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## Jurnal Studi Keislaman



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*Basri Na'ali, Fahmil Samiran*

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BERPIKIR DAN PROBLEM SOLVING DALAM PENDIDIKAN ISLAM

*Dedi Sahputra Napitupulu, Saiful Akhyar Lubis, Yuliana Siregar*

Lembaga Penerbitan, Penelitian, dan  
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*Muhammad Zainuddin Sunarto<sup>1</sup>, Umi Sumbulah<sup>2</sup>*

## STUDY OF LIVING HADITH: The Phenomenon of Different Religious Inheritance through Wasiat Wajibah

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**Abstract:** *The Compilation of Islamic Law specifies that wills are only required for adopted children and their adoptive parents. The parties involved may petition the courts, even though these regulations are less binding. This research uses the type of normative legal research because what is examined in this research is the norm contained in the hadith texts related to the inheritance law above. The case approach is used as an approach in research because the case of inheritance of different religions that are discussed in a separate case within the family sphere, where there is no legal argument or norm that can answer the case above, so the case approach. The research results show that in Article 209 of the Kompilasi Hukum Islam (KHI), describe the law of Wasiat Wajibah. It cannot, therefore, be regarded contrary to Islamic law. Because leaving a bequest to an adopted kid or adoptive parent does not conflict with the general requirements of the Qur'an and the Prophet's Sunnah. The Cassation Decision No. 368 K/Ag/1995, issued 16 July 1998, marked the beginning of the practice of non-Muslim heirs obtaining a portion of the inheritance from Muslim heirs via Wasiat Wajibahs, which created a body of law within the Religious Courts. Non-Muslims inherit the same proportion of their Muslim parents' required bequests as other Muslim heirs. This necessary will is intended to preserve the integrity of the family and accommodate the multicultural, multiethnic, and multireligious nature of Indonesian society. In addition, implementing a sense of fairness is an advantage of this decision. Giving wills to non-Muslim spouses, children, parents, and relatives has contributed to the revival of Islamic law in Indonesia, demonstrating a sense of social fairness.*

**Keywords:** *Hadith, Inheritance of Different Religions, Wasiat Wajibah.*

## INTRODUCTION

Pancasila has educated the people of Indonesian to accept and tolerate religious diversity. This is demonstrated by the freedom of the Indonesian people to practice any religion or belief of their choosing. Because of this mutual respect, families in Indonesia adhere to various religions. This fact can be discovered in Medan, East Nusa Tenggara, Bali, Tana Toraja, Makassar, and other regions in Indonesia. As a result, many households in the region include members of different religions. Despite their diverse religious convictions, this family lives in harmony and mutual respect. A difficulty develops when a family member dies and leaves property to his heirs. There are divergent opinions regarding the distribution of the estate to the heirs (Syahr, 2016).

This floating Islamic inheritance law significantly contributes to studying the relationship between hudud Allah and inheritance. The observance of Allah's *hudud* is a sort of obedience to Allah and His Messenger that will be rewarded if it is carried out and leads to paradise. In contrast, they will be considered disobedient to Allah and His Messenger and punished in hell (Bachri, 2020).

Indonesian practice adheres to three fundamental legal concepts in all areas of law: customary law, Islamic law, and positive law. Parties of various religions can reach a consensus on specific issues of inheritance law. The inheritor and the heir must share the same religious affiliation. When the heir passes away, he is a Muslim, but some of his heirs are not. on the contrary, if the heirs are non-Muslim, some are Muslim while others are non-Muslim and share other variants within the same family (Wahyudi, 2015).

Inheritance matters for non-Muslims are decided in a district court based on the Civil Code for parties who submit themselves to the Civil Code due to the desire for equality among heirs, regardless of religion or gender, to get an inheritance share. On the other hand, customary and Islamic law continue to have issues. The application of customary law to non-Muslim parties who remain firmly linked to the customary law community in question (Wahyudi, 2015).

Inheritors and heirs must be Muslim, have a *nasab* or marital relationship, and be unhindered by inheritance law, according to Article 171 letters b and c of the Compilation of Islamic Law (KHI). In contrast, neither Islamic law

nor positive law regulates religious differences between heirs and heirs in great detail. No single verse in the Qur'an expressly prohibits the inheritance of non-Muslim family members. The Hadith of Bukhari provides a legal basis that prohibits the inheritance of non-Muslims. Prophet Muhammad (SAW) stated, "A Muslim does not inherit from an infidel, and an infidel does not inherit from a Muslim" (Sahih Bukhari, Kitab Faraidh, Hadith no. 6267) (Wahyudi, 2021).

There is a new tendency in the study of hadith, namely how hadith is seen and applied by people in various sociocultural contexts, or what is usually referred to as Living Sunnah/Living Hadith but has received less attention. Although the benefits of this Hadith model study can help us understand the understanding, response, and practice of religion based on a number of Hadith texts (Sumbulah, 2011), relating to the inheritance of different religions through Wasiat Wajibahs, the benefits of this study are limited

A difficulty arises when a family member dies and passes his possessions to his heirs. There is disagreement on the transfer of his estate to his heirs. Because if the heir is a non-Muslim, the Hadith transmitted by Bukhari and Muslim states: "Muslims cannot inherit from unbelievers, and unbelievers cannot inherit from Muslims." Family members of different religions are not entitled to an inheritance share. Heirs of different religions cannot receive inheritance based on the hadith above. There needs to be a legal solution for heirs of other faiths because legally, they cannot accept it, but from a social perspective, they should still receive it because their status is still heirs. There needs to be a legal breakthrough in this matter (Syahr, 2016).

