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Juridical Review Division of Inheritance to Heirs of Different Religions Through a Mandatory Will (Supreme Court Decision Number 218 K/Ag/2016)

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A B S T R A C T

It is a fact of life that humans are not alone. Humans are predestined to always live together for the sake of their lives, giving rise to a type of law whose provisions govern that life and is called "Civil Law".*private right*). The law of inheritance is very closely related to the scope of human life, because every human being will experience a legal event called death. Further legal consequences arise, with the occurrence of the legal event of a person's death, including the problem of how to manage and continue the rights and obligations of someone who has died. Settlement of rights and obligations as a result of a person's death, is regulated by inheritance law. The nature of the research used in this writing is analytical descriptive, while the type of research used in writing this law is normative research. The data collection technique used by the author in this thesis is Library Research (*Library Researh*) Data processing is done qualitatively. Will*Obligation*basically it is permissible, that is, from those who give wills to beneficiaries as long as between them they do not have close kinship or inheritance, some of their opinions are only limited to kinship who do not have inheritance rights because they are veiled or because their inheritance is taken by heirs who are more entitled or because they actually do not get The inheritance of this discussion is usually directed at discourses about the heir's grandchildren, male or female, both male and female. In Islam there is a provision of obstacles to receiving an inheritance called*mawani al-irsi*namely things that can cause the death of the heir to receive inheritance from the heir's inheritance, such as murder, different religions, and slavery, whereas religious differences in the inheritance of Islamic law are obstacles, which means that religious differences in Islamic inheritance cannot inherit one another with the others. However, with the development of the times, changes in law have appeared in the form of jurisprudence or decisions of previous judges, but what

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needs to be remembered is that the size of the will*mandatory*received by a person is only allowed as much as one-third of the inheritance unless all the heirs agree, so that with a will*mandatory*this is a person still get his inheritance rights despite being hindered by religious differences. So testament*mandatory*in such a context is in the context of establishing kinship relations. However, if one of the family members has a different religion, efforts can be made to carry out the obligatory will in accordance with the decision of the Supreme Court.

Introduction

It is a fact of life that humans are not alone. Humans live side by side, even in groups and often have relationships with each other, these relationships occur with regard to their life needs which cannot always be fulfilled alone. The needs of human life vary. Such a thing is actually the result of human behavior that wants to be free. A freedom in behavior will not always produce something good. Especially if the freedom of one's behavior is not acceptable to the social group. Therefore, in order to be accepted by social groups, both in creating order within a social group, provisions are needed, in other words, that the legal rules that apply are positive law. Positive law which is often also called*the right constituted*are legal provisions that apply at a certain time and place. In accordance with its aim to achieve order for justice, legal rules will develop in line with the development of human association. The development of these legal rules in their implementation indicates a replacement of the applicable legal rules (positive law).[1] Therefore, in order to carry out a rule of law that applies, it is necessary to explain what law can be a guide to a problem that arises in the wider community.

Humans are predestined to always live together for the sake of their lives, giving rise to a type of law whose provisions govern that life and is called "Civil Law".*private right*). Civil law is the provisions that regulate and limit human behavior in fulfilling their interests/needs. Civil law sayings (*private right*) in a broad sense includes material legal provisions governing individual interests.

Legal provisions governing individual interests are made applicable to all residents of Indonesia. The national civil law section that was created consisted of marriage law and agrarian law. which until now there is still no national civil law as a whole as a system of civil law norms,[2] One of them is the law of inheritance. Inheritance law (*inheritance law*) is one part of civil law as a whole and is the smallest part of family law. The law of inheritance is very closely related to the scope of human life, because every human being will experience a legal event called death. Further legal consequences arise, with the occurrence of the legal event of a person's death, including the problem of how to manage and continue the rights and obligations of someone who has died. Settlement of rights and obligations as a result of a person's death, is regulated by inheritance law[3]. Among the rules governing human relations established by God are the rules regarding inheritance, where property and ownership arise as a result of a death. Assets left by someone who has died require regulations regarding who is entitled to receive them, how much, and how to obtain them.

The rules regarding inheritance are established by Allah through His words contained in the Qur'an. Basically, Allah's provision regarding inheritance has a clear purpose and direction. Various things that still require explanation, both affirmative and detailed, for Indonesian Muslims, Allah's rule regarding inheritance has become a positive law that is used in religious courts in deciding cases of division or disputes regarding

[1] R.Abdoel Djamali,*Introduction to Indonesian Law,*(Jakarta: RajaGrafindo Persada, 2016), p. 1

[2] *Ibid.,* hlm. 147-148.

