

The Juridical Basis of Religious Court Judges in Granting Mandatory Will Rights to Non-Muslims: Study of the Analysis of Religious Court Decision Number 263/Pdt.G/2007/PTA.Sby

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Abstract

In this study, the main problem is the concept of wills wajibabah which is not yet known in classical fiqh, as well as the lack of provisions in Indonesian legislation that can be used by judges to decide cases of wills wajibabah. As a result, judges in religious courts have struggled to resolve cases of wajibah wills brought before the court. The purpose of this study is to analyze the juridical basis of judges in the Religious Courts in Indonesia in granting the right of compulsory bequest to non-Muslim heirs. The approach used in this research is content analysis. The source of information used is Decision Number 263/Pdt.G/2007/PTA.Sby the decision is then analyzed using the content analysis method. The data used is secondary data consisting of primary legal materials in the form of decisions of Religious Courts in Indonesia regarding mandatory wills, as well as secondary and tertiary legal materials. Data analysis was conducted using qualitative normative analysis method. The findings of this study indicate that the ijtihad of judges in religious courts is based on juridical foundations which include the Law (UU), Compilation of Islamic Law (KHI), verses of the Qur'an, hadith, opinions of scholars, fiqh rules, Maqasid Sharia rules, and qiyas.

Keywords: juridical basis; judge; non-Muslim; mandatory will.

Introduction

The term wajibah will (B.S. & Hariyati, 2020; Fauzi, 2019; Mutmainah & Sabir, 2019) was first introduced in Egypt through the 1946 Inheritance Law with the aim of maintaining justice and providing assistance to orphaned grandchildren. (Harahap, 2020; Nuraenun, 2017) The main principle introduced in Egypt regarding inheritance law is the right of orphaned grandchildren to their grandfather's property. (al-Ash'ari, 2022) This is controversial in Islamic law because it does not recognize representation. The

proposed solution to support the position of orphaned grandchildren is through compulsory bequests. (Fihna, 2022; Marsiani, 2016; Wahib, 2014)

In Egypt, the law of intestacy restricts bequests to grandchildren of the testator whose parents died first, and they do not receive a share of the inheritance due to their position as *zawil arham* or being covered by other heirs. The compulsory inheritance law in Egypt dates back to 1946 and was included in the 100th amendment in 1985. For example, Article 76 states that if the testator does not make a will for his predeceased descendants, then his descendants will receive an inheritance equal to their father's share through a compulsory will, with a limit of no more than one-third of the inheritance. (Afwan, 2024)

In Indonesia, unlike in Egypt, probate is granted specifically to adopted children. If an adopted child does not receive a will during his or her lifetime from his or her adoptive parents, then he or she has the right to obtain a compulsory will that can be filed before the law. (Dkk, 2019; Khomaini, 2023; Nofitasari, 2021) The amount of probate granted cannot exceed 1/3 of the total inheritance. (Achmad Jarchosi, 2020; Ritonga, 2021)

Compulsory probate relates to property issues. (Aisyah, 2019; Windani & Meiliawati, 2023) The transfer of assets from one person to another can occur in various ways. For example, a grant is a transfer of property from one person to another as long as the person who bequeaths the property is still alive. Inheritance is the transfer of property to another person when the owner of the property dies. A will is property given from one living person to another, but the transfer of the property occurs after the death of the person who gave it. (Wantaka, 20189)

The law of wills is mentioned in the Qur'an in Surah Al-Baqarah (2:180) and Surah An-Nisa (4:11-12), which require Muslims to make a will before dying. In addition to the above verses, wills are also based on many Prophetic traditions. Among them is the hadith of the Prophet Muhammad which tells about the desire of Sa'd bin Abi Waqqas who wanted to bequeath more than half of his property because he only had one daughter, but the Prophet forbade him and was only allowed to bequeath 1/3 of his property. So, at the doctrinal level, a person may only bequeath a maximum of one-third (1/3) of his property to others. (Setiawan, 2017) Furthermore, recipients of wills who are not heirs are not entitled to their inheritance based on the Prophet's hadith that it is not permissible to make a will for heirs.

Wasiat wajibah is a will for heirs.(Achmad Jarchosi, 2020) or relatives who do not receive inheritance from the deceased due to certain circumstances, such as being unable to receive inheritance or because their religion is different from the deceased.(Rinaldi et al., 2017) Although there is the word wajib in the term mandatory will, in reality this will is not legally required, but only recommended. Several Islamic countries have adopted this mandatory will provision, including Indonesia by including the provisions of Article 209 of the Compilation of Islamic Law. However, the obligatory will mentioned in this article only concerns the adoptive mother against the property of her adopted child. Based on the explanation above, it can be understood that the mandatory will is a maximum of 1/3 of the deceased's property, in its implementation it is entirely under the decision of the *ijtihad* of a religious court judge. The judge has the right to determine the nominal according to the *maslahat* in the view of a judge.

