

The Distribution of Obligatory Bequest to Non-Muslim Biological Children from the Perspective of Islamic Inheritance Law in Indonesia

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This study evaluates the application of the Compilation of Islamic Law in Indonesia (KHI) in the Supreme Court Decision Number 721/K/Ag/2015, which awarded half of the deceased's inheritance to the plaintiff, who had been married to the deceased under a false identity for seventeen years. Controversy arose from the religious differences of the deceased, who was declared Muslim, and the Christian burial process, raising questions about the validity of the marriage. Using a normative juridical research method, including statutory and analytical approaches, this analysis investigates the court's disregard of the KHI, despite its recognized authority within the Indonesian legal context, particularly in inheritance and bequest disputes. The research findings indicate that the court's reliance on the interpretation by Yusuf Al-Qardhawi instead of the KHI diminishes legal certainty. The study concludes that for better judicial consistency and fairness in inheritance cases, explicit consideration of the KHI is essential. This insight underscores the need for judicial adherence to established legal norms to maintain integrity and predictability in legal proceedings, which has significant implications for the legal community's approach to similar cases.

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Public Interest Statement

This study examines a significant decision by the Indonesian Supreme Court that deviates from the established Compilation of Islamic Law in Indonesia, thus impacting legal certainty in inheritance cases. By identifying judicial neglect, this research fills an important gap in the literature on Islamic inheritance law and emphasizes the need for adherence to legal precedents to ensure justice. This is particularly significant for legal practitioners, scholars, and the broader community as it enhances a deeper understanding of judicial processes and promotes a more predictable legal environment in Indonesia.



Introduction

Indonesia is a pluralistic nation characterized by diverse ethnicities, languages, and religious beliefs, which are reflected in its legal system (Gunawan, 2016). Indonesian law integrates elements from customary law, western law, and Islamic law, which intertwine to form a coherent national legal framework. The Compilation of Islamic Law in Indonesia (Kompilasi Hukum Islam-KHI), heavily inspired by the Qur'an and Sunnah, plays a crucial role in this system, particularly in matters of family law such as marriage and inheritance (Asriati, 2012). The KHI reflects religious norms and responds to the evolving legal needs of Indonesia's plural society. By understanding these unique aspects, the KHI is expected to bridge local wisdom and the demands of modernization, while preserving national identity in judicial practices and public policy (Disantara, 2021).

Previous studies have extensively examined the role of the Compilation of Islamic Law in Indonesia (KHI), highlighting its importance and application in various legal issues. However, there remains a gap regarding its integration and influence in contemporary legal practices, particularly in cases involving religious diversity and

inheritance rights. This study aims to bridge this gap by exploring the interaction between Islamic law and national legal principles, offering new perspectives on the application of the KHI in modern legal conflicts. By delving deeper into how the KHI has adapted to various complex legal situations, this study seeks to provide new insights that can aid in the formulation of more inclusive and equitable policies.

The need for this research arises from the ongoing legal and social challenges in Indonesia, where legal pluralism can sometimes lead to conflicts in inheritance cases, particularly among citizens of different religions (Hazairin, 1981). This study is crucial because it addresses the complexities and nuances of applying Islamic law in a multi-religious society, ensuring that legal interpretations align with contemporary societal values while maintaining religious integrity. This is particularly important because inheritance conflicts often reflect broader social tensions that can disrupt societal harmony. Therefore, this research is significant not only from a legal perspective, but also from a social perspective, where its findings are expected to provide recommendations for handling similar cases in the future more fairly and effectively.

This study focuses on the application of Islamic inheritance law under the Compilation of Islamic Law in Indonesia (KHI), particularly how these laws intersect with national legislation in cases involving the heirs of different religions. Specifically, it involves a case study of Decision 721/K/Ag/2015 concerning the distribution of inheritance to non-Muslims, where judges are faced with two alternatives: the interpretation of scholar Yusuf Al-Qardhawi and the use of the KHI. This includes an analysis of the legal provisions and judicial decisions that have shaped the current inheritance law landscape in Indonesia. By identifying and analyzing the points of intersection and conflict between the KHI and other laws, this research aims to uncover the best practices and areas needing reform within the Indonesian inheritance law system.

