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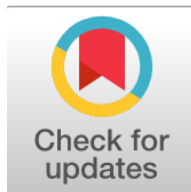
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**Division of Inheritance of Heirs of Different Religions with Heirs
According to the Compilation of Laws: Pembagian Warisan Antara Ahli
Waris Beragama Berbeda dengan Ahli Waris Menurut Kompilasi
Hukum**

*Pembagian Warisan Antara Ahli Waris Beragama Berbeda dengan Ahli
Waris Menurut Kompilasi Hukum*

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Abstract

General Background: Inheritance remains one of the most sensitive issues in Islamic family law, as it intertwines material distribution with justice, kinship, and social harmony. **Specific Background:** The Compilation of Islamic Law (KHI) in Indonesia explicitly prohibits inheritance across religions, creating legal rigidity when confronted with plural family realities shaped by interfaith marriages and conversions. **Knowledge Gap:** While classical jurisprudence closes the door to interfaith inheritance, Indonesian legal pluralism and social justice demands reveal tensions between strict fiqh norms and societal needs, with limited scholarly synthesis on the role of mandatory wills as a legal compromise. **Aims:** This study aims to analyze the legal construction of inheritance for heirs of different religions under the KHI and evaluate the jurisprudential role of mandatory wills as a middle path in Indonesian courts. **Results:** Findings show that although the KHI normatively restricts inheritance to Muslims, jurisprudence recognizes mandatory wills as a mechanism to grant non-Muslim heirs a share, aligning with constitutional principles of justice and reducing family conflict. **Novelty:** This research highlights mandatory wills as a dynamic legal innovation that bridges classical fiqh with contemporary demands of pluralism and human rights. **Implications:** Reforming inheritance law to temporarily integrate mandatory wills will strengthen legal certainty, prevent discrimination, and promote social harmony within Indonesia's diverse society.

Highlight :

- KHI prohibits interfaith inheritance but raises justice issues.
- Obligatory wills act as a middle ground in court practices.
- Reform of inheritance law is needed to be more inclusive and responsive.

Keywords : Compilation of Islamic Law, Inheritance, Different Religions, Obligatory Wills, Legal Pluralism

Introduction

Inheritance is one of the most sensitive issues in family life.[1] Inheritance is not only about material value, but also about emotional and symbolic value that often triggers conflicts among heirs. In Islamic law tradition, the distribution of inheritance has been detailed, with provisions on who is entitled and how much their share is.[2] However, the rules that seem simple in the text often encounter complex issues when faced with complex social realities, one of which is when the heir and the heirs are of different religions.

Religious differences within families are not uncommon in Indonesia. The phenomenon of interfaith marriage, conversion of beliefs, and religious diversity within a family has become a reality that is difficult to avoid. When a family member passes away, a critical question arises: do children or relatives of different faiths still have rights to the inheritance? This question is not only legal in nature but also touches upon justice, humanity, and family harmony.[3] The Compilation of Islamic Law (KHI) that applies to Muslims in Indonesia provides a clear answer. Article 171 letter c of the KHI states that heirs are those who have blood or marriage relations with the testator, are Muslim, and are not legally impeded. This means that a difference in religion is an absolute barrier to inheritance relations. This provision is in line with the classical fiqh rule 'lā yarith al-muslim al-kāfir wa lā al-kāfir al-muslim' which explicitly closes the door to interfaith inheritance.

However, social reality is often not as straightforward as legal norms. In many cases, children or relatives of different religions still have strong emotional connections and familial bonds with the heirs. When they receive no share of the inheritance at all, a sense of injustice arises that has the potential to trigger conflict. This is where the dilemma arises: on one side is the legal text that must be adhered to, and on the other is the demand for social justice that must be fulfilled. This phenomenon is further complicated by Indonesia's legal system, which adheres to legal pluralism. In addition to the Compilation of Islamic Law (KHI) that applies to Muslims, there is also the Civil Code that tends to be more inclusive, as well as customary law that is flexible according to local cultural values. The tug-of-war between these legal systems often makes the resolution of inheritance cases involving different religions complicated, even leading to prolonged disputes in court.