The growth of social conditions in Indonesia is achievable due to the country's diverse population. Consequently, there is a great deal of cultural, ethnic, racial, and religious diversity. Communities flourish in terms of their social relationships. Numerous individuals engage in marriages based on diverse religions or beliefs nowadays. This highlights the issue of inheritance for followers of other religions. Consequently, the necessity for a well as a form of legal development in the realm of inheritance has ramifications for the contemporary social development of society by taking into account the diverse religious beliefs of family members.

Among the most critical challenges in contemporary Islamic legal theory is the practice of inheritance amongst members of different religions within the same family. On the one hand, neither the Qur'an nor the Hadith

explains the inheritance of heirs of different religions, nor do they offer the inheritance to other religions. However, circumstances and requirements demand otherwise. Based on the preceding description, it would be interesting to discuss the correlation between the implications of the Hadith regarding the prohibition of inheritance between religions and the reality of life in Indonesia, where different religions coexist within the same family because religion is a personal right. In contrast, there is research on compulsory wills in Indonesian inheritance law.

## **METHOD**

This research uses the type of normative legal research because what is examined in this research is the norm contained in the hadith texts related to the inheritance law above. The case approach is used as an approach in research because the case of inheritance of different religions that are discussed in a separate case within the family sphere, where there is no legal argument or norm that can answer the case above, so the case approach, it can elaborate more deeply on the theme of different inheritance. This religion.

Primary data sources in this study are hadith texts related to inheritance from different religions. In contrast, secondary data sources support primary data, especially social studies, that can produce laws, as society expects. Furthermore, the data that has been collected is analyzed using content analysis techniques so that it can produce a complete and in-depth study, as well as the conclusions obtained, are readily accepted by the public.

## **DISCUSSION**

### **DIFFERENT RELIGIOUS INHERITANCE**

Inheritance law is a body of legislation that governs the rights and responsibilities of a deceased person's heirs and other legal organizations. For heirs subject to inheritance law which is subject to the inheritance law of the Civil Code, the District Court can distribute the inheritance. In Contrast, the Religious Courts can distribute the inheritance to heirs according to Islamic inheritance law. The issue arises, however, if the heirs are subject to Islamic inheritance law. However, the Islamic heirs are of other religions (non-Islamic), as non-Islamic heirs do not inherit under Islamic inheritance

law. Non-Islamic heirs can be born if one partner abandons Islam during the marriage between husband and wife. There may also be descendants of the marriage who adhere to a religion other than Islam, which poses legal complications, particularly after the partition of inheritance (Yanti et al., 2016).

In terms of inheritance, the Civil Code adheres to a bilateral individual inheritance system. If the testator dies, the property must be deducted for many of charges, including whether the property has been awarded zakat, prior to being deducted for paying debts or caring for the body. After this is deducted, the remainder of the heir's assets is dispersed to the heirs. According to Civil Code requirements, all portions of the heirs are equal, regardless of whether the children, siblings, or mother are identical. In contrast, Islamic law classifies heirs according to their inheritance (Istiqamah, 2017).

Death is categorized as a legal act; a person's rights and responsibilities disappear after death. All assets, including tangible and intangible property, are automatically transmitted to the heirs of the heir (*zaw al-furud*). (Raharjo & Dwi Putri, 2019) In the KHI, which has regulated this inheritance, it is specified that the heir and heirs must be Muslim, have blood or marital ties, and not be banned from becoming heirs by law (Article 171 letters b and c). However, the preceding positive legal principles do not control religious distinctions between heirs and heirs.

According to the study of Islamic law, there are many impeding factors in the inheritance process (*mawani' al-irts*), or in *faraidh* terminology, conditions or characteristics that prevent a person from inheriting even if they meet the necessary requirements and have a relationship with the heir. Conditions such as murder, religious divisions, and slavery hinder heirs from inheriting (Arif, 2017).

According to Article 838 of the Civil Code, the following individuals are ineligible to inherit: a) Heirs convicted of murdering or attempting to murder the heirs; b) heirs convicted of slandering and complaining about the heirs have committed a felony punishable by more than four years in prison; c) heirs who forcibly impede or hinder the heirs (Arif, 2017).

Death is the initial process of an inheritance. In principle, the practice of inheritance must be based on each religion, that is, both the heir and the heir must be both Muslim. So that religious differences are the reason for the

