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The Views of Scholars of The Islamic Union of Subang And Sumedang On Contemporary Issues Of Family Law (Juridical Analysis of the Granting of Compulsory Wills for Heirs of Different Religions and its Contribution to the National Legal System)

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Abstract: Mandatory wills regulated in Article 209 of the Compilation of Islamic Law are only for adoptive parents and adopted children, there are no mandatory wills for heirs of different religions. However, the Supreme Court Decision stipulates the right to non-Muslim inheritance with a mandatory will, so it requires in-depth study. The purpose of this study is to analyze the thoughts of the scholars of the Subang and Sumedang Islamic Union regarding the obligatory will for the heirs of different religions. The framework of thinking in this study is (1) Grand Theory: The Theory of Maqasid Shari'ah by Muhammad al-Syathibi in his book al-Muwafaqot, which emphasizes that maqashid shari'ah is one of the important concepts in the study of Islamic law. The essence of the theory of maqashid shari'ah is to attract benefits and reject madharat; Middle ranges theory is Gustav Radbruch's theory of legal justice, certainty, and the usefulness of huku as the three legal principles. The applied theory is a progressive legal theory from Satjipto Rahardjo which states that progressive law is responsive and can contextualize the application of law with the basis of the development of human life. The research method used is descriptive analysis with a normative juridical approach. This research is classified as a type of qualitative research, therefore the type of data is related to the purpose of the research in question. The primary data source is taken from the views of the Islamic Union of Subang and Sumedang scholars about the inheritance of different religions. Data collection techniques with interviews and literature studies. The data is analyzed by collecting, classifying, and interpreting it with the content analysis method and then inferred. This study concludes: (1) The views of the scholars of the Subang and Sumedang Islamic Union regarding the share of inheritance for heirs of different religions depend on the content of the heirs' wills and the agreements of other Muslim heirs. Philosophically, the name heir is not the essential meaning of heir, but because there is a postulate of the Quran and al-Hadith that states that "Muslims do not inherit to the infidels", then the heirs of different religions, who accept by way of a will with the principle of effort to give their rights as worship.

Keyword: Ulama, Islamic Union, Contemporary Issues, Wills, Inheritance, and Islamic Law.

INTRODUCTION

The classical scholars said that if a person converts to Islam before the inheritance is distributed, then he does not get the inheritance. Another narration from Mu'az says: a Muslim receives inheritance from a disbeliever, but not vice versa. This is based on an argument that he had heard the Prophet say: "Al-Islaamu Yazidu Wa Laa Yanqus" . It is also narrated that a Jew died and left two children, one Muslim and the other Jewish. To the Muslim Mu'az has distributed the inheritance to him . In another narration it is said: "Laa Yatawaaratsu Ahlu Millataini Syattaa", in this context the majority of classical scholars agree that what is meant by "millataini" is that one is Muslim and the other is not .

With this problem, several questions were asked about the opinion or thoughts of the Islamic Union scholars of Subang and Sumedang about the inheritance rights of different religions or non-Muslims, while the deceased was a Muslim, as well as the legal basis used by the Islamic Union scholars about the inheritance rights of different religions and the methodology of thought used.

METHOD

This study uses descriptive analytical methods and philosophical juridical approaches from the views of Islamic Unity scholars by comparing the thoughts of scholars who discuss the position of inheritance rights for heirs of different religions or non-Muslims. Data were collected by in-depth interviews and analyzed by juridical and philosophical analysis methods.

RESULTS AND DISCUSSION

An Analysis of the Views of the Ulama of the Islamic Association of Subang and Sumedang on Compulsory Testament for Heirs of Different Religions

Ulama of the Islamic Association of Subang Regency and Sumedang Regency are religious leaders who are recognized by members of this organization as people who understand and master the science of Islam, namely knowing and understanding the science of the Qur'an, al-Hadith, Ushul Fiqh Science, Fiqh Science, and so on, especially science which is a branch of Islamic law or sharia science. Among them are KH HB, KH SB, KH MR, KH EM, and others.

According to the opinion of the scholars of the Islamic Association of Subang and Sumedang, the granting of inheritance property to heirs of different religions through mandatory wills, because heirs of different religions are among those who are prevented from getting inheritance property from Muslims. The provisions of wills in Islamic inheritance law in Indonesia are regulated in Articles 194-209 of the Compilation of Islamic Law (KHI). Specifically, the mandatory will is regulated in Article 209. However, the compulsory testament regulated in KHI is only intended for adopted children and adoptive parents. However, for heirs of different religions are prevented from receiving inheritance. According to the provisions of KHI, different religions are an obstacle to getting inherited property. KHI does not regulate the distribution of inheritance to heirs of different religions.

In its development, the mandatory will is not only given to adopted children and adoptive parents, but also given to heirs of different religions because the mandatory will for heirs of different religions becomes a jurisprudence that is different from the concept of fiqh which stipulates that heirs of different religions cannot inherit the assets of the Muslim heirs, of course on the contrary, non-Muslim heirs do not bequeath their property to heirs of different religions.