Literature Review

Nofitasari (2021) comprehensively explored how court decisions have progressively adapted 'wasiat wajibah' to include non-Muslims and stepchildren, thus expanding its scope beyond traditional Islamic inheritance laws. These adaptations reflect significant legal developments designed to address the complexities of family relationships in Indonesia's diverse societies. The review also covers the broader application of the Compilation of Islamic Law in Indonesia (KHI) in managing interfaith and non-traditional family structures, highlighting how decisions at the Cassation level set precedents for a more inclusive interpretation of Islamic law.

Additionally, Nofitasari offers a comparative analysis with other Muslim-majority countries, providing a global perspective on the unique adaptation of Islamic law in Indonesia, which specifically integrates local customs into its legal practices. A normative sociological perspective is employed to assess the broader social implications of these legal changes, particularly concerning evolving social values around family structures and interfaith marriages.

Wahyudi (2021) The study examines the prohibition of interfaith inheritance in Islamic law, particularly within the framework of the Compilation of Islamic Law in Indonesia (KHI). This highlights the use of 'wasiat wajibah' (obligatory bequest) to overcome religious barriers in inheritance cases between Muslims and non-Muslims. While innovative, this judicial approach raises questions regarding its consistency and alignment with traditional Islamic teachings on inheritance.

Ramadhani et al. (2019) It provides insights into the implementation of interfaith inheritance laws in Indonesia, discussing how local courts navigate the complexities of interfaith family dynamics. Ramadhani's work complements Nofitasari's research by examining specific case studies that illustrate the practical challenges and solutions in applying 'wasiat wajibah' (obligatory bequest) within an interfaith context.

Raharjo dan Dwi Putri (2019) Focusing on legal pluralism in Indonesia, it highlights how various legal traditions, including customary law and Islamic law, coexist and influence inheritance practices. Their analysis provided a broader understanding of how Islamic inheritance laws are adapted to fit the diverse cultural landscape of Indonesia.

Mutmainah dan Sabir (2019) explores the role of judicial discretion in interpreting Islamic inheritance law, particularly in cases involving stepchildren and adopted children. Mutmainah and Sabir's study emphasizes the significance of judicial decisions in shaping the application of Islamic law to contemporary family structures.

This study distinguishes itself from previous studies by focusing on the implications of these legal adaptations for future court decisions in Indonesia. This study demonstrates that as social norms evolve, interpretations of the KHI also adapt. This comprehensive survey not only outlines the current legal landscape but also establishes a theoretical framework supporting ongoing research on the dynamic interaction between law, society, and religion in Indonesia.

The novelty of this research lies in its methodological approach, which ensures that it is firmly rooted in Islamic jurisprudence while remaining adaptable to social changes. It particularly focuses on the interpretation by Yusuf Al-

Qardhawi, in contrast to the KHI, highlighting the KHI's position as the primary reference compared to other sources. This adaptability is crucial as it contributes to a broader academic understanding, demonstrating scholarly mastery in this field. This research aims to fill gaps in the existing literature by offering a detailed analysis of recent court decisions and their broader social implications, which have not been extensively covered in previous studies.

Additionally, this research provides a comparative perspective by analyzing how similar legal adaptations have been implemented in other Muslim-majority countries, thereby offering a more comprehensive understanding of the global context. This aspect of the study highlights Indonesia's unique position in integrating local customs into Islamic legal practices, which is relatively under-explored in the current literature.

Materials and Methods

This type of research is normative legal research, also known as doctrinal research (Marzuki, 2017; Vinx, 2007). According to Peter Mahmud Marzuki, all legal research is inherently normative, including the topic addressed by the researcher concerning obligatory bequests, which is based on the examination of court decisions. The approach begins with the statute, case, and comparative approaches. Primary legal data include the following: (1) the 1945 Constitution of the Republic of Indonesia, (2) the Civil Code (*Burgelijk Wetboek*), (3) Presidential Instruction No. 1 of 1991 on the Compilation of Islamic Law in Indonesia, and (4) Supreme Court Decision No. 721/K/Ag/2015. Secondary legal data consists of sources from books, journal literature, scholarly works, and other materials related to the research problem

The analysis of legal materials is conducted descriptively and qualitatively, while the data analysis employs deductive logic. This method involves interpreting and discussing research findings based on legal concepts, regulations, theories, and doctrines related to the research problem. Regulations are positioned as the major premise and correlated with relevant legal facts used as the minor premise. Through the syllogism process, conclusions were drawn. (Marzuki, 2017)

