Budapest International Research and Critics Institute-Journal (BIRCI-Journal)
Humanities and Social Sciences
ISSN 2615-3076 Online)
ISSN 2615-1715 (Print)
www.bircu-journal.com/index.php/birci
Budapest Institute

Decided Ratio on Religious Court Decision No. 701/Pdt.G/Pa/Sky Concerning Mandatory Will for Non-Muslim

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Abstract

The aims of the study to find out Decided Ratio on Religious Court Decision No. 701/Pdt.G/Pa/Sky concerning Mandatory Will for Non-Muslim. This study used qualitative research. Based on the description of the discussion in the previous chapter, it can be concluded that the research results are as follows: a.Mandatory wills for non-Muslims in the perspective of Islamic law from among scholars have religious opinions, but according to contemporary Islamic legal theory. b. Compulsory will law against non-Muslims in a positive legal perspective is not regulated normatively in a clear formulation, both in the Civil Code (KUHPdt) and in the Compilation of Islamic Law (KHI). Its application is based on jurisprudence.

Keywords
decide ratio; religious; non muslim

I. Introduction

Freedom of religion and belief is one of the “most important and foremost human rights. Freedom of religion is one of the basic rights that every human in the world has to seek God. Freedom of religion has four aspects, namely freedom of conscience, freedom of religious expression, freedom of religious association, and freedom to institutionalize religious beliefs.

In general, a will is a gift of property from one person to another. A will is a transfer of assets to the inheritance which is carried out after the death of a person. From the point of view of the law, a will is an act that is done with a will of heart under any circumstances.” 171 letter f of the Compilation of Islamic Law states that a will is a gift of "an object from the testator to another person or institution that takes effect after the testator dies. Article 194 to Article 208 regulates ordinary wills, while Article 209 regulates special wills given to adopted children or adoptive parents. In Islamic law literature, these different wills are called mandatory wills. The concept of inheritance in Islam is addressed to distant relatives or relatives who do not have the right to inherit and also to other people. From this understanding, the theory of legal reasoning on will law develops until it comes to reasoning about its legal position, and finally concerning mandatory wills.

According to Fatchur Rahman, mandatory wills are only for grandsons and daughters, both male and female, whose parents died before or together with their grandparents.

According to Mohamad Zamro Muda that the mandatory will is part of "the inheritance given by law to children whose mother or father died before their grandparents or grandparents died simultaneously and the children did not get a share of the inheritance." their father or mother. But it was given to them with certain levels and conditions as a will and not as an heirloom. The Compilation of Islamic Law has provisions regarding mandatory wills which are “different in their arrangement from other Islamic countries. In Islamic inheritance, several things areat are a barrier to becoming an

DOI: https://doi.org/10.33258/birci.v5i3.6316

heir, namely different religions, murder, and slavery. Article 171 point c of the Compilation of Islamic Law stipulates that an heir is a person who at the time of death is related by blood or marriage to the heir, is Muslim, and is not prevented by law from becoming an heir. Indirectly, the Compilation of Islamic Law makes religious differences a barrier to becoming heirs. The Compilation of Islamic Law itself does not regulate the distribution of inheritance to heirs of different religions, from here we can see that there is a legal vacuum and ambiguity."

The prohibition of mandatory will is the same as the prohibition of inheritance, whether it is ikhtilaf al-din, namely different religions or apostasy. In addition to slavery and murder, the ulama's agreement also occurred in terms of religious differences as barriers to inheritance. This agreement is based on the hadith of the Prophet, from Osama ibn Zaid which states:

It means: "Muslims do not inherit unbelievers and unbelievers do not inherit Muslims" (Narrated by Bukhari).

