

## Harmonizing The Distribution of Inheritance Property in Inter-Religious Families

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### Abstrak

Penelitian ini membahas tentang harmonisasi Hukum Waris dalam konteks keluarga antar agama, tentang pembagian harta warisan antar anggota yang berbeda agama. Permasalahan ini tentang bagaimana penerapan serta pembagian Hukum Waris dalam keluarga antar agama. Penelitian ini mengacu pada Undang-Undang Nomor 1 Tahun 1974 Tentang Perkawinan dan Surat Edaran Ma (Sema) Nomor 2 Tahun 2023 Tentang Petunjuk Bagi Hakim Dalam Mengadili Perkara Permohonan Pencatatan Perkawinan Antar-Umat Beragama Yang Berbeda Agama Dan Kepercayaan. Metode penelitian yang digunakan Yuridis normatif. Hasil penelitian penulis menunjukkan bahwa terdapat tiga sistem pembagian Hukum Waris di Indonesia, yaitu hukum perdata, Hukum Waris Islam, dan Hukum Adat. Penyelesaian pembagian waris dalam keluarga antar agama untuk agama muslim menggunakan wasiat wajibah sedangkan bagi Agama non-muslim (Hindu, Kristen, Katolik, Budha, Konghucu) berlaku Hukum Perdata atau Hukum Adat yang dianut pewaris. Dalam menghadapi permasalahan Hukum Waris di Indonesia dalam keluarga antar agama perlu adanya satu pengaturan khusus yang mengaturnya. untuk meminimalkan risiko ketidakpastian hukum dan kekeliruan dalam pembagian waris dalam keluarga antar agama

**Kata Kunci:** *Harmonisasi Hukum Waris, Pembagian Harta Warisan, Keluarga, Antar Agama*

### Abstract

*This study explores the harmonization of inheritance laws in interfaith families, specifically addressing the distribution of inherited assets among members with different religions. It focuses on the application and distribution of inheritance laws for interfaith families, referring to Law Number 1 of 1974 concerning Marriage and Supreme Court Circular Letter Number 2 of 2023 concerning Guidelines for Judges in Adjudicating Cases of Registration of Marriages between Believers of Different Religions and Beliefs. Applying a legal normative method, the findings conclude that there are three systems of inheritance laws in Indonesia: civil law, Islamic inheritance law, and customary law. The resolution of inheritance distribution in interfaith families within in Islam involves the application of "wasiat wajibah," while for non-Muslim faiths (Hindu, Christian, Catholic, Buddhist, Confucian), civil law or customary law adhered to by the deceased applies. Inheritance law issues in interfaith families in Indonesia necessitates a specific regulation to minimize legal uncertainty and confusion in the distribution of inheritance among interfaith families*

**Keywords:** *Inheritance Distribution, Interfaith, Legal Harmonization, Family*

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## **Pendahuluan**

Indonesia is a country rich in ethnic, customary, and cultural diversity, earning it the designation of a pluralistic nation in the Asian continent. This diversity is characterized by the coexistence of various religious beliefs and practices across different regions. Literally, belief entails one's expectations and convictions regarding the honesty, goodness, and loyalty of others (Kbbi, 2016). On the other hand, religion can be interpreted as a set of rules and norms governing the relationships among individuals, between humans and the divine, and with the universe. Religion and religious life are inseparable components of human existence and cultural systems (Muhaimin & Mudzakir, 2005).

Religious and belief diversity among Indonesian citizens is acknowledged and legally guaranteed. Article 28, letter E, paragraph 1 of the 1945 Constitution states that "Every person has the right to embrace their religion and worship according to their beliefs, choose education and teaching, choose employment, choose citizenship, choose a residence within the state's territory and leave it, and has the right to return." This article serves as the legal foundation for Indonesian citizens to freely choose their beliefs and engage in all religious rituals according to their faith (Jufri, 2017). Article 1 of Law Number 1 of 1965 regulates the recognition of six religions in Indonesia, namely Islam, Christianity, Catholicism, Hinduism, Buddhism, and Confucianism. The Indonesian state only acknowledges these six religions as stipulated in the mentioned law.

