

The Juridical Analysis of Inheritance Distribution for Non-Muslim Heirs Muslim Heirs Conception of Legal Certainty

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Abstract. Indonesian society is a plural society in which two or more elements coexist and mingle with one another. In any society, every marriage cannot be separated from the possibility of producing offspring or children who are considered to be the bringers of happiness. With these facts, of course it will affect several sectors in Indonesia. In the legal field for example. The law most affected by diversity is the Law of Inheritance. That is, if the heirs are subject to Islamic inheritance law while there are Islamic heirs of different religions (non-Islam). In this study, researchers used a sociological juridical approach. Because the research that is sought is legal aspects in the implementation of the law with the implementation of science and applicable legal rules as well as from a social and community point of view in everyday life. The research specifications shown are descriptive analysis in nature. Researchers in their efforts to collect data are carried out in several ways, namely: field studies and studies of documents/library materials. According to western inheritance law, heirs of different religions are not a barrier to becoming heirs while Islamic inheritance law, heirs of different religions is a barrier to becoming heirs. However, heirs of different religions can still receive inheritance through a mandatory will as stipulated in the MA Jurisprudence No. 51/K/AG/1999 with the condition that it does not exceed 1/3 of the total inheritance.

Keywords: Different; Inheritance; Religions.

1. Introduction

Indonesian society is a plural society or in other words Indonesia is a country that is able to bind politically two or more elements or elements or social orders to live side by side and be able to blend in with one another.¹A long process that begins with a meeting and continues until the marriage phase is no stranger to Indonesia. In any society, whether the pattern of life is diverse or not, every

¹Dikdik Baehaqi Arif, DB A, Framing Indonesia's Diversity: The Citizenship Education Perspective of Curricular Programs, 2013. Journal of Ahmad Dahlan University, p. 1

marriage cannot be separated from the possibility of producing offspring or children who are considered to be the bringers of happiness from the results of the marriage. Marriage is carried out with a man and a woman who are both bound by a physical and spiritual bond and aim to form a happy family.

With the fact of diversity like this, of course it affects several fields in Indonesia. This is no exception in the field of law, where this is a vital field considering that Indonesia is a legal state according to Article 1 paragraph (3) of the 1945 Republic of Indonesia Law (hereinafter referred to as the 1945 Constitution of the Republic of Indonesia). The law that is most influenced by the diversity that exists in Indonesia is the Law of Inheritance. The marital relationship as referred to in Article 1 of the UUP, not all of these marital ties can result in the breakup of a marriage due to divorce, death and court decisions. Dissolution of marriage due to death will result in assets called inheritance and those left behind are called heirs.

Indonesia has an Inheritance Law which continues to be affected by the development of 3 (three) main and fundamental concepts of the inheritance system. The three legal systems are customary law, Islamic law and Dutch heritage law or civil law which are commonly found in *Burgerlijk Wetboek*.² Inheritance law according to customary law in Indonesia is inseparable from the influence of different kinship community structures. Customary inheritance law is still obeyed and carried out by the customary community regardless of the customary inheritance law that has been stipulated in writing or not. The form and legal system of customary inheritance is closely related to the form of society and the nature of kinship.³

In the law of inheritance, the community will encounter two main problems, namely the inheritance left by the deceased which is referred to as inheritance, and those who are entitled to the inheritance are called heirs. If a person dies, this is a legal event and will have legal consequences, namely how to manage and continue the rights and obligations of someone who has died.⁴

Inheritance law according to the Compilation of Islamic Law in Article 171 (a) is "the law governing the transfer of inheritance rights (*tirkah*) to the heir, determining who has the right to become the heir and how much is each share."⁵

²Milayani, O. Legal Position of Heirs who Inherit by Substituting or "Bij Plaatsvervulling" Heirs According to Burgerlijk Wetboek. 2014. Al-Adl, 9(3), 405-434. p. 407

³M. Idris Ramulyo, "A Comparison Between the Teachings of Shafi'i, Hazairin and Obligatory Wills in Egypt regarding the Distribution of Inheritance for Grandchildren According to Islam," Law and Development Magazine No. 2 Year. XII (Jakarta: FHUI, 1982), p. 154.

