

INHERITANCE RIGHTS IN INTERFAITH MARRIAGES ACCORDING TO INHERITANCE LAW

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ABSTRACT

Abstract: Marriage is an important event in everyone's life. But in reality, there are still many people who marry with different religions, which in the end interfaith marriages create various kinds of problems, such as a person's part in obtaining inheritance or what is also known as an inheritance from heirs of different religions will be affected or participate. change, besides that the problem that often occurs because of interfaith marriages is that a person cannot get an inheritance because the rules of each inheritance law that apply and regulate inheritance have their own rules which are different from one another. In writing this law, it will be explained what is the position of a person as in decision number 16 K/AG/2010 which is used as an example in writing this law, and how the suitability between the decision given by the judge and the inheritance regulations that exist and apply in Indonesia. the author will use the Normative Juridical Method/literature review by reading and analyzing both books, articles, the internet, and applicable laws and regulations. The brief conclusion that the author can give here is that the position of a person who has a different religion from the heir to get an inheritance can be determined by the rules contained in each inheritance law, and the suitability between the judge's decision given in decision Number 16 K/AG/2010 Even though the judge has reformed the law by giving a mandatory will to heirs of different religions, The obligatory will cannot be blamed because the obligatory will itself has the goal of obtaining justice

Keywords: Inheritance Rights; Marriage; Different Religions

Introduction

Marriage is an event that can be said to be an important event in everyone's life. According to Article 1 of Law 1 of 1974 concerning Marriage, Marriage is an inner birth bond between a man and a woman as husband and wife to form a happy and eternal family (household) based on the One True Godhead (Waluyo, 2020). So based on the understanding of marriage in the Law, it can be said that marriage is not only seen as a social or worldly event but also as a sacred event that is certainly influenced by their respective beliefs. Then since a marriage event is carried out, there will certainly be an inner birth bond between the two parties, and also a family relationship will arise between the relatives of the two parties maua bars, which will certainly cause inheritance rights for each member of the family.

Marriage and religion themselves have a close and inseparable relationship. Almost all religions regulate marriage, which always wants marriage between a man and a woman who have one religion. Some examples of religions that are recognized in Indonesia and do not give permission / do not allow marriage to be carried out if both candidates have different religions, namely, first, according to Christianity, interfaith marriage is an invalid marriage, because it is not carried out according to Christian religious rules and not by the conditions specified in the marriage. Then according to Islam, mixed marriage is strictly prohibited because it is not by the rules that exist in Islam itself. Because in the view of Islam, marriage between two people who have different religions is invalid. But in Indonesia, the marriage law has not specifically regulated the marriage of interfaith couples, so there is a legal vacuum. Therefore, there are still many people who perform marriages of different religions between a man and a woman of different religions, and also traditional life with various cultures and religions, does not reduce the possibility that there will be a marriage between religions, so the marriage of different religions is still a problem in itself because it is feared that marriages of different religions will cause its problems, For example, the issue of inheritance for spouses/children who are in marriages of different religions.

Because of the existence of marriages or marriages of different religions, so far, religious differences are considered to be one of the factors that will change or affect a person's share in getting an inheritance from heirs of different religions, religious differences that exist in a marriage are considered as factors that make a wife/husband / even children get a different amount of inheritance than should be obtained. Usually, the issue of inheritance is regulated in the Law of Inheritance. This inheritance is researched because there are still many people who have problems when distributing inheritance rights. Even though the law of inheritance itself still has a very close relationship with human life because it has a relationship with property or wealth and others. Where every human being will feel an event called death, where death becomes the end of the life journey of every human being in the world. Therefore, if the deceased person has a family and leaves a property or inheritance, then in any way the property owned will be divided among the family left behind. Thus the laws that usually discuss inheritance or inheritance are Islamic inheritance law, customary inheritance law, and also civil inheritance law, where the regulations regarding inheritance in Islamic inheritance law, customary inheritance law, and civil inheritance law have their own rules which certainly also have differences. For example, as in Islamic Law, an heir who is not Muslim cannot inherit property. So that with these regulations, there will be different regulations in the distribution of inheritance rights for families who perform interfaith marriages, and this can occur because there are different regulations and have not regulated inheritance rights for married couples who have different religious marriages so in solving this inheritance rights issue, each party will follow or submit to their respective religious laws or customary law. Thus, looking at the existing problems and the uncertainty of the law in the distribution of