According to KHF, the mandatory will for heirs of different religions is based on the Compilation of Islamic Law (KHI) as in Presidential Instruction Number 1 of 1991. Wasiat is regulated in Chapter V Articles 194-209 KHI. Article 194 paragraph (1) KHI states that a person who is at least 21 years old, of sound mind, and without coercion can bequeath part of his property to another person or institution (non-heirs). Article 195 KHI states that a will is made orally in the presence of two witnesses, or in writing in the presence of two witnesses, or before a Notary. Wasiat is only allowed as

much as one-third of the inheritance, unless all heirs agree. A will to an heir is valid if it is approved by all the heirs. This approval statement is also made orally in the presence of two witnesses, or in writing in the presence of two witnesses, or before a Notary. Meanwhile, Article 209 KHI regulates wills that are specifically given to adopted children or adoptive parents. This type of will is commonly called mandatory will.

Article 209 KHI states that "The inheritance of the adopted child is divided based on Article 176 to Article 193 above, while the adoptive parents who do not receive a will are given a mandatory will as much as 1/3 of the property of the adopted child. Against adopted children who do not receive a will are given a mandatory will as much as 1/3 of the inheritance of their adoptive parents."

There is a tradition of the Prophet Muhammad that states:

حَدَّثَنَا أَبُو عَاصِمٍ عَنْ ابْنِ جُرَيْجٍ عَنْ ابْنِ شِهَابٍ عَنْ عَلِيِّ بْنِ حُسَيْنٍ عَمْرِو بْنِ عُثْمَانَ عَنْ أُسَامَةَ بْنِ زَيْدٍ رَضِيَ. اللَّهُ عَنْهُمَاأَنَّ النَّبِيَّ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ قَالَ لَا يَرِثُ الْمُسْلِمُ الْكَافِرَ وَلَا الْكَافِرُ الْمُسْلِمَ (رواه البخاري).

Abu 'Ashim narrated to us from Ibn Juraij from Ibn Shihab from 'Ali ibn Husayn from Amr ibn 'Uthman from Usamah ibn Zayd (may Allah be pleased with him) who said: "A Muslim does not inherit from a disbeliever, and a disbeliever does not inherit from a Muslim". H.R.Al-Bukhari."

Based on the hadith according to KH. SF, it is agreed that disbelievers do not inherit from Muslims. It was narrated from Umar, Mu'adz and Muawiyah that they inherited Muslims from disbelievers and did not inherit disbelievers from Muslims. This was narrated by Muhammad ibn al-Hanafiyah, 'Ali ibn al-Hussein, Said ibn Musayyib, Masruq, 'Abdullāh ibn Mi'qal, Ash-Sha'bi, Nakha'i, Yahya ibn Ya'mar and Ishaq, but this is considered to be an unsubstantiated opinion from them, of which Ahmad said: There is no dispute that the Muslim does not inherit from the disbeliever.

The hadith with the same matan was also narrated by many hadith scholars, such as by Imam Muslim, Abu Daud, Al-Turmudzi, Ibn Majah and Al-Shafi'i. The majority of the scholars of the hadith are both Companions and Taabi'in, such as 'Amr ibn 'Uthman. 'Uswah, Al-Zuhri. 'Atha', Thawus, al-Hasan, 'Umar ibn 'Abdul 'Aziz, al-Thauri, Abu Hanifah and his companions, Malik, al-Shafi'i and Ahmad ibn Hanbal. This is corroborated by the rule that states that religious differences cut off mutual inheritance as well as guardianship in marriage.

Some scholars allow Muslims to bequeath their property to non-Muslims (infidels), including Imam Ibn Taimiyah, and Imam Ibn Qayyim al-Jauziyah. This is based on the narration of Mu'adz bin Jabal, Muawiyah bin Abi Sufyan, Muhammad bin Hanafiyah, Muhammad bin Ali bin Husain, Sa'id bin Musayyab, Masyruq bin Ajda', Abdullah bin Mughaffal, Yahya bin Ya'mar, and Isaac. The narration explains that Muadz bin Jabal, Muawiyah, and those who allowed Muslims to inherit from the disbelievers said "We inherit from them and they do not inherit from us just as we marry their women and they may not marry our women". According to these two great scholars, the hadith about Muslims not inheriting from disbelievers, nor disbelievers from Muslims, can be interpreted in the same way as the Hanafi school of fiqh interpreted the hadith "A Muslim cannot be killed by killing a kāfir", The diction "kāfir" has a meaning and interpretation in the hadith which is kāfir harbī, because the harbī kāfir used to be termed for people who always fought Muslims, so that it makes both of them in breaking the relationship between the two, especially regarding the distribution of inheritance.

Ibn Qayyim al-Jauziyah, who is also a student of Ibn Taymiyah, gave the opinion that the concept of loyalty is not a condition or illat of inheritance. However, the Illat is marked by the behavior and mutual assistance of a Muslim to Ahlu Dzimmah, then he is entitled to that help, otherwise if Ahlu Dzimmah does not help and help a Muslim, then a Muslim has no right to respect them. The inheritance is still valid because of the spirit of mutual assistance in helping, so Muslims inherit it, even though they will not help Muslims. Because the basis of inheritance is not only love and loyalty of heart. If that is the case, then the hypocrites do not take inheritance from the Muslims, but in their sunnah but inherit from each other.