In addition to the hadith text above, the inability to inherit from each other between Muslims and non-Muslims is also based on a narration that explains that when Abu Talib died, he left four sons, namely Ali, Ja'far, Uqail, and Talib. Ali and Ja'far are both Muslim while 'Uqail and Talib are both infidels (read non-Muslim). The Prophet divided Abu Talib's inheritance to 'Uqail and Talib not to Ali and Ja`far because both were Muslims.26

The problem point in this dissertation is that it departs from the settlement of inheritance disputes that have been decided by the Supreme Court in the cassation process, where the panel of judges of the Supreme Court has decided cases of inheritance of different religions with decisions that are out of the nature of the law or existing statutory regulations, both normatively and generally in positive law. The emergence of a Supreme Court decision that is very different and even contradicts the normative provisions of positive law in Indonesia, namely Decision No. 368K/AG/1995 and Decision No. 51K/SG/1999, as well as Decision No. 16 K/AG/2010 concerning the permissibility of a non-Muslim heir to inherit by giving a mandatory will, by re-exploring the philosophical meaning and sociological considerations. So that it can contribute to the renewal of Islamic family law in Indonesia, especially regarding inheritance of different religions. Family life is bound by the existence of relationships between family members (Djamarah in Hendra,Y. et al. 2019). Departing from "the settlement of inheritance disputes that have been decided by the Judges of the Sekayu Religious Court, where the panel of judges decides on the inheritance of different religions with decisions that are out of legal habit or judges' jurisprudence on previous decisions. In the Compilation of Islamic Law, itself there is no provision regarding inheritance of different religions may be determined by the judge, the basis for the judge to give a decision is to "fill the legal vacuum in the Compilation of Islamic Law and provide a sense of justice. "By exploring philosophical meanings and sociological considerations so that they can contribute to legal changes in Indonesia, especially regarding inheritance of different religions."

II. Review of Literature

Ratio Decided to the Decision of the Religious Court No. 701/Pdt.G/Pa/Sky

Mandatory wills are generally given to someone or several people, who are not kinship because the function of the mandatory will is basically to position someone who does not have a lineage, then to maintain the friendship, a mandatory will is given. This is so that someone whose inheritance is not determined will get a mandatory will for the sake of humanity, either because of an adopted child, or a grandchild who is exposed to the hijab from another heir. A mandatory will is a will that is intended for heirs or relatives who do not get a share of the inheritance of the person who died, because of a syara's obstacle. Superman in his book Fiqh Marwaris (Islamic Inheritance Law), defines a mandatory will as a will whose implementation is not influenced or does not depend on the will or will of the deceased.

A mandatory will must meet two conditions; First, who must receive a will, not an inheritance. If he has the right to receive an inheritance even if it is small, it is not obligatory to make a will for him. Second, the person who dies, both grandparents and grandparents have not given the child a will that must be made a will, the amount that is willed in other ways, such as a gift for example. In connection with the mandatory will for non-Muslim heirs, the author describes the views of the majority of scholars who do not agree with this view. In other words, jumhur agreed that the law of is sunnah so that there is no mandatory will. The evidence regarding the will is contained in Surah al-Baqarah verse 180 which means "It is obligatory on you when one of you comes (signs) of death if he leaves a lot of property,

The argument used is that the quote in the verse above has been translated by the Marwaris which have explained the share of each heir such as parents and close relatives with definite provisions.18 So that a will which was originally statutory must become sunnah.

The difference in religion that becomes a barrier to inheritance is if between the heir and the heirs there are differences in religion, one of which is Muslim, the other is not Muslim. For example, the heir is Muslim, the heir is Christian, and vice versa. Therefore, if a Buddhist dies, the heirs are Hindus, and there is no obstacle between them inheriting. Likewise, it does not include different religions and Muslims from different schools of thought.

Based on the description above, the mandatory will cannot be given to just anyone but must be given to people who deserve to receive the mandatory will. For example, in the case of a child who apostates or is of a different religion, he does not receive an inheritance, because he is of a different religion from his parents, but because he is very polite, obedient to his parents, and even he who has cared for and cared for his parents, he must accept the will. It is different from the case if someone who apostates and does not receive an inheritance, even during his life he has never been with him, so that after his parents die, then takes the property that is considered his right, then it is not allowed in Islam.