The Supreme Court, as the highest judicial institution, has faced this situation before. In several decisions, one of which is Decision Number 368 K/AG/1995, the Supreme Court attempted to find a middle ground by introducing the concept of mandatory wills. This mechanism allows heirs of different religions to still receive a portion of the inheritance, not as heirs, but as beneficiaries of the will.[4] This solution is considered fairer because it maintains a balance between strict fiqh texts and the social needs of a heterogeneous society. Academic debates have also emerged. Some circles view the implementation of mandatory wills as a progressive step that aligns with the spirit of maqāṣid al-sharī'ah, which is to uphold public interest.[5] On the other hand, there are those who criticize that this step deviates from the standard provisions of Islamic inheritance laws. This difference in views actually shows that Islamic law in Indonesia is dynamic, always negotiating with the evolving social context.

From the perspective of human rights, this issue is also important. The principle of non-discrimination teaches that every child, regardless of religion, has the right to their parents' wealth. However, religious law has its own logic which sometimes conflicts with the logic of human rights. Indonesia, with a majority Muslim population, faces the challenge of how to maintain the authority of Islamic law while not neglecting the universal values of justice.[6] This situation makes the discussion of inheritance across religions very relevant. It is not only a legal discourse but also a reflection on how Islamic law in Indonesia interacts with national law, human rights values, and social realities. This research is expected to not only provide a description but also to reveal the dynamics of law that exist in society. Thus, the results can contribute to the reform of inheritance laws in Indonesia, to be more responsive to religious pluralism and the needs of social justice.

Research Method

The type of research method used in this study is normative juridical, which is a legal research method carried out by examining primary, secondary, and tertiary legal materials that are directly related to the issues of inheritance distribution of heirs from different religions according to the Compilation of Islamic Law (KHI). The main focus of this research is on the analysis of positive legal norms, legal principles, and the doctrine of Islamic inheritance jurisprudence that serve as the foundation for the preparation and implementation of the KHI. This normative juridical research aims to analyze the synchronization and relevance of norms in the KHI with the needs of the pluralistic Indonesian society in terms of religion. Additionally, this research also assesses how the application of a mandatory will serves as an alternative solution to overcome obstacles in interfaith inheritance, as well as reviewing its consistency with the principles of justice and public interest in both Islamic law and national law.[7] The approaches used are the statute approach, the conceptual approach, and the case approach. The statute approach is used to analyze relevant legal provisions, such as the Compilation of Islamic Law (Presidential Instruction No. 1 of 1991), Law No. 3 of 2006 concerning Amendments to the Religious Courts Act, as well as provisions related to inheritance in civil law. The conceptual approach is used to understand the principles of Islamic inheritance law, the principle of justice, and the concept of obligatory wills in the context of religious differences.

The object of study in this research is the legal norms contained in the Compilation of Islamic Law (KHI), the doctrines of Islamic inheritance law, the principles of national inheritance law, as well as court rulings that provide interpretations regarding cases of heirs and beneficiaries who are of different religions. This study also examines the views of Islamic law experts in Indonesia regarding the urgency of mandatory wills as a normative solution. Although this research does not use a direct empirical approach, the social context of Indonesia's pluralistic society serves as an illustrative background to clarify the urgency of the discussion. The phenomenon of increasing cases of heirs and beneficiaries of different religions in Indonesia reflects the current challenges in the application of KHI, especially when it comes to balancing the authority of

fiqh norms with the demands of social justice. By using a normative legal approach, this research is expected to contribute in the form of theoretical and prescriptive analysis regarding the distribution of inheritance between different religions according to KHI. In addition, this research also offers normative solutions through the application of mandatory wills as a form of legal compromise that aligns with the values of public interest, as well as strengthening the integration of Islamic law within the plural national legal system.