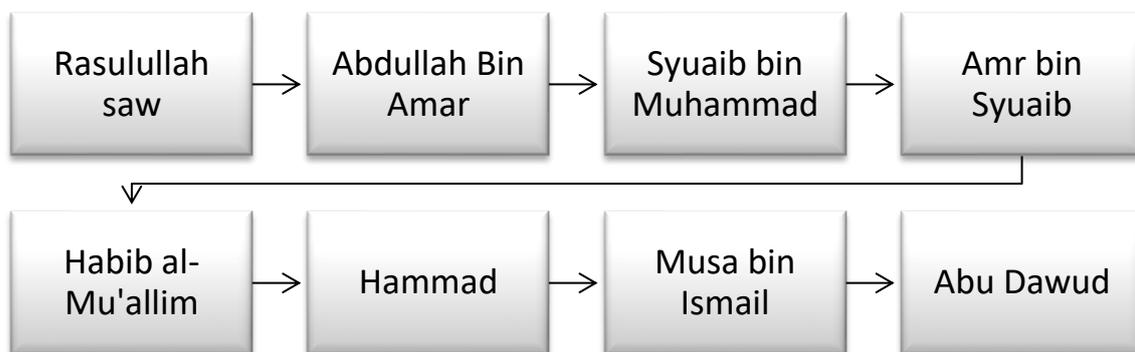
non-occurrence of inheritance to heirs of different religions. Religious differences, measured when the death of the heir. Because there are several conditions that prevent a person from getting an inheritance, namely murder, different religions, and slaves (Maimun, 2017).

No verse in the Qur'an explicitly prohibits inheritance between followers of different religions. Abu Dawud's hadith is the legal underpinning that prohibits the inheritance of religions other than Islam.

2911 - حَدَّثَنَا مُوسَى بْنُ إِسْمَاعِيلَ حَدَّثَنَا حَمَّادٌ عَنْ حَبِيبِ الْمُعَلِّمِ عَنْ عَمْرِو بْنِ شُعْبَةَ عَنْ أَبِيهِ عَنْ جَدِّهِ عَبْدِ اللَّهِ بْنِ عَمْرٍو قَالَ قَالَ رَسُولُ اللَّهِ -صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ- « لَا يَتَوَارَثُ أَهْلُ مِلَّتَيْنِ شَتَّى » (Al-Sijistani, n.d.)

Meaning; It was narrated by Musa bin Ismail from Hammad from Habib al-Mu'allim from Amr bin Shu'aib from his father from his grandfather Abdullah bin Amr said that the Prophet Muhammad said "it is not permissible to inherit from each other the followers of two different religions at all. (HR Abud Dawud: 2911)

Research on the narrators of the hadith above, as follows:



### 1. Abdullah Bin Amr

His full name is Abdullah bin Amr bin al-Ash bin Wail bin Hasyim bin Sua'id bin Sa'id bin Sahm bin Amr bin Hushoish bin Kaab bin Luai bin Ghalib al-Quraish (Al-Mazzi, 1994)/

Abdullah bin Amr had many teachers: the **Prophet Muhammad**, Suroqah bin Malik bin Ju'syum, Abdurrahman bin Auf, Umar bin Khattab, his father Amr bin Ash, Mu'az bin Jabal Abi Bakr Siddiq, Abi Sa'labah al-Khusyanniy, Abi Darda', and Abi Muwaihibah (Hajar, 1994).

Likewise, many people received Hadith from Abdullah bin Amr including: Ibrahim bin Muhammad bin Talhah bin Ubaidillah, Abu AmamahAs'ad bin Sahal bin Junaif, Isma'il, Anas bin Malik, Abu AbdillahBasyir bin Muslim al- Kindi, **Syu'aib bin Muhammad** bin Abdullah bin Amru bin al-Ash, and others (Hajar, 1994).

Based on the assessment of the scholars of Abdullah bin Amr, it is clear that Abdullah bin Amr is an indisputable narrator of Hadith because no Hadith scholars doubt his quality. In addition, he is also one of the Companions of the Prophet. If it is related to the rules of Kullusahabah 'udul, then the Hadith narrated by Abdullah bin Amr can be accepted from the side of the chain.

Thus, it becomes difficult to reject the relationship (*ittishal al-sanad*) between the Prophet and Abdullah bin Amar. Abdullah bin Amr got the Hadith from the Prophet SAW using the al-Qira'ah technique and the symbol of *tahammul* قال.

## 2. Syu'aib bin Muhammad

His full name is Syu'aib bin Muhammad bin Abdullah bin Umar bin al-Ash al-Quraish al-Sahmi al-Hijazi (Al-Mazzi, 1994).

Syu'aib bin Muhammad had many teachers including: Ubadah bin al-Shamat, Abdullah bin Abbas, Abdullah bin Umar bin al-Khattab, **Abdullah bin Amar bin al-Ash**, Muhammad bin Abdullah bin Amr bin al-Ash and Mu'awiyah bin Abi Sufyan. Similarly, many people received hadith from Shu'aib bin Muhammad including: Thabit al-Bunani, Abu Sahabah Ziyad bin Umar, Salamah bin Abi al-Husam, Usman bin Hakim al-Ansariy, Atha' al-Kharasani, Umar bin Shu'aib, and **Amr bin Shu'aib** (Hajar, 1994).

Shu'aib bin Muhammad received favorable views from Hadith critics, which shows that the Hadith text of Shu'aib bin Muhammad is permissible. The hadith narrated by him can be confirmed as authentic. Shu'aib bin Muhammad was one of Abdullah bin Amr's students, so their relationship continued. In addition, the grandfather-grandson relationship between Shu'aib bin Muhammad and Abdullah bin Amr shows the potential for a meeting between the two. The *tahammul* sign used is عن.

### 3. Amr bin Syu'aib

His full name is Amr bin Syu'aib bin Muhammad bin Abdullah bin Amr bin al-Ash al-Quraish al-Sahmi (Al-Mazzi, 1994).