In practice, the determination of the amount of the mandatory will for adopted children must also take into account the amount of the share given to biological children, so that there is no injustice between the two. This means that although the maximum limit of the mandatory will is 1/3 of the total inheritance, it should not exceed the share given to biological children. (Fazlon et al., 2022; Hannifa et al., 2022; Octasari et al., 2023) This is important to ensure that no disparity arises between adopted and biological children, thus ensuring fair treatment in the distribution of inheritance.

The existence of adopted children in society is a social phenomenon (Abdoeh, 2018; Safrudin, 2022) which is practiced with various motivations.(Achmad Jarchosi, 2020) In general, the motivation for child adoption can be divided into two broad categories, namely subjective motivation and objective motivation. Subjective motivations for adopting a child are those that arise from the personal desires of the individual adopting the child. These subjective motivations may include reasons such as the absence of offspring or heirs, or as an attempt to acquire biological children. On the other hand, objective motivation for adopting a child means adopting from the perspective of the interests of the child in question. In general, objective motivations also involve social and spiritual factors. Both people who have biological children and those who do not can be socially and spiritually motivated to adopt a child. In addition, economic reasons can also be an objective motivation for adopting a child, especially if the biological parents are unable to meet the needs of the child. (Sompie, 2017)

Article 171 letter h in the Kitab Hukum Islam (KHI) explains that adopted children refer to children whose maintenance for daily life, including education costs,

and such responsibilities are transferred from the original parents to their adoptive parents based on a court decision. (Fatia & Budiarta, 2023; Sompie, 2017) On the other hand, Article 209 regulates the inheritance of adopted children. Article 209 paragraph (1) stipulates the obligation for adopted children to provide a will to their adoptive parents amounting to 1/3 of the total inheritance. Meanwhile, Article 209 paragraph (2) emphasizes that adopted children who do not receive a will will be given a mandatory will of 1/3 of the inheritance of their adoptive parents. (Aisyah, 2020; Marsilina, 2021) Thus, the mandatory will is understood as an obligation stipulated by law (KHI) for adoptive parents to give a maximum of 1/3 of their inheritance to their adopted children after death.

In Indonesia, there are several cases regarding the granting of mandatory wills in the Religious Courts where the judges' decisions are not in line with the concept of mandatory wills in the Compilation of Islamic Law. First, Decision No. 263/Pdt.G/2007/.PTA.Sby concerning the granting of a mandatory will to non-Muslims. In this case, a mother willed her property to five of her seven children. One of the contents of her will was to set aside a portion of her estate to be given to one of her Christian children, to be given after her death. The case then reached the appeal level. In this case, the applicant was one of the siblings of six applicants, including PSP who is a non-Muslim. The decision of the judges of the Surabaya High Court of Religious Affairs upheld the decision of the Jember Religious Court. The decision stated that the respondent PSP was prohibited from receiving inheritance from her heirs due to her status as a non-Muslim. However, she was entitled to receive a will through a grant from the testator's estate as stated in dictum number five, namely 1/7 of the estate. Second, Decision No. 21/Pdt.G/2016/PT.MK on the mandatory granting of a will to a non-Muslim husband. After the appeal process was completed, the Makassar High Court of Religion issued a decision that upheld the Makale Religious Court's decision. Among the decisions was a petitum stating that PMR as the husband of the testator only received a mandatory will (grant) from his wife's estate.

The decision above is interesting to study, because they have their own uniqueness when compared to other decisions related to mandatory wills. Normatively, the Judges of the Religious Courts should not be able to give mandatory wills to non-Muslim heirs referring to the provisions in the Compilation of Islamic Law. In reality, the Religious Court Judges took an extra-ordinary way and went out of the proper rules. Meanwhile, other Religious Court decisions related to the granting of mandatory wills to

adopted children are all still in the order of reasonableness, in accordance with the regulatory corridor in the Compilation of Islamic Law.

Therefore, the formulation of the problem of this research is How the Juridical Basis of Religious Court Judges in Providing Compulsory Testamentary Rights to Non-Muslims in Decisions Number 263 / P. dt.G / 2007 / PT.Sby about compulsory wills to non-Muslims. This study aims to determine and analyze how the juridical basis of religious court judges in granting mandatory will rights to non-Muslims.