inheritance to each heir from a marriage of different religions, the problems to be discussed in this study are based on the case of decision Number 16 K / AG / 2010. From the ruling, it will be discussed how the existing arrangements regarding inheritance rights when a marriage of different religions occurs, how / what ways can be done to solve the problem of the division of inheritance property to heirs who perform marriages of different religions, how the position of one's inheritance in a marriage of different religions as in the judgment, The discussion will be carried out by the laws and regulations, following other regulations in Indonesia, especially with inheritance law.

Research Method

The research method used for writing this law is the Normative Juridical Method which is a study of international rules, conventions, and agreements, including the study of norms and principles in these rules. In addition, the data to be used are secondary data obtained through books, journals, research results, as well as laws and court decisions. Then the analysis method to be used is qualitative carried out from the beginning of the research to the end of the research and is not related to data in the form of numbers. And the last method of data collection uses literature tracing/research methods where data will be obtained through books, journals, the internet, and others.

Result And Discussion

As is known, regulations regarding marriage have existed for a long time and are followed by all communities including in Indonesia. Regulations regarding marriage then continue to develop with the development of society which is usually influenced by knowledge, beliefs, and religion adopted by each community. Before the 1974 regulation governing marriage, marriages were carried out based on each Indonesian resident. For example, for native Indonesians who are Muslims, religious law that has followed customary law will apply, then for other Indonesians customary law will apply, and others. But after the birth of Law No. 1 of 1974 concerning marriage (UUP) which came into force on October 1, 1975, the existing regulations have been replaced and no longer apply. Where this Law it explains the validity of a marriage if it is carried out according to its religious law article 35 it is explained that the property obtained in marriage will be joint property. The joint property in the marriage is one type of property out of many other possessions owned by a person. In everyday life, this treasure has a very important meaning for everyone because this treasure can be used to live daily human life. Article 35 of this Law not only regulates joint property but also regulates property before marriage, where the sound of article 35 is as follows (Harimurti, 2021) :

1. Property acquired during the marriage becomes joint property
2. The property of each husband and wife and the property acquired by each as a gift or inheritance are under the control of each beneficiary, the parties do not specify otherwise.

And all husbands and wives have the right to bring legal deeds concerning the joint property with the consent of both parties. Article 36 of the Marriage Law states that:

1. Regarding joint property, husband and wife can act on the agreement of both parties.
2. Regarding each other's property, husband and wife have the full right to take legal action regarding their property.

With the existence of assets that arise in a marriage, there are also various inheritance law systems in Indonesia. Where the inheritance system is:

1. Customary inheritance law that governs inheritance is carried out by native Indonesians and there has been no influence from Islamic Law (Harimurti, 2021).
2. Islamic inheritance law is implemented by native Indonesians who have gained influence from Islamic Law.
3. Civil inheritance law that applies to Europeans and Foreign Easterners in Indonesia (Amir, 1993).

What is certain is that all inheritance laws will have their regulations, including rules for inheritance in marriages of different religions. But over time, cases of inheritance due to marriages of different religions are increasingly occurring in society. This is as stated in the Supreme Court decision Number 16 K / AG / 2010, where in the case or case it is explained that on November 1, 1990, Evie Lany Mosinta as the defendant married the late Muhammad Armaya Bin Renreng (Heir) at the Boeng civil registration office, Poso regency. Where the marriage is carried out at the Civil Registry office because the identity of the heir is Muslim and the wife (Defendant) is Christian, this interfaith marriage can be carried out at the civil registry office due to a Supreme Court (MA) jurisprudence, namely Supreme Court Decision No. 1400 K / Pdt / 1986 The decision among others states that the Civil Registry Office at that time was allowed to carry out interfaith marriages. But in fact in Article 2 of Government Regulation No. 9 of 1975 concerning the implementation of Law No. 1 of 1974 concerning Marriage and Article 4 of Law No. 23 of 2006 concerning Population Administration, the Civil Registration Office does not play a role in marrying couples of different religions but only registers marriages that have been legalized in advance. Then the marriage between Evie Lany Mosinta and the late Muhammad Armaya Bin Renreng lasted for 18 years until finally the heir was declared dead. And in that marriage, there was no child. So that after the late Muhammad Armaya Bin Renreng passed away, he left other heirs (Plaintiffs) as follows:

1. Biological mother: Halimah Daeng Baji
2. Sister: Murnihati Bint Renreng; Mulyahati Bint Renreng : Djelihatati Bint Renreng
3. Brother: Muhammad Arsal Bin Renreng.

Thus, the Makassar Religious Court in its decision No. 732/Pdt.G/2008/PA then granted the plaintiff's claim for the granting of inheritance from the heir (1/2 of the joint

property) to the existing plaintiffs. Then the appellate level, the High Religious Court with decision Number 59/Pdt.G/2009/PTA Mks, also upheld the previous religious court rulings that already existed. But because the defendant felt that the religious court's decision was unfair, the defendant then filed a cassation at the supreme court level. So that the Supreme Court at the cassation level issued a decision Number 16K / AG / 2010 which ruled that the decision issued by the Makassar Religious Court was annulled. And in its ruling, the Supreme Court tried itself which stated the defendant got 1/2 of the joint property with the heirs and the rest was given to other heirs. But of the 1/2 of the testator's estate that becomes the estate of the heirs, there is also a 1/4 share for the defendant in the form of a mandatory will.

Based on the case of inheritance division between wives and husbands who carry out interfaith marriages, it will be discussed how the position of someone like the wife who has a different religion from her heir if it is related to the 3 inheritance laws that apply in Indonesia. As discussed earlier in Indonesia 3 types of inheritance law apply, namely Islamic inheritance law, customary inheritance law, and civil inheritance law. Hence the standing of Evie Lany Mosinta as a Defendant in the case when viewed from the inheritance law in Indonesia, namely:

Islamic Inheritance Law The sources of inheritance in Islamic Inheritance Law come from (Sari, 2018) :

1. The Qur'an is the first and foremost source. Where will be regulated regarding the provisions of the share of each heir, as stated in Surah An-Nisa verse 7, verse 33, and others?
2. Ijmak can be used in solving inheritance problems that exist and have not been clearly explained by Nash.

Then in the Islamic Law of Inheritance, it is said that the causes that allow a person to obtain an inheritance are as follows:

1. The existence of basic family relationships as written in Surah An-Nisa verse 7.
2. The existence of a marriage bond, as written in Surah An-Nisa verse 12.
3. And there was the liberation of slaves, which today no longer exist because slavery has long been abolished.

Then in Islamic inheritance law, it is explained that several reasons can hinder or prevent inheritance, where preventing inheritance has the meaning of an action taken that can eventually invalidate a person's right to inherit. People who lose their inheritance due to the presence of many "al arts are called mahram and the hindrance is called hitman (Fatmawati, 2020). The barriers to inheritance are:

1. Slavery = where slavery becomes a barrier to inheritance. Because slaves are considered incompetent in dealing with property rights in any way.
2. Murder = The fuqaha agree that murder is a hindrance / in principle can be a barrier for the murderer to obtain the property of the murdered person. It is said that a

murderer will not be able to inherit the estate of the heir (the person who has already been killed).

3. Different Religions = What is meant by different religions is that people who inherit property or their heirs have different religions (Hanifah, 2019). In this case one is Muslim and the other is Non-Islamic/has the beliefs of the other. Because basically, a person who has a different religion cannot inherit the other two. But in the sunnah fiqh written by Sayyid Sabiq, it is mentioned that there are narrations from Mu'adz, Mu'awiyah, Ibn Musayyab, Masruq, and Nakha'i, that a person who is Muslim can receive an inheritance from a non-Muslim but not vice versa. Then in the opinion of M. Mustafa ash-Syalabi (Maizal, 2022), religious differences between heirs and heirs are an obstacle to inheritance. For example, if the husband adheres to Islam and dies, but the wife is of another religion, the wife does not have the right to inherit. This opinion is based on the Hadith of the Prophet Muhammad (peace be upon him) which states that a Muslim does not inherit from non-Muslims and vice versa.

