E-ISSN: 2962-2816 | P-ISSN: 2747-1985
JOURNAL OF LAW, POLITIC AND HUMANITIES (JLPH)
https://dinastires.org/JLPH dinasti.info@gmail.com +62 811 7404 455
DOI: https://doi.org/10.38035/jlph.v4i4
Received: 30 May 2024, **Revised:** 17 June 2024, **Publish:** 21 June 2024

The Distribution of Inheritance Rights To Heirs of Different Religions: Study of Court Decision Number 0554/PDT.P/2023/PA.SBY

Icha Choerunnisa[1], Tjempaka[2]
[1] Universitas Tarumanagara, Jakarta, Indonesia, ichachoerunnisa181141@gmail.com
[2] Universitas Tarumanagara, Jakarta, Indonesia, not.tjempaka@gmail.com

Corresponding Author: Indonesia, ichachoerunnisa181141@gmail.com

Abstract: In Indonesia's multicultural society, inheritance issues frequently arise where family members may hold different religious beliefs. These differences often trigger social issues, including inheritance disputes that require legal handling. Indonesia, predominantly Muslim, has regulations such as the Compilation of Islamic Law that govern inheritance. Inheritance issues are particularly complex in cases of interfaith marriages. In the Compilation of Islamic Law, religious differences can pose barriers to inheritance, according to the majority of scholars. However, courts have adapted, based on jurisprudence No. 51K/AG/1999, regarding compulsory wills, allowing non-Muslim heirs to receive inheritance rights. The research focuses on Decision Number 0554/Pdt.P/2023/PA.Sby, which addresses a multicultural inheritance dispute, reflecting challenges in applying Islamic inheritance law in a multireligious context. This highlights the need for flexible and empathetic interpretation of the law to achieve social justice. This study employs a normative juridical method and finds that the analysis of Court Decision Number 0554/Pdt.P/2023/PA.Sby reveals that although Islamic law prohibits heirs of different religions from inheriting, courts can use ijtihad (independent reasoning) and consider fairness and societal values. In this context, compulsory wills can be a solution to grant inheritance to non-Muslim heirs. This decision reflects the legal flexibility in addressing religious diversity in Indonesia and underscores the importance of protecting the rights of heirs fairly.

Keyword: heirs; interfaith; inheritance rights

INTRODUCTION

The issue of inheritance is often an issue that arises in people's lives. It cannot be denied that Indonesian society has extraordinary diversity. Indonesian society is divided not only based on tribe, nation, and ethnicity, but also religious beliefs. In a family, religious differences are a phenomenon that is quite rare, but not impossible. Family members may have different religious beliefs. These differences often lead to social problems, such as inheritance rights, which require legal resolution to prevent conflicts between family members (Daud, 2021).

The majority of Indonesians follow the religion of Islam. Based on information from the Ministry of Home Affairs, there were 237.53 million Muslims in Indonesia as of December 31, 2021, which accounted for 86.9% of Indonesia's overall population of 273.32 million people. In second place, there are 20.45 million Christians, and 8.43 million Catholics. Furthermore, the number of Hindus and Buddhists in Indonesia are 4.67 million (1.71%) and 2.03 million (0.74%) respectively. Meanwhile, Confucianism is followed by 73,635 people and other faiths are followed by 126,515 people, representing only 0.05% of the total Indonesian population (Shalehah, 2020).

In Indonesia, the regulation on Islamic inheritance is explained in Book II of the Compilation of Islamic Law, covering several aspects such as (Faqih, 2017): a) General Rules; b) Heirs; c) Division of Inheritance; d) Aul and Rad; e) Wasiat; and f) Hibah. Inheritance issues arising from marriage are often complicated, especially when they involve couples of different religions. In the context of Indonesia's multireligious society, interfaith marriages are not uncommon.