In studying and analyzing this phenomenon, this research will use *maqasid shari'ah* theory. The main theory used is the *maqasid* theory of Ash-Shatibi, who is popularly known as the *maqasid shariah* figure in Islamic Law. According to him, *maqasid al-Syariah* can be summarized in five aspects of maintenance that take place hierarchically. The five aspects of maintenance are the maintenance of religion (*hifz al-din*), maintenance of the soul (*hifz al-nafs*), maintenance of reason (*hifz al-'aql*), maintenance of offspring (*hifz al-nasl*), and maintenance of property (*hifz al-mal*). These five forms of preservation are the general objectives of Sharia law advocated by Ash-Shatibi. (Lutfiatus Sholikhah, 2023; Sugeng, 2018)

There are several previous studies in the case of *wasiat wajibah* to non-Muslims. Among them, Apriyudi in his article entitled "Distribution of Heirship to Non-Muslim Siblings through Compulsory Wills" concluded that non-Muslim biological children are not recognized as heirs in Islamic inheritance law. However, through the concept of compulsory testament, non-Muslim children can receive a share of the Muslim heir's estate equal to the share of daughters. This research highlights the importance of revising the law to clarify the inheritance provisions for non-Muslim children in Muslim families. (Apriyudi, 2018) Ismail in an article entitled "Granting Compulsory Wills to Non-Muslim Wives According to the Indonesian Supreme Court Decision No. 16K/AG/2010". The main finding in this study is that positive law in Indonesia does not explicitly regulate the granting of mandatory wills to non-Muslim wives, but the Supreme Court of the Republic of Indonesia through its decision grants this right based on considerations of justice and humanity. In conclusion, although the Compilation of Islamic Law does not mention the mandatory will for non-Muslim wives, the Supreme Court provides mandatory wills to non-Muslim wives as an effort to fulfill a sense of justice after the wife's long devotion to a husband of a different religion. (Ismail, 2020)

Furthermore, Raharjo and Putri in the article "Analysis of the Granting of *Wasiat Wajibah* to Heirs of Different Religions after the Supreme Court Decision Number 331

K/AG/2018". The findings state that before the Supreme Court's decision, non-Muslim heirs were given a mandatory will of 3/4 of the inheritance, which later changed to 1/4 of the inheritance. This change reflects a shift in the value of justice in society, which adapts to the development of the values of justice and humanity. (Raharjo & Putri, 2019) Likewise Herenawati, et al in the article "The Position of Inheritance from Non-Muslim Heirs and the Application of Mandatory Wills for Non-Muslim Heirs" found that religious differences are often a barrier to inheritance. However, the Badung Religious Court made a breakthrough by determining the inheritance of Muslim heirs from apostate heirs and providing inheritance in the form of mandatory wills for non-religious heirs. This decision shows that in the context of Islamic inheritance law, religious differences are not always a barrier, and the application of mandatory wills can ensure justice and benefit for all parties. (Herenawati et al., 2020)

Referring to the reality above, it can be seen that there is a legal gap that needs to be explored more regarding the granting of mandatory wills to non-Muslim heirs. The difference between the decision of the Panel of Judges of the Religious Court and the regulations contained in the Compilation of Islamic Law shows a discrepancy in decision making in each judicial institution. In fact, the source of legal reference used in producing the decision is the same, namely referring to the Compilation of Islamic Law. The point that distinguishes this research from previous studies as listed above, that this research seeks to reveal in more depth and more broadly about the juridical basis used by Religious Court Judges in granting mandatory wills to non-Muslim heirs.

Methods

This research is included in the type of legal research, which is a scientific activity based on certain methods, systematics, and thoughts that aim to study one or several certain legal symptoms by analyzing them. This research uses library research materials, namely the judge's decision as the main legal material. The approach used is a case approach. The case in question is the case of a will contest that has been decided, namely Decision Number 263 / P. dt.G / 2007 / PT.Sby. The case approach understood is the ratio decidendi, which is the legal reason used by the judge to arrive at his decision.

The data source used in accordance with the method of obtaining it is a secondary data source. The main references used are the decisions of religious high court judges regarding mandatory wills that have permanent legal force in religious courts in

Indonesia until 2016. In addition, secondary legal materials such as laws and regulations on marriage, fiqh and ushul fiqh books were also used. Data collection was carried out by searching online for both decisions relating to mandatory wills on the Supreme Court website. Data analysis in this research is document analysis or content analysis. Content analysis can be done objectively and systematically to describe the content of an information document material. Descriptive content analysis in this research is to describe in detail a particular message or text. In this research, the text message in the religious high court judge's decision on the will is analyzed. Furthermore, the data is described using reduction techniques, data presentation, and verification (conclusion drawing).