⁴Ibid., 406

⁵Focusmedia Editorial Team, Compilation of Islamic Law. 2007. Focusmedia, Bandung, p. 56

However, the problem is if the heirs are subject to Islamic inheritance law while there are Islamic heirs of different religions (non-Islam). Often in customary law differences in religion and belief result in the loss of the rights of a child who embraces a religion different from the religion of his parents to the inheritance that is his right, be it assets or debts.

Non-Islamic heirs can occur because in the course of the marriage bond between husband and wife one of the parties leaves the Islamic religion and/or the offspring of the marriage embrace a religion other than Islam. So that after the division of inheritance this raises separate legal issues, especially in the distribution of inheritance. Non-Islamic heirs can occur because in the course of the marriage bond between husband and wife one of the parties leaves the Islamic religion and/or the offspring of the marriage embrace a religion other than Islam. So that after the division of inheritance this raises separate legal issues, especially in the distribution of inheritance.

2. Research Methods

This study uses a sociological juridical approach. The research specification used is descriptive analysis. The data used includes primary and secondary data. Retrieval of data using field studies and literature studies. Using qualitative methods. Data analysis using qualitative analysis.

3. Results and Discussion

3.1. Juridical Analysis of Inheritance Distribution for Non-Muslim Heirs and Muslim Heirs in the Conception of Legal Certainty

Whereas in the consideration of the Judge, the Plaintiffs filed an application for the distribution of inheritance of land objects and their buildings, against the Defendants with the argument that the object of the dispute is an inheritance, the heirs of the deceased parents of the parties. Where at first there was no objection regarding the distribution of assets that were the object of the dispute and agreed to be sold. However, two days later Defendant II stated that he did not agree without clear reasons and insisted that he did not want to sell the land and buildings that were the object of the dispute. Hearing this, Defendant I, as the party entrusted by the mother of the parties, did not dare to carry out the mandate and chose not to do anything without the approval of all of her siblings. This of course makes the heirs uncertain about their respective shares of the inherited property which is the object of the dispute where one of the heirs is a non-Muslim. However, with the Court Decision No. 227/Pdt.G/2022?PA.Sal where the Judge has decided who has the right to become an heir and their

share including heirs who are non-Muslims with all considerations and authentic evidence available.

In this case the judge's decision is in line with the Theory of Legal Certainty used by the author where legal certainty is protection for justice seekers against arbitrary actions which mean that someone will be able to obtain something expected in certain circumstances. The community expects legal certainty because with legal certainty the community will be more orderly. Which means that with the judge's decision it becomes a bright spot for anyone who has the right to become an heir and their share of inheritance, including non-Muslim heirs who get a 10% share of the existing inheritance.

In addition to the Legal Certainty Theory, the author also uses the Pancasila Theory of Justice in analyzing Court Decision No. 227/Pdt.G/2022?PA.Sal. Justice is basically a relative concept, everyone is not the same, fair according to one is not necessarily fair to the other, when someone asserts that he is doing justice, it must of course be relevant to public order where a scale of justice is recognized. The scale of justice varies greatly from one place to another, each scale is defined and fully determined by society according to the public order of that society. This justice is based on and imbued with the essence of human justice, namely justice in the relationship between humans and themselves, humans and other humans, humans and society, nation and state and the human relationship with God. In this case the Judge has decided the case fairly. It can be seen in the ruling that gives a decision on the distribution of inheritance in accordance with existing rules, in this case Islamic law. Where the male share is twice the female share and non-Muslim heirs are given a mandatory will to inherit with the maximum assets allowed to be given is 1/3 of the existing inheritance. In addition, for the sake of a sense of justice, the Judge also decided to charge the costs of the case to Defendants I and II.

