

The Position of Heirs Who Re-Converted to Islam After the Heir Died

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Abstract

According to Islamic law there are people who are entitled to receive inherited property under certain conditions, but there are also people who actually have the right to receive inheritance, but are hindered from obtaining inherited property due to certain factors as well. One of the factors that prevents a person from obtaining inheritance is the religious difference between the heir and the heir. It becomes a problem when there are heirs of different religions who demand to get inherited property because they have converted to Islam again and consider themselves still entitled to inherited property. Based on the results of the study, it was found that the position of heirs who converted to Islam returned after the sipewaris died and before the division of inheritance, still did not get inherited property. This is because what is a hindrance is that religious differences are taken into account when the heir dies, because the division of inheritance begins when the heir dies.

Keywords: Heir, Islam, Heir, Deceased

INTRODUCTION

One of the rules in Islam that demands benefits for humans is the enactment of inheritance law. The majority of Muslims are convinced that the system that has existed and is regulated in fiqh contains norms of justice that inevitably contain benefits that can be accounted for. The hope is to apply inheritance law according to Islamic law so that it can bring benefits in human life.¹

Inheritance law in Islam receives a very large portion of attention because it concerns the division of inherited property which often raises ripples in a family because the existing division is considered unfair by the heirs. Ironically, the death of a person turns out not only to cause grief, but also to result in disputes among heirs related to his inheritance. Things like this are very likely to happen, if the relevant parties are inconsistent with the signs that have been set. One of the reasons for the emergence of disputes is religious differences.

Heirs of different religions are not a new problem in the islamic inheritance law, but become a lively conversation if they have entered the realm of courts. The problem is that the Qur'an does not give a complete explanation at all regarding the part of the heirs of different religions; on the other hand the hadith also does not give any information about the share of property for nonmuslim scholars. In line with the development of time, various cases that occur related to the inheritance law of different religions are increasingly common. One of the contributing factors was the disapproval of the heirs of different religions towards the unjust division of hata.²

RESEARCH METHODS

A study cannot be said to be research if it does not have a research method because the purpose of the research is to reveal a truth systematically, methodologically and consistently.³ The

¹Chamim Tohari, "Rekonstruksi Hukum Kewarisan Beda Agama Ditinjau Dari Al-Usul Al-Khamsah", dalam *Mazahib: Jurnal Pemikiran Hukum Islam*, Vol. XVI, No. 1, Juni 2017, hlm. 2.

²Mulyadi, 2019, Analisis Pemikiran Abdullah An-Na'im Tentang Kewarisan Beda Agama Dan Relevansinya Dengan Hukum Kewarisan Di Indonesia. *Tesis*. Proram Studi Hukum Keluarga Islam Program Pascasarjana Universitas Islam Negeri Raden Intan, Bandar Lampung, hlm. 1.

³Rahimah, R., & Koto, I. (2022). Implications of Parenting Patterns in the Development of Early Childhood Social Attitudes. *International Journal Reglement & Society (IJRS)*, 3(2), 129-133.

research method used is normative juridical research, which is legal research carried out by researching library materials or skunder data.⁴ Soerjono Soekanto stated that there are 5 scopes of legal research, namely research on legal systematics, legal systematics, level of legal synchronization, legal history and comparison.⁵ Judging by its nature, this study is descriptive analytical, describing all the symptoms and facts and analyzing the problems that exist now in law⁶ relating to the exercise of the rights of suspects and defendants at the time of serving the period of detention. This research uses an empirical juridical approach, namely an approach by conducting an assessment and analysis of the position of heirs who re-entered Islam after sipewaris died.

RESULTS AND DISCUSSION

Factors Hindering Heirs from Obtaining Inheritance

Inheritance law is a part of civil law that is specifically included in family law. Human life will not be separated from the existence of the law of inheritance, because it is part of the scope of human life. Sunnatullah, man will inevitably experience death, therefore the consequences of the legal event will give rise to the management of rights and obligations in the law of inheritance. Inheritance law provides for the settlement of various rights and obligations as a result of the death of the testator.⁷

The discussion contained in inheritance science is related to the causes of inheritance and its barriers (hijab). The causes of a person being entitled to obtain/receive an inheritance are:

1. Marital relationship, i.e. husband and wife even though they have been together or have divorced, but in the period of iddah talak raj'i. A valid marriage in the perspective of Sharia is a sacred bond by bringing together a man and a woman as long as the bond is still lasting.⁸ The marital relationship essentially ends when one of the husbands or wives dies, resulting in one of the husbands or wives receiving an inheritance from the other, although there has been no intercourse. Inheritance through the marital route is only by the path of fadlu (fixed shares) only.⁹
2. The existence of kinship or nasab relations, namely father, mother, children, grandchildren, siblings, seayah, seibu and so on. The nasab relationship is one of the reasons for the awris expert to get a part of the inheritance with the criterion of a blood relationship that binds the heirs to *the heirs*, this kinship is called the ultimate kinship.
3. The existence of a *wala'* relationship i.e. the relationship between the former slave and the person who freed him, if the former slave had no heirs entitled to spend the entire estate. Jawad Mughniyah said that *wala'* is a relationship between 2 (two) people that makes the two seem to be like siblings like a nasab relationship. One who has freed slaves means to have restored one's freedom and identity as a human being. Allah Almighty conferred upon him the right of inheritance against the freed slave, if the slave had no intrinsic heirs, either because of kinship or the existence of a marriage rope. The freeness of a person from slavery then he regains the pleasures of his humanity and the end of the period of slavery. The existence of slaves no longer exists on the face of the earth, so the existence of *wala'* as the cause of obtaining inheritance also no longer exists

⁴ Koto, I., & Faisal, F. (2021). Penerapan Eksekusi Jaminan Fidusia Pada Benda Bergerak Terhadap Debitur Wanprestasi. *Journal of Education, Humaniora and Social Sciences (JEHSS)*, 4(2), 774-781.

⁵ Zainuddin, Z. (2022). Implementation Of The Change Of The Chairman Of The Labuhan Batu Selatan Regional People's Representative Council. *International Journal Reglement & Society (IJRS)*, 3(1), 11-18.

⁶ Winarno Surakhmad, *Dasar dan Teknik Research* (Bandung: Tarsito, 1978), hal. 132

⁷ Dwi Dasa Suryantoro, "Tinjauan Hukum Islam Terhadap Terhalangnya Hak Kewarisan", dalam *Jurnal Intiyaz*, Vol. 4, No. 1, Maret 2020, hlm. 17.

⁸ Fatchur Rahman, 1990, *Ilmu Waris*, Bandung: PT Alma'arif, hlm. 113.

⁹ Teuku Muhammad Hasbi Ash Shiddieqy, 1999, *Fiqh Mawaris*, Semarang: Pustaka Rizki Putra, hlm. 30.

Relations with fellow Muslims, i.e. *baytul mal* which holds the estate of the person who leaves no heirs at all with those causes before. Inter-Islamic relations occur if there is a Muslim who dies without an heir but has a legacy / inherited property, then the property can be carried out by handing over his inheritance to *baytul mal* which will be intended for the benefit of Muslims. This means that the property of Muslims who do not have heirs is inherited by Muslims

The barrier to inheritance consists of murder, slavery and religious differences between the heir and the heir that can abort a person's right to inherit the inheritor's estate. This means that various barriers to a person inheriting are actions or things that can abort a person's right to inherit property after the existence of causes to inherit.

The Position of People of Different Religions According to Islamic Law

In the perspective of Islam, conversion is known as apostasy. Apostate comes from the Arabic *al-riddah* which means to turn it away, return it. Lexically the word *al-riddah* means to return from one condition to another. According to the term, an apostate or *al-riddah* is a person who returns (to the original place or path) of the Islamic religion, the perpetrator is called an apostate, that is, he boldly declares an infidel after faith. Another meaning of apostasy is to return from Islam to paganism with heart, speech, or action; either just a joke or intentionally. The opinion expressed by the scholars of classical jurisprudence included that apostate men should be sentenced to death when they are adults and in a conscious state. If the apostate is a child who is still in puberty, he is sentenced to imprisonment until adulthood. If as an adult neither repents, it is punishable by death. A drunk and insane person cannot be punished if he is apostate. Clerics from Hanafiah and Shia circles say that a woman who apostates should be imprisoned until she repents and returns to Islam, but according to Imam Hambali, Imam Malik and Imam Shafi'i should be sentenced to death.

Firdaus AN has given examples that indicate that there has been a paganism (apostasy) in a Muslim, namely:

1. Deny the religious teachings that have been set forth definitively. For example, about the oneness of Allah, denying God's creation of nature, denying the existence of angels, denying the prophethood of Muhammad saw, denying the Qur'an as a revelation of Allah, denying the day of resurrection and vengeance, denying the pharynx of prayer, zakat, fasting, and hajj.
2. Justify what has been agreed upon. For example, justifying drinking liquor, adultery, eating pork and justifying killing people who are awake in their blood.
3. Justifying what has been agreed upon, for example, forbidding eating rice.
4. Berating the Prophet Muhammad pbuh, as well as berating the previous Prophets of Allah Almighty.
5. Berate the religion of Islam, denounce the Qur'an and the Sunnah of the Prophet, and turn away from the laws that have been outlined in the Qur'an and the Sunnah of the Prophet.

The Position of Heirs Who Re-Converted to Islam After the Heir Died

To obtain inheritance, conditions must be met, one of which must be Muslim. This means that if the heir is not Muslim, then the heir will not receive the inheritance. The determination of the heirs will take the most important side when determining the granting of wills and inheritances. This is because among the deceased human beings who must need the care of the mayit's closest family is related to inheritance and wills.