This study employs several interpretative instruments to examine Supreme Court Decision No. 721/K/Ag/2015 based on the work of Mertokusumo. The first is systematic or logical interpretation, which is a method of interpreting laws as a part of the overall legislative system by relating them to other laws. The second is grammatical interpretation, which emphasizes the importance of language in providing meaning to objects. (Mertokusumo, 2007)

Results

Indonesia, with its diverse cultures and religions, often sees aith and intercultural marriages. Many couples decide to marry despite differences in faith, either by maintaining their respective religions or by converting them before marriage. Such marriages can result in religious differences between parents and their children, or children may choose their faith later in life. This situation poses potential issues for inheritance, as Muslims and non-Muslims cannot inherit from each other, according to Islamic law (Sajuti, 2008).

According to the teachings of Prophet Muhammad (PBUH), Article 172 of the Compilation of Islamic Law in Indonesia (KHI), and the Fatwa of the Indonesian Council of Ulama No: 5/MUNAS VII/MUI/9/2005 issued during the VII National Conference of the MUI on July 26-29, 2005 (Jumadil Akhir 1426 H), it has been established that Muslims cannot inherit from or bequeath property to non-Muslims. However, this contrasts with Supreme Court Jurisprudence No. 51/K/AG/1999, which presents a different legal perspective.

“Non-Muslim heirs can still inherit from a Muslim decedent through the institution of Wasiat Wajibah (obligatory bequest), where the non-Muslim child receives a share equal to that of a Muslim child as an heir.”

Furthermore, decision no. 16/K/Ag/2010, it is stated: "The marriage between the decedent and the Cassation Applicant has lasted for a considerable time, namely 18 (eighteen) years, meaning the Cassation Applicant has dedicated herself to the decedent for a long period. Therefore, even though the Cassation Applicant is non-Muslim, it is fair and just for her to receive her rights as a wife, including a share of the estate through Wasiat Wajibah and a portion of the joint property, in accordance with Supreme Court jurisprudence and the sense of justice."

Jurisprudence refers to court decisions or rulings that have been affirmed and made permanent by the Supreme Court (MA) because of their innovative legal implications, serving as precedents for lower courts within the hierarchy of the MA. Normatively, it is stipulated that the compilation of such jurisprudence is the exclusive authority of the MA (Badan Pembinaan Hukum Nasional (BPHN), 1992)

Wasiat wajibah, or "obligatory bequest," is intended for heirs or relatives who are unable to receive any inheritance because of religious restrictions or certain divine provisions. In the modern context, it appears that matters once purely divine are increasingly subject to human intervention. (Maribunti et al., 2019) According to Supreme Court Jurisprudence, a non-Muslim biological child is entitled to one-third of the deceased's estate, in accordance with the portion typically allocated to heirs

Article 201 of the Compilation of Islamic Law in Indonesia (KHI) states: "If the bequest exceeds one-third of the estate and some heirs do not agree, the bequest shall only be executed up to one-third of the estate." Supreme Court jurisprudence recognizes non-Muslim biological children as heirs, allowing them to receive an inheritance equal to that of their Muslim counterparts. This decision has sparked controversy, as, traditionally, under the KHI, non-Muslims are not eligible as heirs. Complicating this issue further, the teachings of Prophet Muhammad (PBUH) explicitly state that Muslims cannot inherit from non-believers, and vice versa, non-believers cannot inherit from Muslims.

The provision of an obligatory bequest (wasiat wajibah) to non-Muslim biological children, equating their share with that of Muslim children, blurs the traditional distinctions made under Islamic inheritance laws. This approach can influence future court decisions, potentially disadvantaging other heirs. Such decisions may lead to complex legal challenges, particularly because Islamic legal principles generally exclude non-Muslims from their inheritance. However, the implementation of wajibah allows them to claim a share of a Muslim decedent's estate, thereby complicating the application of Islamic inheritance laws in Indonesia.

Judges operate based on the principle of *res judicata pro veritate habetur*, which states that a court decision is considered correct, even if it contradicts existing laws based on various considerations. However, the precedent set by equating the inheritance shares of non-Muslim and Muslim biological children can influence future rule. This may lead to similar decisions by other judges, potentially disadvantaging the parties involved.

The provision of wasiat wajibah with a share of one-third (1/3) is considered potentially detrimental to other heirs given that there are heirs who receive one-sixth (1/6), one-eighth (1/8), and ashobah who may receive less than these specified portions.

