

# Inheritance Division for Non-Muslim Heirs According to the Supreme Court's Decision

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## ABSTRACT

Inheritance problem is not new, but contextually, inheritance dispute problems often arise in the community. The verdict of the Supreme Court provides a different interpretation that inheritance for non-Muslims is permitted by means of the obligatory worship for the sake of justice and benefit. While many scholars have agreed on its prohibition, the Compilation of Islamic Law and the fatwa of Indonesian Ulama Council (MUI) went on to give their permission. The question is, "What is the method and approach used by the Supreme Court in deciding the case of inheritance of different religions?" The results of this study are expected to be a meaningful contribution to the development of knowledge in general and Islamic law in particular regarding the reconstruction of the freedom of judges in deciding the case of inheritance different Religion based on progressive law. This research is a combination of normative and empirical legal research (applied law research). Normative-empirical legal research is legal research that is the object of studying normative legal rules and their application to legal events. The Supreme Court's decision on inheritance of different religions is a progressive attitude of the judge in observing the case, so that for the sake of legal justice, he gives it to non-Muslims by way of the obligatory wills. The decision of the Supreme Court Judges regarding the ability of non-Muslims to receive from Muslim heirs through the obligatory will, is a form of progressive, innovative and responsive attitude, a judge and has become jurisprudence for judges in the Religious Court.

**Keywords:** *Reinterpretation, inheritance, heirs of different religions*

## 1. INTRODUCTION

Indeed the main purpose of law is for justice and benefit, however, there must be a strong argument so that the law does not conflict with *syariah* law'. The main task of the judge is to understand the truth of the event concerned objectively through definitive proof, in order to obtain the truth of an event and aim to establish legal relations between the two parties and determine the decision based on the results of the evidence, and to convince the judge of the arguments or events that are submitted.[1]

Judges' confidence in proving civil cases is closely related to the concept of formal truth that is adhered to in civil procedural law. The formal truth does not require the judge to decide the case with his conviction, but it is sufficient based on the available evidence and is valid according to the Law. Settlement of civil cases that emphasize the search for formal truth, received attention from legal experts, because sometimes it becomes the reason for dissatisfaction of the parties who litigated the judge's decision.[2] In Islam, the principles of truth and justice are often found in the Koran, including the word of Allah Almighty, in Surah Ali Imran verse: 60, which means: "The truth comes from your Lord, therefore do not you (Muhammad), including those who doubt." (Surah Ali Imran: 60).[3, p. 57]

Inheritance law in Indonesia is still pluralistic, because currently there are three inheritance legal systems, namely customary inheritance law, Islamic inheritance law, and inheritance law Civil Code (Civil Code). This can be seen from the absence of national laws that specifically regulate inheritance law (unification of inheritance law), as in marriage law. With the prevailing legal pluralism, the heirs are given the freedom to determine the law they will use in dividing inheritance.

Civil law, which has an open nature and is not imperative, allows for the desires of the owner of the property who at the time of his death will be treated according to a certain way. This is because basically a property owner is entitled to be able to determine the allotment of his assets according to his own free will. This is a consequence of inheritance law as governing law.[4, pp. 2–3]

A will is also a one-sided legal act. This is closely related to the nature of *herroepelijkheid* (can be revoked) from the determination of the will. Here it means that a will cannot be made by more than one person because it will cause difficulties if one of the creators will revoke the will.

This is as stated in Article 930 of the Civil Code, which states: "In the only deed, two or more persons are not permitted to declare their will, whether to grant a third person, or on the basis of a joint statement or reciprocity.[5]

A will usually contains what is called appointment as an inheritance and giving a will. *Erfstelling* is the designation

of one or several people to be heirs to obtain all inheritance or a certain portion (such as how many) of inheritance. The person appointed is called the Testamentair Erfgenaam, the heir according to the will and just like an heir according to the law, he obtains all the rights and obligations of the deceased onder algemene title. As for a will which is the influence of Islamic law is the granting of rights to someone on the basis of a special will, the object of which can be determined. People who receive relief are called relief.

The last wish of a human being in the form of a will is sometimes able to avoid a dispute between the heirs, because with the last message and awareness of the heirs to respect the last wish of the willor. On the other hand it can also cause disputes that end in court.

What is interesting to study and analyze is that classical scholars have forbidden a non-Muslim to inherit from Muslims or vice versa, as well as in the Compilation of Islamic Law which also prohibits the inheritance of different religions, it is also in tune with the MUI fatwa which also Forbid the existence of heirs of different religions, this is based on the hadith of the Prophet which says not to each other. Seeing a Muslim to his heirs who are infidels, or an heirs of infidel inherit to Muslim heirs. In addition, the scholars also stressed that a will was not obtained for the heirs of non-Muslims who are analogous to the heirs of the different religions.