This view is in line with the opinion of Sheikh Yusuf Al-Qardhawi that the illat of this issue is the spirit of mutual cooperation, not because of differences in tawhid. For al-Qardhawi, illat in matters of inheritance is an attitude that provides help. Although the difference in belief does not allow making it a legal reason about it. The teachings of Islam instructs its people to help Ahlu Dzimmah, so that Muslims get their inheritance, while Ahlu Dzimmah with his disbelief does not inherit from Muslims, so they do not get inheritance from Muslims. That is why he believes that the basis of inheritance is not

a tie of the heart. If this is used as an excuse, then the hypocrites will neither receive nor give inheritance. Yet the Sunnah states that they receive and give inheritance.

Abdullah Ahmad An-Na'imi argues that one of the discriminations in family law and sharia civil law is related to religious differences. Religious differences are a barrier to all inheritance, so that a Muslim will not be able to inherit from or inherit a non-Muslim. According to An-Na'imi, discrimination in the name of religion and gender under sharia violates the enforcement of human rights. Discrimination based on either gender or religion is morally repugnant and politically unacceptable today.

In line with An-Na'imi's opinion, Asghar Ali Engineer states that an Islamic society (Jami' at-Tauhid) will not recognize discrimination in any form and on any basis, such as race, ethnicity, religion and class. According to Asghar tawhid is not limited to impure monotheism, but extends to include a sociological dimension. It must be remembered that human unity should not be reduced to interfaith unity alone. According to Asghar, the spirit of the Qur'ān is more important than the opinions of medieval jurists and therefore all the books of shari'ah law as formulated by the early fuqaha' should be reviewed in depth. The centrality of justice must be emphasized.

The opinion of several scholars including Ibn Hazmin is the basis for the existence of a mandatory will. Although in his book Ibn Hazmin does not mention the term mandatory testament, but the opinion of Ibn Hzmin is very closely related to mandatory testament, because Ibn Hazmin clearly states that testament to parents and relatives who do not get inheritance is mandatory and if not implemented, Then the heirs are obliged to give away the property that should have been willed by the testator which means that according to Ibn Hazmin, the attitude of not making a will of someone who should be obliged to do, not just rewarded with sin, but there is a social action or muamalah that must be carried out by the heirs, namely giving away the property to the person who should receive the will.

According to KH. EM, etymologically, a will is "A message conveyed by a person who is about to die, which is usually related to property. Willing to die here means a situation that makes a person feel that his death is coming, so he feels the need to prepare various things in connection with the state of his property or relatives after he dies, such as a person who has been sentenced to death, or a person who is seriously ill so that he feels that his death is coming soon, or a state of age that is getting old accompanied by a feeling of weakening, or other circumstances that make a person feel that his death is coming soon. Wasiat can also mean "a message about something good, which must be carried out after a person dies or "a gift that is carried out after the death of the person who gave the will. This definition is not much different from the definition in the dictionary as stated above, but in this sense it is broader, which is not only about property, but can include everything that is good, such as a will so that children continue to live in harmony, so that kinship is maintained, so that worship is not abandoned, so that existing businesses are continued and so on.

The word wajibah etymologically is part of taklify law. Taklify law itself is a law that contains a legal category in terms of the strength of the demand. Al-Ghazhali mentioned that there are demands in which the demands themselves are firm and clear, not demands that can be interpreted otherwise.

Al-Ghazahali mentioned:

هو الخطاب الدال على طلب الفعل

An expression that shows a demand to do something definitively

Or something that must be done or must be done or must be done. Thus, etymologically, the obligatory will is something that must be done.

Yusuf Qardhawi points out that Imam lbn al-Qayyim mentioned the issue of a Muslim inheriting from a disbeliever in his book, Ahkam Ahl al-Dzimmah. He mentions several opinions and then justifies the opinion that a Muslim can inherit from a disbeliever. According to Yusuf Qardhawi, Ibn al-Qayyim took this opinion from his teacher, Ibn Taymiyyah. In his book, he states that regarding inheritance for Muslims from disbelievers, the salaf (classical) scholars differed in opinion. However, most of them were of the view that the Muslim does not inherit from the disbeliever, just as the disbeliever does not inherit from the Muslim. This is also the view of the Imams of the four madhhabs and their followers. However, there was one group of them who were of the view that a Muslim can inherit from a disbeliever, and not vice versa. This latter opinion was the opinion of Mu'adz ibn Jabal, Mu'awiyah ibn Abu Shufyan, Muhammad ibn al-Hanifiyah, Muhammad Ali ibn Husayn (Abu Ja'far al-Baqir), Sa'id ibn Musayyab, Masyruq ibn Aida', Abdullah ibn Mughafal, Yahya ibn Ya'mar, and Isaac ibn Rawahah.