The implementation of wasiat wajibah is not influenced by the wishes or testament of the deceased, and is intended for heirs or relatives who do not receive inheritance. This concept is relatively new within the framework of traditional Islamic jurisprudence and contemporary Islamic inheritance law. The Quran opposes the equalization of familial relationships due to the practice of adoption, similar to what has developed in Arab society and has also been observed in Indonesia. In adoption cases, adopted children often do not receive inheritance if adoptive parents do not leave a will or are unaware that adopted children are not entitled to inherit under Islamic law. Conversely, some adoptive parents choose alternative methods of distributing their assets to their children (*Ensiklopedi Hukum Islam*, 6, 1996).

Initially, the Compilation of Islamic Law in Indonesia (KHI) stipulated that wasiat wajibah only applied to adopted children and adoptive parents. For instance, Article 209 of the KHI states that the inheritance of adopted children must be divided according to Articles 176 to 193 and that adoptive parents who are not included in the will must receive a wasiat wajibah from the estate, and vice versa. It is important to note that this obligatory bequest is relative and not dependent on the wishes of the decedent but can be directly arranged by the heirs.

Furthermore, decision no. 721/K/Ag/2015, involving Antonius Papilaya and Fransisca Papilaya as defendants/appealants against Sumarni binti Sirat as Plaintiff/Appellee, both parties sought justice regarding the property of Vincencius Papilaya, who was the father of the Defendants/Appellants and husband of the Plaintiff/Appellee. In this case, the Defendants/Appellants requested the plaintiff to equally divide the inherited house located at Jalan M.P. Mangkunegara Sukatani I Number 59 RT 040/014, Kelurahan 8 Ilir, Kecamatan Ilir Timur II, Kota Palembang, with SHM Number 11901/8 Ilir and Survey Certificate Number 18/8 Ilir/2011.

At that time, the Defendants/Appellants, Antonius Papilaya and Fransisca Papilaya, were Christians/Catholics and believed that their fathers shared the same faith. However, in a previous decision by the Palembang Religious Court, based on evidence provided by the plaintiff, it was established that Vincencius had converted to Islam, as demonstrated by the marriage certificate and family card. Consequently, the Palembang Religious Court ruled that the Plaintiff and the Defendants I and II were heirs of the late Vincencius, with the following inheritance shares:

1. The plaintiff obtained $\frac{1}{2}$ (half) of the joint property.
2. The other $\frac{1}{2}$ (half) is determined as inheritance.
3. Determine that the Plaintiff shall receive $\frac{7}{24}$ (seven twenty-fourths) of the inheritance after paying off the debts of Vincencius; and

4. Determine that Defendants I and II will receive 17/24 (seventeen-twenty-fourths) of the inheritance, which will be divided into 2 (two).

In some cases, the *judex facti* at the Palembang Religious Court demonstrated errors in the application of the law in its legal considerations. These errors involve the acceptance of certain aspects and potentially overlooking other crucial evidence. For instance, the Court's declaration that the marriage between the deceased and the plaintiff was legitimate and beyond reproach is questionable. This conclusion was reached despite suspicions that the Marriage Certificate might have been forged or flawed allegedly based on falsified identities and information.

The appeal of the Defendants/Appellants originated from their claim that the plaintiff had converted from Islam to Protestant Christianity. They supported this assertion by stating that on Sunday, February 16, 2014, the plaintiff was reported to have been baptized into Protestant Christianity, led by Pastor Adi Takarina.

However, in decision no. 721/K/Ag/2015, the Court considered that the Decedent was a Muslim at the time of death, based on the testimony of two witnesses who were in the same room when the Decedent was hospitalized. Both witnesses testified that the Decedent was a Muslim at the time of death, despite the Defendants/Appellants conducting the funeral according to the Christian rites.