Law Number 1 of 1974 regarding Marriage (hereinafter, The Marriage Law) regulates all aspects related to the implementation of marriage for Indonesian citizens. Article 1 of the Marriage Law explains that "marriage is a physical and spiritual bond between a man and a woman as husband and wife with the aim of forming a happy and eternal family (household) based on the Almighty God." The principles of marriage outlined in the Marriage Law are considered to have a close relationship with religion or spirituality. Therefore, the essence of marriage involves not only physical or bodily aspects but also the spiritual or religious elements, which play a crucial role. The objective of marriage is to establish a stable and happy family and to have descendants and children to continue the family line. A family constitutes the smallest unit within society, serving to reinforce solidarity, cultivate cultural norms, facilitate economic cooperation, and fulfill psychological needs, including those related to marriage (Lao et al., 2021).

In building a family, a valid marriage serves as a crucial foundation for Indonesian citizens. The Marriage Law has provided provisions regarding valid marriages. According to Article 2, paragraph 1 of the Marriage Law, "A marriage is valid if conducted according to the laws of each religion and belief." In Indonesia, marriages between individuals of different ethnicities, cultures, and nationalities are not prohibited by law. There are no regulations in Indonesian law that forbid marriages based on differences in ethnicity, culture, or nationality.

Marriages between individuals of different religions, also known as interfaith marriages, can be understood as unions between two individuals with differing religious beliefs or doctrines (Hanifah, 2019). A marriage between a man and a woman of different religions mark the beginning of the formation of an interfaith family. Interfaith families is common in many countries, including Indonesia. Literally, an interfaith family is one consisting of members who adhere to varying religious beliefs (Pajarianto & Mahmud, 2019). Formally, marriages between individuals of different religions are not allowed in Indonesia. This is because the Marriage Law does not specifically regulate interfaith marriages. Article 2, paragraph 1 of the Marriage Law only states that a marriage is valid if conducted according to the laws of each religion and belief. Furthermore, Law no. 12 of 2006 on Citizenship states that a marriage conducted by an Indonesian citizen outside Indonesian territory should be acknowledged in Indonesia. Interfaith marriages can be allowed informally through dispensation granted by the

District Court. In Indonesia, interfaith marriages can obtain legal validity through dispensation. The dispensation aims to allow an individual to perform a legal act deviating from the requirements of the prevailing law. In this context, dispensation allows a woman and a man of different religions to marry, even though the regulations stipulate that the condition for marriage should be the same religion (Fajari, n.d.). The followings are the steps for obtaining dispensation for an interfaith marriage:

1. The applicant submits a dispensation request to the competent court. The competent court is the religious court for couples adhering to Islam and the district court for couples not adhering to Islam
2. The applicant must provide the following documents:
  - a) Photocopies of the identity cards (KTP) of the applicant, prospective husband/wife, and parents/guardians
  - b) Photocopies of the birth certificates of the applicant, prospective husband/wife, and parents/guardians
  - c) Letter of statement from the parents/guardians of the applicant
  - d) Letter of statement from a religious figure related to the applicant
  - e) Letter of statement from a community figure related to the applicant
  - f) Certificate from a doctor
3. The judge will examine the dispensation request and summon the applicant, prospective husband/wife, and parents/guardians to appear in court
4. The judge will consider the dispensation request based on the provisions of Article 7, paragraph (1) of Supreme Court Regulation Number 5 of 2019, which includes:
  - a) Consideration of humanity
  - b) Consideration of the child's interests
  - c) Consideration of legal and justice aspects
  - d) The judge will issue a dispensation decree

If the dispensation request is granted by the District Court, the interfaith marriage can be recorded at the Civil Registry Office. Furthermore, an interfaith marriage conducted outside the territory of Indonesia can also be recognized legally.

The phenomenon of interfaith marriages is widespread in Indonesia, involving both public figures and the general population. One notable case occurred in Indonesia in early 2005 when the artist Deddy Corbuzier, a Catholic, married Kalina Ocktaranny in an Islamic ceremony officiated by a figure from the Paramadina Foundation as a personal religious leader. Eventually, their marriage was duly recorded in the civil registry. One aspect of concern in the context of interfaith families is the issue of inheritance, particularly the distribution of inherited assets among family members who practice different religions. Moving on to these interfaith family cases, one area of focus in this paper is the inheritance law, especially the distribution of inherited assets among family members with different religious beliefs.