Amr bin Syu'aib had many teachers including: Salim, Abdullah bin Umar, Sa'id bin Abi Sa'id al-Maqburiy, Sa'id bin Musayyib, Sulaiman bin Yasar, **Syu'aib bin Muhammad**, Thawus bin Kaisan, Ashim bin Sufyan bin Abdullah al-Tsaqafi, Abdullah bin Abi Najih, Urwah bin Zubir, Atha' bin Abi Rabah, Amr bin Sufyan bin Abdullah al-Tsaqafi, Amar bin Syarid bin Suwaid al-Tsaqafi, Muhammad bin Muslim bin Shihab al-Zuhri and etc.

Likewise, many people who received Hadith from Shu'aib bin Muhammad including Ibrahim bin Maisarah al-Thafi, Ibrahim bin Yazid al-Khuzi, Osama bin Zaid al-Laitsi, Ishaq bin Abdullah bin Abi Farwah, Ayub al-Sakhtiani, Tsaur bin Yazid al-Hishmi, **Habib al-Mu'allim**, Hariz bin Uthman al-Rahabi Abu Ishaq al-Syaibani, and Abu al-Zubir al-Maki (Hajar, 1994).

Amr bin Shu'aib received a good rating with a very high score from the Hadith critics. Al-Nasa'i, one of the *mutasyaddud* Hadith critics, gave a *tsiqah* assessment so that the narrated Hadith could be considered authentic. According to the scholars' interpretation of Amr bin Shu'aib, the chain between Amr bin Shu'aib and Shu'aib bin Muhammad continued because Amr bin Shu'aib was one of Shu'aib bin Muhammad's disciples. In addition, Amr bin Shu'aib and Shu'aib bin Muhammad had a robust relationship as father and son, allowing for the transmission of Hadith through meetings and activities. The *tahammul* sign used is عن.

### 4. Habib al-Mu'allim

Habib al-Mu'allim had many teachers: Hasan al-Basri, Atha 'bin Abi Rabah, **Amr bin Syu'aib**, Hisham bin Urwah and Abi al-Muhazzim al-Tamimi. Likewise, many people received hadith from Habib al-Mu'allim, including **Hammad bin Salamah**, Abd Warits bin Sa'id, Abd al-Wahhab al-Tsaqafi, Marhum bin Abdul Aziz al-Aththar and Yazid bin Zurai' (Hajar, 1994).

Habib al-Mu'allim is a person whose hadith can be accepted. The *jarh* (defect) addressed to him, such as the invalid hadith and Laisa bi

al-quwa, did not reduce the credibility of Habib al-Mu'allim; even the *mutasyaddid* critic, Ibn Ma'in, gave a very high rating, *tsiqah*. In addition, the investigated hadith did not contain any unusual or foreign material. The related traditions inherited from other religions, where Habib al-Mu'allim is one of the narrators, are manageable. Using the symbol *tabammul* عن, the connection between Habib al-Mu'allim and Amr bin Syu'aib can be proven; because Habib al-Mu'allim was one of Amr bin Syu'aib's students.

#### 5. Hammad

His full name is Hammad bin Salamah bin Dinar al-Basri, Abu Salamah (Al-Mazzi, 1994).

Hammad bin Salamah had many teachers, including: Thabit al-Banani, Qotadah, Hamid al-Thawil, Ishaq bin Abdullah bin Abi Talhah, **Habib al-Mu'allim**, Khalid al-Haza ', Dawud bin Abi Hanad and Sulaiman al-Taimi. Likewise, many people who received Hadith from Hammad bin Salamah include Ibn Juraij, al-Tsauri, Abu Salamah, Adan bin Abi Iyas, **Musa bin Ismail**, and Abu Nasr al-Tsama (Hajar, 1994).

Hammad bin Salamah received favorable reviews from Hadith critics of the highest quality; Even Ibn Ma'in and al-Nasa'i from the *mutasyaddid* Hadith critics gave a *tsiqah* assessment of him. The positive assessment of hadith critics towards Hammad bin implies that the text of the narrated Hadith is acceptable. The link between Hammad bin Salamah and Habib al-Mu'allim is connected because Hammad bin Salamah is one of Habib al-Mu'allim's students, using the symbol *tabammul* عن.

#### 6. Musa bin Ismail

His full name is Musa bin Ismail al-Minqari, Abu Salamah al-Tabuzaki al-Bashri (Al-Mazzi, 1994).

Musa bin Ismail had many teachers, including Abban bin Yazid al-Aththar, Ibrahim bin Sa'd al-Zuhri, Isma'il al-Minqari, Ayan al-Khuwarizmi, Hammad bin Zaid, **Hammad bin Salamah**, Hamzah bin Najih, Khalid bin Uthman al-Muzni, Khazraj bin Uthman and HababahbintAjlan. Many people who received hadith from Musa bin

Ismail include: Bukhari, **Abu Dawud**, Ibrahim bin Ishaq al-Harbi, Ibrahim bin Husayn bin Dizil, Ahmad bin Hasan al-Tirmidhi, Abu Bakr Ahmad bin Khaitamah, Ubaidillah bin Fadhalah bin Ibrahim al-Nasa'i, Yahya bin Ma'in, Ya'qub bin Sufyan and Ya'qub bin Syaibah (Hajar, 1994).