Based on several barriers of inheritance in Islamic inheritance law, it can be seen that the position Islamic inheritance law for someone like Evie Lany Mosinta who adheres to Christianity and is different from her heir, should not be allowed / unable to get an inheritance from her husband who adheres to Islam.

Customary Inheritance Law In customary inheritance law, it is explained that the customary inheritance system is divided into 3 types, namely:

1. Individual inheritance system = where in this inheritance system the existing inheritance property will be divided into ownership among all heirs, as applicable according to the Civil Code and Islamic law (Superman, 2022). Usually, this system of individual inheritance prevails among independent communities, which are not strongly bound by kinship. The advantage of this individual system is that with a division, each heir has a free or self-determinable right to the share that can be received. The heirs have the freedom to determine their will over the estate.
2. Collective inheritance system = In this collective inheritance system, the existing inheritance will be inherited or will be controlled by a group of heirs in an undivided state. Usually, it can be in the form of land, houses, and others.
3. The majority inheritance system = the last is the mayoral inheritance system, which means that the inheritance of parents or heirs will remain intact and not divided among all heirs, but will be controlled by the eldest son as in the patrilineal community of Lampung and Bali. But it can also be mastered by the eldest child of women such as in the matrilineal environment of Semendo in South Sumatra and Lampung.

Based on the inheritance system based on customary law, it can be seen that the inheritance system does not see religious differences, so the position of Evie Lany Mosinta who has a different religion from her heir is not a problem to get an inheritance property.

Civil Inheritance Law In civil inheritance law, it is explained that the group of heirs consists of 4 groups, namely:

1. Group 1 = Husband / Wife who outlives his heirs & descendants.
2. Group 2 = Parents & Siblings of the heir
3. Group 3 = Family in a straight line up after Mr. & Mrs. of the testator. Consists of Grandparents, Grandparents, and so on
4. Group 4 = Family members who are in the line to the side and their families up to the sixth degree.

When viewed based on this classification, it is written on the first group of Husband / Wife who still lives longer than their heir. So that a wife like Evie Lany Mosinta can be said to be someone who takes precedence in the division of inheritance compared to other heirs. So that the position of the wife can be said to be absolute or automatically become acceptable. But still by remembering the conditions given to become heirs, namely:

1. There must be a person who dies.
2. There is a person who is still alive as an heir who will inherit when the heir dies.
3. An heir must be capable and entitled to inherit, meaning that a person is not declared by law to be unfit to inherit.

In addition, the law also says things that can cancel an heir receiving an inheritance, namely (Trovani, 2021):

1. The heir with the judge's decision has been convicted of murder / at least trying to kill the heir.
2. A person who by a judge's decision has been convicted of defaming/complaining to the heir that the heir has committed a crime which is thus punishable by imprisonment of 4 years or more.
3. Heirs who have violently prevented the testator from making or withdrawing the will given.
4. An heir who has already embezzled, destroyed, or even forged an existing will.

If at any time an heir who has received his share is found that the heir did any of the above, then the heir must return everything that is controlled including the results obtained by him. Based on the conditions and some barriers to a person getting an inheritance as written, we can see that there is no obstacle to a person not being able to get an inheritance because of religious differences. So that in the Civil Inheritance Law, the position of Evie Lany Mosinta, who is Christian and different from her heirs, is still given or legalized to receive inheritance regardless of religion.

COMPATIBILITY BETWEEN THE DECISION GIVEN BY THE JUDGE IN DECISION NUMBER 16 K / AG / 2010 WITH THE INHERITANCE REGULATIONS IN FORCE IN INDONESIA.