According to Yusuf Qardhawi, this was also the view of Imam lbnu Taimiyah, among whom they said: 'We inherit from them (the disbelievers) and they do not, just as we can marry their women and they cannot marry our women'. As for those who forbid Muslims from inheriting from disbelievers, they rely on the hadeeth muttafaq 'alaih: "Muslims do not inherit from disbelievers, and disbelievers do not inherit from Muslims

According to them, this is the evidence that prohibits a Muslim from inheriting from hypocrites, zindics (atheists) and apostates. In this regard, Ibn Taymiyyah said: "It has been established according to the Sunnah of the Prophet (peace and blessings of Allaah be upon him) that he applied the ruling to the disbelievers and hypocrites. They inherit and we inherit from them. When Abdullah bin Ubay and other hypocrites died, the Prophet forbade visiting them and asking forgiveness for them. However, they still inherit from Muslims and inherit from Muslims. As Abdullah bin Ubay bequeathed his property to his son. The Prophet never took any of the hypocrites' inheritance and never declared it as fa'i property (booty from the disbelievers without warfare), but rather, gave it to his heirs.

According to Ibn Taymiyyah, what supports the opinion that Muslims inherit from disbelievers and not vice versa, is because inheritance is based on helping. Meanwhile, the barrier to inheritance is the act of attacking (fighting Muslims).

Some of these opinions provide an understanding that the basis of the granting of inheritance is not on the similarity of beliefs or the same religion, but rather on peace and help and provide an understanding that the kafir referred to in the prophet's hadith that Muslims do not inherit from kafirs and vice versa are kafir harbi, namely kafirs who are hostile to Islam so that they must be influenced. The next understanding is that the difference in religion with the heir and not hostile to each other does not necessarily eliminate the right of inheritance.

Yusuf Qardhawi argues that non-Muslims who coexist peacefully with Muslims cannot be categorized as kafir harbi or kafirs who must be fought. Implicitly the Supreme Court wants to strengthen the argument of its decision and at the same time provide an argument for its opinion which in essence has given inheritance to non-Muslim heirs, it is because based on the hadith of the Prophet SAW which is agreed upon by Bukhari and Muslim and other hadith scholars that disbelievers do not inherit Muslims. Then against this proposition Yusuf Qardhawi and also Ibn Taymiyah and Ibn Qoyyim al-Jauziyah argued that the definition of kafir in the verse is kafir harbi or kafir who are hostile to Islam. Thus, people of different religions who are not hostile to Islam or who live in peace with the heir even though they have different beliefs are still entitled to a share of the heir's property. In the decision, the wife who is not a Muslim is given a mandatory will of ¼ (one quarter) of the property.

Yusuf Qardhawi states that heirs of different religions can obtain inheritance with mandatory wills on the grounds of obtaining benefits and softening their hearts so that they are close to Islam and are expected to convert to Islam. This is done for the sake of humanity and protect the rights of heirs of different religions from the heir's property so that Islamic law answers the challenges of changing times and with that intention the benefit of preserving the soul and offspring, as well as property can be upheld, This also shows that Islam is rahmatan lil'alamin.

The theory applied by Yusuf Al-Qaradhawi is mafsadat and mashlahat to consider the problem of different religions, in the current situation if someone dies in a non-Muslim state and then leaves a Muslim child, Yusuf Al-Qaradhawi argues that if the property is not inherited by his Muslim child, it will fall to the non-Muslim party which is feared to bring a lot of harm, whereas if the inheritance falls to his Muslim child who already knows he must submit and obey sharia law and with all the consequences. If in the hadith "a non-Muslim cannot inherit the property of a disbeliever, and a disbeliever cannot inherit the property of a disbeliever". Yusuf Al-Qardhawi argues that the infidels referred to in the hadith of the prohibition of Muslims inheriting the property of infidels and infidels inheriting the property of Muslims, are infidels harbi who fight against Islam.

With Yusuf Qardhawi's thinking, the legal istinbath applied by the Supreme Court in deciding the granting of inheritance property to heirs of different religions, that the consideration of benefit takes precedence over harm, that the heirs have long accompanied the Muslim heirs, and heirs of different religions are not infidels who must be fought, heirs of different religions must get protection for their civil rights given the existence of mandatory wills.

Regarding the existence of this will, fiqh scholars define a will as a voluntary transfer of property from a person to another party that takes effect after the person dies, whether the property is in the form of material or in the form of benefits. This will is usually intended for the heirs or relatives who do not

get a share of the inheritance from the person who died, because of a shara' obstacle. While the existence of a mandatory will is regulated by Article 209 paragraph (1) and (2) of the Compilation of Islamic Law which has stated explicitly that against adoptive parents who do not receive a will to be given a mandatory will as much as 1/3 of the inheritance of their adopted children and against adopted children who do not receive a will to be given a mandatory will as much as 1/3 of the inheritance of their adoptive parents. But in the development of the law there are dynamics of the use and amount of the distribution of mandatory wills in Indonesia. The development of these dynamics is not far from the intervention of the judge in his decision, so, the obligatory will is an action taken by the ruler or judge as a state apparatus to force or give a testamentary decision for a person who has died, which is given to a certain person in certain circumstances as well.

For those people who do not get this exact number (al-qarabat), Islam has recommended, and even requires the al-muwarrits to bequeath part of their property (mandatory will) to al-qarabat. Or in other forms such as grants given to them before al-muwarrits died. By al-qarabat is meant here in the sense of biological children of different religions, or biological fathers and mothers who also happen to have different religions. This position of al-qarabat in Islamic conception they do not get the right of inheritance from al-muwarrits, because normatively textualist hadith of the Prophet s.a.w. reported by muttafaq alaih from Usamah bin Zaid confirms that disbelievers do not inherit from Muslims, and (vice versa) Muslims do not inherit from disbelievers.