Musa bin Ismail is a Hadith narrator whose narration is reliable, as the Hadith critics point out, who rate Musa bin Ismail a very high rating, namely *tsiqah*. Ibn Ma'in, a Hadith critic, gave a good assessment of him. Using the symbol *tabammul* حَدَّثَنَا, the relationship between Musa bin Ismail and Hammad bin Salamah is linked because Musa bin Ismail was one of Hammad bin Salamah's students.

## 7. Abu Dawud

His full name is Sulaiman bin al-Asy'ats bin Syaddad bin Amr bin Amir, better known as Abu Dawud (Al-Mazzi, 1994).

Abu Dawud had many teachers including: Ibrahim bin Basyar al-Ramadiy, Ibrahim bin Hamzah al-Ramliy, Ahmad bin Muhammad bin Hanbal, Ahmad bin Mani 'al-Baqahwiyy, Ishaq bin Ibrahim al-Faradisiy, Ismail bin Basyr bin Mansur al-Salimiy, **Musa bin Ismail**, and Yusuf bin Musa al-Qathan.

People who received the hadith from Abu Dawud include: al-Tirmidhi, Ibrahim bin Hamdan bin Ibrahim bin Yunus al-Aquli, Abu Usamah Muhammad bin Abdul Malik bin Yazid and Abu Awanah Ya'qub bin Ishaq (Hajar, 1994).

Abu Dawud is a reliable narrator whose Hadith is acceptable. In terms of his nature and intellectual abilities, none of the detractors of the Hadith consider him to be flawed. Abu Dawud connected with Musa bin Ismail and himself because he was one of Musa bin Ismail's students and used the symbol *tabammul* حَدَّثَنَا.

Hadith scholars agree that two factors must be met to get authentic quality: avoiding *syadz* (irregularities) and *'illat* (defects). These two aspects must be the primary reference for researching the subject of Hadith (Ismail, n.d.).

There are no definite benchmarks related to the quality of matn research. Shalahuddin al-Adabi found that Matan's four benchmarks were: 1) Not

against the commandments of the Qur'an; 2) Does not contradict the stronger Hadith; 3) Not against common sense and history; 4) The text of the Hadith shows the quality of the words of a prophet.

Discussion of the quality of the hadith sanad found differences in the mention of religious adherents, namely أهل ملتين and أهل دينين both of which have the same meaning. The word أهل ملتين is found in the Hadith narrated by Abu Dawud, Tirmidhi, Ibn Majah, and Ahmad bin Hambal. At the same time, the history of al-Darimi uses أهل دينين. Although there are differences in the editorials used, they will not cause differences in the meaning of the Hadith. Thus, the Hadith narrated by Abu Dawud from Abdullah bin Amr is valid because it meets the criteria for a valid Matan, as stated by Saladin al-Adabi above.

Based on the information above, it is clear that the Hadith prohibiting inheritance of different religions served as a guide for the Prophet in resolving inheritance disputes between himself and his cousins, 'Aqil, Talib, Ja'far, and Ali, who were descendants of the Prophet's uncle Abu Talib. To avoid a dispute between Ja'far, Ali, and 'Aqil about the division of inheritance from Abu Talib. The Hadith of the Prophet is more a policy (legal-specific) matter. Although the content of the Hadith applies to some instances and times and is not universally normative, it can be done at different times and places (universal).

حَدَّثَنَا أَبُو عَاصِمٍ عَنِ ابْنِ جُرَيْجٍ عَنِ ابْنِ شِهَابٍ عَنِ عَلِيِّ بْنِ حُسَيْنٍ عَنِ عَمْرِو بْنِ عُثْمَانَ عَنِ أَسَامَةَ بْنِ زَيْدٍ - رَضِيَ اللَّهُ عَنْهُمَا - أَنَّ النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ « لَا يَرِثُ الْمُسْلِمُ الْكَافِرَ ، وَلَا الْكَافِرُ الْمُسْلِمَ » (رواه البخاري 6764)(Al-Bukhari, 1992)

Abu 'Ashim narrated from Ibn Juraih from Ibn Shihab from Ali bin Husayn from Amr bin Usman from Usama bin Zaid that the Prophet Muhammad said: "Muslims do not inherit from unbelievers, and unbelievers do not inherit from Muslims" (HR. Bukhari 6864).

In addition to Tirmizi, Abu Dawud, Ibn Majah, Ahmad, Malik, and Ad-Darimi, Imam Muslim of Sahih Muslim transmitted the following Hadith. Riadi argued that the Hadith is authentic based on the study of the sanad, but from the Hadith's perspective, many continue to question its contents. Once, Mu'adz bin Jabal ruled in a case where Jewish heirs donated their fortune to Muslim descendants (Wahyudi, 2015).

The Hadith originally arose during the Fathu of Makkah (8 H/630 CE), when Usama bin Zaid asked the Messenger of Allah where he would reside in Mecca. The Messenger of Allah inquired, "Did the son of Abu Talib 'Aqil leave the house for us?" Then the Prophet of Allah stated, "Neither believers nor unbelievers inherit from others." In addition, the Messenger of Allah reportedly questioned, "Who will inherit Abu Talib?" Osama bin Zaid said, Osama bin Zaid said, "' Aqil and Talib inherited it." According to Ma'mar's narration from Zuhri, Osama bin Zaid inquired where the Prophet of Allah would stay the following day when he was absent.