The rules regarding inheritance rights between heirs of different religions are not clearly explained. Article 173 of the Compilation of Islamic Law (KHI) does not explicitly state that religious differences are an obstacle to inheritance. The formulation of the article through paragraphs (b) and (c) emphasizes that both the testator and the heir must embrace Islam. From an in-depth examination of this article, it appears that heirs of a different religion from the testator have no right to inheritance. This opinion is reinforced by the majority of scholars' interpretation of a hadith, which states that Muslims and non-Muslims cannot inherit from each other.

Conflicts in the division of inheritance often arise as a result of these legal events (Suma, 2005). Disputes can occur not only because of dissatisfaction from the heirs regarding the amount of inheritance they receive, but also with regard to determining who is or is not entitled to receive the inheritance. In Indonesia, which has a highly diverse society, inheritance disputes caused by differences in belief or religion often occur. This is mainly because of the doctrine based on the nash and the opinion of the majority of scholars which states that heirs who are of a different religion from Muslims cannot inherit from Non-Muslim heirs (obstructed or mahjub).

Some individuals believe that the prohibition on interfaith inheritance is a form of Islamic discrimination against other faiths (Apriyudi, 2018). This prohibition is considered to be against the concept of Islam as a mercy for all nature. However, non-Muslim parties need not worry about losing their inheritance rights from the deceased's estate, thanks to a Supreme Court decision in 1995. Since then, the Supreme Court has consistently applied the principle of mandatory wills. In fact, judges at the first and second instance Religious Courts often refer to Supreme Court decision number 331/K/AG/2018 as a significant reference (Daud, 2021).

If a Muslim dies, his or her wealth will be divided among the heirs in accordance with the principles of Islamic law. Based on Article 171 point (a) of the Compilation of Islamic Law, the law of inheritance regulates the rights to the testator's wealth, establishes the individuals entitled as heirs, and determines the portion of their inheritance. Furthermore, according to Article 171 letter c of the KHI, heirs are defined as individuals who have a blood or marriage relationship with the testator, follow the Islamic religion, and are not legally restricted from becoming heirs. Therefore, heirs are entitled to receive a share of the inheritance on the basis of various factors, including blood relationship, marriage, and religious similarity.

In this study, the researcher focuses on Decision Number 0554/Pdt.P/2023/PA.Sby outlining the inheritance dispute case between the plaintiffs, recorded in Indonesian legal history as one of the important examples in the handling of inheritance according to Islamic inheritance law, especially in a multicultural and multi-religious context. The case began with

the marriage between Pamudji alias Pamuji Winarya bin K.S. Sugondo and Srimurniwati alias Sri Murniwati binti Tah Tjong Gwan, which took place in 1968 in Kedungpring, Lamongan. This marriage gave birth to six children, who would later become the center of the heir's petition after their parents passed away.

Srimurniwati died in 1996 and Pamudji followed in 2016, leaving behind a substantial estate, which included land and buildings as well as savings and some other assets. However, the assets were still registered under Pamudji's name, creating the need for proper legal arrangements so that the assets could be utilized by his heirs. Interestingly, there are cultural and religious dynamics here as the four applicants, namely Nanang Sumarsono, Ruly Nurhayanto, Indra Gunawan Sugiarto, and Happy Pujiastuti, have different religious backgrounds, where only Nanang is still a Muslim while the others have converted to Christianity.

On February 07, 2023, Pamudji's children filed a formal petition with the Surabaya Religious Court to be established as legal heirs. They were supported by strong evidence including death certificates, their parents' marriage book, and personal identity documents that reinforced their status as the biological children of the deceased Pamudji. In this application, they argued that their desire to administer and utilize the estate through transfer of names, sale and purchase, and other legal actions was to ensure that the estate could continue to provide economic benefits to the family.

The Surabaya Religious Court, in its hearing, faced the challenge of considering the multicultural and multi-religious aspects of establishing a strict Islamic inheritance law. However, after considering the evidence and witness testimonies presented, and taking into account the uniqueness of the case, the court decided to grant the petitioners' request. In its decision, the court established Pamudji's four children as legitimate heirs, with a special note on the fact that religious differences do not preclude their right to inherit.