[3] Eman Suparman,*Indonesian Inheritance Law in the Perspective of Islam, Custom, and BW*, (Bandung: PT Replik Aditama, 2019), p. 1.

the inheritance.[4]. One of them is the division of inheritance, where the heirs have different religions from the heirs, in this case it has also been regulated through a will and strengthened by jurisprudence.

Research methods

The nature of the research used in this paper is analytical descriptive, meaning that the discussion is carried out by presenting and describing a complete, detailed, and systematic data. Then the data will be analyzed by using legal science theories, applicable laws and regulations, and the author's thoughts.

The type of research used in writing this law is normative research, namely research based on primary, secondary and tertiary legal materials.

The data collection technique used by the author in this thesis is Library Research (*Library Research*), namely data collection techniques by searching for and studying the Constitution, laws and regulations, books, scientific journals, and writings that are considered to have something to do with the discussion of this thesis. Legal research conducted by examining literature or secondary data can be called normative legal research.

The data obtained in the framework of compiling this thesis was processed from the results of the study of the Supreme Court Decision which were processed qualitatively, namely by using words and sentences with the intention of compiling a discussion material that is systematic and easy to understand or understand so that it can provide an effective picture to the public. reader

Discussion

1. Analysis of the Implementation of Distribution of Inheritance to Heirs of Different Religions through Compulsory Wills in Supreme Court Decision No.218/K/AG/2016

Islamic inheritance law is one of the important expressions of Islamic family law, it is half the knowledge possessed by humans, "studying and studying Islamic inheritance law means studying half of the knowledge possessed by humans who have been and continue to be in the midst of Muslim society from the early days of Islam to the Middle Ages. , modern and contemporary times and in the future. Humans as individuals (individuals) have a solitary soul life, but humans as social beings cannot be separated from society. "Humans are born, live, develop and die in society as well".

In the wider scope of community life, society is composed of several individual, ethnic and religious groups that influence the pattern of family formation. In the order of living together that is united and related to each other in society, it is possible that inter-ethnic and inter-religious marriages will occur, or even many are also found in the same family of siblings. embrace a different religion or parents and their children embrace a different religion. "One of the legal consequences of religious differences in a family is the problem of inheritance." If there are differences in belief (religion) then there is no right to inherit each other.[5]

In this Supreme Court decision, the division is distributed after the entire inheritance is divided into two as joint property, then the Supreme Court gives the inheritance through a will*mandatory*for the defendant or the cassation applicant, namely the relative of the heir, it is taken from half the portion given to the heirs

[4] Amir Syarifuddin, Islamic Inheritance Law, (Jakarta: Kencana, 2011), p. 4

[5] Moh. Sukran R. Labone,*"Granting a Compulsory Will in the Perspective of Islamic Law"*, (Environmental Master Law Journal, Vol. 4 Issue 1, February 2020)http://mrtg.untad.ac.id/index.php/TMLJ/article/view/1 93#, accessed on October 24, 2022

of ¼. On the Supreme Court Decision Number 218/K/Ag/2016, the consideration of the Supreme Court Judge is giving inheritance*mandatory*to non-Muslim heirs viz[6]

(1) On September 12, 1987, a husband and wife named Martomulyono alias Tugimin bin Martowirono passed away, whose wife, Poniyah bint Poniman, also died on January 2, 1997. During their marriage, Martomulyono and Poniyah were not blessed with any children. Mrs. Poniyah has no siblings, while Martomulyono has 2 (two) siblings, namely the result of his father's first marriage Martowirono alias Ngadi with his mother Mrs Surip, the deceased's siblings Martoduwiryo bin Martowirono alias Tugiman who died on 5 November 1952 and during In his life, he was married to Mrs. Mbah Mombro, but had no children, Sardjono alias Hadi Sardjono who passed away on December 26, 2001, had a wife named Saminah and 2 (two) children namely Gregorius Priantono and Dwi Lestari. In addition to siblings, Martomulyono also has 4 (four) half-siblings, namely 2 (two) siblings. Martowirono from his second marriage to Tukiyem, namely Soeparno and Maryati, and 2 (two) other relatives Martowirono from his third marriage to Kamsiyah, namely Siti Aminah and Saban (hereinafter collectively referred to as the "Plaintiff"). Martomulyono alias Tugimin (hereinafter referred to as the "Heir") and Poniah left an inheritance in the form of a piece of land and a building.

