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## THE POSITION OF OTHER HEIR APPARENT DUE TO THE OBSTRUCTION OF SINGLE DAUGHTER WITH DIFFERENT RELIGION IN THE DISTRIBUTION OF INHERITANCE ACCORDING TO THE COMPILATION OF ISLAMIC LAW

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**ABSTRACT** : This research was conducted with the aim of finding out how the position of other heir apparents according to the Islamic Law Compilation if a single daughter has different religion as the heir apparent of a deceased father, whether it changes the position of the inheritance rights of other heir apparent. This study used a normative research method with a statutory approach and the nature of this research was prescriptive. The results of this study indicated that child who previously had the right to inheritance from their parents, but because of other things (different religion) in accordance with Article 171 letter b and c of the Islamic Law Compilation, loses their position over inheritance rights. As for the position of inheritance rights in accordance with Article 174 paragraph (2) of the Islamic Law Compilation, it is stated that if all the heir apparents are alive, only children, father, mother, widow or widower are entitled to inheritance because the religion of a single daughter is different, it will transfer to the mother and the grandparents of the single daughter with different religion.

**Keywords** - *The Position of Other Heirs, Single Daughter, Different Religion, Islamic Law Compilation*

### I. INTRODUCTION

Islam regulates the distribution of inheritance fairly through the existing rules in the Al-Qur'an. Heirs are people who will receive ownership rights (tirkah) from the heirs. According to the positive law on Islamic inheritance as regulated in the Islamic Law Compilation as stated in Article 171 letter c, in order to inherit, the heir apparent and the heir must be Muslim, have blood or marital relations and are not prevented by law from becoming heirs. In other words, barriers to inheritance are actions or things that can invalidate a person's right to inherit an inheritance after there are reasons for inheriting. Inheritance will be hindered by 4 things, namely as follows:

- 1) Slavery, a person with the status of a slave who does not have the right to inherit from his/her own siblings. (Surah An-Nahl verse 75).
- 2) Murder, the murder of an heir by an heir apparent causes an inability to inherit the property left by the person who killed him/her, even though the person killed does not leave any other heirs other than the one killed.
- 3) Different religions, a condition of different religions will prevent obtaining inheritance assets, in this case the heir apparent and heir whose religions are different.
- 4) Different countries, in terms of religion of people who inherit and people who inherit, different countries are classified into two, namely different countries between non-Muslims and different countries between Muslims.

Based on the understanding of the verses of the Qur'an and the hadith of the Prophet Muhammad relating to the implementation of inheritance, there are several principles that can be used as the basis for determining a legal decision regarding the settlement of inheritance. The principles of Islamic inheritance law can be extracted from the verses of inheritance law and the sunnah of the prophet Muhammad SAW. The principles can be classified as follows:

- a. Ijbari Principle. Etymologically, "Ijbari" means compulsion, which is doing something other than one's own will. In terms of the law of inheritance, it means that the transfer of assets of a person who has died to those who are still alive occurs automatically. This means that there is no legal action or statement of will from the heir. The provisions of the Ijbari principle can be seen, among others, in the provisions of the Qur'an, surah

- An-Nisa verse 7 which explains that: For men and women there is a share in what their parents and close relatives leave. It means a share of the inheritance of the heir.
- b. The bilateral principle in Islamic inheritance law is that a person receives inheritance rights from both relatives, namely from the female and male descent. This bilateral principle can be clearly found in the provisions of the Al-Qur'an Surah An-Nisa verses 7, 11, 12 and 176. In verse 7, it is stated that a man has the right to inherit from his father or mother. Likewise, women inherit from both parents. This bilateral principle also applies to relatives to the side (i.e. through father and mother).
  - c. This individual principle is that each heir (individually) is entitled to the part that is obtained without being tied to other heirs. Thus, the portion that is obtained by an individual heir is entitled to all the assets that have become his share. This provision can be found in the provisions of the Al-Qur'an Surah An-Nisa verse 7 which states that the share of each heir is determined individually.
  - d. The principle of balanced justice is a balance between rights and obligations and a balance between what is obtained and needs and uses. In other words, it can be argued that the gender factor does not determine inheritance rights. The legal basis for this principle is in the provisions of the Al-Qur'an Surah An-Nisa verses 7, 11, 12 and 179.

One of the problems regarding inheritance is related to the rights of non-Muslims to inheritance rights. In fiqh, it is stated that one of the causes of the termination of a person's inheritance rights is when the person is in a non-Muslim condition. The difference in religion between the heirs and the heir apparent is a condition for the termination of one's inheritance rights. The legal basis that clearly and expressly prohibits heir apparent with different religion is in the hadith narrated by Bukhari, that the Prophet SAW said: "Muslims do not inherit from infidels, and infidels do not inherit from Muslims" (Sahih Bukhari, Kitab Faraidh, Hadith No. 6267).