Result and Discussion

A. The Principles of Inheritance Law in the Compilation of Islamic Law Related to Heirs of Different Religions

The Compilation of Islamic Law (KHI) as the substantive law of religious courts in Indonesia explicitly regulates inheritance issues in Book II. Article 171 letter (c) of the KHI defines heirs as "persons who, at the time of death, have a blood relation or a marital relationship with the deceased, are Muslim, and are not legally prohibited from being heirs." This formulation indicates the existence of three basic requirements for someone to be an heir, namely (1) the existence of a blood relation or marriage with the deceased, (2) both the deceased and the heir must be Muslim, and (3) there must be no legal barriers to inheritance as stated in Article 173 of the KHI.[8] More explicitly, Article 171 letter (c) directly closes the possibility of inheritance between Muslim heirs and non-Muslim heirs. Thus, religious differences are placed as one of the reasons for the obstruction of inheritance. This formulation is in line with the opinion of the majority of scholars in classical jurisprudence which states 'la yatawarats al-muslim wa al-kafir' (a Muslim and a non-Muslim cannot inherit from each other). The evidence is based on the hadith of Prophet Muhammad SAW: 'La yaritsu al-muslim al-kafira wa la al-kafir al-muslima' (a Muslim cannot inherit from a non-Muslim, and a non-Muslim cannot inherit from a Muslim) (HR. Bukhari and Muslim).[9]

The regulations in the KHI emphasize the position of the state in standardizing Islamic inheritance law in Indonesia, which often differs from the social practices of the community. For example, in the context of a pluralistic society, it is not uncommon for heirs who are Muslim to have children or relatives of different religions due to mixed marriages, conversion of faith, or other social factors. However, the KHI normatively closes the possibility of direct inheritance, as it is considered contrary to the Islamic belief principle that the bond of faith is stronger than the bond of blood in matters of inheritance.[10] Nevertheless, this principle cannot be separated from criticism. Some Islamic law scholars argue that the KHI regulation is too textual and does not sufficiently consider the sociological aspects of Indonesia's plural society. In many cases, religious differences within families do not automatically erase the emotional bonds or social responsibilities between parents and children. Therefore, alternative solutions such as the concept of mandatory wills are beginning to find a place as a bridge between classical fiqh norms and the social-legal realities in Indonesia.[11]

Furthermore, politically and legally, the choice of KHI to adopt the views of the majority of scholars regarding the prohibition of inheritance across religions reflects the state's caution in formulating Islamic family law. KHI was born from Presidential Instruction No. 1 of 1991 as a codification of Islamic law that applies specifically to Muslims in religious courts. Therefore, it is more compromise-oriented and normative, functioning to integrate various scholars' views into a single positive regulation. However, the consequence is that there is a gap between the legal text of KHI and the increasingly complex needs of the Muslim community in Indonesia, especially in facing cases of cross-religion inheritance.[11] Thus, the principle of inheritance in the Compilation of Islamic Law (KHI) fundamentally departs from a classical normative foundation that prioritizes uniformity and legal certainty, but in practice, it creates problems when faced with the reality of plural families of different religions. This is the starting point for understanding why the debate about heirs of different religions continues to be relevant in the context of Islamic family law in Indonesia.

B. Practical Problems in Inheritance Cases with Different Religions in Indonesia

In socio-legal practice in Indonesia, the difference in religion between the deceased and the heirs creates quite a complex dilemma. Although the Compilation of Islamic Law (KHI) normatively closes the space for inheritance among different religions, the reality in society is often more complex than legal texts. Families in Indonesia often consist of members with different religions due to mixed marriages, religious conversion due to marriage, and personal choices in belief. This situation results in normative rules of the KHI often not being able to fully address the concrete issues that arise in the field.[12] One of the main problems is the emergence of substantive injustice in the family. For example, a child who has cared for their parents since childhood until their death, but because they adhere to a different religion than the heir, they cannot legally receive a share of the inheritance under Islamic law. This situation often sparks family conflicts, feelings of injustice, and even lawsuits in general courts. To observe the inconsistencies in legal regulations, the following table can be considered:

