "ijihadatbiqui" in addition to "ijihadistinbati".

Istihsan is taking good things. According to Abd. Al-WahhabKhallaf, istihsan is the move of thought of a mujtahid from qiyasjali (clear) provision to qiyaskhafi (unclear) or kulli (general) argument to the provisions of the law of taxis (special) on the basis of a proposition which enables the transfer<sup>11</sup>. In addition, the Supreme Court in deciding the case of this position uses the pattern of reasoning istislahi with the method maslahat. Thus, non-Muslim children inherit the inheritance of the Muslim Heirs on the grounds of "watuqsituilaih" (and to be fair to them) means to give (qistan) from wealth to them (non-Muslims) in order to maintain good relations, Called maslahat.

The role of religious judges ijihad judges on the enforcement of Islamic family law in the field of inheritance in religious pluralism, namely the functioning of the Religious Judicature as well as "legal institutions" that enforce the legal certainty, as well as "social institutions" that facilitate dynamics of social development of legal aspects resulting in decision Religious Court judges have justice values (philosophical aspect) and benefit value (sociological aspect). From here the invention of the law is absolutely necessary, let alone the development of life (including the development of Muslim family law in Indonesia) in the context of the life of nation and state in religious pluralism.

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<sup>11</sup>Abd. Al-WahabKhallaf, *IlmUshul al-Fiqh*, (Kairo: Dar al-Kuwaitiyyah, 1968), pg. 79.

### **3. Contribution to the national law of Ijtihad Religious Judge on the Law Enforcement of Islamic Family in the Field of Inheritance in Religious Pluralism.**

The decision of the Supreme Court which states that the non-Muslim (Nasrani) sons of the legal status are not heirs, but they are entitled to share in the property of their parents (inheritance of the Muslims) on the basis of a mandatory will, Women) heirs of the deceased father and his mother.

The ruling of the Supreme Court can be drawn by the rule of law, namely that in relation to the inheritance of Islam, the difference of religion is not one of the barriers of a person to get a part of the inheritance of the heir (Muslim). To fulfill the sense of justice as one of the principles of Islamic inheritance law, the non-Muslims are entitled to get a part of the estate of the heir (Muslim) by using the construction of the law of wills, namely: "mustah's will".

There are two ways in the development of national law, namely through the establishment of legislation and through judicial decisions (jurisprudence). The judges' judgment of the Religious Courts occupies a very important place, because in the judgment (jurisprudence) one can find the form of concrete legal norms, in addition there is permissibility of adjusting the rule of law with the demands of change, both the changing circumstances and the change of sense of justice.

Considering the position of case in this research, there is contribution of judges of Religious Court concerning development of inheritance law in Compilation of Islamic Law to national law, namely: Biological child of non Moslem (Nasrani) she is entitled to get part of the heritage of both people based on a mandatory will, which is equal to the part of the daughter of the deceased heir's father and mother.

The judges' decision on the development of Islamic inheritance law in the Compilation of Islamic Law can be construed in national law. The Decision of Religious Courts excavated from the teachings or Islamic law or the application of Islamic teachings or law will be incarnate in the form of principle or principle of law derived from the teachings or principles and messages of religious values, which is a way of thinking the people and the nation of Indonesia.

The decision of the Supreme Court is the formation of the rule of law, which comes from Islamic teachings and law as part of the national legal system. In addition, in the decision (jurisprudence), the birth or adapt the doctrine (law) according to Islamic teachings into doctrine (the doctrine) of the national legal system. Thus there is no dualism between Islamic law and national law because it is fully reflected in the judgment (jurisprudence), and the product of Islamic law that belongs to and enjoyed by Indonesian Muslims, but can also be owned and enjoyed by other religions other than Islam, national law.

Thus, reflection of synergies is reflected in the formulation of Islamic law and its application (application or verdict) of the integrating law that breeds between the religious notion (which belongs to the Muslims only) with the notion of nationality (which belongs to the public or the whole nation). Thus the existence of Islamic law is as an inseparable part of the awareness of the Indonesian Muslim community regarding law and justice that is clearly the existence or existence in the framework of national law.

The contribution of Islamic law through judgment (jurisprudence) is another instrument in the formation of the law. The Supreme Court legislation obligates judges to find the right laws in determining a decision. It is necessary for the judge to give justice as it deserves.