(2) Before she died, Poniyah had gathered all of her husband's siblings, namely Soeparno, Maryati, Siti Aminah, Saban and Sardjono (deceased) and their families, to carry out an oral will, namely to give the rights to the land and object of the dispute to Soeparno and Maryati, and on at that time the original Certificate of Property Rights Number 254, Patangpuluhan Village, on behalf of her husband, was handed over by Poniyah to Maryati, and until now the original certificate is still kept by Maryati. Whereas after Poniyah died, Sardjono and his wife (Saminah) called Maryati to ask permission from the other relatives so that Dwi Lestari, who was already married, was allowed to occupy the back room only, without the slightest prejudice, Maryati and the other siblings allowed it, even though only temporarily and with conditions if Maryati and her siblings, who all live outside Yogyakarta are in Yogyakarta, they can still stay at the house. However, as soon as Sardjono was allowed, Saminah and Dwi Lestari did the opposite, by controlling the land and building of the house, filling all the rooms and rooms with the belongings of Sardjono and his family, so that there was no room left for relatives to use. -Maryati's sister when she was in Yogyakarta. This act finally made Maryati's siblings no longer free to stay at the house left by Martomulyono. Apart from controlling the entire house without Maryati's permission and knowledge, until now, Saminah and Dwi Lestari have also rented out part of the house to other parties and are enjoying the rental money themselves. That it is not enough just to control and enjoy the object of dispute, without the knowledge and permission of Maryati's brothers[7].

(3) If you pay attention to the case of the Supreme Court Decision Number 218K/AG/2016, when Martomulyono (Heir) died in 1987, the inheritance was not immediately divided, even when Poniyah (the heir's wife) later died in 1997, the inheritance was also not divided legally. Martomulyono is a Muslim heir, while during his lifetime his sibling (Sardjono) was not a Muslim, at the time of his death Sardjono was prayed for and buried Catholically and this was reinforced by the sign of a cross on Sardjono's grave, as well as Saminah, Gregorius and Dwi Lestari, all of whom are Catholics. Therefore, according to the heirs, both Sardjono and his descendants, because they are not Muslim or have different religions, have absolutely no right or have lost the right to become heirs of Martomulyono, so that there are no other heirs of Martomulyono apart from brothers. father and sister, namely Soeparno, Maryati, Siti Aminah and Sabah.

(4) If you look at the giving of Poniyah's inheritance to the Religious Courts and the High Religious Courts, it is different. As is well known, Mrs. Poniyah did not leave any relatives when she died. At the Religious Court, the share of the inheritance of the late Poniyah binti Paiman from the joint assets and inheritance of the late Martomulyono bin Martowirono alias Tugimin is 50%

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[6] Nova Sagitarina A. Karim,*"Analysis of the Judge's Decision that Gives Obligatory Wills to Offspring of Heirs of Different Religions"*, (Jurnal Suara Hukum Vol. 1 No. 2, September 2019) https://journal.unesa.ac.id , accessed on October 24, 2022

[7] *Ibid*., p.. 14

+ 12.5% = 62.5%, it was decided to hand it over to the Baitul Mal of the City of Yogyakarta, while at the High Court, Mrs. Poniyah's share of the joint assets was half (50%) and the inheritance as a wife was 12.5% = 62.5 % of the inheritance, it was decided to be distributed equally to:

a. Hadi Sardjono received 1/5 x 62.5% = 12.5% which was also received directly by Saminah, Gregorius and Dwi Lestari (no longer distributed to their heirs);
b. Soeparno gets 1/5 x 62.5% = 12.5%
c. Maryati gets 1/5 x 62.5% = 12.5%
d. Siti Aminah earns 1/5 x 62.5% = 12.5%
e. Saban earns 1/5 x 62.5% = 12.5%

Whereas Article 191 KHI states that if the heir does not leave any heirs at all, or whether the heirs exist or not is known, then the said property is by the decision of the Religious Court handed over to the Baitul Mal for the benefit of the Islamic religion and general welfare. Based on Article 171 point h KHI states Baitul Mal is a Religious Treasure Hall. So that the decision of the Religious Court which gave Almahrumah Poniyah binti Paiman's share of the joint assets and inheritance of the late Martomulyono bin Martowirono alias Tugimin of 50% + 12.5% = 62.5%, was handed over to Baitul Mal Yogyakarta City, is valid, in accordance with the Compilation of Islamic Law. Meanwhile, the gift of Poniyah's inheritance to the brothers of her deceased husband's father, as stated in the Decision of the High Religious Court, is also permissible for the benefit of shared property. This is the best possibility according to the judges' ijtihad in deciding the case in this case.