The issue arose from the Court's consideration, which stated that the plaintiff had been married to the deceased for a considerable period of 17 (17) years, making it fair and just for the plaintiff to receive ½ (half) of the joint property, even though they were of different religions at the time of marriage. Therefore, the author opines that if this is the case, the plaintiff should receive ½ (half) of the joint property as inheritance and also receive an obligatory bequest from the remaining ½ (half) of the estate along with the defendants/appellants. (Faiz et al., 2023)

Discussion

1.1 The Position of KHI in the Indonesian Legal System

The national legal system is based on Pancasila and the 1945 Constitution and encompasses various laws enacted by the government and the House of Representatives (DPR). This system follows the model of a democratic rule of law where laws are formulated and enforced based on the principles of democracy and the rule of law (Safa'at, 2022). Customary law is a legal system recognized in various regions of Indonesia, operating based on local traditions and customs. This law is acknowledged and respected as long as it does not conflict with national law or the principles of Pancasila. Additionally, religious law, particularly Islamic law, is recognized in the Indonesian legal system, especially in the fields of family law and inheritance, as regulated in the Compilation of Islamic Law in Indonesia (KHI).

In exploring the dimensions of Islamic law within Indonesia's national legal system, it is important to consider the intricate relationship between Islamic legal principles and the broader legal framework. Islamic law, or Sharia, holds a significant position in various aspects of Indonesian society, reflecting the country's cultural and historical ties with Islam (Darna, 2021). Indonesia, the country with the largest Muslim population in the world, has a long tradition of integrating Islamic values into its legal system. This process reflects not only a commitment to religious teachings, but also an adaptation to evolving social and political dynamics (Hasanudin, 2021).

The influence of Islamic law in Indonesia extends beyond mere legal regulation; it also shapes societal norms and behaviors. In many communities, Islamic law serves as a moral guide that influences various aspects of daily life from family relationships to business practices. For example, the principles of justice and social welfare, derived from Islamic law, are often reflected in social and philanthropic activities. Additionally, rules regarding what is halal and haram, as well as the obligation of zakat, exemplify how Islamic law affects individual behaviors and decisions within economic and social contexts (Lukito, 1998).

To explore the history of the Compilation of Islamic Law in Indonesia (KHI) in Indonesia, it is important to understand its origins and development within the country's legal framework. The KHI serves as a significant legal document that consolidates the various principles of Islamic law into a cohesive framework, reflecting Indonesia's Islamic legal heritage and traditions. The roots of Islamic law in Indonesia can be traced back to the era of Islamic kingdoms, in which legal norms are influenced by Islamic jurisprudence and principles. The development of Islamic law in Indonesia is an ongoing process shaped by historical, political, and social factors that influence the evolution of the legal framework (Sarkowi & Susilo, 2020).

The formalization of Islamic law in Indonesia gained momentum during Indonesia's independence, particularly with the formulation of state principles by the BPUPKI Committee (Sarkowi & Susilo, 2020). This marked a significant step towards recognizing the role of Islamic legal principles in the national legal system, laying the groundwork for the subsequent codification of Islamic law in the form of the Compilation of Islamic Law in Indonesia ((Sarkowi &

Susilo, 2020). The historical discourse surrounding the formalization of Islamic law in Indonesia reflects the complex interplay between political, social, and legal traditions (Sarkowi and Susilo 2020).

The enactment of the Compilation of Islamic Law in Indonesia in 1991 through Presidential Instruction No. 1 of 1991 was a pivotal moment in the codification of Islamic legal principles within Indonesia's legal system (Syahbandir et al., 2022). This compilation encompasses various aspects of Islamic law, including regulations on family law, inheritance, and economic transactions, and aims to provide a comprehensive legal framework informed by Islamic jurisprudence (Syahbandir et al., 2022). The Compilation of Islamic Law in Indonesia serves as a bridge between traditional Islamic legal norms and contemporary legal practices, reflecting efforts to harmonize Islamic principles with modern legal needs.

The Compilation of Islamic Law in Indonesia (KHI) plays a crucial role in shaping Indonesian legal practices, particularly in the fields of family law, inheritance, and economic transactions (Asripa, 2020). Its provisions have become a guide for legal practitioners, judges, and academics to interpret and apply Islamic legal principles in the national legal context. The KHI provides a foundation for legal certainty and consistency in handling various legal issues governed by Islamic law, contributing to the harmonization of legal practices in Indonesia (Asripa, 2020).

The historical journey of the Compilation of Islamic Law in Indonesia reflects ongoing efforts to adapt Islamic legal principles to the evolving needs of Indonesian society. The KHI has undergone revisions and updates to ensure its relevance and applicability in contemporary legal contexts, embodying the dynamic process of legal reform and adaptation (Hefni, 2022). One area in which the influence of Islamic law is the most prominent is family law. The rules governing marriage, divorce, children's rights, and inheritance are heavily influenced by the Sharia principles.