In the context of inheritance law in Indonesia, variations exist in the system of distributing inherited assets among officially recognized religions such as Islam, Christianity, Catholicism, Hinduism, and Buddhism. Each religion has different rules and principles regarding the distribution of inherited assets based on their respective teachings and scriptures. However, conflicts or tensions often arise in the inheritance distribution within interfaith families. This can be attributed to differences in religious beliefs, norms, and values among family members practicing different religions. In this context, it is crucial to seek a harmonious solution in inheritance law that can accommodate the interests and religious beliefs of diverse family members. Therefore, to narrow down the scope of the issues discussed in this paper, it aims to explore how inheritance law is applied in family law when distributing inheritance among children from different religions within interfaith families and how the harmonization of inheritance law regulates the distribution of inheritance for heirs practicing different religions.

## Research Method

This paper was written to respond to the increasing prevalence of interfaith marriages in society, making it crucial for the author to discuss the application of inheritance law for interfaith families. This is prompted by the widespread lack of understanding among the public regarding the implementation of inheritance law. Therefore, the research method employed in this paper is the legal-normative method. The legal-normative research, as defined by Soerjono Soekanto, is the method applied in this study. The normative (doctrinal) method is generally associated with the practitioners' and professionals' works to solve specific legal problems (Jonaedi Efendi et al., 2018).

However, this paper does not solely rely on the legal-normative method or the prevailing inheritance law in Indonesia. It also incorporates the author's analysis, resulting in solutions and ideas concerning the legal issues discussed. The solutions and ideas presented in this paper are constructed using both primary and secondary legal sources. The primary legal sources used in this research include the Constitution, the Civil Code, Law Number 1 of 1974 concerning Marriage, Law Number 1 of 1965 concerning Prevention of Misuse and/or Blasphemy of Religion, Compilation of Islamic Law, Customary Law, Law Number 7 of 1989 concerning Religious Courts, Law Number 12 of 2006 concerning the Citizenship of the Republic of Indonesia, Supreme Court Circular Letter (SEMA) Number 2 of 2023 on Guidelines for Judges in Adjudicating Cases of Marriage Registration between People of Different Religions and Beliefs. These legal sources are complemented by secondary legal materials, including research findings, books, and journals related to inheritance, marriage, customary law, and other disciplines pertinent to inheritance.

## Results and Discussion

### The Implementation of Inheritance Law in Interfaith Families

In general, the inheritance event involves the transfer of ownership rights of assets from the deceased to the living individuals. According to Article 830 of the Civil Code, "Inheritance only occurs due to death." If there is no death, the transfer of inheritance cannot take place. Inherited assets can include tangible and intangible items passed down from one generation to the next, such as legacies, heritages, debts, and wills. As stated by Wirjono, "Inheritance is a matter of whether and how various rights and obligations regarding a person's wealth at the time of their death will be transferred to others who are still alive." (Nugroho, 2016)." In Indonesia, there are three systems of inheritance law: civil law, Islamic inheritance law, and customary law. Each of these systems operates on different foundations and regulations (Munarif et al., 2022).

#### 1. Civil Law

In the Civil Code, marriage is defined as a legal relationship between subjects, namely, a man and a woman, who bind themselves in matrimony. This relationship is based on their mutual agreement, binding them to each other. In this context, the agreement differs from that specified in Book III of the Civil Code, although it shares similarities to the one in Book III of the Civil Code, i.e., involving a connection between the two parties. However, there are differences in the form and content of this agreement (Soimin, 1992).

The conditions for conducting marriage are regulated in Law Number 1 of 1974 concerning Marriage and Government Regulation of the Republic of Indonesia Number 9 of 1975 concerning the Implementation of Law of the Republic of Indonesia Number 1 of 1974 concerning Marriage. A marriage is considered valid when conducted in accordance with the laws of each religion and belief embraced by the parties.