When compared with the Supreme Court Decision Number 368K/Ag/1995 stating that the rights of children who change religions are the same as the rights of other children who are Muslim, the Supreme Court Decision Number 51K/Ag/1999 heirs who are not Muslim can still inherit from the inheritance of the heir. Muslim, and the Supreme Court Decision Number 16K/Ag/2010 gives the position of a wife who is not a Muslim the same as the position of a Muslim wife. In these three decisions the judge accepted the request in accordance with the true facts, while in the Supreme Court Decision Number 218K/Ag/2016 the judge rejected the application because there was an element of unlawful act, and the applicant in this case had no right to inherit, but was a non-Muslim relative. has the right to receive a share of the heir but by using a will*mandatory*.

The author in this case concludes, granting a will*mandatory*to non-Muslims began with the issuance of the Supreme Court Decision Number 218K/Ag/2016, which relies on the jurisdiction of the Supreme Court of the Republic of Indonesia Number 368K/Ag/1995 dated 16 July 1998 and the Jurisprudence of the Supreme Court of the Republic of Indonesia Number 51K/Ag/1999 dated 29 September 1999 and the Jurisprudence of the Supreme Court of the Republic of Indonesia Number 16K/Ag/2010, which in one of its considerations states that biological children and non-Muslim heirs are not heirs, but are still entitled to receive a share of the inheritance based on a will*mandatory*because of his capacity as a recipient of a will not as an heir even if he had not bequeathed before. Until the will*mandatory*can be used to make other decisions.

Therefore, the provisions for resolving issues of marriage law, inheritance and endowments for adherents of Islam refer to KHI. It has been established through process*the square*(determination) in the form of Presidential Instruction and applies positively to Muslims. Therefore, KHI which contains material law can be accepted and has been stipulated by Presidential Decree/Inpres Number 1 of 1991 can be seen as written law. Meanwhile, if we look at the division of inheritance according to *Civil Code* (BW) in this case the Civil Code, the law has established orderly families who become heirs, namely the wife or husband left behind and the legal or illegitimate family of the heir. Legal heirs or heirs*from intestate*Based on blood relationship there are four groups, namely:

1. First Class

Family in a straight line down, includes children and their descendents husband or wife left behind and or who lived the longest. The husband or wife who was left/lived the longest was only recognized as an heir in 1935, whereas previously husband/wife did not inherit from each other.

2. The Second Group

Family in an upward straight line includes parents and siblings, both male and female, as well as their offspring. For parents there is a special rule of ¼ (one quarter) part of the inheritance, even if they inherit it jointly with the inheritor's siblings.

3. The Third Group

Includes grandparents, and the next ancestor of the inheritor.

4. The Fourth Group

Includes family members in line to the side and other relatives up to the sixth degree.

The law does not distinguish between male and female heirs, nor does it differentiate birth order, there is only a provision that first class heirs if there are still any will cover the rights of other family members in a straight line up or sideways. Likewise, groups with higher degrees cover those with lower degrees. As for the heirs according to a will or*testimony*, the amount is uncertain because this type of heir depends on the wishes of the testator. A will often contains a reference to a person or several heirs who will receive all or part of two inheritances. But as well as legal heirs or*from intestate*, heirs according to the will or heirs*testaments*will obtain all the rights and obligations of the heir[8].

Provisions contained in the Civil Code whose contents limit a person making a will so as not to harm the heir according to the law, among others, can be seen from the substance of Article 188 paragraph (2), that is, with an inheritance or grant, the bequeathing party or the heir may not harm the heirs who are entitled to an absolute share. Heirs who get an absolute share or*Legit Portie*this includes the heirs according to the law, they are the heirs in the upward and downward lines who obtain a certain part of the inheritance and that part cannot be eliminated by the heir. In relation to that, R. Subekti, submitted in his book, that the rules regarding*Legit Portie*by law is viewed as a limitation of a person's freedom to make a will or*Testimony*according to his own will.

As stated above, a person who will receive a number of inherited assets must first fulfill the following conditions:

1. There must be a person who dies (Article 830 of the Civil Code)
2. Must be heirs or heirs must be present when the heir dies. This provision does not imply reducing the meaning of the provisions of Article 2 of the Civil Code, namely that a child in the womb of a woman is considered to have been born, if the interests of the child so require.
3. An heir must be capable and entitled to inherit, in the sense that he is not declared by law as someone who is not eligible to inherit because of death or is not considered as incompetent to become an heir.