[Table 1. Is here]

This table shows the existence of legal disharmony in Indonesia. The Compilation of Islamic Law (KHI), which serves as the primary reference for religious courts, restricts inheritance for different religions, while the Civil Code (KUHPerdata) is more flexible, and the Supreme Court attempts to provide solutions through the concept of mandatory wills.[13] In addition to legal problems, there are also sociological and psychological issues. Many families are reluctant to bring interfaith inheritance issues to court because they are considered taboo or sensitive. They prefer to use family deliberation, although it sometimes results in dissatisfaction or the dominance of one party. In some cases, non-Muslim heirs only receive informal gifts or donations before the heir passes away, not in the form of legally recognized inheritance rights. This compromise approach is often viewed as a practical solution, but from a formal legal perspective, its position is weak and vulnerable to

future disputes.[14] The next problem is related to identity politics and interreligious relations. In societies that are still deeply rooted in religious sentiment, cases of inheritance between different religions often trigger stigma. Heirs of a different religion are considered not entitled because they are viewed as having broken the bond of family faith. This sometimes exacerbates tensions within extended families and has the potential to trigger social division. Therefore, this issue is not merely a matter of family law, but also touches on the dimensions of social harmony and the diversity of the nation.[15]

C. Legal and Social Implications of Inheritance in Different Religions

The legal implications of the KHI provisions that prohibit inheritance across religions are very complex. Normatively, this rule is indeed rooted in classical jurisprudence that views religion as a strict requirement for inheritance. However, in practice, this provision creates problems when confronted with the reality of diverse Indonesian families. Many families in Indonesia consist of members from different religions due to mixed marriages or religious conversions, making this provision seem rigid and causing injustice.[16] The legal implications for the Compilation of Islamic Law (KHI) are quite serious, as KHI emphasizes the exclusivity of inheritance only for fellow Muslims. On one hand, KHI serves as a form of codification of Islamic law that is expected to provide legal certainty. However, on the other hand, it creates a paradox when faced with the context of the Indonesian Muslim family, which is no longer homogeneous. The provisions in KHI ultimately lead to legal discrimination, as they close the door for family members of different religions to obtain their inheritance rights, even though they have significant social ties and contributions to the heir.[17]

Furthermore, KHI's attitude of locking itself into classical jurisprudence makes Islamic law seem neglectful of the principle of substantive justice. In fact, if the law only becomes an instrument of 'certainty' without considering the sense of justice that lives in society, it loses its social legitimacy. In this case, the neglect of heirs of different religions not only violates individual rights but also triggers fragmentation within families and even prolonged disputes in court.[18] Therefore, this problem shows the urgent need to revise KHI, so that Islamic law in Indonesia does not get trapped in a dry normative formalism, but is able to respond to the challenges of justice in a pluralistic society. In practice, this legal gap is addressed by the mandatory will mechanism, which is seen as a form of legal engineering to balance the KHI rules and the needs of society. However, since KHI does not explicitly accommodate this concept, its applicability is still highly dependent on judicial interpretation. This causes legal uncertainty due to the lack of uniformity in rulings among courts.[19]

Thus, the legal implications of the prohibition of inheritance for different religions in KHI are not only limited to the loss of economic rights of heirs but also extend to sociological aspects, namely family conflicts, and juridical aspects in the form of inconsistent decisions. This situation reinforces the urgency to reform inheritance law in KHI, to be more responsive to the dynamics of Indonesia's plural society without neglecting the religious values that underlie the establishment of those regulations.[20] In the legal realm, the consequence of this regulation is the emergence of uncertainty. The Compilation of Islamic Law (KHI) explicitly prohibits inheritance across religions, while the Civil Code applicable to non-Muslims actually permits it. In the practice of religious courts, the Supreme Court attempts to find a middle ground by using the concept of mandatory wills, which allows for a specific portion of the inheritance to be allocated to heirs of different religions, even if not through direct inheritance mechanisms. This legal dualism shows that the Indonesian legal system still leaves a confusing gray area for society.