The principle of inheritance according to the Civil Code (KUH Perdata) is based on blood

relations. Those entitled to be heirs are blood-related family members, both legitimate and born out of wedlock, and the surviving spouse, as stated in Article 832 of the Civil Code. In Article 832 of the Civil Code, heirs can be categorized into 4 groups :

- Group I: Family members in the direct line downward, namely, the surviving spouse and the surviving children.
- Group II: Family members in the direct line upward, such as parents and siblings.
- Group III: Grandparents and ancestors.
- Group IV: Family members in the collateral line up to the sixth degree, including uncles, aunts, and cousins. For example, paternal and maternal uncles, aunts, as well as siblings of grandparents are included in Group IV (Akbar, 2022).

Despite the existence of heir groups, not everyone is automatically entitled to claim inheritance from their siblings. Article 830 of the Civil Code stipulates that inheritance only occurs due to death. This means that the inheritance process takes place when the deceased has passed away. The categorization of heir groups is based on the priority of inheritance distribution. As long as individuals in Group I are still alive, Group II is not entitled to the inheritance, and so forth.

In addition to the four heir groups mentioned earlier, the Civil Code also regulates individuals deemed unfit to be heirs. Article 838 of the Civil Code identifies four types considered ineligible to inherit and are ineligible for inheritance:

- 1) Those who have been sentenced for committing or attempting to commit the murder of the deceased.
- 2) Individuals who, by a court decision, have been found guilty of making false accusations against the deceased, accusing the deceased of committing a crime punishable by a prison term of five years or more severe punishment.
- 3) Those who have obstructed the deceased, using violence or tangible actions, from making or revoking their will.
- 4) Those who have concealed, destroyed, or falsified the will of the deceased.

According to Article 914 of the Civil Code, "If the deceased leaves only one legitimate child in the direct line downward, then the legitime portie consists of half of the estate that the child would have received in the inheritance due to death. If the deceased leaves two children, the legitime portie for each child is two-thirds of what each child would have received in the inheritance due to death. In the case where the deceased leaves three or more children, the legitime portie is three-quarters of what each child would have received in the inheritance due to death. Legitime portie, or an absolute share, is the portion of the inheritance that must be given to heirs in the direct line according to the law, namely children and grandchildren, whether from a legal marriage or an extramarital union, as well as parents. The term 'children' also refers to their descendants in any degree; however, they are only counted as substitutes for the children they represent in receiving the inheritance."

## 2. Islamic Inheritance Law

In Islamic Law, marriage can be defined as a strong contract or *mitssanqan ghalidzan* to obey the command of Allah, and its implementation is considered an act of worship for Muslims (Samad, 2017). The purpose of the marital bond is to realize a family life that is *sakinah*, *mawaddah*, and *rahmah*. The registration of marriages for those of the Islamic faith is carried out at the Office of Religious Affairs (KUA).

The term "inheritance" is derived from the Arabic word "waris," which means وَرِثٌ - يَرِثُ (Munawwir & Munawwir, 1997). In Islamic inheritance law, matters such as wills and gifts are included the primary source in Islamic inheritance law is the Quran, specifically Surah An-Nisa verses 11, 12, and 176. In the Islamic perspective, inherited wealth includes a sum of assets and all rights from the deceased in a clear state. This means that the inheritance inherited by the heirs is a sum of assets and all rights, "after deducting the payment of the deceased's debts and other payments

resulting from the death of the deceased. (Suparman, 2007).

In the Compilation of Islamic Law (KHI), there is currently no specific article that explicitly prohibits inheritance for heirs and beneficiaries who have different religions. Article 173 of the KHI states that "A person is disqualified from being an heir if, by a court decision that has legal force, they are convicted of: a. being accused of murder or attempted murder or severe assault against the deceased; b. being found guilty of false accusation by filing a complaint that the deceased has committed a crime punishable by 5 years of imprisonment or a more severe punishment." Apart from the issue of religious difference between the deceased and the heirs, Article 173 of the KHI mentions conditions where heirs are prohibited from inheriting, specifically attempted murder and false accusations against the deceased. The Compilation of Islamic Law in Chapter II regulates the Law of Inheritance, addressing aspects such as heirs and their respective shares. The principles used in inheritance law in the Compilation of Islamic Law are as follows (Mahkamah Agung, 2007);