This case highlights the non-uniformity of interpretation and application of Islamic inheritance law in the courts, in dealing with heirs who convert to Christianity, with judges recognizing their right to inherit through compulsory probate based on strong blood and marital relations with the testator. This indicates a dilemma between adherence to the principles of Islamic law and adapting to social conditions and the needs of justice. Furthermore, in these cases, the granting of mandatory wills to non-Muslim heirs was based not on their direct status as heirs, but on their religiously precluded position. This demonstrates the courts' efforts to bridge the gap between the strict provisions of Islamic law and the social realities that require fair and inclusive solutions, which accommodate the diversity of family relationships and religions in the context of inheritance.

Taken together, these cases reflect the challenges faced in applying the principles of Islamic inheritance law in multicultural and multireligious contexts, demonstrating the courts' efforts to find a balance between legal custom and the need for broader social justice. It opens up insights into the importance of flexible and empathic interpretation in inheritance law in order to achieve a fair solution for all parties involved. In this regard, the application of different laws in cases of inheritance distribution to heirs of different religions results in the loss of the principle of legal certainty (Yanti & Mulyadi, 2016). This study aims to examine the practice of inheritance distribution to different religious heirs, based on the analysis of Court Decision Number 0554/Pdt.P/2023/PA.Sby.

From the background discussion above, the problem formulations presented are as follows: First, how is the distribution of inheritance to heirs who have different religions according to Islamic Inheritance Law? Second, what is the legal impact for non-Muslim heirs who receive a share of inheritance from a Muslim heir in accordance with Court Decision Number 0554/Pdt.P/2023/PA.Sby? These two questions are crucial to study in order to better understand the implementation of Islamic Inheritance Law in situations where the testator and

heirs are of different religions, as well as to understand the legal consequences of court decisions in related cases.

METHOD

This research was conducted using the normative juridical method, in which researchers collect and examine various rules, principles, and legal doctrines to find solutions to the legal problems at hand (Marzuki, 2014). In this research, the author applies several approaches, such as a statutory approach and a conceptual approach. The data used is secondary, and data analysis is carried out with descriptive-qualitative methods. The research is descriptive analytical, which aims to present data in detail in order to provide a thorough understanding of a legal event in society, which is then analyzed in accordance with applicable norms.

RESULTS AND DISCUSSION

Regulation of Islamic Inheritance Law in the Context of Religious Difference

Religious differences in a pluralistic society are a necessity that allows inclusive interactions between religious believers (Casram, 2016). In the context of Islamic law, religious differences have fundamental implications, particularly in relation to inheritance rights. Islamic legal norms stipulate that religious differences between the testator and the heir preclude inheritance rights; a Muslim is not entitled to inherit from a non-Muslim, and vice versa. This is not explicitly mentioned in the Qur'an, but the Hadith of the Prophet Muhammad narrated by Imam Bukhari and Muslim expressly states the impossibility of inheritance between adherents of different religions. The implication of this religious difference results in a restriction in the division of inheritance, which is recognized and reinforced through the teachings and traditions of hadiths.

In the context of conventional Islamic fiqh, the view held by the majority of scholars from the four madhhabs - namely Imam Abu Hanifah, Imam Malik, Imam Ash-Shafi'i, and Imam Ahmad bin Hanbal - is that there is no possibility for a Muslim to inherit property from a non-Muslim, and vice versa (Al Juzairi, t.t.). The criterion to determine whether someone can receive inheritance or not is the religious status of the heir at the time of the death of the testator. If the heir is non-Muslim at the time of the Muslim testator's death, then he is not entitled to receive inheritance. Furthermore, the conversion of the heir's religion to Islam after the death of the Muslim testator also does not change their status as hindered heirs. In addition, this research on inheritance also considers the correlation with other legal concepts such as grants and wills, which are often closely intertwined in the social practices of the community.