In the meantime, neither his departure nor the time of Fathu Makkah was mentioned in Yunus' account. Asqalani argued that the Hadith alludes to early Islamic law because Abu Talib died before the hijrah (Wahyudi, 2015).

Yusuf al-Qaradawi teaches in his work *Hadyu al-Islam FatawiMu'a'sirah* that Muslims can inherit from non-Muslims but non-Muslims cannot inherit from Muslims. According to him, Islam is not opposed to the path of goodness and accepts it for the sake of its people. Inheritance can also unite people's hearts to God, teach them to obey Him, and develop His religion. The aim of money is obedience to God, not disobedience. In addition, according to him, the attitude of cooperation, not religious differences, is *illat* on inheritance. According to al-Qaradawi, *illat* in situations of inheritance is the provision of aid. However, he cannot *illat* in this regard due to religious differences. Historically, Muslims aided *ahludhimmah* in order for them to receive an inheritance from Muslims. The *ahludhimmah*, on the other hand, did not assist the Muslims due to their disbelief; consequently, they did not inherit from the Muslims (Maimun, 2017).

## WASIAT WAJIBAH

Before there is a regulation regarding the inheritance of a person who dies through inheritance, the owner of the property must use the will process to transfer his assets from generation to generation. When a person owns the property and believes that his death is imminent, he must make a will addressed to his parents and relatives so that the property he leaves behind will pass to the person to whom he wants to inherit it and who is legally entitled. On the other hand, this property will make it easier for the bereaved family to distribute the assets according to the deceased's wishes and prevent the future seizure of property, which is vulnerable to family hostility (Mahmudi, 2013).

حَدَّثَنَا مُسَدَّدُ بْنُ مُسْرَهَدٍ حَدَّثَنَا يَحْيَى بْنُ سَعِيدٍ عَنْ عَبْدِ اللَّهِ حَدَّثَنِي نَافِعٌ عَنْ عَبْدِ اللَّهِ - يَعْنِي ابْنَ عُمَرَ -  
عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ « مَا حَقُّ امْرِئٍ مُسْلِمٍ لَهُ شَيْءٌ يُوصِي فِيهِ يَبِيتُ لَيْلَتَيْنِ إِلَّا  
وَوَصِيَّتُهُ مَكْتُوبَةٌ عِنْدَهُ ». (سنن أبي داود : 2864)

It was narrated by Musaddad bin Musarhad from Yahya bin Shu'aid from Ubaidillah from Nafi' from Abdillah bin Umar from the Messenger of Allah, who said: "There is no right for a Muslim to have something that he wants to testify for more than two nights unless his will is written on his side." (Sunan Abi Dawud: 2864)

The above hadith is a legitimacy of the permissibility of wills. According to al-Bani, the above hadith is a good-quality Hadith. So with this quality, the above legitimacy is undeniable. However, what has yet to be found in the text is related to obligatory wills.

Regarding the study of this will, the fiqh scholars define a *will* as a voluntary transfer of property from one party to another that takes effect after the person dies, both in the form of property and benefits. The debate that arose later in the community centered on the type of Wasiat Wajibah, which according to Andi Syamsu Alam, is well intended for heirs or relatives who do not receive a share of the inheritance of people who died due to obstacles under syari'ah law (Syamsu & Fauzan, 2008).

A Wasiat Wajibah is a legal action carried out by an heir, ruler, or judge as a state administrator, where they force or give a mandatory decision to make a will for a deceased person, given to certain people under certain conditions. As a result, a Wasiat Wajibah is a will ~~that~~ is considered to have been carried out by a person who has died, even though he has not left a will.

The existence of a Wasiat Wajibah has been appropriately regulated in Article 209 paragraphs (1) and (2) of the Compilation of Islamic Law, which states that adoptive parents who do not receive a will must be given as many wills as possible. 1/3 of the inheritance of the adopted child, and for the adopted child who does not receive an inheritance, 1/3 of the inheritance of his adoptive parents is given a Wasiat Wajibah. However, along with legal developments, there have been changes in the use and extent of the distribution of Wasiat Wajibahs in Indonesia. The development of these dynamics cannot be separated from the judge's intervention in their decisions because we cannot close our eyes that what can be interpreted as

the Wasiat Wajibah is also based on Abdul Manan's assertion that Wasiat Wajibahs are actions taken by authorities or judges as state administrators in order to force or give a verdict. Wills for individuals who died were given to specific individuals under certain circumstances. (Abdul, 2017)

According to Islamic law, Wasiat Wajibah applies to heirs who do not receive a share of the inheritance due to obstructions to obtaining the inheritance. According to fiqh experts, giving wills to heirs whose inheritance has been determined is forbidden. There is no indication that they will reveal differences in affection between the heirs that could trigger a dispute.

The thinkers in Egypt were the first to introduce the term obligatory will. Egyptian scholars believe there must be a way for 'grandchildren' who are prevented from inheriting because of being prevented by sons; one way out is through a Wasiat Wajibah. Wasiat Wajibahs in Egypt is regulated by the Egyptian Will Law no. 71 of 1946, articles 76 to 79. This requirement applies to grandchildren or grandchildren whose father/mother died before or at the same time as the heirs (grandparents). In Egypt, legally binding would already include explicit provisions. Compared to Indonesia, Article 209 of the Compilation of Islamic Law regarding Wasiat Wajibahs only explains that wills are given to adopted children and adoptive parents in a maximum proportion of one-third (Syahr, 2016).