- 1) Bilateral/Parental Principle: This principle does not differentiate between male and female heirs in terms of rights to inherit and does not recognize dzawil arham.
- 2) Direct Heirs and Replacement Heirs Principle: This includes direct heirs mentioned in Article 174 of the Compilation of Islamic Law (KHI) and replacement heirs (plaatsvervulling) regulated by Article 185 of the KHI.
- 3) Ijbari Principle: This means that upon a person's death, their relatives (based on blood and marital ties) immediately become heirs, and they have no right to refuse or contemplate whether to accept the inheritance
- 4) Individual Principle: The inheritance can be divided among each heir, except when the inherited property is land less than 2 hectares.
- 5) Principle of Balanced Justice: The male-to-female ratio for inheritance shares is 2:1, except in certain circumstances.
- 6) Inheritance Due to Death Principle: The transfer of ownership rights from an individual to their relatives through inheritance applies after the individual's death.
- 7) Blood Relation Principle: It signifies blood ties resulting from a valid marriage.
- 8) Wasiat Wajibah (obligatory bequest) Principle: Adopted children and adoptive father can reciprocally make wills about their respective properties.
- 9) Egalitarian Principle: Non-Muslim relatives by blood are entitled to a maximum of 1/3 of the obligatory bequest, not exceeding the share of equivalent heirs.
- 10) Limited Retroactive Principle: The Compilation of Islamic Law does not have retroactive effect. If the inheritance has been physically divided before the law's implementation, there is no legal basis for family inheritance claims.
- 11) Gift and Will Principle: Gifts and wills to heirs are considered part of the inheritance.

However, considering the hadith of the Prophet Muhammad (peace be upon him) recorded by Bukhari and Muslim: "A Muslim does not inherit from a non-Muslim, and a non-Muslim does not inherit from a Muslim." There is a prohibition on mutual inheritance if the deceased and the heir have different religions. Nevertheless, the Supreme Court has issued jurisprudence to address non-Muslim heirs, as evidenced by the Supreme Court's Decision No. 51/K/AG/1999 and No. 16/K/AG/2010. These decisions affirm that non-Muslim heirs can still inherit through an obligatory bequest, and their share should not exceed 1/3 of the inheritance. Therefore, in Islamic law, non-Muslim heirs with different religions from the deceased, who was a Muslim, still have their inheritance rights through the obligatory bequest.

### 3. Customary Law

Customary law is a local legal system in a particular region or community that is practiced, believed, and upheld by the inhabitants of that area. The term "customary law" may not be necessary for ordinary citizens who understand the term "custom" to denote manners or

etiquette, rather than in its legal sense. Hazairin asserts that custom constitutes the repository of morality within society, signifying that ethical norms widely acknowledged by the community form its essence. According to Hazairin, customary law is indeed law, encompassing both the aspects of customary manners and legal principles. Consequently, Hazairin does not distinguish between custom and customary law, nor between written law and the ethics of customary practices (Susylawati, 2009). According to Ter Haar, "Customary inheritance law comprises legal rules governing the ways in which, from century to century, the transfer and transition of tangible and intangible wealth occur from one generation to the next."<sup>19</sup> Customary inheritance law in Indonesia possesses its own distinctive characteristics, differing from Islamic law and Civil Law. This disparity is rooted in the philosophical background of the Indonesian nation, embracing Pancasila, and the diverse unity of its society, as reflected in the motto *Bhineka Tunggal Ika* (Soerojo, 1995)."

The structure of customary law societies in Indonesia recognizes three types of kinship systems (Van Dijk, 2006):

1. Parental Kinship System:

According to Van Dijk, in the parental kinship system, rules governing marriage, the obligation to provide financial support, respect, and inheritance apply equally to both parents and relatives from both paternal and maternal sides. This system is prevalent in the societies of West Java, Central Java, East Java, Madura, Kalimantan, and Sulawesi (Makassar).

2. Patrilineal Kinship System

In the patrilineal kinship system, children connect themselves to paternal relatives based on the unilateral lineage of males. This system is found among societies such as the Bali, Rejang, Batak, and Makassar.