The social implications are more felt at the family level. The provisions prohibiting inheritance for those of different religions often lead to conflicts among siblings or family members, especially if the deceased was very close to the heirs of a different religion during their lifetime. Cases like this often end up in court, even triggering divisions in previously harmonious families. Moreover, there is also a discriminatory stigma experienced by heirs of different religions, as if religious differences provide a valid reason to overlook their contributions to the family. From a human rights perspective, this prohibition can be seen as contrary to the principles of justice and legal certainty as guaranteed in Article 28D paragraph (1) of the 1945 Constitution. Every citizen has the right to equal treatment before the law without discrimination, including in the matter of receiving inheritance from their parents or relatives.[21] Thus, the legal and social implications of inheritance across religions are not merely a matter of normative text, but also concern substantive justice and family harmony. Rigid laws may actually create injustice and prolong conflict, whereas the function of law should be to bring order and social peace.

D. Legal Analysis of Mandatory Wills as a Solution for Inheritance Across Different Religions

The concept of mandatory will is one of the legal innovations in Indonesia that serves as a solution to the issue of inheritance prohibitions for different religions. Normatively, the KHI (Compilation of Islamic Law) does not allow for interfaith inheritance as it refers to classical fiqh provisions. However, the Supreme Court has emphasized through several decisions that non-Muslim heirs still have the right to receive a portion through the mechanism of a mandatory will. The legal basis for this mandatory will is not explicitly stated in the KHI, but is developed through jurisprudence and the principle of legal justice. In the context of Islamic law, the mandatory will is considered a form of legal engineering to address the needs of a pluralistic modern society. Thus, judges have a creative role in filling legal gaps (*rechtsvinding*) to achieve substantive justice. The jurisprudence of the Supreme Court, such as Decision No. 51 K/AG/1999 and Decision No. 331 K/AG/2018, consistently shows the direction of legal development that heirs of different religions should not be ignored. They can still receive a rightful share based on blood relations and considerations of justice. This model also demonstrates how Islamic law in Indonesia moves dynamically, not merely textually, but also taking into account social realities and principles of justice. To clarify the comparison position between direct inheritance according to KHI, obligatory wills according to

jurisprudence, and civil inheritance law (BW), the following table is presented:

[Table 2. Is here]

From the table, it is evident that the mandatory will functions as a middle ground between the classical fiqh norms in the KHI that prohibit inheritance across different religions, and the principles of justice in a more inclusive positive law. Through this mechanism, heirs of different religions still receive a proportional share without violating the fundamental principles of the KHI. The mandatory will also represents the flexibility of Islamic law in Indonesia, which not only rests on normative texts but also considers the increasingly plural and dynamic social realities of society. However, it should be noted that this model still faces constraints because it has not been explicitly stated in the legislation. As a result, its implementation heavily relies on the courage and interpretation of judges in religious courts. This condition creates legal uncertainty, as not all judges share the same progressive views. In practice, there are religious courts that grant rights through mandatory wills, while in other areas, they still deny them on the grounds of the absence of written legal basis. This certainly creates disparities in legal treatment among fellow citizens.[22]

In addition, another problem that arises is the low awareness of the public regarding the mechanism of compulsory wills. Many families are unaware of this legal alternative, leading them to accept the provisions prohibiting inheritance between different religions without seeking a solution. It is at this point that the role of the state becomes important, not only in the formation of regulations but also in socializing the law to the public so that they understand their rights. Philosophically, the idea of mandatory wills is also in line with the principle of substantive justice mandated in Article 28D paragraph (1) of the 1945 Constitution, which states that every citizen has the right to recognition, guarantees, protection, and fair legal certainty as well as equal treatment before the law. If inheritance law only emphasizes normative-theological aspects without considering the social context, it risks neglecting higher human values. Within this framework, the recognition of mandatory wills is not merely a legal compromise, but also an effort to harmonize religious values, social justice, and constitutional principles.[23] Thus, it is time for lawmakers to include mandatory wills in the revision of the Compilation of Islamic Law (KHI) or the national inheritance law, to ensure legal certainty and to prevent society from relying solely on jurisprudence. The presence of explicit regulations will not only strengthen the position of mandatory wills within the legal system but also prevent discrimination, family conflicts, and the legal uncertainties that have continued to overshadow interfaith inheritance practices in Indonesia.