The children who previously had the right to inheritance from their parents but because of the religions difference, he/shes lose their position on inheritance rights. In the case of inheritance and inheriting a status or position, a child of a different religion will be veiled or hindered. This is the reason that the position of the rights of non-Muslim children to the inheritance of Muslim heirs is regulated in the Islamic Inheritance Law in effect in Indonesia which places children of other religions of the embraced heir's religion not obtaining an inheritance but obtaining a compulsory will and distribution of inheritance to non-biological children. Muslims, through a mandatory will, in essence, determine that heirs who are not Muslim can still receive assets from an heir who is Muslim based on the mandatory will, which shares the same share as the daughter's share as heirs. In the perspective of Islamic Law, the realization of the mandatory will is in line with the view of Islam as a religion which aims to realize a manifestation of the principles of justice and compassion contained in Islamic teachings itself as mentioned in the Al-Qur'an and many hadiths. The legal basis for giving property to non-Muslim biological children is a gift contained in the Al-Qur'an Surah An-Nisa verse 8 which states that:

"And when [other] relatives and orphans and the needy are present at the [time of] division, then provide for them [something] out of it and speak to them words of appropriate kindness."

Furthermore, inheritance is a matter of what and how the various rights and obligations regarding a person's wealth when he dies will be transferred to the living family, namely the heir. The heirs have rights and obligations that must be fulfilled before and after the heir dies. The right of the heir is to receive the inheritance which is his part. Conversely, heirs also have several obligations as heirs. The obligations in question include taking care of the costs of caring for the corpse, all debts of the heir and so on. In other words, before the distribution of inheritance is carried out, several rights that are related to the inheritance must first be settled. The rights that must be settled and paid are: Zakat, Shopping, Debt, Will. However, someone's death often results in cross disputes among the heirs regarding their inheritance. The problem that then arises is whether the single daughter of different religion who is prevented from inheriting changes the position of other inheritance rights according to the Islamic Law Compilation. Whether it returns to the wife, parents or siblings of the heir and how the compilation of Islamic law is divided.

Based on the above background, the problem formulations to be examined in this paper are to explain whether the single daughter of different religion who is prevented from inheriting changes the position of other inheritance rights according to the Islamic Law Compilation.

## II. METHODS

This type of research in legal research WAS normative legal research. According to Peter Mahmud Marzuki, normative legal research is a process to find a rule of law, legal principles, and legal doctrines to address legal issues at hand. (Marzuki, 2011).

This research used a statutory approach which prioritizes legal materials in the form of statutory regulations as a basic reference in conducting research. (Marzuki, 2019).

The characteristic of this research is prescriptive research that studies the objectives of the law, the validity of legal rules, the values of justice, legal concepts and legal norms.

### III. RESULTS AND DISCUSSION

In Article 176 KHI which states:

"If there is one daughter, she gets half of the share, if there are two or more, they get two-thirds of the share, and if there are a daughter and a son, then the son share is two to one with the daughter".

However, if you look at the provisions of Article 171 letter c, daughters with different religion do not get any inheritance. The different religions between the heir and the heir apparent will be a barrier to receiving an inheritance. In Islamic law, there are grants (gifts) and wills. A grant is a gift or gift to someone from someone who is still alive in the form of assets or whatever. A will is a statement made by the heir when he was alive to someone to give part of his property to the desired person. The difference between a grant and a will is where the person who gives a gift or gift to someone is still alive, while the will will be carried out when the person who gave the property has died. Based on this, children of different religions with their parents will receive their parents' assets by means of grants and wills. In giving a will or grant to someone, it is 1/3 of the property owned or left behind to avoid the real heir so that when he/she is left, he/she is not in a poor state.

The argument about wills is listed in (Qur-an-Nisa ': 11):

"The distribution of the inheritance is carried out after the issuance of the will and after the debt is paid".