3. Matrilineal Kinship System

According to Bushar Muhammad, societies following the matrilineal system, lineage based on the maternal side is considered important. This results in a closer and more pervasive familial relationship among individuals sharing the same maternal lineage. The consequences, especially in matters like inheritance, are more extensive and significant than those based on the paternal lineage. This system is observed among the Indian Apache West, Khasi in Meghalaya, Northeast India, Naxi in the provinces of Sichuan and Yunnan, China, Minangkabau in West Sumatra, Kerinci, and the Sumendo people.

Inheritance distribution for children in interfaith families is determined by the prevailing inheritance law based on the religion practiced by their biological parents. This understanding is derived from the jurisprudence issued by the Supreme Court. For instance, in 2015, the Supreme Court issued Decision Number 721 K/Ag/ incorporated in the Compilation of Supreme Court Jurisprudence until 2018. In its consideration, the Supreme Court stated as follows:

*The deceased was of Islamic faith and left only one heir embracing Islam, namely the Plaintiff (Sumarni binti Sirat/wife). However, the deceased's children were non-Muslims, rendering them ineligible as heirs. Yet, the two non-Muslim children of the deceased were granted a share through an obligatory bequest (wasiat wajibah). The issue of the status of non-Muslim heirs has been extensively studied by scholars, including Yusuf Al Qardhawi. The interpretation suggests that non-Muslims living peacefully alongside Muslims cannot be categorized as kafir harbi. The peaceful coexistence of the Plaintiff's children with the deceased during their lifetime, despite differing beliefs, justifies them receiving a share through the obligatory bequest. Considering the substantial duration of the marriage between the Plaintiff and the deceased Vincencius Papilaya bin Yos Papilaya (17 years), even though the latter's status was non-Muslim at the time of marriage, the deceased is deemed deserving and equitable in obtaining his rights as a husband. This includes receiving half (1/2) of the jointly owned assets throughout their marriage, aligning with Supreme Court jurisprudence and the principles of*

*justice* (HUMAS & RI, n.d.);”

Based on the considerations in the court decision number 721 K/Ag/ dated November 19, 2015, an obligatory bequest can be employed in cases of interfaith families where the heirs are not of the Islamic faith. According to the Encyclopedia of Islamic Law, an obligatory bequest is defined as a bequest designated for heirs or relatives who do not inherit from the deceased due to a legal impediment (Dahlan & Islam, 1998). Meanwhile, Suparman defines an obligatory bequest as a bequest whose execution is not influenced or dependent on the wishes of the deceased (Noviarni, 2021). Therefore, it can be concluded that an obligatory bequest is intended for heirs or relatives who do not receive a share of the inheritance due to a legal impediment. The allocated share of a compulsory bequest to eligible heirs or relatives is typically one-third (1/3) of the total inheritance. In cases of inheritance distribution between Muslim and non-Muslim, particularly in interfaith families, the resolution often involves the application of an obligatory bequest. This approach is evident in legal precedents, such as court decision number 721 K/Ag/. It's worth noting that judges may have discretion in their decisions, and legal provisions for non-Muslim religions (Hinduism, Christianity, Catholicism, Buddhism, Confucianism) follow civil law or customary law adhered to by the deceased.

### **Harmonization of Inheritance Law for Heirs in Interfaith Families**

Harmonization is the effort to achieve consistency, conformity, compatibility, and balance among various interconnected factors, eliminating fundamental differences to create a unified whole. In the legal context, harmonization can be understood as the endeavor to attain coherence and compatibility between different legal regulations, encompassing both material and formal aspects. Law, as a system, should be perceived as an order characterized by harmony and completeness. A legal system is considered harmonious when it manages to avoid conflicts among its components. If conflicts persist due to unforeseen circumstances, the legal system should provide instruments for resolution (legal remedies). (Mawar, 2020).