Islamic inheritance law contains various principles that in some cases apply to other inheritance laws. Islamic inheritance law has its own style and characteristics, and is extracted from the texts of the Qur'an and the Prophet's hadith. Of the five principles that are related to the transfer of property from the testator (al-muwarrits) to the heirs (al-warits), namely the principle of ijbari, bilateral principle, individual principle. Fairness in its implementation does not necessarily mean the same in getting a share of inheritance rights. Justice in this context is associated with the level of utility and need. In general, the share of male and female recipients of inheritance rights is not the same amount, because men have heavy obligations and responsibilities for themselves and their families (al-Nisa': 34). While women all the needs and living expenses are the responsibility of men, not burdened with the obligation to provide maintenance, and when married by a man, he will get a dowry. With this understanding, there is a substantial difference in the inheritance rights received by heirs of different genders and levels that have been determined by Allah. And at the same time a picture of justice in the concept of Islam which means not equal.

Among the majority of conventional scholars (fuqaha and mufassirin) have agreed that due to different religions can prevent inheritance rights (mawani' al-irts). However, then they disagree on the issue of when disbelievers cannot inherit the inheritance (al-mauruts) of Muslims, whether Muslims can inherit the inheritance of disbelievers if there are causes that allow them to inherit, and whether other religions other than Islam such as Jews and Christians who are still in the same family of Allah's religion can inherit from each other.

Imam Abu Hanifah, Imam Malik, Imam Shafi'i, and their followers stated that it is not permissible for a disbeliever to inherit the tirkah of a Muslim, or vice versa, while Imam Ahmad bin Hanbal argued that a disbeliever can inherit the tirkah of a Muslim, and vice versa due to al-wala', those who are of different religions but still in the same family of Allah's religion, non-Muslim wives, and non-Muslim relatives who converted to Islam before the tirkah was distributed.

Mu'az b. Jabal, Mu'awiyah b. Abi Sofyan, Sa'id b. al-Musayyab, Masruq, al-Nakha'iy, Muhammad b. al-Hanafiyyah, Muhammad b. 'Ali b. al-Husayn, b. 'Ali b. Abi Talib, and Ishaq b. Ruwaihah were of the opinion that a Muslim can inherit from a disbeliever, but not vice versa. Their opinion is based on a hadith reported by Abu Dawud and authenticated by al-Hakim from Mu'az who said: I heard the Prophet s.a.w. say: Islam is more and not less. Therefore, the Muslim can acquire rights (inheritance) that the disbeliever does not acquire. Secondly, based on qiyas, they say that it is permissible for a Muslim to marry a woman of the Book but not vice versa, and it is also permissible for a Muslim to take the ghanimah of a disbeliever. If these two things are permissible, then deductively analogically it means that it is also permissible for Muslims to inherit the wealth of the disbelievers.

Among the Maliki school of thought, there are two opinions: Firstly, they say that Christians cannot inherit the wealth of Jews, and the wealth of people from religions other than Christianity and Judaism, and the reverse is also not true. But the Magi can inherit the property of the Watsani, Burhami, and Shabi'i and the like. Secondly, those who hold the same view as the Hanbali school.

Based on some of these views, what is actually prohibited is giving inherited property while giving wills in the form of property is permissible, while compulsory wills are permitted because of the permission of the testator with strong evidence and witnesses, so if the compulsory will is taken from the inheritance for the heirs of different religions or adopted children and adoptive parents. some of these traditions show that the law of wills to heirs is prohibited and invalid unless there is permission or consent from other heirs. If in reality the testator (al-muwarrits) until he dies does not make a will, then by the heirs (al-waritsun) it is deemed necessary and they agree to it in an effort to realize a sense of justice, especially to heirs of different religions, then it can be implemented through compulsory probate. Because this is done as an alternative to giving his rights, so that there is no will for the heirs except those of different religions with the testator.

Making a will specifically for relatives who are prevented from obtaining inheritance rights due to different religions is in line with the views of Ibn Hazm al-Zhahiri who argues that wills are obligatory (al-fardh) for every Muslim, especially for relatives who are prevented from obtaining inheritance rights. Furthermore, Ibn Hazm said that if no will is made for relatives who are not entitled to inheritance, then the judge must act as muwarrits, namely giving part of the inheritance property (al-tirkah) to relatives who are prevented from getting their inheritance rights, as a mandatory will for them.

The provision of the heir's inheritance to non-religious heirs through compulsory probate seems to contradict al-kulliyat al-khamsah or al-dharuriyat al-khamsah, especially the maintenance of religion and the maintenance of property. However, this is not the case when analyzed more deeply. Consideration of the granting of compulsory wills to heirs of different religions is actually based on various rationales. Among other things, the rationale that Surah Al-Baqarah verse 180 for certain circumstances mansukh, namely for parents and relatives who receive inheritance, but still muhkam for certain circumstances, namely for heirs who do not receive inheritance, such as because it is hindered from becoming heirs, for example because of differences in religion, or because of mahjub by other heirs, such as when grandchildren with children or siblings with biological children, On that basis Ibn Hazmin mentioned the need for heirs to give away the inheritance that was not willed to those who deserve it. Other thoughts such as those put forward by Yusuf Qardhawi that, according to Ibn Taymiyyah, illat transfer of property on inheritance is not the similarity of faith, but the spirit of helping, otherwise the barrier to inheritance is the attitude of attacking, also as stated by Yusuf Qardhawi that who may not inherit each other between Muslims and infidels is kafir harbi.