The relevance of Ulama's Views, Legislation, MUI Fatwa and the Supreme Court's Decision

No .	The Ulama' of Scholars	According to Law	Fatwa MUI	The Cission MA
1	The classical scholars have forbidden a non-Muslim to get an inheritance from Muslims or vice versa. In addition, the scholars also stressed that a will was not	Compilation of Islamic Law which also prohibits the inheritance of different religions	MUI fatwa forbids the inheritance of different religions.	The Putusan Supreme Court is very different and even contradicts the basic legal normative and positive law in Indonesia, namely Decision No. 368K / AG / 1995 and Decision No. 51K / SG / 1999,

obtained for the heirs of non-Muslims who are analogous to the heirs of the different religions.				and Decision No. 16 K / AG / 2010 concerning the ability of a non-Muslim heir to inherit by giving the referee the obligation to him, by re-exploring the philosophical meaning and sociological considerations. The Illat verdict is not betrayed to heirs of different religions who do not get inheritance, but it is pronounced to the form of alms or grants can be given to whomever they want.
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The problem in this dissertation is that the Supreme Court judges have decided on cases of inheritance of different religions with decisions that come out of the legal *tabi'at* or existing laws and regulations, both normative and positive laws, namely the emergence of Supreme Court decisions that are very different and even contrary to the basic legal normative and positive law in Indonesia, namely Decision No. 368K / AG / 1995 and Decision No. 51K / SG / 1999, and Decision No. 16 K / AG / 2010 concerning the ability of a non-Muslim heir to inherit by giving the referee the obligation to him, by re-exploring the philosophical meaning and sociological considerations. The 'Illat verdict is not betrayed to heirs of different religions who do not get inheritance, but it is pronounced

to the form of alms or grants can be given to whomever they want. This decision is an example of a decision that is very progressive and contrary to general rules.

As for the previous study, Riyanta's dissertation in 2014 at UIN Sunan Kalijaga Yogyakarta with the title "The Implementation of the Obligatory Testament For Different Religious Heirs (Study of the Supreme Court's Decision Number 51K / AG / 1999), this study only examined one decision. as for the formulation of the problem is what is the method and approach used by the Supreme Court in deciding the case of inheritance of different religions?

Practically, the results of this study are expected to be a reference material in decision making by legal practitioners, academics and scholars, and at the same time become an academic foundation in the making of new legal policies governing the freedom of judges in deciding cases of Beda religion in Indonesia.

## 2. THEORETICAL FRAMEWORK

This research is a combination of normative and empirical legal research (applied law research). Normative-empirical legal research is legal research that is the object of studying normative legal rules (in abstracto) and their application to legal events (in concreto). This is where the importance of progressive law is important, with the motto of pro-justice law and pro-people law. Progressive law puts the dedication of legal actors at the forefront. The perpetrators of the law are required to promote honesty and sincerity in carrying out the law. They must have empathy and care for the suffering experienced by the people and this nation.

## 3. RESULT AND DISCUSSION

In reality, many cases must be resolved for the sake of law based on humanitarian justice, for this reason, this research is only limited to the religious differences that normally people of different religions do not get a will and inheritance in the perspective of Islamic law and the Indonesian legislative regulations. In this case the researcher also limits the results of the Supreme Court's decisions, especially the Decision No. 368K / AG / 1995, Decision No. 51K / SG / 1999, and Decision No. 16 K / AG / 2010 concerning the ability of a non-Muslim heir to inherit.

### 3.1. Progressive Law

In the midst of an increasingly complex life and growing understanding, legislation is often interpreted as subjective and secular. Such attitudes are thought to be based on motives of worldly interests, such as; want to get rich quick, want to work comfortably and safely, want to quickly move up the rank, or want to win certain parties, and so on. They forgot the meaning of the verdicts which

read: "For the sake of justice based on the Almighty God". They neglect the mandate of the fifth precept "Social justice for all Indonesian people".

Progressive Law broke the deadlock in seeking justice. Progressive law does not understand law as an absolute final institution, but is largely determined by its ability to serve humans. In the context of such thinking, the law is always in the process of continuing to be. The law is an institution that continuously builds and changes itself towards a better level of perfection. The quality of perfection here can be verified into factors of justice, welfare, concern for the people and others. This is the nature of "law which is always in the process of becoming (law as a process, law in the making), this is the face of progressive law which can be understood in essence to find the true nature of the law.

If equality before the law cannot be realized, the alignments are absolute and lasting forever. Humans create laws not only for certainty, but also for real happiness and justice. As long as the judge is human, the complex or predisposed choice available to him will determine how a text is read and interpreted according to existing rules (written rules that are statutory). Linear and nonlinear cassation. Positive textual mind-sets will only "spell" a rule.

Another way is to contemplate (contemplation) and look for deeper meaning from a rule. This is according to Paul Scholten's idea. When the "door to contemplation of meaning" is opened, a new panorama unfolds before the judge. Contemplation will not stop at the subjective dimension, but also social in the sense of progressive law itself. Judges not only listen with subjective ears, but also with "social ears".