The distribution of inheritance among heirs with different faiths can be regulated through harmonization involving Civil Law, Islamic Law, and Customary Law. Civil Law does not explicitly address inheritance across religions, as indicated in Article 830 of the Civil Code, stating that inheritance only occurs upon death. This provision does not explicitly require the religion of the deceased and heirs to be the same. However, in practice, Civil Law tends to recognize inheritance across religions, as seen in various jurisprudences decided by the courts. For instance, in Supreme Court Decision Number 147 K/Pdt/1968, the Supreme Court ruled that heirs of different religions than the deceased are still entitled to inherit. This decision is based on Article 832 of the Civil Code, which stipulates that heirs are individuals determined by the law or the deceased. In this context, the deceased did not specify that the heirs must share the same religion. Therefore, heirs of different faiths remain entitled to the inheritance.

The harmonization of inheritance laws governs the distribution of inheritance for heirs of different faiths through agreements among the heirs. These agreements can be achieved through consensus or mediation outside the court by the heirs themselves. When heirs have different religions, there are at least five steps that can be taken to settle inheritance distribution:

1. Agree on the Applicable Inheritance Law (ONLINE, 2022);
2. Determine the Deceased's Estate;
3. Identify Heirs of the Deceased;
4. Calculate Each Heir's Share;
5. Create an Inheritance Distribution Agreement.

In the absence of consensus through harmonization, dispute resolution can be pursued through legal channels, involving litigation in a court of law. An illustrative case of harmonizing inheritance laws through litigation can be found in Decision No.16 K/Ag/2010 dated April 16, 2010. In this ruling, the Supreme Court decided that a wife of a different faith (non-Muslim), who had been married to and



accompanied the deceased for 18 years, was entitled to inherit through the obligatory bequest. The considerations in this decision are as follows:

*The marriage between the deceased and the petitioner had lasted for a significant period of 18 years. This implied a substantial commitment from the petitioner to the deceased. Therefore, even though the petitioner was a non-Muslim, it was deemed just and fair for her to receive her rights as a wife, including a share of the estate through obligatory bequest and a portion of the joint assets, in accordance with the Supreme Court's jurisprudence and the principles of justice.*

*Recognizing that the issue of the position of non-Muslim heirs had been extensively studied by scholars, including Yusuf Al Qardhawi.*

*It was interpreted that non-Muslims living peacefully alongside Muslims should not be categorized as "kafir harbi". In the case of the petitioner and the deceased, who had peacefully coexisted despite differing beliefs, it was deemed fitting and just for the petitioner to receive a share of the deceased's estate through obligatory bequest;*

An example of harmonization occurred between Nias Customary Law and Islamic Inheritance Law in a dispute over the inheritance of the Fataya family, adjudicated by the North Sumatra court. The issue arose when Fataya and his Muslim wife passed away, leaving a vast inheritance comprising land and coconut plantations, inherited from Fataya's father, Tetandrosa Marunduri. Hezekieli, along with Asamudin Marunduri, Fangoja Marunduri, and Sofunaso Marunduri, filed a lawsuit in the Gunung Sitoli District Court, Nias. The defendants were Azali Maruhawan (Defendant-1) and Zakalia Marunduri (Defendant-2). Interestingly, the plaintiffs and defendants were still relatives. The plaintiffs' father had siblings named Fataya Marinduri and Satima Marinduri. Despite being siblings, Fataya and Satima practiced Islam,

while the plaintiffs' father was a Christian. Defendant-1 was the child of Satima Marunduri, and Zakalia Marunduri was still a cousin to Fataya due to their grandmothers being siblings and both adhering to Islam. The plaintiffs argued that they were the rightful heirs as Fataya had no descendants, in accordance with Nias customary law, and requested the application of customary law. In contrast, the defendants argued, based on Islamic Faraid Law, that they were entitled to the inheritance as they shared the same religion as the deceased.

Peaceful resolution attempts were made but reached an impasse, leading to the case being brought to court. In court, the plaintiffs presented seven witnesses, four of whom were Muslims. These witnesses generally asserted that, according to Nias customary law, the plaintiffs were the rightful inheritors. In the Hinako region, where the deceased resided, customary law applied, even if there were different religions within a family. The defendants presented six witnesses, one of whom was a Christian. These witnesses essentially stated that, since Fataya Marunduri was a Muslim, the inheritance distribution should align with Islamic law.