RESULTS AND DISCUSSION

Maqasid al- Sharia

Maqasid al-syariah literally means the purpose of sharia law.(Iqbal et al., 2023; Kurniawan & Hudafi, 2021; Ridwan, 2020) Ideally, the religious teachings established by Allah SWT and the Prophet Muhammad in the Qur'an and Hadith have a specific purpose. Sometimes the purpose can be known directly and sometimes the purpose of sharia law needs to be explored more deeply to find it. Islamic jurists in this case are called mujtahids, who have broad authority based on the provisions of sharia law to explore the objectives of sharia law. Ash-Shatibi is one of the Islamic jurists who introduced the concept of maqasid al-Syariah. According to him, this maqasid al-Syariah can be summarized in five aspects of maintenance that take place hierarchically. The five aspects of maintenance are the maintenance of religion (hifz al-din), maintenance of the soul (hifz al-nafs), maintenance of reason (hifz al-'aql), maintenance of offspring (hifz al-nasl), and maintenance of property (hifz al-mal). These five forms of preservation are the general objectives of Sharia law advocated by Ash-Shatibi. (Lutfiatus Sholikhah, 2023; Sugeng, 2018)

This Islamic jurist elaborated on these objectives of Sharia with clear examples, viz:(Hasanudin, 2020; Wiguna, 2021)

1. Allah SWT has established the shari'a about the obligation of prayer and the wisdom and good value in performing it, fasting and its benefits for health, and paying zakat to help others and purify wealth with the main purpose of maintaining the existence of religion. Conversely, when someone insults religion, makes fun of people who pray or fast, then he deserves certain sanctions.

2. Allah SWT stipulates that everyone eat, drink, rest, and take good care of himself so that his body remains healthy to carry out worship to Allah and society. Conversely, when someone interferes with the safety of another person's soul in various forms and then threatens the safety of his soul, even to the point of killing him, then Allah SWT imposes a severe punishment on the perpetrator.
3. Allah SWT stipulates that everyone maintain their intellectual capacity with good food and drink to keep their brains healthy. Conversely, when someone consumes certain drinks or substances that can alter the function of the mind and brain, then Allah SWT punishes the culprit with a clear punishment.
4. Allah SWT has stipulated that people who have fulfilled these conditions can get married, so the sharia institutionalizes marriage with the help of the state. On the other hand, when people channel their sexual needs in a deviant way, this is condemned by religion and in certain circumstances the perpetrator may even be punished.
5. Allah SWT has stipulated that everyone seeks sustenance, accumulates wealth and does his best with good / right and Allah SWT guarantees the existence of his property for him. Conversely, when there are people who take, seize and or embezzle the property of others, then Allah SWT severely punishes the perpetrators.

In the current context, documents in the form of power of attorney laws, government regulations, and local regulations also serve a specific purpose. The purpose of all regulations issued by any organization can be assessed from a *maqasid al-syari'ah* perspective in the same and substantive way. This is based on the premise that Allah SWT has stipulated that Muslims must obey Allah and the Prophet Muhammad and obey *ulil amri*. *Ulil amri* in Surah an-Nisa (4:59) has been interpreted by commentators with various meanings. The meaning of *ulil amri* includes judges. (Amri, 2018; Mauliah, 2023) Judges are people who have the right to make decisions on cases submitted to them. (Putri & Izzuddin, 2022) Therefore, the decisions they make can be studied and examined for their purpose, as they are made by people who are authorized by the sharia law of the Qur'an and Sunnah.

Analysis of Court Decision No. 263/P. dt.G/2007/PT.Sby

Wasiat wajibah is one of the cases that is not always brought to the Religious Court even though it is within its absolute jurisdiction. As of mid-2018, a number of cases have been resolved by religious judges and posted on the Supreme Court website.

This is in contrast to other cases such as divorce, inheritance and marriage which continue to increase each year in all religious courts in Indonesia. On the one hand, the scarcity of compulsory testament cases is understandable as Muslims rarely bequeath their property except to a handful of people.

The case contained in Decision No. 263/P. dt.G/2007/.PTA.Sby concerning the granting of compulsory wills to non-Muslims. In this case, a mother willed her property to five of her seven children. One of the contents of her will was to set aside a portion of her estate to be given to one of her Christian children, to be given after her death. When the mother died, one of her Muslim children challenged her will. He took the matter to the Religious Court in December. In the end, one of the seven siblings objected and did not accept the court judge's decision to give the will to the non-Muslim sibling, even while in Jember. The Religious Court declared the mother's will invalid.