As is known, in Decision Number 16 K / AG / 2010 the heir named Muhammad Armaya Bin Renreng can also called Armaya Renreng, had Islam and died on May 22,

2008. The late Armaya Muhammad Bin Renreng left behind a Christian wife with a citation of marriage certificate No. 57/K.PS/XI/1990. And in this marriage, the late Muhammad Armaya Bin Renreng with Evie Lany Mosinta (Wife) was not blessed with a child. At the time of death, the deceased left several heirs, namely:

1. Biological mother: Halimah Daeng Baji
2. Sister: Murnihati Bint Renreng : Mulyahati Bint Renreng : Djelitahati Bint Renreng
3. Brother: Muhammad Arsal Bin Renreng.

And also leave property acquired during the marriage period and considered joint property as follows:

4. Immovable property: one unit of permanent house building and land, covering an area of +216 m² located on Jalan Hati Murah, No 11, Mattoangin Village, Mariso District, Makassar
5. one unit of permanent house building and its land, covering an area of + 100 m² located on Jl. Manuruki, BTN Tabariah G 11/13 Complex
6. Moving Treasure: one unit of Honda supra fit a brand motorcycle, with No. Pol. DD 5190 KS is red and black.

Life insurance money from PT. AIA Indonesia insurance, amounting to IDR 50,000,000, has been received by his wife, Evie Lany Mosinta.

Because all of these assets are joint property, all of these assets are still controlled by Evie Lany Mosinta. After various methods have been done so that the property can be distributed in a family way but to no avail. So, 5 other heirs left by the late Muhammad Armaya Bin Renreng filed a lawsuit with the Makassar Religious Court to hold a division of joint property owned under Islamic law.

Based on the lawsuit given by the five heirs of the late Muhammad Armaya Bin Renreng at the Makassar Religious Court, the decision given was to hand down decision Number 732 / Pdt.G / 2008 / PA. Mks, in essence, Evie Lany Mosinta only gets 1/2 part of the joint property and is not entitled to receive the property legacy because he is Christian and different from the religion adopted by the late Muhammad Armaya Bin Renreng. Then this decision was appealed to the Makassar High Religious Court, and on July 15, 2009, the Makassar High Religious Court handed down decision number 59/Pdt.G/2009/PTA. Mks which only strengthens the decision of the Makassar Religious Court. Then against the decision, another cassation was filed to the Supreme Court and the Supreme Court handed down a decision with register number 16 K / AG / 2010 on April 30, 2010, with consideration *Judex Facti* (Kaswadi, 2021) (which examines the evidence of a case and determines the facts contained in the case) that is wrong in the application of the law, where the considerations are as follows:

That the marriage between the heir and the cassation applicant (Wife) has been going on for quite a long time, namely for 18 years. This means that the cassation applicant has long been devoted to the heir. Therefore, even though the cassation applicant adheres to a non-Islamic religion, it can still be said that it is appropriate and fair to

obtain her rights as a wife to get part of the existing estate in the form of a mandatory will and part of the joint property owned by the existing sense of justice.

Therefore, the decision originating from the Makassar High Religious Court must be annulled and the Supreme Court will try itself with the following considerations:

That the position of heirs who are non-Muslims has been widely studied by scholars including cleric Yusuf Al-Qardhawi, who said that non-Muslim religious people who coexist peacefully and there is no problem, then cannot be categorized or determined as a Kafir Harbi (Non-Muslims who declare war on Muslims) (Abshor, 2020). Such is the case with cassation petitioners and heirs who during their lives mingled in peaceful harmony despite different beliefs. therefore it is proper and proper for the Cassation Applicant to obtain a share of the testator's estate in the form of a mandatory will.

Based on the above considerations, in the opinion of the Supreme Court, there are grounds to grant the cassation application of the cassation applicant and annul the decision of the Makassar High Religious Court No 59/Pdt.G/2009/ PTA. Mks, which upheld the decision of the Makassar Religious Court Number: 732/Pdt.G/2008/PA. Mks, dated March 2, 2009.