After fulfilling the above conditions, the heirs are given flexibility by the law to further determine the attitude towards an inherited property. The heir is given the right to think for four months after which he must state his attitude whether to accept or reject the inheritance or it is possible that he accepts the inheritance on the condition that he accepts the inheritance*beneficiary*, which is a middle ground between accepting and rejecting inheritance. As long as the heir uses his right to think in order to determine that attitude, he cannot be forced to fulfill his obligations as an heir until the period ends for four months (Article

[8] Eman Suparman, *Op.Cit.,* p.29.

1024 of the Civil Code). After the time period stipulated by law ends, an heir can choose between three possibilities, namely:[9]

1. Receive the inheritance in full;
2. Receiving an inheritance but with the condition that he will not be obliged to pay the heir's debt which exceeds his share in the inheritance, or is referred to as accepting in kind*beneficiary*;
3. Rejecting inheritance.

On the other hand, the KHI does not accommodate this principle in Article 173 which states that, a person is prevented from becoming an heir if a judge's decision which has permanent legal force is punished for:

1. Was blamed for killing or attempting to kill or severely maltreating the heirs;
2. Defamatoryly accused of having filed a complaint that the testator had committed a crime that carries a penalty of up to 5 years in prison or a more severe sentence.

Refers to theory*maslahah*in carrying out the distribution of inheritance, see the hadith*muttafaq 'alaih*(something agreed upon) and chose the mindset of customary law over sharia, so that Hazirin's opinion said in terminology, can something that has become a tradition in Indonesian society be justified if the goal is the same as*maslahah al-ummah*(public benefit), not all can be accepted if contrary to*nash* (pronunciation with clear instructions). Here comes the concept*maqashid al-Syariah*which considers aspects of religious preservation (*hifdz al-din*) is the main purpose of legislating the law of inheritance in Islam, namely to test the faith of people, especially those who believe in the Qur'an as God's revelation. do they still have faith and follow God's law by saying*sami'na wa atha'na*or reject it by saying*sami'na wa'ashoina.*

The non-entry of non-Muslims as a barrier to inheritance in KHI, is clearly a deliberate act, not a mistake. There is a systematic desire from parties who want such a formulation, it turns out to be a very influential juridical argument in the decision-making process at the Supreme Court in granting heirs' inheritance. to non-Muslims with the concept of a mandatory will. Referring to the description above, the author outlines several main ideas, namely, First, the position of heirs of different religions in Islamic law is clearly prohibited based on the Qur'an, Sunnah and*istihad*Sect scholars. The two inheritance rights for heirs of different religions cannot be given by the main heir can be considered*istihad*which is wrong (*haillah syar'iyyah*), because it is contrary to the provisions of the Shari'a and contrary to the principles of monotheism and religious principles*ijbari*, Third Giving inheritance to heirs of different religions in Article 194-209 KHI by using consideration of the will*mandatory*as much as 1/3 of the main heir's inheritance, it should be amended and reconstructed in accordance with the Al-Qur'an and Sunnah and Fourth, giving inheritance to heirs of different religions as based on Article 194-

209 under Chapter V KHI by using testamentary considerations*mandatory*it is also a juridical fact that the influence of customary law and western law has entered into KHI[10].

Based on the description above, the author analyzes the problem by linking it to the theory of agreement and the theory of justice, where based on the theory of agreement, according to the author, the Supreme Court decision is clear that the distribution of inheritance to non-Muslim heirs is not permissible but returns with an agreement. -an agreement that has been agreed upon by the disputing parties that with the results of the distribution that they have agreed to get their share accordingly and they agreed in front of the judges, and based on the theory of justice according to the author the judge has fulfilled this, because the distribution of rights is fair justice to the parties concerned and feel that there is no need to reclaim the other party, so that

[9] *Ibid*., p. 30

[10] Moh. Sukran R. Labone, *Op. Cit.,* p. 75

all of them involved in this matter also feel that the judge has been fair in making the decision and feels that no one else feels aggrieved.