Fatchur Rahman in his book The Science of Inheritance, explains that the emergence of a mandatory will is due to two things, namely; First, the loss of the element of effort for the testator and the emergence of an element of obligation through legislation or decrees without depending on the willingness of the person who wills and the approval of the beneficiary. Second, there is a resemblance to the provisions for the distribution of inheritance in terms of receiving 2 (two) times the share of men. According to Fatchur Rahman, two elements allow the existence of a mandatory will, because a judge's decision makes it mandatory that it must be given to people who are entitled to receive it, and the distribution is also similar to the distribution of mandatory wills, just as men are two parts of women and not more than one-third of the share.

Mandatory wills are generally given to someone or several people, who are not kinship because the function of the mandatory will is basically to position someone who does not have a lineage, then to maintain the friendship, a mandatory will is given. This is so that someone whose inheritance is not determined will get a mandatory will for the sake of humanity, either because of an adopted child, or a grandchild who is exposed to the hijab from another heir. Problems related to inheritance have generated a lot of responses from scholars who are trying to answer and provide solutions to these problems. Among these solutions is to apply a mandatory will (wasiat mandatoryah), so that grandchildren who are actuated and do not receive an inheritance can still receive an inheritance. look ing for the legal basis in its l system, with the hope that if a phenomenon like the one above appears it can be handled wisely and fairly following applicable law.

Then, the provisions of the mandatory will in many ways are influenced to order to equalize the rights and position of adopted children with the status of biological children. Thus the concept of mandatory will is a modification of the reformer extracted from local values. The concept of substitute heirs and mandatory wills is a way out to give rights to zawil arham who in Sunni fiqh does not get a share, as long as there are ashab al-fur ud heirs. In addition, a mandatory will can be given to a close relative whose economic level is weak, so he needs the help of others, to be able to carry on with his life, then this relative is given a mandatory will to be together.

Another of whether the heirs can receive a will or not, KHI has taken a middle way from the dispute whether the heir can receive a will or not. Ibn Hazm and the Maliki scholars do not allow wills to heirs who receive an inheritance whether the heirs allow it or not, while the Imami Shiite scholars allow wills to heirs even if there is no permission from the heirs, in accordfollowingrality of the letter al-Baqarah (2): 180. Meanwhile, the Syafi'iyah scholars are of believing wills to heirs are permissible as long as there is permission from all other heirs. This opinion is based on the hadith of the Prophet. "There is no will for those who receive an inheritance unless the heirs allow it." The formulation of Article 195 paragraph (3) is in line with the last opinion.30 In this regard, Sajuti Talib stated that in bilateral inheritance, an heir can give a will to anyone or any institution as long as it is within the framework of goodness, for example for the construction of mosques, schools, and religious activities and others. Even according to this teaching, wills to heirs who inherit are not prohibited.

In order to be able to will part of his property, as stated in Article 194 paragraph (1), two cumulative conditions must be met for the testator, namely being at least 21 years old and of sound mind. In addition to these two conditions, there is an additional condition that the will must be made without coercion. Determination of the age of 21 years shows that KHI uses a measure that contains legal certainty to determine whether a person is capable or incapable of carrying out legal actions.28 Meanwhile, the requirement of being reasonable for a testator is very logical so that a person can express his will. If you do not have common sense it is difficult to know whether someone wants to bequeath his property or not. In determining "common sense" which is the general guideline, as long as it is not proven otherwise,

To be able to act as a beneficiary, KHI does not specifically regulate. However, based on Article 171 letter (f) it can be understood that a beneficiary is a person and an institution. This is concluded by the phrase "to other people or institutions". In addition, Article 196 also stipulates that in a will, both in writing and orally, it must be stated clearly who or whom or what institution is appointed to receive the property in the will.