One of the basics of granting a Wasiat Wajibah for adopted children is the transfer of responsibility for meeting daily needs and education costs from biological parents to adoptive parents. However, there were no non-Muslim obligatory willies from 1991 to 1998. This is based on the ongoing codification of the Islamic legal code and the law itself. According to M. Anshary, only Muslim heirs are entitled to inherit. The provisions regarding heirs of different religions: a. Heirs of different religions do not receive inheritance rights from heirs who have died; b. Heirs of different religions, because they do not receive inheritance rights from heirs who died, look for ways to get a share through Wasiat Wajibahs; and C. The amount of the Wasiat Wajibah of non-Muslim heirs from the heirs is appropriate when the person concerned is a Muslim (Anshary, 2013).

Determining inheritance rights for non-Muslim heirs based on Wasiat Wajibahs is not regulated in detail in a legal rule, both according to positive law and Islamic law (Al Quran and Hadith). However, this does not mean

that applying a Wasiat Wajibah to heirs of different religions is incorrect; Instead, it is a solution taken by a judge to ensure that heirs who are prevented from inheriting because of religious differences can get their rights to receive the property left by the family.

A Wasiat Wajibah is a will whose implementation is not influenced or dependent on the will or wishes of the testator. As a state apparatus, the ruler or judge can make will decisions on certain relatives. The purpose of a Wasiat Wajibah is to distribute justice by distributing shares to heirs related by blood. However, adoptive parents and adopted children who may have performed various services for the heirs are not given a proportionate share of the provisions of the inheritance law. Islam can then achieve this by obliging them to receive part of the property from heirs of different religions (Shalehah, 2020).

The acquisition of inheritance for heirs of different religions through a Wasiat Wajibah also creates a lack of legal certainty because the acquisition of inheritance through a Wasiat Wajibah is not determined with certainty in the laws and regulations, only confirmed in jurisprudence, the amount of which is the highest the amount is the same as that obtained by equal heirs or may not exceed 1/3 of the inheritance (Yanti et al., 2016).

The groups that allow Wasiat Wajibahs are Abi Abdullah Muhammad bin Umar al-Razi, Sayyid Qutb, Mu'ammad Abduh, Said bin Jabir, Rabi' bin Anas, Qatadah, Muqatil bin Hayyan, Ibn 'Abbas, and al-Hasan. Moreover, this view is the holding of Ibn Hazm. The reasons they use: first, the obligation in surah al-Baqarah verse 180 is only carried out to *walidain* (parents) and *aqrabin* (relatives) who are hindered or are not heirs. This is explained by Ibn Hazm, who said that the command to give a will in the will still exist and is obligatory. The waived orders are addressed only to family members who have become heirs. If a Muslim dies and does not leave any last will, the heirs are obliged to give part of their inheritance. Moreover, if this obligation is not carried out, then the court that acts as the ruler (*ulil Amri*) is obliged to give the will to fulfill this testamental obligation (Daud, 2021).

The group that does not allow the existence of a Wasiat Wajibah is the majority of scholars who agree that the law of giving wills to relatives who are not entitled to inherit property is sunnah. In this case, the evidence used by the majority of scholars is. First, the text in Surah al-Baqarah verse 180

has been confirmed by the Mawarits verses, which have explained the share of each heir, such as parents and relatives, with definite provisions. Second, the obligation in this testament verse has also been confirmed by the hadith of the Prophet Muhammad, which means: (Daud, 2021).

"From Abu Umamah RA said: I heard the Messenger of Allah (SAW) say in one of his sermons in the year of Hajj Wada' that Allah has given rights to those entitled. Therefore, there is no right to obtain a will for the heirs..." (Al-Tirmidhi, 1977).

## **WASIAT WAJIBAH FOR FAMILY OF DIFFERENT RELIGION**

Although the Indonesian people are primarily Muslim, Indonesian society is pluralistic because it consists of various tribes, ethnicities, and religions. This religious diversity is characteristic in Indonesia, especially in a family. In some instances, both parents are Muslim, but one child is not Muslim. This difference in belief significantly impacts the family, especially regarding the legal implications that family members may experience.

*Inheritance* is a relationship that depends on close family relationships (regions) based on kinship and marriage. According to Qardhawi, the spirit of mutual help distinguishes *illat* from inheritance in general, not just because of religious differences (Al-Qaradhawi, 2007).

This shows that the judge's consideration plays a significant role in determining the size of the inheritance share for non-Muslim heirs. The applicable provisions stipulate that the obligatory portion of the obligatory will may be at most one-third of the inheritance. In this case, granting a share of inheritance to non-Muslim heirs through a *Wasiat Wajibah* does not eliminate discrimination against other Muslim heirs. There is no certainty regarding the amount of inheritance received, and their position is not the same as that of Muslim heirs. Suppose judges examine and adjudicate inheritance cases involving non-Muslim heirs based on the *illat* law of Hadith regarding the prohibition of inheritance of different religions. In that case, this condition will not occur. As long as there are no hostility and evil between the heirs and the heirs, then there is no obstacle for Muslims and non-Muslims to inherit each other.