For instance, marriage law in Indonesia reflects many aspects of Islamic law, including the requirements for valid marriage and divorce procedures. In religious courts, which have specific jurisdiction over family matters for Muslims, the KHI serves as the primary guide for resolving family disputes. This demonstrates how Islamic law has been integrated into the national legal system to regulate personal and family affairs. Concepts such as social fiqh have been applied in family law to address contemporary social issues. Social fiqh, which emphasizes the importance of understanding and responding to the social context of the community, allows Islamic law to remain relevant in the face of changing times (Bowen, 2003). For example, in addressing issues like interfaith marriage or women's rights, interpretations of Islamic law can be adjusted to reflect widely recognized values of justice and equality.

The evolution of Islamic law in Indonesia underscores the ability of Islamic legal principles to adapt to society's changing needs. Although deeply rooted in Islamic teachings, this law has the flexibility to evolve in accordance with contemporary demand (Khoiruddin et al. 2019). This adaptability is evident in how religious courts handle complex and unique cases, often by considering social norms and local cultural contexts. This demonstrates that Islamic law is not static but continuously evolves in response to social realities.

From the perspective of state principles, efforts to incorporate Islamic legal principles derived from the Quran and Hadith into the national legal system are accommodative and aim to integrate Islamic law into the legal framework. Thus, Islamic law has become one of the sources of national law, influencing national legislation by positioning the state and religion as distinct yet mutually influential entities. This relationship is reflected in several laws that regulate matters related to religion, particularly Islam, including inheritance law. Consequently, the applicability of Islamic legal institutions (Religious Courts, KHI, and Islamic Inheritance Law) specifically applies to their adherents

1.2 Critical Review of Supreme Court Decision Number 721/K/Ag/2015 (Distribution of Obligatory Bequest to Non-Muslim Children)

The Islamic inheritance system is a legal system that has been regulated in the Qur'an, as-Sunnah, ijma,' ijtihad ulama. Inheritance can be said to be the process of transferring the inheritance of a person who dies in the form of property to debts and receivables, in the form of property rights or other rights to legal heirs according to the law (Salihima, 2015).

According to Islamic inheritance law, inheritance only occurs upon the death of the decedent, when the decedent's assets are transferred to the heirs. This is because inheritance rights do not arise spontaneously, but are based on specific causes (Habiburrahman, 2011). However, it is undeniable that the Quran stipulated who was entitled to inherit and the proportion of their shares. Additionally, it also specifies the conditions that can disqualify an heir from receiving the inheritance, such as: (Thalib, 1981)

1. Religious Differences

Fiqh scholars agree that inheritance cannot be granted to people of a different religion. This is based on the Prophet Muhammad (PBUH), as narrated by Bukhari and Muslims, stating that a non-believer cannot inherit from and receive inheritance from Muslims, as follows:

Narrated Usama bin Zaid: the Prophet said, "A Muslim cannot be the heir of a disbeliever, nor can a disbeliever be the heir of a Muslim.

According to some scholars, including the Companions, Tabi'in, and later generations, it has been stated that a disbeliever cannot inherit from a Muslim and vice versa (Masail, 2016)

It means: "The scholars are unanimously agreed that a disbeliever cannot inherit the property of a Muslim, and the majority of scholars from among the Companions, Taabi'een and later generations are of the view that a Muslim cannot inherit the property of a disbeliever."

2. Slavery

This is considered giving a stranger inheritance without cause and is void according to scholarly consensus (Az-Zuhaili, 2011)

3. Killing The Heir

Based on the words of Prophet Muhammad S.A.W., narrated by Ibn Majah:

"Narrated (Muhammad Bin Rumh), narrated (Al Laits bin Sa'ad) from (Ishaq bin Abu Farwah) from (Ibn Shihab) from (Humaid bin Abdur-Rahmaan bin 'Auf) from (Abu Hurairah), Allah's Messenger (peace and blessings be upon him) said: 'A murderer does not inherit."

Among these obstacles, there is one controversy that is still being debated by the scholars, which is a person who apostatises. An apostate is a person who leaves Islam for another religion or who becomes devoid of religion altogether.