The law of inheritance in Islam, known as "Faraid," is the plural form of the word faridah which derives from fardu, meaning decree or gift. The main sources of Islamic inheritance law include the Qur'an, Hadith, Ijma, and Ijtihad of the scholars, which apply to Muslims in Indonesia as referenced in the Compilation of Islamic Law (Limbanadi, 2014). In Indonesia, Muslims follow this rule of inheritance law in succession, where it is binding and begins with determining heirs by blood (nasabiyah) or marriage (sababiyah). Not all individuals who fulfill these criteria will be entitled to inherit, depending on certain conditions such as the lives of the testator and the beneficiary at the time of the inheritance transaction, as well as the absence of legal impediments. Furthermore, Islamic inheritance law also stipulates various barriers that can prevent heirs from acquiring property, such as slavery, murder, difference of state, and difference of religion. Thus, the determination of the inheritance rights of the heirs is based on the relationship of nasabiyah, sababiyah, and validity in the marriage group of the heirs.

The concepts in the laws of grants, wills, and inheritance are often compared because of the similarities in transferring assets to other parties, although they have differences in terms of the maker, time of implementation, and scale (Imron, 2015). Both grants and wills are

agreements made by the grantor or testator to transfer assets to another party during their lifetime (Dalimunthe, 2020). Meanwhile, in inheritance law, unlike grants and wills, the inheritance of property does not depend on individual wishes but is guided by the mandatory provisions of Islamic law. Grants take effect as soon as they are declared by the grantor, without the need to wait for death. A will will only take effect after the death of the person who made it. Meanwhile, the transfer of property in inheritance law is active since there is certainty about the person's death.

The concept of compulsory bequest became widely recognized in Egypt after the reform of the inheritance law in 1946. According to the Encyclopedia of Islamic Law, compulsory bequest is a will intended for heirs or relatives who do not get a share of inheritance due to Shara' constraints (Setyawan, 2023). In practical terms, compulsory probate is defined as an action taken by the ruler or judge who grants a decree on the will to a deceased individual, implemented in certain situations and not by the will of the testator, but rather by the judge's decision (Nugraheni dkk., 2010).

Surah Al-Baqarah verse 180 largely emphasizes the importance of making a will for the pious when death approaches, especially for parents and relatives. There is a divergence of opinion among scholars on this matter. Most jurists, including Imam Hanafi, Imam Malik, Imam Shafi'i, Imam Hambali, as well as the Zaydiyah and Imamiyah schools, are of the opinion that making a will is not obligatory. They cite several reasons, including the lack of examples of Companions making wills, the view that wills are voluntary acts that fall under the category of benevolence, and the belief that the obligation to make a will has been superseded by the rules of inheritance and the hadith prohibiting making wills to inheritors. However, there are also those who argue that bequests are obligatory, based on the hadith that enjoins setting aside one-third of one's wealth for bequests as a way of increasing one's good deeds, as expressed by Abu Darda'.

Ibn Hazm argues that making a will is an obligatory act, especially for parents and close relatives who do not receive inheritance automatically, whether due to differences in religion, slavery status, or the existence of other heirs who are superior. Furthermore, Ibn Hazm asserts that if the testator did not make a will before dying, then his heirs are obliged to distribute some of the inheritance as alms to relatives. This opinion is supported by the principle that all verses in the Qur'an are muhkamat, which means that the text and meaning are clear and cannot be changed or deleted. Surah Al-Baqarah verse 180, for example, is not annulled by other verses on the law of inheritance, but is only further explained by them. This is reinforced by the verse in Surah An-Nisa which emphasizes that the law of inheritance can only be implemented after the fulfillment of the will and the payment of debts.