From the analysis of the position of the case mentioned above, that Islamic law (in this case the inheritance law in the Compilation of Islamic Law ) through the judgment of Religious Court can be donated to national inheritance law which applies nationally also that at this time not yet have both unification and codification. Such a theory of "transformation" and "legal discovery" theory is used as a knife of analysis that the Judicature (jurisprudence) of Religious Courts can be used as legal norms that can be donated to national laws that apply nationally also does not distinguish the origin of the religion of each Indonesian society.

#### **IV. CONCLUSIONS AND SUGGESTIONS**

Based on qualitative analysis by using normative juridical approach and paradigm study of constructivism, the study concluded as following.

##### **A. Conclusion**

1. Form of reconstruction and legal considerations Religious Courts judges on enforcement of Islamic family law inheritance law in the field of religious pluralism is: (1) The realization of reconstruction is the biological child (female) who are non-Muslims (Christians) of their legal status is not an heir, but he is entitled to get a part of the estate of the inheritance based on a mandatory testament whose shares are equal to the daughters (other) part of the deceased mother's father, and (2) as for the legal considerations in the verdict that is in all-round life does not rule out in a family consisting of members Families of different religions. To fulfill the sense of justice as one of the principles of Islamic inheritance law, non-Muslims from the heritage of Muslim heirs with the construction of the law "mustah's will". In QS. Al-mumtahanah (60): paragraph 8, al-Qurtubi interprets the word "watuqsituilaim" (and do justice to them), suggests that the

verse can also be interpreted as a giver of expenditure (infaq) against non-Muslims are required by living by the family that Muslims. According to him, religious differences do not impede their right to earn a living.

2. The method and the role of magistrate judges *ijtihad* Religious Courts on the enforcement of Islamic family law inheritance law in the field of religious pluralism is: (1) *maqasid al-shari'ah* with *istihsan* method by considering the positive and negative effects of an application of the law (*al-nazar fi al-ma'alat*) in addition to the method of beneficiaries with shades *penalaranistislahi*, and (2) the role of *ijtihad* urgent Religious Court judges where Justice Religion is a dynamic institution, interpret law texts (Compilation of Islamic Law) in the context of society and changes. The Religious Court is not only a juridical building, but is related to so many sociological building components, that is, as a legal institution with cultural roots that must be responsive to the dynamics of the law of its people.
3. Contribution to the national law of *ijtihad* Religious Court judges on the enforcement of Islamic family law in the field of inheritance law in religious pluralism is a religious distinction is not one of the barrier of a person to get a part of the heritage of the heirs (Muslims). To fulfill the sense of justice as one of the principles of Islamic inheritance law, the non-Muslims are entitled to get a share of the estate of the heir (Muslim) by using the construction of the law of wills, namely: "mustah's will". As for the contribution to the national law is the biological child (female) who are non-Muslims (Christians) of their legal status not as heir, but he is entitled to a share of the inheritance both parents (Heir Muslims)

based was borrowed, whose share equal to the part of the child (female) heirs of the deceased father and his mother.

## **B. Suggestions**

1. Law empirically is not a static thing, but always follows the change of society, therefore judges as law enforcement and justice must explore, understand and follow the legal values that live and thrive in society.
2. Because the judge faced the case, he must decide upon the case faced by passing the interpretation to apply the legal ideas (maqashid al-syari'ah) to the concrete legal issues relating to the legal illat that underlies it.

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## **LEGISLATION**

Kebijakan Pembangunan Hukum Nasional dalam Garis-garis Besar Haluan Negara (TAP No. II/MPR/1993)

Putusan Pengadilan Agama Jakarta Pusat: No. 377/Pdt.G/1993/PA-Jk. Tanggal 4 Nopember 1993 M, bertepatan dengan tanggal 19 Jumadil Awal 1414 H. Jo. *Putusan Pengadilan Tinggi Agama Jakarta: No.14/Pdt.G/1994/PTA-JK*, tanggal 25 Oktober 1994 M, bertepatan dengan tanggal 20 Jumadil Awal 1415 H. Jo. *Putusan Mahkamah Agung RI : No. 368.K/AG/1995*, tanggal 16 Juni 1998