The positive legal perspective on Islamic inheritance is set out in the Compilation of Islamic Law, that to be able to inherit each other between the heirs and heirs must be Muslim, have a blood relationship or marital relationship and are not hindered because the law to be the heir

(Article 171 letters b and c), whereas in the event of a religious difference between the heir and the heirs of the KHI is not clearly regulated at all. In the Qur'an there is not a single verse that clearly and unequivocally forbids the inheritance of different religions.¹⁰ The source of the law that clearly and expressly forbids the inheritance of different religions is precisely in the historical hadith of Bukhari, that the Prophet Muhammad SAW said: "Muslims do not inherit from infidels, and infidels do not inherit from muslims". The hadith is also narrated by Muslims, Turmuzi, Abu Dawud, Ibn Majah, Ahmad, Malik and Ad-Darimi.

Religious differences in a family do give rise to ripples of commotion related to the division of inherited property. The majority of classical jurisprudence scholars have agreed that because different religions can hinder the right of inheritance (*mawani' al-iritsi*). The scholars of classical jurisprudence then differed in opinion regarding when infidels should not bequeath the inheritance (*al-mauruts*) of a Muslim; whether muslims can inherit the inheritance of infidels if there are found causes that allow them to inherit.

Related to the first two issues related to when an infidel should not bequeath the estate of a Muslim and whether a muslim person may inherit the inheritance of an infidel if there are found causes that allow to inherit, Imam Abu Hanifah, Imam Malik and Imam Shafi'i and his followers argue that it is not permissible for infidels to inherit the property of muslims, or either because of the relationship of freeing slaves (*al-wala'*), marital relations (*al-zaujiyyah*) or because of kinship (*al-qarabah*). Similarly, if a Muslim dies, who leaves a nonmuslim wife or a nonmuslim relative and then they convert to Islam before the inheritance is distributed, then they still do not get the right of inheritance.

Unlike the other three imams of the school, Imam Ahmad ibn Hanbal said that infidels can inherit the relics of muslims and vice versa, if it is caused by slavery (*al-wala'*), those who are of different religions but still in one family of allah's religion, nonmuslim wives and nonmuslim relatives who converted to Islam before the relics were distributed. Mu'az ibn Jabal, Mu'awiyah ibn Abi Sofyan, Sa'id ibn al-Musayyab, Masruq, al-Nakha'iy, Muhammad ibn al-Hanafiyyah, Muhammad ibn Ali ibn al-Husain, Ali ibn Abi Talib, Ishaq bin Ruwaihah said that muslims can inherit from infidels, but not vice versa. Religious differences that are one of the barriers to inheriting occur if the heirs and bequeaths one of them is Muslim and the other is not Muslim. Religious differences as a barrier to inheritance are taken into account at the time the heir dies, since it is at this time that the right of inheritance for the heirs comes into force.

For apostates, his legacy can be inherited by muslims. If when an apostate has his family who is Muslim dies, the apostate does not get an inheritance. If the apostate converts to Islam again before the division of inheritance, this will result in opposition among muslims,¹¹ this is because if an apostate converts to Islam again during the division of inheritance, it is feared that the apostate only wants inheritance from the deceased. There is another possibility, namely that after the apostate who converted to Islam again gets an inheritance, there is a potential that he

¹⁰Banyak sekali ayat Al-Qur'an yang berbicara tentang waris, terutama yang terdapat dalam surat An-Nisa', namun sama sekali tidak dijumpai pernyataan tentang halangan menerima warisan. Ayat Al-Qur'an yang biasanya dijadikan sebagai sumber hukum bagi halangan menerima waris terkait dengan perbedaan agama, yaitu QS. An-Nisa' ayat 141. Ayat 141 surat An-Nisa' itu ternyata tidaklah berkaitan dengan halangan menerima waris, namun berbicara tentang orang-orang munafik yang bermuka dua, sehingga memang sangat tidak tepat jika ayat itu dijadikan sebagai landasan bagi adanya larangan perbedaan agama sebagai halangan menerima warisan. Muhammad Adib, "Halangan Menerima Warisan", dalam Muchit A. Karim (ed.). 2012. *Problematika Hukum Kewarisan Islam Kontemporer di Indonesia*. Jakarta: Badan Litbang dan Diklat Kementerian Agama Republik Indonesia, halaman 167.

¹¹Yusuf Al-Qaradawi, 2017, *Fatwa-fatwa Kontemporer*, Jilid 3, pent. Hadyu al-Islam Fatawi Mu'asirah, Jakarta: Gema Insani Press, halaman 852.

will return to apostasy, so it is true that Imam Ahmad's opinion states that he is really still an infidel and not entitled to inheritance.

CONCLUSION

That the position of the heirs who converted to Islam returned after the sipewaris died and before the division of inheritance, still did not get the inheritance property . This is because what is a hindrance is that religious differences are taken into account when the heir dies, because the division of inheritance begins when the heir dies.

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