In the context of inheritance distribution, the Compilation of Islamic Law (KHI) does not provide an explicit explanation of the application of mandatory wills. KHI only contains rules regarding the division of inheritance between the testator and adopted children in Article 209, without mentioning the provisions of wills for individuals of different religions. This shows that the KHI does not specifically regulate mandatory wills for people of different religions. Although there is no explicit prohibition in the KHI against granting wills to heirs of different religions, the general interpretation taken from Article 171 letter c of the KHI indicates an implicit prohibition. The article defines heirs as individuals who are related by blood or marriage to the testator, are Muslim, and are not legally prohibited from becoming heirs, which is often interpreted as a basis for the prohibition of mutual inheritance between Muslims and non-Muslims, as is the view of the majority of fiqh scholars.

In the Civil Code, inheritance law is regulated as the process of transferring ownership of property from the testator to the heirs. This law determines the parties entitled to receive the inheritance, the proportion of the share, as well as the timing of the distribution of the property. The principle of inheritance law confirms that all rights and obligations of the testator transfer automatically to the heirs without the need for other legal action, as long as

they fulfill all the requirements of inheritance law. According to civil law, heirs are classified into four groups. The first group includes straight-line families downward such as husband or wife and children, including descendants of any marriage who are entitled to equal shares. The second group includes straight-line families such as parents and siblings and their descendants, who inherit in the absence of a husband, wife or direct descendants. The third bracket involves straight-line families when there are no descendants or spouses, where the inheritance is passed on to more distant relatives in the same line. Finally, the fourth group includes siblings of both parents and all their descendants up to the sixth degree. In addition, the division of inheritance can also be done by will, giving the testator the discretion to determine beneficiaries outside of these standard provisions.

In the context of Islamic law, inheritance is defined as a rule that regulates the transfer of rights to the inheritance (tirkah) of the heir, by determining who is entitled to become heirs and the proportion of their shares (Cahyani & Wirajaya, 2020). To be recognized as an heir, there are several conditions that must be met, namely having a blood relationship with the testator such as biological children or parents of the testator, the same religion as the testator, and a marital relationship with the testator, such as husband or wife. In addition, prospective heirs must not have obstacles in receiving inheritance, for example, they must not be involved in actions that result in the death of the testator. Before the inheritance distribution process can be carried out, several things need to be resolved first, including the separation of joint assets, funeral expenses for the testator, repayment of debts to God, repayment of debts to other humans, and repayment of the will that has been left behind.

In the context of the division of inheritance involving heirs of different religions, the settlement can be done through a mandatory will. The implementation of this mandatory will is mandatory and is not related to the wishes or consent of the deceased testator (Rohana, 2021). Unlike ordinary wills, compulsory wills do not require evidence of speech, writing, or the will of the testator, because their implementation is based on legal justification that requires their implementation. The presence of a mandatory will is supported by the missing element of initiative from the testator and the presence of legal obligations mandated by legislation or court decisions.

Although there is no provision in Islamic inheritance law that allows mutual inheritance between people of different religions, there are other mechanisms that allow the transfer of assets between Muslims and non-Muslims through grants, wills and gifts. This approach is in line with the Fatwa of the Indonesian Ulema Council contained in the results of MUNAS Number: 5/MUNAS VII/MUI/9/2005. The fatwa emphasizes that the provisions of inter-religious inheritance in Islam are absolute, based on qath'i proofs from the Qur'an and Hadith, so they cannot be reinterpreted. However, Islam still provides opportunities for expressions of affection between individuals of different religions through legal instruments such as grants, wills and gifts that have a wider scope and are not limited to adherents of the same religion, but can also be applied between adherents of different religions.

Regarding religious differences in terms of inheritance, the Compilation of Islamic Law refers to the views of classical scholars which indicate that religious differences between the testator and the heirs are an obstacle in the inheritance process. In accordance with Article 171 letter b of the Compilation of Islamic Law, it is stated that the testator must be a Muslim at the time of death or when considered dead based on a court decision, and leave heirs and inherited assets. Furthermore, Article 171 letter c states that heirs must have a blood or marriage relationship with the testator, be Muslim, and not be prevented by law from receiving inheritance. The religious identity of heirs can be verified through identity cards, personal confessions, religious practices, or witnesses, while children who are not yet of age take religion from their father or from their neighborhood, in accordance with the provisions in Article 172 of the Compilation of Islamic Law.