2. Problems Arising Against the Distribution of Inheritance to Heirs of Different Religions

Compilation of Islamic Law Article 171 letter F states that a will is the giving of something from an heir to another person or institution that will take effect after the heir dies. While wills in traditional jurisprudence that have been around for a long time, for example according to Ibnu Qudamah, a follower of the Hambali Madhhab, state that it is possible to make a will to heirs if desired. Whereas according to Malik faith, a will can be executed if approved by the heirs, if only a part of the heir approves, then the will is taken from the person who allows it. This opinion is in accordance with Article 195 paragraph (2) and (3) of the Compilation of Islamic Law which states as follows:

Article 195 paragraph (2)

"A will is only allowed as much as one-third of the inheritance unless all the heirs agree"

Article 195 paragraph (3)

"The will to the heirs is valid and approved by all the heirs"

In contrast to Islamic law, in western civil law, wills in the form of grants are not limited to how much, while in Islamic law 1/3 of the inheritance. According to Oemar Salim, if the will (*testimony*) stipulates that the grant of certain items is used for the term legaat, while the term efstelling is used for granting all inherited assets or a certain part (how much) of the inheritance to a certain person.[11]

Whereas according to Shi'ah Imamiyah, a will can be for any heir and not for other heirs, as long as it does not exceed a third of the inheritance. Another opinion is in the Zahiri Sect. Ibn Hazm stated that it is obligatory for every Muslim to make a will to a close family who does not receive an inheritance, either because the inheritance was taken by a more entitled heir or because they did not actually receive an inheritance. But almawardi, a follower of the Syafi'I Madhhab, says that a will to close family is Sunnah, not obligatory.

The provisions in the Compilation of Islamic Law, all the pillars and conditions are combined together with the implementation procedures regulated from Article 194 to Article 209 of the Compilation of Islamic Law. The Islamic concept, as can be understood from the Islamic jurists above, is that will is basically permissible, that is, from those who give wills to beneficiaries as long as they do not have close kinship or inheritance, some of their opinions are only limited to kinship who do not have inheritance rights because they are hijab or because the inheritance is taken by the heirs who are more entitled or because they do not actually get the inheritance, this discussion is usually directed at discourses about the heir's grandchildren, male or female, both male and female. So a will in this context is in the context of establishing a kinship relationship. And they all reasoned with understanding of the holy text of the Qur'an, Al-Baqarah verse 180:

Prescribed for you, when death approaches one of you, if he leaves something good, the bequest to parents and relatives in the common It is a right upon the righteous.[ﷺ] 180.

[11] H.M. Fahmi Al Amruzi, *Op. Cit*., p. 20.

"It is obligatory on you, if someone among you comes (signs) of death, if he leaves a lot of wealth, make a will for his parents and close relatives in a ma'ruf manner (this is) an obligation on pious people".

The concept of a property will in Islam is shown to distant relatives or relatives who do not receive inheritance rights and also to other people. It is from this understanding that the theory of legal reasoning on wills develops, up to reasoning about its legal position. The last one concerns the will*mandatory*That is when the will*mandatory*happen and why it must be held. According to Fatthurrahman, Will*mandatory*is only for grandsons and granddaughters whose parents died before or together with their grandparents. In line with that, Moh. Young Zamro said that will*mandatory*is a part of the inherited property allocated by law for children whose mother or father died before their grandfather or grandmother or they died at the same time and the children did not get a share of their grandfather's or grandmother's inherited property because of the wall (*veiled*) by their father or aunt. Therefore, given to them with certain rates and conditions as a will and not as an inheritance[12].

According to Peter Mahmud Marzuki, judges do not just apply laws. Through their decisions which become strong jurisprudence, judges also make laws that in practice dispute resolution cannot be avoided when the terminology used or the law does not regulate the problem at hand or the existing law contradicts the existing situation. Therefore, the judge in this case then made the formation of the law (*legal formation*), analogs (*legal analogy*), legal refinement (*law refinement*) or interpretation (*interpretative*). Such activities within the legal system*continental* known as legal discovery*legal finding*). Lawyers (*legal finding*) is actually a system-specific problem*civil law*[13].

To make it easier in terms of completing the inheritance calculation, what must be done includes:

a. Image of inheritance chart to facilitate case resolution;
b. Determine who the heirs are;
c. Determine who the heirs are;
d. Determining the size of the inheritance (including original property and joint property);
e. Calculate the share of each heir.

Adding the opinion of Moh Anwar, before calculating the origin of the problem. There are several things that must be considered beforehand which include:[14]

a. Determining who is entitled to receive a share of the existing heirs, in this case it is necessary to see who is prevented from inheriting and who is not.
b. Determine how much part of each heir according to the provisions of the heirs*dzawil furudh*who is entitled to receive the inheritance and determine who is the heir*ashabah*who will receive the advantage of property when available.
c. After determining the things above, then do the calculation according to*faraid*,but in this case, apart from determining the origin of the problem, it is also necessary to pay attention to the possibility of haul and/or problems arising*degree*.