In addition, the granting of mandatory wills to heirs of different religions is also not contrary to al-kulliyat al-khamsah or al-dharuriyat al-khamsah. That is because the granting of mandatory wills to heirs of different religions is not necessarily seen as a disregard for the maintenance of religion, it is apart from as stated by Yusuf Qardhawi that the illat of the transfer of inheritance property is not based solely on belief, but the essence is to help, also by reorienting maqashid al- sharia from a classical perspective to a contemporary perspective as expressed by Yasser Auda. According to Yasser Auda as stated by Andi Triyawan, the definition of Hifdzu al-diin from the classical meaning of "protecting religion", shifts its meaning with contemporary meaning to "provide freedom and respect for belief", (here it appears that the expansion of the meaning of hifdzu al-diin is because in principle maintaining religion should also not shift from the freedom to provide religious choices for someone - pen), as well as hifdzu al-maal from the classical meaning of "protecting property", with contemporary meaning its meaning shifts to "economic development and equitable distribution of welfare levels".

The reason Yasser Auda sees the need to reorient the meaning of Sharia is because Islamic Law has humanist, responsive, progressive values and values justice, productivity, development of human resources and natural resources, spirituality, cleanliness, unity, compassion and democracy. Here it appears that Yasser Auda wants an understanding of maqashid al-syari'ah to be a universal understanding that includes all the universal values of Islamic Law, such as although there is a law of qishash on murder, it is not contrary to human values, because the law of qishash itself seeks to uphold the right to life of a person, although there is a law of cutting on theft, but does not take away a person's right to live with perfect limbs, because the perfection of limbs is a gift from Allah that is peerless, Likewise, the law of stoning on adultery muhshan must be placed in such a way because in adultery muhshan the goal is not stoning, but efforts to maintain the sanctity of offspring. Rasululllah SAW himself did not prioritize the implementation of stoning; it was evident from the emphasis on recognition as proof, which is when the stoning is the target. of course, all the evidence becomes the same in the case of adultery, but the Prophet prioritizes recognition as evidence. So, the existing Islamic law,

whether it is shari'a, fiqh, or fatwa initiated by previous scholars, can be developed by the context of human needs in this era. As long as the development of Islamic law is still based on the main sources of Islamic law, namely the Qur'an and hadith, and still upholds maqashid al-syari'ah as the philosophy of Islamic law.

The reorientation of classical maqashid al-syari'ah towards contemporary maqashid al-syari'ah, according to Jasser Auda, is a change from classical maqashid al-syari'ah, which is "protection" (protection) and "preservation" (preservation), towards maqashid al-syari'ah, which is "development" (development) and "right" (freedom). Thus, the benefit that is used as a reason by the Supreme Court in granting compulsory probate to non-religious heirs is a benefit that still rests on maqashid al-syari'ah under current social conditions. The social conditions recorded in several Supreme Court decisions include the harmony created between the testator and the heirs of different religions, namely, even though they have different beliefs, the testator and the heirs live side by side in harmony, helping each other and respecting each other even though they have different beliefs. Changes in social conditions and realities that live in society can change the implementation of legal norms as legal rules put forward by Al-Zarqa:

لاينكر تغير الأحكام بتغير الأزما والأحوال

Inevitably, changes in the law are caused by changes in times and conditions.

This rule is the development of the rule proposed by Ibn Qoyyim Al-Jauziyah which reads:

تغير الفتوى بحسب تغير الأزمنة والأمكنة والأحوال والنيات والعوائد

Changes in fatwas occur due to changes in times, places, differences in conditions, intentions and circumstances.

Jasser Auda views that the ḍarūriyyāt, hājiyyāt and tahsiniyyāt levels are interrelated and cannot be separated. In this case, the hājiyyāt and tahsiniyyāt aspects should not be left out. There is no prioritization between basic human needs because each synergizes to form a system. In this issue, the mandatory will is applied to create a harmonious family so that it is necessary to achieve this goal to build a good relationship between family members. A good relationship will be built with the equality (egalitarian principle) of rights and obligations among family members. The equality of rights and obligations between heirs is a tahsiniyāt aspect as a means of building good relationships between family members as a hājiyyāt aspect so that these relationships can achieve the goal of harmony in the family as a ḍarūriyyāt aspect.

The benefits to be realized and achieved by Islamic law are universal, true benefits, worldly and ukhrawi, physical, mental, material, spiritual, individual mashlahat as well as public mashlahat, mashlahat today and tomorrow. All are protected and well served, without distinguishing between types and groups, social status, regions and origins, weak or strong, rulers or people.