Although Article 171 letter c does not directly mention that differences in beliefs are a barrier to inheritance rights, the provision that requires the testator and the heir to be Muslim implies that the absence of the same Islamic religion between the two prevents inheritance rights, thereby terminating the inheritance relationship on the basis of religious differences. The Islamic Code makes it clear that this termination of inheritance rights is based on the views of classical scholars, particularly Imam Shafi'i. In addition, a Circular Letter from the Bureau of Religious Courts dated February 18, 1958 Number B/I/735 explains that the material legal basis of the Islamic Code is derived from 13 texts in the Shafi'i school of thought. The Islamic Code itself is a form of ijtihad from classical fiqh texts that have been adapted to the Indonesian social context, and until now, this law is still used as a reference by judges in the religious courts.

In this case, the judge considered the context in which children who are related by blood are not recognized to receive inheritance from the testator, considering that the Qur'an and hadith do not recognize the concept of substitute heirs. The regulation of obligatory wills for adopted children is considered an adaptation in the transfer of responsibilities from biological parents to adoptive parents, which includes the fulfillment of daily needs and education costs.

Analysis of Court Decision Number 0554/Pdt.P/2023/PA.Sby and its Implications for Non-Muslim Heirs

Based on the Supreme Court decision Number: 198K/AG/1992 issued on February 14, 1994, assets owned by a person during life that are reduced by the rights of other parties, including the surviving spouse, are considered as inheritance. According to Article 171 letter (c) of the Compilation of Islamic Law (KHI), an heir is identified as an individual who is related by blood or marriage to the testator, embraces Islam, and has no legal obstacles to becoming an heir. In terms of inheritance, it is very important to consider the religious similarity between the testator and the heir. If there are religious differences, this may prevent the heir from receiving the inheritance.

Giving inheritance to heirs of different religions is not only against Islamic law, but also against the purpose of the law, which is to safeguard the soul, mind and even religion. This is why Muslims do not allow heirs of different religions to inherit. God has entrusted the view of property, so it must be guarded as taught by God and used for the benefit of humans who believe in God (Allah).

Islamic law is recognized in the Indonesian constitution, specifically through Article 29 paragraph (1) of the 1945 Constitution which states that Indonesia is a state based on the One True God. In addition, the existence of Islamic law is strengthened by Law No. 7 of 1989 concerning Religious Courts. Further efforts were seen in the making of the Compilation of Islamic Law instructed by President Soeharto through Presidential Instruction Number 1 of 1991, dated June 10, 1991. KHI, which contains 229 articles on Islamic law, applies exclusively to Muslims in Indonesia as a guide in their religious law, not to citizens of other religions.

In this context, judges have the authority to conduct rechtvinding or legal discovery in inheritance cases, as stipulated in Article 5 of Law No. 48/2009 on Judicial Power. Furthermore, based on Article 229 of the Compilation of Islamic Law, judges are authorized to decide cases based on justice and values prevailing in society. Specifically in the context of Islamic law, judges may apply ijtihad if the Qur'an and Al-Hadith do not provide a clear answer on an issue. Ijtihad is a method of interpretation that allows Islamic scholars to find consensus-based solutions based on the Qur'an and Al-Hadith. With regard to inheritance for non-Muslims, the concept of wajibah will is used, which is defined by scholars as a voluntary transfer or gift of property effective upon a person's death.