Thus, the Supreme Court decision number 16 K / AG / 2010 which has overturned all decisions *Judex Facti* by granting inheritance rights to Evie Lany Mosinta through a mandatory will.

Based on a little explanation from the case of the Supreme Court decision number 16 K/AG / 2010, we will discuss a little about what inheritance law is used in the decision given by the judge. If you look back at the heir and his wife in the case both have different religions or beliefs. It will also concern which judiciary has the authority to resolve the existing problem. Absolute competence from a religious court regulated in articles 49 to 53 of Law No. 7 of 1989 concerning Religious Courts which has subsequently been amended twice, namely to Law No. 3 of 2006 and most recently Law No. 50 of 2009 concerning the Second Amendment to the Law Number 7 Year 1989 on Religious Courts. But articles 49 and 50 of the law reads

Religious courts have the duty and authority to examine, decide and settle cases in the first instance between persons of Muslim faith in the areas of:

1. Marriage
2. News
3. Testament
4. Grant
5. Endowments
6. Zakat
7. Infaq

8. Shadaqah
9. Islamic economics.

Then article 50, is explained:

In the event of a property dispute or other dispute in the case mentioned in Article 49, the subject matter of the object of the dispute must first be decided by the court in the general judicial environment.

In the event of a dispute over property rights as referred to in the first regulation which is the subject of law between persons of Muslim faith, the object of the dispute may be decided by the Religious Court together with the case referred to in Article 49.

If seen, the two articles, namely Article 49 and Article 50, can provide obstacles to the implementation of religious courts because most cases regarding inheritance will directly involve property disputes between the parties themselves and other parties. For inheritance cases in decision number 16 K / AG / 2010, the inheritance law used or used is Islamic law, because the heir who left the property is Muslim.

Then how is the compatibility between the verdicts given by the judge in judgment Number 16 K/AG/2010 if it is related to the inheritance regulations in force in Indonesia? Because in this case, the inheritance law that must be used is Islamic Inheritance Law due to a joint decision of the plaintiffs, this discussion will be more about the Islamic inheritance law that applies in Indonesia. But in the simulation/implementation carried out on inheritance problems that often occur, if the parties do not agree on what inheritance law will be used, even though someone adheres to Islam can still use other inheritance laws such as Customary Inheritance Law and Civil Inheritance Law and also in inheritance problems that occur, often customary inheritance law is used even though the person who uses customary inheritance law adheres to Islam, this happens because everyone must be looking for inheritance law that is easier to use, for example, if using Islamic inheritance law must wait for a court decision and others. Meanwhile, if you use customary inheritance law, inheritance problems can be solved only with RT, RW, and Camat. As is known, the position of the wife of the late Muhammad Armaya Bin Renreng named Evie Lany Mosinta has the status of a widow or wife who adheres to a different religion from her heir (Non-Islam) in obtaining or obtaining the inheritance of her Muslim husband. If it is related to Islamic inheritance law that will be used to resolve this inheritance problem, as mentioned in POrigin 174 Compilation of Islamic Law (Khouw & Fataruba, 2022) which reads as follows, The groups of heirs consist of:

According to blood relationship:

The male group consists of a father, son, brother, uncle, and grandfather. The female group consists of a mother, daughter, and sister of a grandmother. b. According to the marital relationship consists of a widower or widow.

(2) If all heirs are present, only children, fathers, mothers, widows, or widowers are entitled to inherit.