E. Legal and Social Implications of Inheritance Distribution Between Different Religions

The issue of inheritance across different religions is not only a matter of legal texts, but also touches on the sociological and moral aspects of society. When beneficiaries of different faiths do not receive their rights, conflicts within families often arise, a sense of injustice emerges, and even legal disputes that prolong the problems occur. As noted by Mukti Arto, inheritance disputes in the practice of religious courts are often not just about the nominal value of wealth, but more about the sense of justice that is perceived to be neglected.[24] Therefore, the implications of the division of inheritance in this context have two sides: legal implications and social implications. From a legal perspective, the rigid application of Islamic inheritance law often leads to problems. Non-Muslim heirs feel marginalized, while from the perspective of religious courts, they cannot be designated as heirs. This creates a 'vacuum of legal protection' that could undermine public trust in religious courts. In this context, the mandatory will, which has been reinforced through Supreme Court jurisprudence, is seen as a compromise, as it provides a solution that connects Islamic legal texts with the principles of substantive justice.[25]

On the social side, the division of inheritance across religions concerns family relations. Many families end up being torn apart solely because of religious differences in inheritance. Azyumardi Azra emphasizes that religious pluralism within families in Indonesia is a social fact that cannot be avoided, so when religious law fails to accommodate this reality, what is at stake is the social cohesion of both families and society (Azra, 2002). However, Islam itself upholds the values of brotherhood and kinship. When the law fails to provide a sense of justice, the impact is not only the loss of wealth, but also the collapse of the values of brotherhood. To clarify the position of the relationship between the rule of law and social impact, here is a simple diagram that can be used in the article:

[Table 3. Is here]

From the diagram above, it can be understood that the settlement of inheritance for different religions cannot be adequately addressed solely through a textual approach using the Compilation of Islamic Law (KHI), but requires intervention from jurisprudence and legal reform to avoid detrimental social impacts. The mandatory will becomes a middle solution that can reduce conflicts, maintain family harmony, and provide legal legitimacy for heirs of different religions. Ultimately, this issue emphasizes the importance of reformulating national inheritance law to be more inclusive, so that the principles of legal certainty (*rechtssicherheit*), justice (*gerechtigkeits*), and utility (*zweckmassigkeit*) can go hand in hand.

Conclusion

The division of inheritance from a deceased person of a different religion with heirs is a crucial issue in inheritance law in Indonesia. The Compilation of Islamic Law (KHI) strictly prohibits heirs of different religions from inheriting from each other, creating problems when faced with the multicultural social reality and diverse beliefs. In this context, normative Islamic law and the practice of positive law in Indonesia experience a tension between the principle of legal certainty and the demands of substantive justice. The jurisprudence of the Supreme Court, through the implementation of a compulsory will for heirs of different religions, becomes a moderate alternative solution. This approach provides space for non-Muslim

heirs to still receive a part of the deceased's inheritance, even if not within the framework of "direct inheritance." Thus, the compulsory will serves as an instrument for harmonizing religious norms, state law, and the social needs of the community. From a social perspective, the ambiguity of inheritance rules regarding different religions has the potential to provoke family conflicts, breakdowns in social relations, and feelings of injustice. Therefore, there is a need for a reformulation of national inheritance law that is more inclusive by accommodating the pluralism of Indonesian society. In general, the renewal of inheritance law must be based on three main principles: legal certainty (*rechtssicherheit*), justice (*gerechtigkeits*), and utility (*zweckmassigkeit*). Only in this way can inheritance law in Indonesia truly reflect Islamic values while also addressing the needs of social justice in a pluralistic society.

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