Based on the description above, the author explains that the problem that arises is that many non-Muslim heirs do not accept or are dissatisfied with the inheritance rights they receive as if they feel that it is inappropriate for what they did while the heir was still alive, because they who are not Muslim. With this,

[12] *Ibid.,* p. 23.

[13] *Ibid*., p.. 30

[14] Oemar Moechtar,*Development of Inheritance Law Practices of Inheritance Dispute Resolution in Indonesia*, (Jakarta: Prenadamedia Group; 2019), p. 149

the heirs questioned their rights, thus the heirs demanded a lot from the local court to be able to get their rights.

3. Settlement Efforts Against the Distribution of Inheritance to Heirs of Different Religions

In the law of inheritance according to the Civil Code, a principle applies that when a person dies, immediately all rights and obligations are transferred to all the heirs. If an heir demands the distribution of inheritance in front of the court, this claim cannot be rejected by other heirs. This provision is stated in Article 1066 of the Civil Code, namely:

1. A person who has the right to part of the inheritance cannot be forced to give the inherited property in a state that is not divided among the existing heirs;
2. The distribution of inherited property can always be demanded even if there is an agreement that prohibits it;
3. An agreement on the suspension of the distribution of inheritance may only be made for a certain period of time;
4. The agreement on the suspension of distribution is only binding for five years, but can be renewed if it is still desired by the parties

The inheritance system of the Civil Code does not recognize the term "origin assets or joint assets" or assets acquired jointly in marriage, because inheritance in the Civil Code from anyone is a "unity" which in its entirety and whole will pass from the hands of the inheritor/ his heirs. As emphasized in Article 849 of the Civil Code, namely the law does not look at the nature or origin of the items in an inheritance to regulate inheritance. The inheritance law system of the Civil Code recognizes otherwise from the customary inheritance law system distinguishing "kind" and "origin" of goods left by heirs[15].

Indonesian society is a pluralistic society. This plurality also applies in civil law. Where inheritance law is a part of the law that is developing very thickly in Indonesian society. It cannot be denied that the post-independence Indonesian state has not yet been able to form a codified inheritance law that applies to Indonesian citizens. Based on Article 1058 of the Civil Code it is determined that an heir who refuses an inheritance is deemed to have never become an heir. The refusal is retroactive until the death of the testator. According to Article 1059 of the Civil Code, the portion of the heirs who refuse falls on other heirs. According to the provisions in Article 1057 of the Civil Code, refusal of inheritance must be stated explicitly at the district court clerk's office.

Unlike the case with Islamic inheritance law. First, Islamic inheritance law does not recognize the refusal of inheritance as known in the Civil Code of inheritance law. In Islamic inheritance law, there are principles*ijbari*which means that the transfer of the assets of someone who dies to their heirs applies automatically according to Allah's provisions without depending on the will of the heir or heirs, so that there is no human power that can change it by entering other people to become heirs or expelling people who are entitled to become heirs. heir[16]. One that relates to assets that must be completed before the distribution of assets is the settlement of a will, if the deceased person writes or conveys a will.

In Islamic inheritance law there are several things that can invalidate the rights of heirs to receive inheritance from the heir, as explained briefly in the conditions for heirs above. In this section it is explained again in more detail about the things or obstacles (*al-Hail*) which can make an heir not get a share of the inheritance. In language al-Mani' means*al-Hail*(obstacle), jama'nya*al-Mawani'*(some barrier), if interpreted in words*al-irth*then be*al-mawani' al-Irth*(some inheritance barrier). Meanwhile, in terms, it is something that

[15] Eman Suparman,*On. Cit.,*hlm 25.

[16] Oemar Moechtar, Op. Cit., p. 21.

causes a person to lose his rights legally because of the fulfillment of the causes that lead to the existence of that something in that person.

According to fiqh scholars, there are three types of barriers to inheritance, namely slavery (*al-Riqq*), murder (*al-Qatl*), and religious differences (*disagreement*), and apart from the three above, it is still being debated among scholars. The inheritance barriers referred to sometimes prevent a person from receiving an inheritance and there are also obstacles that prevent him from inheriting his property, namely: Slavery, Murder, and Differences in Religion. We all know that religious differences in inheritance in Islamic law are one of the obstacles that hinder a person from receiving inheritance, meaning that religious differences in Islamic inheritance cannot be mutually inherited from one another.