If a husband and wife apostatize, the Hanbalis state that if the husband apostatises before having intercourse, then the marriage becomes void immediately, and they cannot inherit from each other. If they apostatize afterwards, then there are two narrations that state that, first, the separation should be hastened, and second, they should wait until the 'iddah (waiting period) is over. Whoever dies, living cannot inherit him (Az-Zuhaili, 2011).

Based on the description above, it can be concluded that if someone is of a different religion from the testator, then he is no longer part of his heirs and/or cannot inherit from each other. However, it cannot be denied that the issue of the testator not being able to inherit his property to his wife, children, and others who should be included in the class of heirs, but he is a religion other than Islam, can be a polemic in itself.

One is Supreme Court Decision Number 721/K/Ag/2015, where the late Vincencius Papilaya Bin Yos Papilaya, hereinafter referred to as the Heir. During his lifetime, he had been married 2 (two) times, and his last wife was the Plaintiff who was also a Muslim. Nevertheless, the Heir apparently left 2 (two) children from the first wife who is currently Christian/Catholic, following legal considerations:

"That the Heir is proven to be a Muslim so that the case a quo is the authority of the Religious Court, this is evidenced by the marriage certificate and two witnesses who were in the same room when the Heir was hospitalised, both of whom witnessed that the Heir was a Muslim when he died, even though the funeral process was carried out in a Christian manner by the children of the Heir (Defendant I and Defendant II) who are Christians."

In this decision, the judge has revised the previous decision, which gave a share of 17/24 (seventeen per twenty-four) for the Defendant because this amount has exceeded the share of the mandatory will, which is 1/3 (one-third), so that in the decision, the judge has replaced it with 1/3 (one-third) for the two biological children of the non-Muslim heirs.

However, in Supreme Court Decision No. 721/K/Ag/2015, there is no consideration for the judge with the Compilation of Islamic Law in Indonesia (KHI). The judge used the interpretation of the scholar Yusuf Al Qardhawi to decide the share of the non-Islamic biological children of the heir, and categorized them as kafir harbi, so that these children were considered worthy and deserving of a share of the heir's estate in the form of a mandatory will, following legal considerations:

“That the issue of the position of non-Muslim heirs has been widely studied by scholars including Yusuf Al Qardhawi, interpreting that non-Muslims who coexist peacefully cannot be categorised as kafir harbi, as well as the children of the Cassation Petitioner and the testator during their lifetime got along peacefully even though they had different beliefs, therefore it is appropriate and feasible for the children of the Cassation Petitioner to obtain a share of the testator's estate in the form of a obligatory bequest.”

The Compilation of Islamic Law in Indonesia (KHI) is a crucial legal framework that serves as a reference for judges in Religious Courts in Indonesia. Established as the first codification of Islamic law in Indonesia and enacted by Presidential Instruction No. 1 of 1991, the KHI enhances legal certainty by embodying the principles of living law and the teachings of tauhids. Consequently, the KHI is used as substantive law to handle, evaluate, and decide cases within its jurisdiction (Saiful, 2013). When judges use the Compilation of Islamic Law in Indonesia (KHI) as the basis for legal arguments during case deliberations, the KHI becomes a binding framework for all parties involved in proceedings at the Religious Court (Az-Zuhaili, 2011). Specifically, the KHI addresses inheritance law in Articles 171 to 193 and regulations regarding bequests in Articles 194 to 209.

Article 209 of the Compilation of Islamic Law in Indonesia (KHI) stipulates that obligatory bequests (wasiat wajibah) are only intended for adopted children and adoptive parents, whereas Article 171(c) requires that heirs must be Muslim. Therefore, it is appropriate for the judge in Supreme Court Decision No. The 721/K/Ag/2015 not only relies on scholarly interpretation, but also incorporates the KHI as a fundamental legal source in Indonesia. This approach ensures robust and accurate legal certainty.

Supreme Court Decision No. 721/K/Ag/2015, as adjudicated at the cassation level, signifies that judges were faced with a dilemma between prioritizing legal certainty and justice. This is reflected in the initial considerations of the judges when confronted with facts. First, the allegation of a fraudulent marriage through a false identity by the first wife was dismissed. Second, it was proven that the decedent died as Muslims. Based on these facts, judges shifted their paradigm from the beginning, recognizing the non-Muslim biological child from the first wife as a beneficiary entitled to a portion of the inheritance.