This case was decided by a religious court judge in December with Case No. 204/Pdt.G/2007/PA.Jr. The judge ruled that PSP, who is a Christian, is one of the seven biological children of S as an heir, while the other six children are Muslims. The judge ruled that PSP could not receive inheritance because the objective condition of being non-Muslim made her not entitled to receive inheritance from her Muslim mother. The judge specifically cited one of the hadith propositions which states that a Muslim cannot inherit from a non-Muslim and vice versa. However, the judge transferred his position as a 1/7 compulsory heir on the basis of his closeness to his mother and the affirmation of article 209 of the Islamic Inheritance Law which allows it. In accordance with the provisions of Islamic law, the judge ruled that the issue of compulsory inheritance through bequest to PSP should take precedence over the distribution of the estate to the other six siblings.

The case then reached the appeal level. In this case, the applicant was one of the siblings of six applicants, including PSP who is a non-Muslim. The decision of the judges of the Surabaya High Court of Religion upheld the decision of the Jember Religious Court. The decision stated that the respondent PSP was prohibited from receiving inheritance from her heirs due to her status as a non-Muslim. However, she is entitled to receive probate through a grant from the testator's estate as stated in dictum number five, which is 1/7 of the estate.

Referring to the definition of mandatory testament in accordance with the jurisprudence conveyed by Prof. Dr. H. Abdul Manan, that mandatory testament is an act carried out by the authorities, in this case the Panel of Judges as a State apparatus to

give a decision that is compelling on the testator's will given to certain people and in certain circumstances.(Nofitasari, 2021) Another opinion regarding the mandatory will was conveyed by Andi, who explained that the mandatory will is a will intended for heirs who are veiled.(Naja & Aziz, 2022) Suparman also gave an opinion about the mandatory will, that the implementation of the mandatory will is not hindered or does not depend on the will or will of the testator.(Khalisha & Zubaedah, 2021)

The opinion of these experts is based on the fact that the role of implementing the obligatory will owned by the Religious Court exists because of the judicial power possessed by the Religious Court based on Article 24 paragraph of the 1945 Constitution of the State of Indonesia. It is further explained in Article 49 paragraph (1) of the Law on Religious Courts, that in exercising judicial power the Religious Courts have the duty and authority to examine, decide and settle at the first level for citizens who are Muslims. With the scope of the case, namely, marriage, inheritance, wills, grants, waqf, zakat, infaq, shadaqah, and Islamic economics.

The duties and authority of the Religious Court are also in accordance with the competence of the absolute court, that the court that has the right and authority to examine and decide Islamic cases related to marriage, inheritance, wills, grants, waqf, zakat, infaq, shadaqah, and Islamic economics is the Religious Court.(Fataruba, 2016) So that based on the authority of the Religious Court, it makes the Supreme Court also have the same rights and authorities in receiving and examining requests for legal remedies both ordinary legal remedies and extraordinary legal remedies for first-level decisions in the Religious Court. So based on the provisions of this legal basis, making mandatory wills can be given through the Religious Court as the first level court in the Religious Courts, as well as through the Supreme Court as the final level court or as a place to submit applications for ordinary and extraordinary legal remedies, namely cassation and judicial review.

Based on the provisions regarding mandatory wills in Article 209 of the Compilation of Islamic Law, basically mandatory wills are intended for adopted children and/or adoptive parents. The amount of shares to be received by adopted children and/or adoptive parents is the same as that received by biological children and/or parents, which is regulated in Article 176 through Article 193 of the Compilation of Islamic Law. However, the difference in the amount of the share to be received by adopted children and/or adoptive parents with biological children and/or biological

parents is that the amount of the share cannot exceed 1/3 (one-third) of the total amount of the inheritance of the heir.

Therefore, referring to the provisions of the mandatory will, the Panel of Judges decided that in the case of heirs of different religions, non-Muslim heirs get a share of the Muslim heir's estate based on the mandatory will with the same amount as Muslim heirs. And also contained in the Supreme Court Decision Number 51/K/AG/1990 with similar content. Furthermore, both decisions are used as Jurisprudence for judges to decide similar cases. This jurisprudence is obtained by improving the obligatory will into a broader scope, namely by analogizing adopted children and/or adoptive parents similar to heirs of different religions.