However, with the development of the times, changes in law have appeared in the form of jurisprudence or previous judge's decisions which essentially provide justice for their inheritance rights, especially for those of different religions. In Decision Number 218K/Ag/2016 it has been explained that the judge gives freedom to someone of a different religion in receiving inheritance based on a will*mandatory*. This means that a person who does not receive an inheritance due to differences in religion can submit an appeal or cassation by referring to said jurisprudence. However, it should be remembered that the size of the will*mandatory*received by a person is only allowed as much as one-third of the inheritance unless all the heirs agree, so that with a will*mandatory*This means that someone still gets their inheritance rights even though they are hindered by religious differences. As well as with a will*mandatory*this is a person's sense of justice that can be realized, therefore in Islam efforts to resolve the distribution of inheritance rights for someone of a different religion according to Islamic law can be done through a grant or will.

Whereas in the Civil Code (BW) there is no specific article that provides an understanding of inheritance law. However, the meaning can be seen based on the opinions of experts, so that the opinion of experts that is meant by inheritance according to the Civil Code is the law governing wealth due to the death of a person, regarding the transfer of wealth left by the heir. According to the Civil Code, if there is a problem with the distribution of inheritance between different religions, it explains that basically the law of inheritance according to the Civil Code is different from Islamic inheritance, the difference is that the Civil Code does not recognize the term barrier in the distribution of inheritance. however, there are only people who are disenfranchised not hindered. This means that, in the Civil Code there are no differences in arrangements based on the type or origin of the goods left by the heir.

Even though in the marriage there are differences in religion and as long as the heirs are appropriate according to law, the heirs will still receive their share of inheritance according to the amount. Efforts to resolve the problem of inheritance according to the Civil Code, the parties involved should be able to resolve it amicably first. However, if there are still differences of opinion between the various parties and have not found an agreement, then legal action is the last resort. If the parties settle through legal channels, then it can be submitted to the local court to seek justice.[17]

Conclusion

Based on the description above, several conclusions can be given as follows:

1. Analysis of the distribution of inheritance to heirs of different religions through wills*Obligation*through Supreme Court Decision Number. 218K/Ag/2016 is that in the wider scope of community life, society is composed of several individual, ethnic and religious groups that influence the pattern of family formation. "One of the legal consequences of religious differences in a family is the problem of inheritance." If there are differences in belief (religion) then there is no right to inherit each other. In this Supreme Court decision, the division of inheritance is distributed after the entire inheritance is divided into

[17] Rizal Dwi Novianto, "*Inheritance Law of Inheritance Practices of Different Religions According to Islamic, BW, and Customary Law"* (KKN Patriot Serve 2021)

two as joint property, then the Supreme Court gives the inheritance through a will*mandatory*for the defendant or the cassation applicant, namely the brother of the heir is taken from half the portion given to the heirs of ¼. In the Supreme Court Decision Number 218K/AG/2016 the Supreme Court Judge Considers giving inheritance through a will*mandatory*to non-Muslim heirs is valid and in accordance with the applicable rules.

2. The problem that arises in the distribution of inheritance of different religions is the provisions in the Compilation of Islamic Law, all pillars and conditions are combined together with the implementation procedure regulated from Article 194 to Article 209 of the Compilation of Islamic Law. So a will in this context is in the context of establishing a kinship relationship. The concept of a property will in Islam is shown to distant relatives or relatives who do not receive inheritance rights and also to other people. Through their decisions which become strong jurisprudence, judges also make laws that in practice dispute resolution cannot be avoided when the terminology used or the law does not regulate the problem at hand or the existing law contradicts the existing situation, that many heirs are non-Muslims who do not accept or are dissatisfied with the inheritance rights they receive and they feel that it is not appropriate for what they do while the heir is still alive, because they are not Muslim.

3. Efforts to resolve the problems encountered in the distribution of inheritance of different religions can be seen in the reality of people's lives that marriages of different religions occur as a reality that cannot be denied. That people who are not of the Islamic religion cannot inherit the inheritance from the heir. Therefore, the provisions for resolving marriage, inheritance and waqf issues for adherents of the Islamic religion refer to the Compilation of Islamic Law. family first. However, if one of the family members has a different religion, efforts can be made by carrying out a will*mandatory*in accordance with the Decision of the Supreme Court or Jurisprudence.

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