Although interfaith inheritance is not explicitly regulated in the KHI, the Hadith of Prophet Muhammad (PBUH) as a primary reference for the KHI must be considered. The position of the Hadith in the KHI in Indonesia is significant in guiding the interpretation and application of the law within the national legal system, serving as a source of authority and wisdom in interpreting and applying legal norms, (Tangngareng, 2017) As narrated by Bukhari and Muslim, it is written as follows:

“It is not right for a Muslim to inherit the property of a disbeliever, nor is it right for a disbeliever to inherit the property of a Muslim.”

Referring to these provisions, it can be concluded that, although the KHI does not explicitly detail the prohibition of interfaith inheritance, there is an emphasis that the decedent and heirs must share the same religion, Islam. This Hadith provides clear guidance that inheritance rights apply only to individuals of the same faith. In the context of the KHI, this Hadith serves as a critical source of authority, underscoring the importance of religious uniformity in inheritance matters. The position of this Hadith is explicit and has traditionally guided Islamic inheritance practices, ensuring that a Muslim estate remains within the Muslim community.

However, through the interpretation by Yusuf Al-Qaradawi, Jurisprudence No. 51/K/AG/1999 and No. 16/K/AG/2010, which states that non-Muslim heirs of different religions still receive their inheritance rights through the wasiat wajibah. Contrary to the explicit direction of the Hadith, Yusuf Al-Qaradawi offers a more inclusive interpretation of the concept of Wasiat Wajibah. Al-Qaradawi's interpretation allows non-Muslim heirs to receive inheritance rights through wasiat wajibah, thus accommodating heirs of different religions. This approach reflects a more flexible and contemporary understanding of Islamic law that aims to address the complexities of modern multicultural societies.

The jurisprudence mentioned should not be applied to the case at hand (quo), despite the primary issue being the division of inheritance. The dimension overlooked by judges is the context of "justice' for the parties involved. Both first-instance and cassation court judges based their decisions on Supreme Court jurisprudence in Decision No. 172 K/Sip/1974, which states that, if there is an inheritance dispute, the applicable inheritance law is based on the religion of the decedent.

Upon closer examination, this jurisprudence applies when the religion of the decedent is clear, thereby providing a reference for inheritance disputes. However, in the case at hand, both parties claim differently regarding the decedent's religion, making it irrelevant for the judge to use Al-Qaradawi's interpretative approach. This is because of the following reasons. First, the inheritance Division Approach: The method of inheritance division should no longer be based solely on the religion of the decedent. A more solution-oriented approach would be to revert to the division according to the Civil Code (KUHPerdata), as Article 832 of the Civil Code underpins the division of inheritance, regardless of whether it stems from the first or second marriage. Alternatively, Article 180 of the KHI states that inheritance shares for wives in polygamous marriages are equal. Second: Initial Competence Doubts**: From the outset, there were doubts regarding the relative competence of the court, which influenced the judges' paradigm in making their decisions.

Conclusions

Supreme Court Decision No. 721/K/Ag/2015 demonstrates a significant deviation from the Compilation of Islamic Law in Indonesia (KHI) in determining the inheritance rights of non-Muslim biological children by categorizing them as kafir harbi. Instead of adhering to the KHI, the decision relies on the interpretation of scholar Yusuf Al-Qaradawi. This shift highlights a critical judicial trend to prioritize scholarly interpretation over codified Islamic law, even though the KHI was officially recognized under Presidential Instruction No. 1 of 1991 as the foundational codification of Islamic law in Indonesia.

Relying on Al-Qaradawi's interpretation rather than the KHI raises concerns about the consistency and predictability of legal outcomes, especially in sensitive areas such as inheritance, where the KHI provides clear guidelines in Articles 171–209. This judicial approach not only affects the legal certainty intended by the KHI, but also impacts the legitimacy and application of codified Islamic law within Indonesia's judicial system itself.

The practical implications of these judicial decisions are significant. They affect the Muslim community's trust in the legal system's ability to correctly reflect Islamic values. Moreover, inconsistencies in the application of codified law can lead to uncertainty in inheritance disputes, potentially exacerbating familial and social tensions.

To address this issue, it is crucial for future court decisions to align more closely with the KHI, ensuring that legal interpretations do not overshadow the codified law. Additionally, this case should prompt broader discussions on the need for judicial training and awareness regarding the application of the KHI. Legal professionals and judges, particularly in Religious Courts, must be well versed in both scholarly interpretations and codified law to effectively balance religious interpretations with legal certainty.

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