In the Compilation of Islamic Law, it has been regulated that *Wasiat Wajibahs* are intended only for adopted children and adoptive parents. While these rules are less binding, the parties involved can petition the

courts. The law of Wasiat Wajibah is explained in Article 209 of the Compilation of Islamic Law. The law of Wasiat Wajibah in the Compilation of Islamic Law is described in Article 209; paragraph (1) "The inheritance of the adopted child is divided based on Article 176 to Article 193, while the adoptive parents who do not receive a will are given a Wasiat Wajibah as much as 1/3 of the inheritance of their adopted child"; Paragraph (2) "About an adopted child who does not receive a will, he is given a Wasiat Wajibah as much as 1/3 of the inheritance of his adoptive father".

The rule of law mentioned above is new legal construction in Islamic jurisprudence. This is not found in classical and contemporary fiqh literature, considering this problem is typical of Indonesian law, which is very hot in its population. For example, further research is conducted on applying the concept of Wasiat Wajibah in the rules of the Compilation of Islamic Law. Therefore, it cannot be considered contrary to Islamic law. Because bequeathing through a will to an adopted child or adoptive parent does not contradict the general provisions of the Qur'an and the Sunnah of the Prophet. On the one hand, adopted children are individuals who are not heirs; on the other hand, the problem falls within the scope of thought allowed to perform *ijtihad* in it (Nuruddien, 2022).

Cassation Decision No. 368 K/Ag/1995, dated July 16, 1998, became the initial milestone in the practice of non-Muslim heirs receiving part of the inheritance from Muslim heirs through Wasiat Wajibahs, which became a jurisprudence within the Religious Courts. Non-Muslims receive the same inheritance from their Muslim parents' Wasiat Wajibahs as other Muslim heirs. The decision to give part of the inheritance to non-Muslim heirs through Wasiat Wajibahs has become a permanent principle of religious court law (Wahyudi, 2021). Legal considerations of the Supreme Court allocating part of the inheritance of Muslim heirs to non-Muslim heirs (Surya, 2021).

Religious courts have made several court decisions about the distribution of inheritance of different religions, including the Religious Court Decision Number 0140/Pdt.P/2012/PA.Sby and the Supreme Court, Cassation Decision Number 218 K/Ag/2016, have decided that non-Muslims must get a share of the inheritance through a Wasiat Wajibah as a pillar of morality and justice. The presence of fiqh is a breath of fresh air for non-Muslims who seek to share inheritance through Wasiat Wajibahs. On the

other hand, according to John Rawls, distributive justice gives a state a central distributional role and transforms the state into a system. Distribution for its citizens, in which the state will always protect and try to create justice for all disadvantaged, must be based on existing moral decisions. In addition, the implementation of a Wasiat Wajibah that can be given to a non-Muslim is also an implementation of the Aristotelian concept of distributive justice or *Justitia distributive*, which states that justice will give someone according to merit or proportional distribution of rights (Istiqamah, 2017).

This Wasiat Wajibah is to maintain the integrity of the family and accommodate the social reality of the pluralistic, multiethnic, and multireligious Indonesian society. In addition, the benefit of this decision is to implement a sense of justice. The provision of Wasiat Wajibahs to non-Muslim spouses, children, parents, and relatives has helped the revival of Islamic law in Indonesia, showing a sense of justice in its social sphere.

The Compilation of Islamic Law and the results of the jurisprudence of the Supreme Court have produced revolutionary legal decisions. Called revolutionary because considering the provisions of the Qur'an and Hadith that discuss the status of non-Muslim heirs, non-Muslim families cannot receive an inheritance from Muslim relatives or children. This provision only applies to *faraid* law and not will law. Therefore, the cassation decision, which has become jurisprudence, stipulates that non-Muslim family members can receive part of the inheritance of their Muslim brothers and sisters through an obligatory will.

Giving part of the inheritance through Wasiat Wajibahs to family members is only sometimes implemented in various other problems with the same *illat* as the inheritance of different religions. It cannot be directly implemented because Indonesia has hundreds of ~~different~~ socio-cultural systems. Nevertheless, heirs of different religions are still considered, namely in the position of husband and wife or children of Muslim heirs. In addition to a very close blood relationship between parents and children or spouse and partner, a will is required if there is a very close relationship between parents and children or spouse and partner.

However, according to the author, although legally, the position of heirs of different religions has not been regulated in the Compilation of Islamic Law or other Positive legal rules regarding the distribution of heirs of

different religions, at least the heirs of different religions still obtain inheritance through a Wasiat Wajibah, then the principles of justice and expediency can be realized in the inheritance law of different religions.

## CONCLUSION

The problem of inheritance practices between Muslim heirs and non-Muslim heirs is still being debated. The side of fiqh forbids the pattern of inheritance between Muslim heirs to non-Muslim heirs, and this principle is by the hadith above, which has been explained. No legal basis can become the basis for the permissibility of heirs of different religions receiving an inheritance from those who are Muslim.

Other considerations can indirectly become the basis for the permissibility of adherents of other religions to receive an inheritance. Heirs of different religions who have good behavior towards the heir, of course, in terms of social relations, must receive the inheritance because usually, the relationship between the heir and the heir is very good. This is why it is permissible to accept the heir's property.

In practice, heirs of different religions receive a mandatory will, namely the heir's inheritance, before being distributed as an inheritance. Because when the inheritance is taken, it is contrary to the standard legal concept. This obligatory will is the solution to the above problems, which is to be given the heir's inheritance before it is divided, with no more than 1/3 of all the assets left by the heir.

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