If viewed from the contents of Article 174 of the Compilation of Islamic Law, it can be said that Evie Lany Mosinta is one of the heirs entitled to a share. But if you consider the rules prohibition a person to inherit in Islamic inheritance law, a widow who is non-Muslim cannot inherit inheritance property from her husband/heir who adheres to Islam. Because the marriage of different religions is one of the prohibitions for inheritance. Then as written in Article 171 point c of the Compilation of Islamic Law which states that "An heir is a person who at the time of death has a blood relationship or marital relationship with the heir, is Muslim and is not hindered by law from becoming an heir" where from this article it can be concluded that the heir must be a person of Muslim faith. When viewed based on the existing articles and regulations by the Islamic Law of Inheritance, it can be said that Evie Lany Mosinta cannot / is not entitled to inherit the property to be divided. However, in the decision Number 16 K / AG / 2010 the panel of judges in the decision of the Supreme Court of the Republic of Indonesia Number 16 K / AG / 2010 gave a mandatory will for Evie Lany Mosinta amounting to part of the Islamic heirs where this decision is an effort to find the law of the Panel of judges in the decision of the Supreme Court whose existence must be respected as long as the amount of the mandatory will given does not exceed the limit of the provision of wills regulated in the KHI. if it is related to civil or customary inheritance law, the decision given by the Supreme Court is not a problem. Because in Civil Inheritance Law, there is no problem with religious differences, and in customary law, it is also the same as civil inheritance law which does not matter if there is a religious difference in an inheritance process.

Then, in the decision Number 16 K / AG / 2010, as is well known, to resolve the issue of inheritance of different religions, the panel of judges in the decision of the Supreme Court of the Republic of Indonesia Number 16 K / AG / 2010 gave a mandatory will for Evie Lany Mosinta amounting to the share of Islamic heirs where this decision was an effort to find law from the panel of judges in the Supreme Court decision. Where the meaning of a mandatory will itself is an action carried out by a judge as a state apparatus to give a mandatory testamentary decision for a person who has died, which will then be given to a certain person and in a certain situation. According to Fachtur Rahman in his book (Syarief & PRATIWI, 2021), this is called a mandatory will because of 2 things, namely:

1. The loss of an element of *Ikthiar* (effort) for the testator and then an element of obligation arises through the existing decree without relying on the willingness of the testator and without the consent of the beneficiary.
2. There is a resemblance to the provision in the division of inheritance in terms of the acceptance of men twice as much as the share of women.

This mandatory will is a will given to heirs or relatives who do not get a share of the estate of the deceased due to a certain obstacle. Where in general this mandatory will be given to heirs who are entitled to get an inheritance, but due to several things, their inheritance rights become hindered or become void. So that in the end, people who cannot obtain inheritance property can finally obtain it through a mandatory will, as in decision Number 16 K / AG / 2010, where Evie Lany Mosinta was a non-Muslim wife the wife left behind by her husband's will get inheritance but because the wife's religion has a different religion her husband then the wife becomes hindered or difficult to get property The inheritance can therefore be settled through this mandatory testamentary path. This mandatory will also consists of several types when viewed based on whom the will is given, including:

1. Wills are obligatory from adoptive parents to adopted children or vice versa as stipulated in the Compilation of Islamic Law article 209.
2. Wills are mandatory for grandsons or granddaughters whose parents have died / together with their grandparents.
3. Wills are obligatory to heirs/relatives who should be entitled to inherit property but become hindered because of certain things. For example, apostate children and non-Islamic wives (as in decision No. 16 K / AG / 2010) are part of the heirs but are hindered because of a different religion.

Then, this mandatory will according to Ahmad Rafiq, a mandatory will is an action carried out by the ruler or by the judge as a state apparatus to give or force a will decision for someone who has died, which is given to certain people and under certain circumstances as well. In addition, according to Chairman Pasaribu and Suhrawadi, K Lubis said that this mandatory will is a will that is seen as a will that has been done by someone who will die, even though the person did not leave/give the will (Chubba, 2018). Based on several definitions of mandatory will put forward by Ahmad Rafiq and also by Chairman Pasaribu and Suhrawadi K Lubis, it can be concluded that this mandatory will in its implementation will be left to the discretion of the judge. This can happen because the mandatory will has a direct relationship with Islamic inheritance law so in its implementation it must be handed over / given to the discretion possessed by the judge to determine in the process of examining cases and existing inheritance cases. This mandatory will is important to be known by the judge because basically, this mandatory will has a purpose to obtain justice, which is by giving existing parts to heirs who still have rights without giving their due shares, to people who may have contributed to the heir but in Islamic Inheritance Law cannot get a share. So, this is solved by the way out, namely establishing a mandatory will so that the people who are hindered can receive a share of the property owned by the testator.