Heirs of different religions who are heirs who have a marriage relationship or blood relationship that has also been determined by the provisions of the share in the Al-Quran (dzawil furudh) but are immediately blocked or veiled as heirs because of different religions with the testator. Meanwhile, when viewed from the services and closeness of heirs of different religions to the testator may be greater services and closeness compared to adopted children and / or adoptive parents. So that if the adopted child and / or adoptive parents alone get the inheritance of the testator through the mandatory will, the heirs who are different religions should also be able to get the inheritance through the mandatory will as well. This is also based on the value of justice and human values, so that on the basis of this reason the Supreme Court decided to give the right to the inheritance of the testator's property to heirs of different religions through a mandatory will as well as adopted children and / or adoptive parents.

The issue of the position of non-Muslim heirs has been widely studied by scholars including Yusuf Al Qordhawi, who interpreted that non-Muslims who live side by side peacefully cannot be categorized as kafir harbi or kafirs who disturb and threaten the safety of Muslims, as well as the testator and her husband during their lifetime got along in harmony and peace. This is based on several considerations: first, based on the value of justice, that the law is applied with the aim of upholding justice. The justice referred to in Religious Court Decision Number 263/Pdt.G/2007/PTA.Sby is by determining the people who are entitled to be heirs of the testator and giving each heir their respective shares of the testator's inheritance with the provisions of the Islamic Law of Inheritance, as well as providing inheritance for non-Muslim heirs through mandatory wills. Second, based on human values (humanity/insaniyyah), that laws that emphasize human values are considered as substantial laws or laws based on the behavior patterns

of the people in a legal system. Third, that the law was created as social engineering with the aim of social welfare.

Indonesia is a state of law, as has been emphasized in Article 1 paragraph (3) of the Indonesian Constitution 1945 that, "The State of Indonesia is a state of law." As a state of law, it upholds the applicable law as a tool to regulate the life of the nation and state. Likewise, in the case of inheritance, judges who try cases of inheritance of different religions should look at the provisions contained in the rules of positive law in Indonesia first to be used as legal considerations in deciding cases, and if no positive legal rules are found, then judges are allowed to interpret the rules of law and make new legal discoveries on cases that are not previously regulated in positive law.

The case concerned a religious judge's decision to grant inheritance to one of seven non-Muslim siblings through a compulsory will. Initially, five of the seven siblings received a will from their mother when she was alive. However, the will was annulled by the religious judge. However, the judge decided to give the inheritance to the Christian siblings through a compulsory will. The judge instead applied the concept of *hiyal* put forward by the Hanafiah school of thought. The judge annulled the compulsory testament because the legal act violated the provisions of sharia law regarding grants and wills, where grants are given during life and wills are given after death. But then the judge restored the rights of one of the non-Muslim siblings through a compulsory will, because non-Muslims are not entitled to inherit the property of their Muslim mother but can receive property through a compulsory will. Thus, the principle of receiving inheritance for non-Muslims changed from a statutory will to a mandatory will.

Basically, there is a close relationship between grants and wills. Among them, grants and wills can be given to both Muslims and non-Muslims. This is in accordance with the *fiqh* concept that a Muslim can make a will to a *kafir zimmi* (a non-Muslim who has a peace treaty with Muslims) and vice versa as the will is considered valid. It appears that this decision was taken by the judges based on their opinion of the above *fiqh* thinking. The judges were of the opinion that it is permissible for a Muslim to bequeath to a disbeliever and vice versa. In the case of compulsory inheritance in the form of a bequest decided by the judges in the above case, this is correct according to the view of *qiyas*. According to *aulawi qiyas* (*mafhum muwafaqah*), bequests can be given and received from and to non-Muslim relatives. This is relevant to the case under discussion, so the act of a Muslim mother giving her inheritance to her non-Muslim son

is certainly more acceptable. Therefore, the religious judge's *ijtihad* in granting compulsory inheritance in the form of grants to non-Muslim relatives is appropriate.

The judge used various *maslahah* considerations in finding a way for non-Muslims without violating the provisions of Sharia law. First, safeguarding the soul (*hifz al-nafs*). This case involved seven children (including one non-Muslim) who were the heirs of a deceased testator. But before dying, the testator made a will stating that the non-Muslim child would receive part of his property in the form of a grant. This situation can lead to major conflicts if it is not resolved in the religious court after the testator dies. Many cases of inheritance disputes have led to fights, persecution and even murder among heirs. Thus, property that is essentially to be protected for the sake of survival becomes the cause of the collapse of humanity and kinship. The judge's decision to grant a mandatory will to non-Muslims in the form of a grant can be an effective solution to avoid conflict between relatives.

Ensuring the safety of life in Islamic law is second only to the obligation to protect religion in this law. Inheritance issues can lead to family members who do not receive inheritance breaking the law, even killing each other over property. Such practices are incompatible with the objectives of sharia (*maqasid al-syari'ah*), which is a religion of justice, peace and the benefit of the universe (QS. *al-Anbiya`* (21): 107). Hence, maintaining the integrity of the family is the primary goal of Islam (QS. *at-Tahrim*: 66): 6).