Differences in beliefs act as barriers in inheritance law, especially between inheritors and heirs of different religions. For example, a non-Muslim is not entitled to receive inheritance from a Muslim. This agreement is held by scholars of the four major schools of thought: Hanafi, Maliki, Shafi'i and Hambali. They argue that differences in religion invalidate inheritance rights, be it based on blood kinship or marriage. Many scholars consider that individuals who leave Islam, or apostatize, have no right to receive inheritance as they are considered to have left the religion. The general consensus among scholars is that apostasy is considered a religious difference, which results in them not being entitled to inherit from Muslims. There are various views regarding inheritance if one of the relatives is an apostate. According to the majority of Islamic jurists (from among the Maliki, Shafi'i, and Hambali), a Muslim cannot receive inheritance from an apostate because a Muslim does not inherit from a non-Muslim, and apostates are categorized as non-Muslims. In the case of the death of one of the spouses in an interfaith marriage, the applicable law for inheritance is the law of the deceased. MARI Jurisprudence No.172/K/Sip/1974 reinforces this principle by stating that in inheritance cases, the law used is the law of the deceased testator.

In 1995, there was an evolution in Islamic inheritance law in Indonesia with regard to heirs who had a different religion from the testator. Although the rules of inheritance traditionally stated that non-Muslims could not inherit from Muslim heirs, the Indonesian Supreme Court innovated the law by introducing a ruling that non-Muslim heirs could inherit through the mechanism of compulsory probate. This mandatory will is implemented through a judge's decision and is intended for Muslims who die without leaving a will. Many previous studies have examined the topic of heirs of different religions, but the main focus has been on the application of the wajibah will to such situations. However, there is no legal basis that explicitly regulates the application of mandatory wills for non-Muslim heirs, because in the Compilation of Islamic Law mandatory wills are only intended for parents or adopted children.

In that respect, a widower or widow is an heir derived from marriage. However, in the case of an interfaith marriage, a widower or widow is not considered an heir if he or she is not Muslim. This is evident from the definition of heirs in Article 171 letter (c) of the Compilation of Islamic Law which states that they must be Muslim. According to the article, heirs are people who have a blood relationship or marital relationship with the testator at the time of death, are Muslim, and are not prevented by law from becoming heirs.

In this study, the researcher focuses on Decision Number 0554/Pdt.P/2023/PA.Sby which outlines a case of inheritance dispute between the plaintiffs, recording Indonesian legal history as an important example of handling inheritance according to Islamic inheritance law in a multicultural and multi-religious context. The case stems from the marriage of Muslim parents who gave birth to six children. Cultural and religious dynamics arose because the parents' four children were non-Muslims and only one child was a Muslim. On February 07, 2023, the four non-Muslim children filed a formal application to the Surabaya Religious Court to be determined as legal heirs, supported by strong evidence such as death certificates, parents' marriage books, and personal identity documents that reinforced their status as biological children of their deceased parents. The Surabaya Religious Court faced the challenge of considering multicultural and multi-religious aspects in the determination of strict Islamic inheritance law. However, after considering the evidence and witness testimonies presented and taking into account the uniqueness of the case, the court decided to grant the petitioners' request, establishing the four non-Muslim children as legal heirs, as religious differences did not preclude their right to inherit.

Compulsory testament is not only intended for adopted children or adoptive parents in accordance with the provisions in Article 209 of the Compilation of Islamic Law, but can also be given to heirs of different religions, as stipulated in several decisions of the Indonesian Supreme Court (Number 368.K/AG/1995, Number 51.K/AG/1999, and Number

16.K/AG/2010). The view of scholars, including Yusuf Al-Qardhawi, is that non-Muslims who live in harmony and peace cannot be considered as kafir harbi (enemies). This is confirmed by the position of the four non-Muslim children who are recognized as legitimate heirs because they have a harmonious and peaceful relationship with the testator during life, even though they have different beliefs. Therefore, they are considered entitled to receive part of the inheritance despite the changes in the mandatory will.