If there is only a single child and he/she has different religion, then there are several other heirs who are entitled to receive an heir as stated in Article 174 paragraph (1) letter a, the groups of heirs consist of:

- a. According to blood relations:
  - 1) The male category consists of father, son, brother, uncle and grandfather
  - 2) The female group consists of mother, daughter, sister and grandmother

b. According to the marital relationship, it consists of widower and widow

When the formulation of heir apparent in article 174 paragraph (1) letter a is compared with the formulation of heir apparent in the previous inheritance fiqh books, there is a very striking difference. In terms of number, the total number of heir apparents in the previous fiqh books was 25 while the Islamic Law Compilation was only 11 people. The difference in the number of heir apparents lies in the details of the heirs seen from the lineage. The Compilation of Islamic Law does not distinguish the lineage of grandparents from the father and mother, and does not distinguish the lineage of both parties (siblings), unilateral (same father or same mother). Whereas, previous inheritance fiqh distinguished heir apparent by looking at lineage. The formulation of heir apparent in article 174 paragraph (1) letter a of Compilation of Islamic Law has weaknesses that can lead to various interpretations in terms of number and lineage.

H. Idris Djafar and Taifik Yahya in his book "Compilation of Islamic Inheritance Law" states that the heir apparents in article 174 paragraph (1) letter a are as many as 39 people consisting of 21 men and 18 women.

This understanding is related to article 185 of the Islamic Law Compilation regarding changing places, then the details are as follows:

- 1) The group of male heir apparent consists of father, son, grandson of son and so on, grandson of daughter and so on, biological brother, brother with the same father, brother with the same mother, son of biological brother, son of biological sister, son of brother with the same mother, son of the sister with the same mother, son of brother with the same mother, son of sister with the same mother, biological uncle, uncle with the same father, uncle with the same mother, son of biological uncle, son of uncle with the same father, son of uncle with the same mother, paternal grandfather, maternal grandfather.
- 2) The group of female heir apparent consists of mother, daughter, granddaughter of son and so on, granddaughter of daughter and so on, biological sister, sister with the same father, sister with the same mother, daughter of biological sister, daughter of biological brother, daughter of sister with the same father, daughter of the brother with the same father, daughter of sister with the same mother, daughter of brother with the same mother, daughter of biological uncle, daughter of uncle with the same father, daughter of uncle with the same mother, paternal grandmother, maternal grandmother.

Whereas in the Islamic Law Compilation, the inheritance of the heir apparents is as follows:

1. The provision for the share of daughter in Islamic Law Compilation Article 176, namely: If there is one daughter, she gets half of the share, if there are two or more, they get two-thirds of the share, and if there are a daughter and a son, then the son share is two to one with the daughter.
2. The provision for father in Islamic Law Compilation Article 177 is: Father gets one third of the share if the heir did not have a child, if there is a child, the father gets one sixth of the share.
3. In Islamic Law Compilation, the mother will get:
  - a. The mother gets one-sixth of the share if there are children or two or more siblings. If there are no children or two or more siblings, then the mother gets a third of the portion.
  - b. The mother gets one third of the remaining portion after being taken by the widow or widower with the father.
4. The widower gets half of the share, if the heir did not have a child and if the heir had a child, the widower gets a quarter of the share.

5. The widow's share in Islamic Law Compilation Article 180 gets a share, namely: The widow gets a quarter of the share if the heir did not have a child, and if the heir had a child, the widow gets a one-half share.
6. The shares of brother and sister with the same mother in Islamic Law Compilation Article are as follows:
  - a. If a person dies without having the child and father, then each brother and sister with the same mother receives one-sixth of the share.
  - b. If they are two or more people then they get a third of the share.
7. One or more biological sister or with the same father in Islamic Law Compilation Article Article 182 gets the following shares:
  - a. If a person dies without having the father and child yet he/she has one biological sister, then the sister gets half of the share.
  - b. If the sister lives with two or more biological or siblings, then they receive two thirds of the share.
  - c. If the sister lives with a biological brother, the male sibling gets two to one with the sister.

In Article 174 paragraph (2) states that if all heirs apparent are alive, only children, father, mother, widow or widower are entitled to inheritance. This is also stated and clarified in the book *Raudlatut Thâlibîn wa 'Umdatul Muftîn* which was conveyed by Imam Nawawi:

"And if the two parties gather apart from one of the husband and wife partners, the inheritance is five people, namely both parents (father and mother), son, daughter, one partner (husband or wife)"

Thus, the position of the inheritance rights of the heir who died and only had an only child but having different religion is transferred to the wife and parents of the deceased heir. In accordance with Article 180 of the Islamic Law Compilation which states that the widow (wife of the deceased heir) gets a quarter of the share if the heir did not have a child and this division also applies if he has an only child but having different religion, and if the heir had a child, the widow gets an eighth share. Meanwhile, if the parents of the deceased heir are still alive, they are also entitled to inheritance, which is one-sixth each in accordance with the provisions in Article 177 and Article 178 of Islamic Law Compilation). Meanwhile, the siblings of the heir will receive a share from the heir who has passed away if there is still the remaining inheritance which is distributed to the wife and parents of the deceased heir.