The impact of the loss resulting from the killing of an heir who is not given his or her share of the inheritance can result in the breakdown of the household. In addition, this problem will become complicated and will continue for generations to come due to revenge. This does not rule out the possibility of civil war between family members. As a preventive effort to overcome these problems, the judge's policy in granting a will through a grant is the right action in accordance with the objectives of Islamic law, because one of the functions of the judge's decision in Islamic law is as an intermediary and intermediary as a party that stops and resolves disputes.

Second, the protection of property (*hifz al-mal*). Property is something that humans strive to obtain, so it has value in human life. Heirs absolutely need inheritance from their parents. To ensure the security of property so that it is not destroyed and controlled only by a handful of heirs, religious judges prevent such damage by deciding on a compulsory will in the form of a will to a non-Muslim child, because the child cannot obtain property through inheritance. The judge ruled that the distribution of the

estate must be done while the testator is still alive. Thus, the testator witnessed the transfer of the estate and was responsible for distributing it to his non-Muslim children. Indeed, according to Islamic law, a will must be made after the testator dies. The way the judge ruled that the will took the form of a testament means that the will could be made while the testator was still alive, as the will was made during his lifetime. The judge relied on two strong grounds (*maslahah*), on the one hand the execution of the will and on the other hand making allowances to uphold the rights of non-Muslim children without neglecting the rights of Muslim children as they should.

There is something else in this law that also relates to the safeguarding and maintenance of property. Each heir receives his or her own share of the estate. Non-Muslim family members who do not receive an inheritance will more or less feel jealous of other heirs who receive an inheritance. In the Judge's view, social jealousy can lead to illicit acts such as robbery, theft and destruction of other heirs' property. If something like this happens, it can cause huge losses for all parties, given the important role of property in people's lives.

Third, protecting religion (*hifz al-din*). Another consideration of the judges in this decision was the need to preserve religious values. Although the obligation to uphold religious interests is prioritized in sharia law, this was not the case in this case. If the judges had prioritized religious interests in this decision, then the non-Muslim siblings would not have been able to get a share of their parents' inheritance. Thus, the value of the obligation to preserve religion in this decision was seen by the judge from a different perspective. The destruction of a person's religion is the worst impact of inheritance disputes, because if a person's religion is destroyed, then he has lost his meaning as a human being. Many cases show that family members do not get inheritance, seize inheritance from other relatives, or commit acts of destruction in the form of arson, and others. If this happens, it can have a negative impact on the survival of Muslims among their non-Muslim brothers and sisters. Ultimately all these issues can jeopardize the security of one's faith. Therefore, it is very wise to follow the steps of *ijtihad* and legal developments made by the judges by providing a mandatory will in the form of a grant to non-Muslim heirs to maintain the integrity of their religion and beliefs.

Fourth, maintaining the integrity of the family lineage (*hifz al-nasl*). The judge's decision to provide compulsory inheritance in the form of grants to non-Muslim children can make a positive contribution to the maintenance of kinship relations between the children of the heirs. The judge was of the opinion that the consequences

are very serious if a non-Muslim child does not get a share of his parents' inheritance simply because of religious differences. In terms of lineage, he was born and had the same parents as his other siblings. This fact separates him from his siblings because of his wealth. With the judge's ruling, he will remain bound to his siblings, so that the familial ties that bind them remain intact. Therefore, wealth and the obligation to maintain it, which ranks fifth in *maqasid al-syariah*, cannot and should not be a reason to separate them, although there is a way justified by *sharia* to give it to non-Muslims, namely through grants.

Fifth, the realization of justice. The judge's attempt to grant a compulsory will through a grant does not limit the understanding of the laws of inheritance, wills and grants to the scope of religion. The law of inheritance explains that a person who leaves Islam (apostate) is not entitled to inherit from his Muslim parents. Similarly, a Muslim cannot inherit from a non-Muslim. However, in this decision, the judge took another step by requesting a will and providing compensation to the non-Muslim family members. The judge based his view by stating that Islam is not a discriminatory religion, but one that embraces all humanity equally and is a mercy to the universe (QS. *al-Anbiya`* (21): 107).