III. Results and Discussion

Basis of the Heirs to sue in the Decision of the Religious Court No. 701/Pdt.G/Pa/Sky

In the decision of the religious court no. 701/Pdt.G/Pa/Sky explained that it started from the place of business owned by the late Ardiyanto Lojaya, where on April 2, 2012, an agreement was reached between the plaintiff and the defendant who were also present, both of whom agreed to temporarily close/freeze the place of business owned by Ardiyanto Lojaya (the late), this agreement until there is an agreement in the distribution of inheritance clearly and fairly.

On April 24, 2012, without prior notification, the defendant forced the dismantling of the lock for the shophouse where the business was located and on April 25, 2012, the business activities at the shophouse were re-operated with an average daily profit of Rp. 4,000,000.00 (four million rupiahs), this is a problem where the income is the inheritance of the late Ardiyanto Lojaya who also the plaintiffs and the defendants have inheritance rights, it is only natural because the business is a mixture of inherited and joint assets between the late Ardiyanto Lojaya and defendant.

In the subject matter:

1. Granted the plaintiff's claim in its entirety
2. Determine the share of the defendant from the inheritance of the late Ardiyanto Lojaya based on a mandatory will
3. State that:
   a. Kristianto Wicaksana Bin Ardiyanto Lojaya (plaintiff I)
   b. Isabela Putri Savira Binti Ardiyanto Lojaya (plaintiff II)
   c. Vivin Lestari Binti Efendy (Defendant)
   d. Mrs. TjinNjoenLan (co-defendant)
   Are the legal heirs of the late Ardiyanto Lojaya
4. Stating that the assets are several assets with a total of Rp. 1,240,500,000.00 (one billion two hundred forty million five hundred thousand rupiahs) is the inheritance of the testator before marrying the defendant which must be distributed to his heirs following the provisions of Islamic law.
5. Declare Gono Gini's assets with a total of Rp. 2,176,000,000.00 (two billion one hundred seventy-six million rupiahs) must be deducted from the inherited assets, then the remaining assets are distributed to the heirs following the provisions of applicable Islamic law.
6. To stipulate that dictum number 4 (four) is the inherited property of the late Ardiyanto Lojaya and half (1/2) part of the dictum number 5 (five) is the inheritance/inherited property of the late Ardiyanto Lojaya which must be distributed to Plaintiff I, Plaintiff II, co-defendant and defendant.
7. Determine the share of each expert from the inheritance of the late Ardiyanto Lojaya following the provisions of Islamic law both for inherited assets and for joint assets.
8. Declaring that the security confiscation is valid and valuable which is placed by the bailiff of the Sekayu Religious Court on the inherited assets.
9. Sentencing the defendant to issue the rights of Plaintiff I and Plaintiff II.
10. Sentencing the defendant to hand over the money from the shop's business.
11. Reducing the value of the property of the late Ardiyanto Lojaya with his debt to Antony Carlo of Rp. 38,830,951.00 (thirty-eight million eight hundred thirty thousand nine hundred fifty-one rupiah)

12. Punish the defendant to hand over his share of the inherited assets and assets with the defendant's respective heirs following the provisions of Islamic law if it is not divided according to the share of each heir.
13. Declare this decision can be executed first (Uit voorbar by forwarding).
14. Sentencing the defendant to pay court costs arising from this case.

IV. Conclusion

Based on the description of the discussion in the previous chapter, it can be concluded that the research results are as follows:

a. Mandatory wills for non-Muslims in the perspective of Islamic law from among scholars have religious opinions, but according to contemporary Islamic legal theory.
b. Compulsory will law against non-Muslims in a positive legal perspective is not regulated normatively in a clear formulation, both in the Civil Code (KUHPdt) and in the Compilation of Islamic Law (KHI). Its application is based on jurisprudence.

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