Apart from the mashlahah mursalah method, the granting of mandatory wills to non-religious heirs is actually also inseparable from an understanding of the Qur'anic arguments that talk about wasiyat, including Surat Al-Baqarah verse 180 and al-Nisa verse 11. Surat al-Nisa, surah 4: 11 states:

يُوصِيكُمُ ٱللَّهُ فِيٓ أَوۡلَٰدِكُمۡۖ لِلذَّكَرِ مِثۡلُ حَظِّ ٱلۡأُنثَيَيۡنِ

Allah has prescribed for you the division of inheritance for your children. Namely: the share of a son is equal to the share of two daughters.

In fiqh, the discussion of wills always coexists with the discussion of inheritance. Sometimes inheritance is discussed first and sometimes vice versa. The object of a will is property, not an order to perform an action that does not have the form of property. For this reason, the implementation of the will is related to the inherited property and is issued first, before the distribution of the inheritance.

In terms of fiqh experts, a will is a gift of property that is stipulated in time (the transfer of ownership) after the grantor of the will dies, whether it is in the form of an object or the benefits of an object. Thus, it can be understood that a will must contain the elements of (1) al-shighah or a statement of will, (2) al-mushy or the person who wills, who performs ijab in the will by mentioning the material of the will and the object of the will, (3) musha lahu or the person who performs qabul in the will as stated by the mushi, and (4) al-musha bih or the object in the form of property or property benefits.

Based on the statement that the will will be effective after the grantor dies, the will contract is a valid contract if the elements are fulfilled, but it cannot be said to be effective as long as the grantor has not died. This means that the testator can revoke the will if he or she wishes, as long as he or she is still alive, because a will is a contract that does not take effect immediately.

The object of the will is the object or benefit of the object, not others, although there are scholars who make the object of the will in general, as is often the case with a person who makes a will to his son, which says that if I die, you must marry my niece. This is not in line with the Hadīth, which limits a will to no more than one-third of one's property. However, if the object of the will is something other than property, then it is likely that the scholars are based on the word "khair", which means something good, not something forbidden or immoral. However, if it means property, then the scholars interpret the word "khair" to mean property (mal).

Among the Muslim community, the object of a will does not have to be an object, but it can also be a good deed, and this applies among the scholars. The law of bequest for Muslims cannot be separated from one of the objectives of waqf, namely 1) bequest is one of the charities done by a person to get closer to Allah (qurbah) at the end of his life, so that his goodness increases or to cover the shortcomings of the charity that has been left behind, and 2) bequest as a good deed of a person to others, as well as fostering compassion between people.

The scholars differ on the ruling on making a will for someone who is close to death. There are three opinions on this matter. Firstly, it is obligatory for the one who has wealth, whether it is little or much, as is the view of al-Zuhry and Abu Mihlaz. This is in line with the opinion of Ibn Hazm, who stated that it is obligatory according to the reports he received from Ibn 'Umar, Talhah, al-Zubayr, Abdullah ibn Abi Aufa, Talhah ibn Mutarrif, Thawus, and al-Sha'by. They argued with the text of the verse in QS. al-Baqarah [2]: 180.

Secondly, it is obligatory only for parents and relatives who do not inherit from the deceased, according to Masruq, Iyas, Qatadah, Ibn Jarir and al-Zuhry. Thirdly, bequest is not obligatory for the one who leaves no property, as in the first opinion, and it is not obligatory for the parents and relatives who do not receive the inheritance, as in the second opinion. Rather, the ruling on a will depends on the circumstances; it may be obligatory, Sunnah, Haram, Makrooh, or even permissible. But, the prophet's explanation that those who receive inheritance cannot receive a share in the will." The Prophet stated in the following hadith:

قوله صلى الله عليه وسلم- فيما يرويه أصحاب السنن وغيرهم عن عمرو بن خارجة-: "إن الله قد أعطى كل ذي حق حقه، فلا وصية لوارث"

With the inheritance verse and the Prophet's words, some commentators argue that the verse about the obligation of the will, especially for both parents, is erased. There are three opinions in understanding the abolition of the will verse in QS. Al-Baqarah, chapter 2: 180-181:

Firstly, Ibn Abbas, Hasan al-Bashri, Thawus, Masruq and others were of the view that the will for parents and relatives who are heirs is nullified. But it is still obligatory for relatives who are not heirs. Ibn Jarir chose this view. Some say that in current terminology, this is not called naskh (abrogation), but takhshîsh (specialization). The verse on inheritance only removes some of the legal provisions from the generality of the verse on wills, because the word al-aqrabîn is more general than the beneficiaries and non-heirs.

Secondly, the view of Ibn Umar, Abu Musa Al-Ash'ari, Sa'id ibn Al-Musayyab and others that the verse on wills is entirely abrogated by the verse on inheritance in the matter of the rights of beneficiaries or non-beneficiaries. The argument is the following hadith:

ماالشافعي عن عمران بن حصين رضي الله عنه أن رسول الله صلى الله عليه وسلم "حكم في ستة مملوكين كانوا لرجل لا مال له غيرهم، فأعتقهم عند الموت، فجزأهم النبي صلى الله عليه وسلم ثلاثة أجزاء، فأعتق اثنين، وأرق أربعة"

Narrated by al-Shafi'i from 'Imran ibn Husayn that the Prophet (peace be upon him) ruled on the case of six slaves owned by a man who had no property other than them. Then the man freed them before his death. So the Prophet paid him three times and freed two slaves and owned the remaining four slaves.