According to the author, the settlement of inheritance of different religions in the Religious Courts is the right legal step and provides a sense of certainty and justice for all parties entitled to inherit property and also prevents disputes between heirs that have no end. In addition, obtaining this inheritance will also provide peace for all heirs and the inheritance will provide more benefits in their lives.

3.2.The Process of Implementing Inheritance Distribution for Non-Muslim Heirs with Muslim Heirs in the Conception of Legal Certainty

The rules in KHI are based entirely on the opinions of classical scholars, especially Imam Syafi'i. However, in its development, the distribution of inheritance can be carried out in circumstances where there are differences in religion by applying a mandatory will. The provisions in the Compilation of Islamic Law, state that

"Giving property through a mandatory will is carried out solely with considerations for the sake of humanity, a sense of justice and benefit stipulating the obligation to bequeath an heir who at the time of his life did not have a will".

In the implementation of the distribution of inheritance to non-Muslim heirs with Muslim heirs, it certainly has legal consequences. The legal consequences of having heirs of different religions can be seen from a juridical and societal/social perspective. From a juridical point of view, looking at the regulations contained in Article 171 letter (c) and the conditions for those who are entitled to become heirs according to Islamic inheritance law, namely that heirs have blood relations, marital relations and are of various Islam, of course in connection with the existing regulations, the heirs who non-Muslims are not entitled to become heirs of the heir because one of the conditions is to prevent heirs from obtaining the right to become heirs.

Meanwhile, in terms of humanity/social, looking at the values of justice and expediency, namely heirs who are non-Muslim/different religions still have the right to be heirs and those who are not entitled to become heirs get inheritance through a mandatory will as in MA Jurisprudence No. 51/K /AG/1999 and Number 16/K/AG/2010, the acquisition of as much inheritance as possible is equal to the share of equal heirs and may not exceed 1/3 of the inheritance.

The settlement efforts that can be made when there are differences in religion in carrying out inheritance according to Islam are as follows:

1. Grant

Grant according to Article 171 letter g KHI is "Giving an object voluntarily and without compensation from someone to another person who is still alive to own it". Islamic law allows a person to give or gift part or all of one's assets while still alive to another person which is called *intervivos*. In the event that a child has a different religion from their parents, then it is permissible for the parents who are still alive to give a grant to the child. This is because gifts/grants can be made to anyone, both Muslims and non-Muslims. Grants are not as heirs because according to Islamic law, children of different religions are no longer entitled to inheritance.

2. Will

A will according to article 171 letter f KHI is "the gift of an object from the heir to another person or institution that will take effect after the heir dies". In this case, according to the provisions of Article 196 KHI states that "in a will, both in writing and verbally, it must be stated clearly and clearly who or what institution is appointed to receive the inherited property". Article 197 KHI also regulates

matters that can result in the cancellation of a will. Broadly speaking, a will is the gift of a property from a person to another person or to several people after the person's death.

4. Conclusion

According to western inheritance law, heirs of different religions are not a barrier to becoming heirs while Islamic inheritance law, heirs of different religions is a barrier to becoming heirs. However, heirs of different religions can still receive inheritance through a mandatory will as stated in MA Jurisprudence No. 51/K/AG/1999. The distribution of inheritance between Muslim heirs and non-Muslim heirs in the community is still carried out in an equal way by prioritizing the values of justice and kinship between one heir and another regardless of the religious background of one heir to another. The Compilation of Islamic Law should be more detailed about the rules for dividing the inheritance of different religions. Regulations on the inheritance of different religions should not only contain general rules but must become specific provisions with more detailed explanations so that there is no misinterpretation of existing rules and existing provisions. In order to provide legal certainty for seekers of justice in settling the inheritance of different religions, it is necessary to revise the law on the Religious Courts by including definite provisions for heirs of different religions and equality for Religious Court Judges in deciding cases of heirs of different religions referring to jurisprudence. Supreme Court No 51/K/AG/1999 Other Supreme Court Jurisprudence.

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