The judge also provided an understanding that Islamic law is not rigid. According to the judge, Islamic law can provide protection and a sense of justice even to non-Muslims. This is explained at length in the Qur'an, among others in QS. *an-Nisa`* (4): 92 and the Sunnah of the Prophet SAW. The judge is not only guided by the special rules of inheritance that aim to prevent the mixing of inheritance between Muslims and non-Muslims, but also guided by the general rules of justice contained in the verses of the Qur'an and the inheritance of the Prophet Muhammad SAW. Therefore, the decision is taken based on the principle of *mashalih al-mursalah*. In other words, the judge can find the virtue of *maslahah* even though it is not clearly proven by the Qur'an and Sunnah. Nonetheless, the judge still emphasized that one of the non-Muslim siblings in this case was not an heir entitled to receive inheritance, but he could and did receive probate through a grant. However, he could and did receive probate through a gift of property that he could not inherit from his heirs. This is motivated by the judge's view that it is not permissible to include non-Muslims in the group of *kafirs* who are hostile to and fighting Muslims. In response to this, it can be understood that the religious judge's decision is a form of *ijtihad* within the framework of Islamic law reform that prioritizes the values of religious tolerance.

The pattern of religious high court judges in deciding cases of mandatory wills for non-Muslims is not only based on qiyas but also in line with the rules of guidance put forward by Tono that deciding cases submitted that have no legal basis or are unclear, but must study.(Tono, 2013) The provisions of this article provide an understanding that as the main organ of the court and as the executor of judicial power, judges are obliged to find the law in a case even though the legal provisions are absent or unclear. The decisions of religious court judges and religious high courts regarding compulsory probate for non-Muslims are not decisions that are made unconsciously and full of doubts as stated by Afrianto(Aprianto, 2023) but rather an effort to find *maslahah* from every consideration taken by judges in considering the benefits of non-Muslims in the religious world (Islamic judicial area).

The granting of inheritance rights on the basis of a mandatory will to non-Muslim heirs is one of the reforms of Islamic law in the field of inheritance that occurred in Indonesia. The legal reform was born (exists) from the *ijtihad* of the Supreme Court judges in examining, adjudicating, and deciding the case of inheritance of different religions. Basically, judges can make *ijtihad* in deciding a case where there is no rule of law governing the issue, but the judges who make *ijtihad* must not contradict the principles contained in the Quran and hadith as well as those contained in the existing rules of law.

Conclusion

Based on the explanation of the granting of compulsory bequests to non-religious heirs in Religious Court Decision Number 263/Pdt.G/2007/PTA.Sby, conclusions can be drawn from the results of this study, namely as follows:

1. Based on the opinions of experts that heirs of different religions can obtain the inheritance of the testator through a mandatory will that can be given through a court decision. This is in accordance with the rights and authorities possessed by the Religious Court in Article 49 of Law Number 3 of 2006 concerning Religious Courts, that the Religious Court has the duty and authority to examine, decide, and settle at the first level for citizens who are Muslims. With the scope of the case, namely, marriage, inheritance, wills, grants, *waqf*, *zakat*, *infaq*, *shadaqah*, and Islamic economics. So that based on the authority of the Religious Court, it makes the Supreme Court also have the same rights and authorities in receiving and examining requests for legal remedies both ordinary

legal remedies and extraordinary legal remedies for first-level decisions in the Religious Courts.

2. Based on the Jurisprudence of the Supreme Court Decision Number 51/K/AG/1990 and the Supreme Court Decision Number 368/K/AG/1995, the Panel of Judges authorized to examine and decide the case in the Decision of the Religious Court of Religion Number 263/Pdt.G/2007/PTA.Sby that the heirs of biological children of different religions are entitled to the inheritance of the testator through compulsory wills. In addition to being based on the two jurisprudences, the Panel of Judges in deciding the case was also based on several considerations; First, based on the value of justice, that basically the purpose of law is to uphold justice in society. The justice in question is to determine and provide property to non-Muslim biological children who are prevented from becoming heirs through mandatory wills. Second, the value of humanity (humanity/insaniyyah), that the law must prioritize human values based on the pattern of community behavior in the legal system. Third, law as social engineering that aims for social welfare.
3. The juridical basis on which the judge based his decision was the principle of justice, which demands that all individuals, regardless of their religion, should be treated fairly in terms of inheritance rights. Public welfare, which includes security and integrity, is an important aspect of Islamic teachings. In addition, qiyas aulawi was also the basis of the judge in his ijtihad, which is an analogy method based on the principles of Islamic law, to interpret that in the case of grants, non-Muslims can receive property as gifts or donations. The juridical basis of the concept of maslahah mursalah, which is a consideration of public good in the absence of specific nash (shar'i evidence), to interpret that in certain situations, giving inheritance shares to non-Muslim heirs can be a public good or undeniable maslahah.

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