Then the regulations contained in Article 209 of the Compilation of Islamic Law, it is stated that the persons who have the right to obtain a mandatory will are adopted children of their adoptive parents and vice versa whose receipt cannot exceed 1/3 of the existing estate. Then in Article 171 Letter C, it is stated that an heir is a person who at

the time of the testator's death has a blood relationship or marital relationship with the heir then is Muslim and is not hindered by law from becoming an heir.

Based on the contents of Article 171 Letter C, it can be concluded that those who are said to be heirs who are entitled to this mandatory will must have blood relations with the testator but must also be adherents or Muslims and have no obstacles to becoming an heir. Therefore, it can be seen that the decision of the mandatory will given by the judge is not by the provisions in Article 209 of the Compilation of Islamic Law & Article 171 Letter C. because in decision Number 16 K / AG / 2010, where Evie Lany Mosinta is a wife who is also not Muslim. But back again to the decision given by the panel of judges regarding this mandatory will is based on 2 reasons/considerations, namely (Labone, 2020):

1. The marriage process carried out by Evie Lany Monsita and Muhammad Armaya Bin Renreng (Heir) is a legal matter. Where this marriage is carried out at the civil registration office which in existing provisions this marriage is subject to the provisions of civil law (BW) or subject to law No. 1 of 1974.
2. The length of marriage was carried out by Evie Lany Mosinta and Muhammad Armaya Bin Renreng (Heir). Whereas is known the marriage between the heir and his wife has been going on for 18 years, which means that the marriage lasted for quite a long time and Evie Lany Mosinta has also long been devoted to the heir. Therefore, even though Evie Lany Mosinta adheres to a non-Islamic religion, it is still considered worthy and fair to obtain all her rights as a wife to get a share of the inheritance in the form of a mandatory will.

Based on the considerations given by the judge, although the judge has carried out a legal reform by granting mandatory wills to heirs of different religions deviating from the regulations contained in the Compilation of Islamic Law, the mandatory wills given to non-Islamic heirs (Evie Lany Monsita) cannot be blamed also because considering the many rules that exist in Indonesia that are taken based on customary law which becomes law Customary inheritance which is also based on the balance of mankind regardless of religion, and the decision given by the judge can be said to be by the purpose of the mandatory will itself, which has the purpose of obtaining justice, which is to give existing shares to people who may have contributed to the heir but in Islamic Inheritance Law may not get a share And the verdict given is an alternative solution to overcome the problem of disenfranchised heirs like Evie Lany Monsita in this case due to religious differences.

Conclusion

compatibility between the decision given by the judge in the Supreme Court decision No.16K / Ag / 2010 judge with the inheritance regulations in force in Indonesia. It can be seen that the judge gave a mandatory will to the wife who adhered to a different religion from the heir. Although the judge has carried out legal reform by giving mandatory wills to heirs of different religions is deviant or different from the regulations in the Islamic Law of Inheritance, the mandatory will given by the judge

according to the author cannot be blamed also because the mandatory will itself has a purpose to obtain justice, which is to give existing shares to people who may have contributed to the heir but in Islamic Inheritance Law should not get a share And the Judgment given can be an alternative solution to overcome the problem of heirs who have lost their rights. Meanwhile, the suitability of the decision given by the judge in the Supreme Court decision No.16K / Ag / 2010 with 2 other inheritance laws in Indonesia, namely Customary Inheritance Law and Civil Inheritance Law is that if the result of the decision is connected with civil and customary inheritance law, it can be said that the result of this decision is not a problem because in civil inheritance law, there is no problem if there is a different religion, and if customary inheritance law has the same regulations as civil inheritance law, then the result of the judge's decision on this mandatory will cannot be an issue in the inheritance process. The suggestions that can be given, related to this writing are as follows For the Legislature, it is expected to create new rules in the decisions that are happening, where these rules can regulate the rule of law which then the rules can be used to overcome new legal events that are happening in society In addition, it is hoped that the government can make / perfect existing rules regarding mandatory wills so that these rules can be used by those that have been established.

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