If the will is obligatory for relatives, then it would be void for non-relatives. Then why did the Prophet pay back for the two slaves, when they had been willed to be free by the man. Moreover, they were not relatives of the man.

Thirdly, Imam Al-Razi relates that Abu Muslim Al-Isfahani was of the opinion that the verse on bequests is muhkamat and cannot be erased and is an explanation for the verse on inheritance. According to his interpretation, it is obligatory upon you as Allah has enjoined to give inheritance to parents and relatives as in the verse of inheritance (QS. Al-Nisa [4]: 11). There is no contradiction between the permanence of bequests to relatives and inheritance. Wills are given at the time of death

while inheritance is a gift from Allah. The beneficiary can combine (al-jam') the will and inheritance in both verses.

This third opinion is also held by Muhammad Abduh. He states that the hadith lâ washiyyata li wâritsin does not abolish but rather reinforces the provision of inheritance with the implementation of the previous will. Moreover, the position of the hadith is ahad, it is impossible to abolish a verse whose status is definitely mutawatir. Abduh also added, there is no indication that the verse of inheritance was revealed after the verse of the will plus the context of the verse also denies the abolition. Abduh seems to agree with the merging of meanings as intended by Abu Muslim.

What is the size of the wealth in a will? There are two types of disagreement here: the amount of wealth owned by the person making the will and the amount of wealth to be bequeathed. With regard to the former, the scholars differed as to whether the testament is restricted to a large amount of wealth, or whether it is also restricted to a small amount of wealth. The first view is that there is no distinction between wealth, whether it is small or large, and all of it can be bequeathed. This is the view of al-Zuhri, with which al-Sayis agrees. The argument is that Allah requires a will if what is left behind is good, including a small amount of wealth. A good thing is something that is beneficial, and the same applies to a small amount of wealth; if it is also beneficial then it is good. This opinion is based on the absolute meaning of the word khairan, which means wealth, whether it is little or much, and there is no other specification. This opinion is also supported by the argument that Allah has stipulated some rulings on inheritance for wealth, whether little or much, as in QS. Al-Nisa' [4]: 7. If inheritance is obligatory, then bequests are also obligatory.

The second opinion says that what is meant by the word al-khair in this verse is specific to large amounts of wealth. The argument is that if a person leaves behind one dirham, then it is not said that he leaves behind goodness. The limit of wealth that must be bequeathed is 800 dirhams according to the opinion of Ibn Abbas, 1000 dirhams according to the opinion of Qotadah, 1500 dirhams according to the opinion of An-Nakh'i.

The scholars are agreed that if a person dies and has heirs, it is not permissible for him to bequeath all of his wealth. The majority of scholars are of the opinion that it is not permissible for a person to bequeath more than one-third of his total assets. This is because the Prophet said:

،قوله صلى الله عليه وسلم لسعد الذي أراد أن يوصي: "الثلث والثلث كثير" أيضا: "إن الله أعطاكم ثلث أموالكم عند وفاتكم زيادة لكم في أعمالكم".

But the Hanafi Mazhab allows bequeathing the entire property, if the testator does not leave any heirs. Because the maximum limitation of one-third in the will is done in order to encourage the heirs to have enough property as the Prophet said in the mutawatir hadith:

"قال عليه الصلاة والسلام في الحديث المتواتر: "إنك أن تذر ورثتك أغنياء خير من أن تذرهم عالة يتكفون الناس

"Indeed you should leave your heirs with enough wealth rather than leaving them to beg for money".

Some scholars have ruled that it is permissible to leave more than one-third or to leave a bequest for the heirs, if the inheritance has been fulfilled. This is because the prohibition of more than one-third and giving a bequest to the heirs is due to the right of the heirs. If the right of inheritance has been fulfilled, then a bequest of that size is absolutely permissible. The position of a bequest of that size is like that of a bequest for them. They use the following argument:

روى الدارقطني عن ابن عباس أن رسول الله صلى الله عليه وسلم قال: "لا تجوز الوصية لوارث، إلا أن يشاء " أيضا عن عمرو بن خارجة أنه صلى الله عليه وسلم قال: لا وصية لوارث إلا أن تجيز الورثة".

Meanwhile, according to Muhammad Abduh, the size of a lot of wealth is certainly relative, so that the scholars differ in opinion in setting the standard of that much wealth. He stated, that in determining the size is very dependent on the circumstances and good intentions of a person, taking into account the circumstances of the times, personality and household environment. In an arid and poor country, if a person dies leaving 70 dinars, for example, that would be considered leaving "a lot of wealth". However, for a King or Vizier, of course, a different measure is used as a benchmark.

CONCLUSION

The opinion of the scholars of the Islamic Association of Subang and Sumedang understands that sociologically the determination of the share of inheritance for heirs of different religions varies because it depends on the contents of the testator's will and the agreement of Muslim heirs. Philosophically, the designation of heirs is not the true meaning of heirs, but because there is a proposition of the Qur'an and

al-Hadith which states "Muslims do not bequeath to infidels" then it is the heirs of different religions, who receive by way of will with the principle of ikhtiyari (not the principle of ijbari as in the inheritance system), which attempts to give their rights as part of worship.

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