CONCLUSION

In the discussion above, it can be concluded that the analysis of Court Decision Number 0554/Pdt.P/2023/PA.Sby shows that although Islamic law generally does not allow heirs of different religions to inherit, courts can use ijtihad and consider justice and community values in resolving inheritance disputes. In this context, compulsory testament can be used as a solution to grant inheritance shares to non-Muslim heirs, as demonstrated in various previous Supreme Court decisions. These decisions reflect the flexibility of Islamic law in dealing with Indonesia's multicultural and multi-religious dynamics, as well as the importance of protecting the rights of heirs in a fair and equitable context. Therefore, it is important for the judicial system to continuously evaluate and adjust the application of Islamic inheritance law to suit the principles of justice and humanity in a diverse society.

REFERENSI

Al Juzairi, S. A. (t.t.). *Kitabul Fiqhi Ala al-Madzahib al-Arbaah*. Daar al-Dayyan Li al-Turats.

Apriyudi, E. (2018). Pembagian Harta Waris Kepada Anak Kandung Non Muslim Melalui Wasiat Wajibah. *Kertha Patrika*, *40*(1), 45–60.

Cahyani, R., & Wirajaya, A. Y. (2020). Pembagian Waris dalam Hikayat Hauj Jawabir: Sebuah Kajian Kontekstualitas. *MEDAN MAKNA: Jurnal Ilmu Kebahasaan Dan Kesastraan*, *18*(1), 50–69.

Casram, C. (2016). Membangun sikap toleransi beragama dalam masyarakat plural. *Wawasan: Jurnal Ilmiah Agama Dan Sosial Budaya*, *1*(2), 187–198.

Dalimunthe, D. (2020). Comparasi Pengalihan Harta Hibah Menjadi Harta Warisan Perspektif Kompilasi Hukum Islam Dan Kitab Undang-Undang Hukum Perdata. *Yurisprudentia: Jurnal Hukum Ekonomi*, *6*(1), 13–26.

Daud, Z. F. M. (2021). Analisis Putusan Hakim Terhadap Ahli Waris yang Berbeda Agama dalam Perspektif Syara': Studi Kasus No. 1803/PDT. G/2011/PA. SBY. *Jurnal As-Salam*, *5*(1), 62–75.

Faqih, A. R. (2017). *Mawaris: Hukum Waris Islam*. UII Press.

Imron, A. F. (2015). Konsep Wasiat Menurut Hukum Islam, Kompilasi Hukum Islam, dan KUH Perdata. *Asy-Syari'ah: Jurnal Hukum Islam*, *1*(1), 25–50.

Limbanadi, A. (2014). Kedudukan Dan Bagian Ahli Waris Pengganti Dalam Hukum Islam. *Lex et Societatis*, *2*(8).

Marzuki, P. M. (2014). *Penelitian Hukum (Edisi Revisi)* (15 ed.). Prenada Media.

Nugraheni, D. B., Ilhami, H., & Harahab, Y. (2010). Pengaturan dan implementasi wasiat wajibah di Indonesia. *Mimbar Hukum-Fakultas Hukum Universitas Gadjah Mada*, *22*(2), 311–329.

Rohana, N. P. (2021). Wasiat Wajibah Dalam Perspektif Hukum Di Indonesia. *Yurisprudentia: Jurnal Hukum Ekonomi*, *7*(1), 139–155.

Setyawan, R. (2023). Pengembangan Konsep Wajib Wasiat Di Mahkamah Agung Dan Implikasinya Terhadap Pembaharuan Hukum Di Indonesia. *JIL: Journal of Indonesian Law*, *4*(1).

Shalehah, I. (2020). Waris Beda Agama (Analisis Putusan Perkara Kewarisan Beda Agama dalam Putusan MA 16/KAG/2018). *Al-Manhaj: Journal of Indonesian Islamic Family Law*, *2*(1), 31–46.

Suma, M. A. (2005). *Hukum Keluarga Islam di Dunia Islam*. Raja Grafindo Persada.

Yanti, S. S. Y., & Mulyadi, Y. (2016). Pembagian Harta Warisan Terhadap Ahli Waris Beda Agama Serta Akibat Hukumnya. *Diponegoro Law Journal*, *5*(3), 1–12.