This paper wants to say, however small the angle of entry aspect of the court of cassation, it still exists and it all depends on the judges presiding over the trial "why is that because one of the principles of criminal law says" "ius curia novit" with the meaning that the judge who is considered the most knowledgeable about the law.

But of course with logical foundations for establishing laws that will not contain discrimination (not discriminating). Which in order to incorporate the nuances of progressive law in this formal legal state solely to create ideal law. So that in the future all the problems that occur (problems) that occur in a rule of law such as Indonesia is left entirely to the law, the State, and its supporting devices.

So that in the future the trust of the community will be surrendered to the State in seeking justice through the existing judicial institutions, both the District Court (PN), the High Court (PT) and Mahkamah Agung (MA), without any widespread public doubts.

### 3.2. Analysis of the Supreme Court Ruling on Inheritance of Different Religions

In this case, the role of the judge is not only as a mouthpiece of the law, but he must be able to answer

problems that exist outside the formal law, with an interdisciplinary approach, for example there are two Supreme Court decisions about the status of non-Muslim heirs namely the Court's Decision Agung Number: 368K / AG / 1995 dated July 16, 1995 and Number: 51 K / AG / 1999 dated September 29, 1999 and Decision No. 16 K / AG / 2010.

In Decision Number 368 K / AG / 1995 it was stated that the heirs of non-Muslims get a share of the inheritance of Muslim heirs based on the obligatory testament as much as the portion of Muslim heirs, in this decision the non-heirs are not declared as heirs.[6] Whereas in the Decision Number 51 K / AG / 1999 stated that non-Muslim heirs are declared as heirs of Muslim heirs and get equal shares with Muslim heirs based on the obligatory testament, in this decision stated that non-Muslim heirs are considered as heirs.[7] And Decision No. 16 K / AG / 2010 concerning the ability of a non-Muslim heir to inherit by giving referees obliged to him.

From the three decisions above, an understanding can be drawn that through its jurisprudence the Supreme Court has renewed Islamic inheritance law from not giving wealth to non-Muslim heirs to giving wealth to non-Muslim heirs, and from not recognizing non-Muslim heirs as heirs of the heirs Muslims leading to the recognition that non-Muslim heirs are also considered as heirs of Muslim heirs. In other words, the Supreme Court has given heir status to non-Muslim heirs and has given an equal share of assets to Muslim heirs.[8]

With the emergence of these two decisions, it is clear that the Supreme Court has deviated from the provisions in Article 171 Compilation of Islamic Law Letter c that does not give assets to non-Muslim heirs and does not recognize non-Muslim heirs as heirs of Muslim heirs.

In addition, the decision of the Supreme Court judge contradicted the provisions of the Indonesian Ulama' Council (MUI) Fatwa Number: 5 / MUNAS VII / 9/2005 concerning the Inheritance of Religious Differences, which stipulates that: different religion (between Muslims and non-Muslims). 2) Giving wealth between people of different religions can only be done in the form of grants, wills and gifts.[9]

Nevertheless, basically the decision of the Supreme Court judges is not contrary to the principles of progressive law, namely; 1) law is for humans and not humans for law, 2) law is not a law in book but law in action, 3) law is a moral humanitarian institution and not a technology that does not mean true. The Supreme Court judge's decision, of course, using a social approach with the law of God is humanity. This decision is what later becomes jurisprudence for judges to be able to decide cases with substantive justice, so that judges are not only mouthpieces of the law, but are also able to *ijtihad* against the challenges that exist in society that requires decisions.

The Egyptian Inheritance Act passed an opinion stating that a Muslim cannot inherit his non-Muslim heirs, as stated in Article 6 paragraph (i) of the KUHW: "There is no inheritance between Muslims and non-Muslims." [10]

Both religious differences occur when the testator is still alive or when the testator has died. Civil law in force in

Indonesia as in the Civil Code (Civil Code) does not regulate in terms of religious differences between heirs and heirs. In contrast to the Compilation of Islamic Law (KHI), which applies specifically to the Muslim community, which regulates the differences in the religion of heirs and heirs.

In Article 171 item (c) KHI is stated, which includes an heir, that is, someone who when the heir dies dies meets the following requirements: 1) Having blood relations or marital relations; 2) Muslim and 3) Not hindered because of the law to become an heir.

These three requirements are cumulative which means that in order to become heirs according to Islamic law, they must meet all of these conditions. So for example when a father (Muslim) dies and one of his biological children is non-Muslim, then the child is not entitled to become an heir.

## 4. CONCLUSION

Inheritance of different religions is actually prohibited based on the hadith of the Messenger of Allah. "It does not inherit each other from a Muslim to non-Muslims and non-Muslims to Muslims." Likewise in the case of compulsory testament based on Islamic Law Compilation, article 171 that testaments can be given to adopted children or adopted fathers, but the Supreme Court's Decision provides a different interpretation that inheritance for non-Muslims is permitted by compulsory will for the sake of justice and benefit.

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