The inheritance rights received by the heir apparent are essentially the continuity of the responsibilities of the heir to his family or the heirs in proportion to the difference in the responsibilities of a person (who later becomes the heir) to the family (which later becomes an heir apparent). For a man, the main responsibility is his wife and children. Age is not a determining factor in the distribution of inheritance assets. In terms of momentary needs when receiving rights, it can be seen that the similarity in the amount of revenue between the large and the small is unfair, but the review of needs is not in the nature of the distribution of inheritance but for a long period of time until adulthood, the younger ones need have so much needs as many as adults. If it is related to the size of the adult's needs with the length of the need for the younger ones and also to the same acquisition in inheritance rights, then the result will be that both will get the same level of benefit for what they receive. This is essential justice in the view of Islam, which is balanced justice and not equal justice.

#### IV. CONCLUSION

Based on the explanation of the results of this study, it shows that child who previously had the right to inheritance from their parents loses their position over inheritance rights because having different religions, in accordance with Article 171 letters b and c of the Islamic Law Compilation. Whereas for the position of inheritance rights, in accordance with Article 174 paragraph (2) Islamic Law Compilation, it is stated that if all heirs are alive, only children, father, mother, widow or widower are entitled to inheritance because the single daughter has different religion, it will transfer to the mother and the grandparents of the single daughter of a different religion.

#### REFERENCES

##### Books:

- [1] Amir Syarifudin, *Hukum Kewarisan Islam Edisi Kedua*, Yogyakarta : Kencana, 2015
- [2] Hazairin, *Hukum Kewarisan Bilateral Menurut Al-Qur'an dan Hadist*, Ctk. Keenam, Jakarta: Tintamas, 1981
- [3] Hasan, M. Ali, *Hukum Warisan dalam Islam*, Jakarta: Bulan bintang, 1979
- [4] H. Idris Djakfar dan Taufiq Yahya, *Kompilasi Hukum Kewarisan Islam*, Cetk. Kesatu, Jakarta: Dunia PustakaJaya, 1995
- [5] H. Zainal Abidin Abubakar, *Kumpulan Peraturan Perundang-Undangan Dalam Lingkungan Peradilan Agama*, Ctk. Ketiga, Jakarta: Yayasan Al-Hikmah Jakarta, 1999
- [6] M.D Ali, *Hukum Islam Pengantar ilmu hukum dan Tata Hukum Islam diIndonesia*, (Jakarta: PT Raja Grafindo Persada, 1996
- [7] Peter Mahmud Marzuki, *Penelitian Hukum*, Jakarta:Kencana Prenada, 2010

- [8] Prof. T.M. Hasbi Ash-Shidieqy. *Fiqih Mawaris (Hukum-hukum Warisan dalam Syari'at Islam)*, Jakarta :Bulan Bintang ,1973
- [9] Rofiq, Ahmad, *Fiqh Mawaris*, Jakarta: PT Raja Grafindo Persada, 2001
- [10] -----, *Hukum Islam di Indonesia*, cet. IV, Jakarta: PT. Raja Grafindo Persada, 2000
- [11] Yayasan Penyelenggara Penterjemah/Pentafsir Al-Qur'an, Al-Qur'an dan Terjemahnya, Depag RI, 1986

**Journal Papers:**

- [12] Ilyas, *kedudukan ahli waris non muslim terhadap harta warisan pewaris islam ditinjau dari hukum islam dan kompilasi hukum islam*, kanun jurnal ilmu hukum, 2015, 65.173-187
- [13] Salma Suroyo, Mulyadi, Yunanto, *Pembagian Harta Warisan Terhadap Ahli Waris Beda Agama Serta Akibat Hukumnya*, *Diponegoro Law Jurnal*, 2016, 5.3
- [14] Kadi Sukarna, Jefri Kurniawan, *Implementasi Hak Atas Ahli Waris Anak Kandung Non Muslim Yang Berlaku di Indonesia*, *Jurnal Ius Constituendum*, 2017, 2.2
- [15] Muhamad Isna, *Penegakan Keadilan Dalam Kewarisan Beda Agama*, *Jurnal Yudisial*, 2015, 8.3
- [16] Hanum Zulvia, Syahr Alfi, *Wasiat Wajibah Sebagai Wujud Penyelesaian Perkara Waris Beda Agama Dalam Perkembangan Sosial Masyarakat*, *Jurnal Holistik*, 2016, 1.2