In his deliberation, Judge TW Siregar found that the testimony of the plaintiff's witnesses provided a strong basis for knowledge or concrete examples in Hinako. In this region, customary law governs inheritance distribution. For instance, when Defendant-II's father (a Muslim) passed away without leaving male heirs, his estate was divided according to customary law. As a female heir, Defendant-II received only a portion as a gift, not as a legal inheritor.

*"The testimonies of the plaintiff's witnesses are stronger and more credible because they are supported by a foundation of knowledge or examples," explained the judge in his considerations. "It is proven that in the village of Hinako, customary Nias law applies to inheritance distribution, irrespective of religion. Therefore, in this case, to determine the rightful heirs of the late Fataya Marunduri, Nias customary law must be applied."*

The judge dismissed the evidence of the Religious Court Decision presented by the defendants, as it aligned with Government Regulation No. 45 of 1957 concerning Religious

Courts outside Java and Madura. According to this regulation, Religious Courts only have jurisdiction over inheritance cases if all family members share the Islamic faith. The judge also emphasized that Nias customary law follows a patriarchal system, where male descendants inherit based on the paternal line.<sup>28</sup> Consequently, the judge granted the plaintiffs' claims, asserting their right to the inheritance under Nias customary law, despite their different religions. This case, decided by Judge TW Siregar on August 13, 1970, became part of the Jurisprudence of Indonesia published by the Supreme Court in 1975. KHI does not regulate the distribution of inheritance to heirs of different religions. Over time, the application of obligatory bequest has expanded not only to adopted children and adoptive parents but also to heirs of different religions.

The concept of Islamic Fiqh dictates that heirs of different religions cannot inherit the assets of a deceased individual who adheres to Islam. The Supreme Court's decision has set a precedent for the lower courts, as evident in the ruling of the Religious Court in Kabanjahe, Karo District, North Sumatra, with Register Number 2/Pdt. G/2011/PA-Kbj. The plaintiff filed an inheritance lawsuit with the Religious Court in Kabanjahe, registered as Number 2/Pdt. G/2011/PA-Kbj on January 10, 2011. The deceased passed away on August 28, 2010, due to illness, leaving behind heirs consisting of a wife (defendant II) and two sons.

However, one son (the plaintiff) practiced a non-Muslim religion, while the other son followed Islam (defendant I). The biological parents of both heirs had already passed away before the deceased. In this case, the plaintiff requested the court to determine the heirs of the deceased and allocate a portion of the inheritance to the non-Muslim heir (plaintiff) through the obligatory bequest. The Religious Court in Kabanjahe issued a verdict on February 24, 2011, with the decision: granting the plaintiff's lawsuit, determining defendant I and defendant II as heirs, and designating the plaintiff as the recipient of the obligatory bequest from the deceased (their parent).

An analysis of both cases reveals a commonality where the deceased practiced Islam, while one of the heirs practiced a non-Muslim religion. However, the court decisions differ: in the first case, Islamic inheritance law was applied, possibly due to the family residing away from their original region. In the second case, the judge opted for obligatory bequest even though the legal basis for the lawsuit was customary law. From these cases, it can be inferred that Nias customary law takes precedence over Islamic law, as determined by the court's decision. The plaintiffs claimed inheritance rights based on Nias customary law, while the defendants asserted their rights under Islamic law. In this instance, the judge decided to use obligatory bequest.

## **Conclusion**

This research concludes that the inheritance event involves the transfer of ownership rights of assets from the deceased to the living individuals (heirs). In Indonesia, there are three legal systems related to inheritance: civil law, Islamic inheritance law, and customary law. Civil law regulates marriage events and their requirements. A marriage is considered valid when conducted according to the laws of each religion and belief embraced by the parties involved. Heirs are categorized into four groups, with a prioritized distribution of inheritance. Islamic inheritance law involves bequests and gifts, grounded primarily in the Quran. It follows principles such as bilateral, direct heirs, *ijbari*, individual, balanced justice, and others. Customary law, on the other hand, is local and depends on specific communities or tribes. There are three kinship systems in customary law: parental, patrilineal, and matrilineal. In interfaith family cases, particularly between Islam and non-Islam, the Supreme Court's decision states that obligatory bequests can be used as a solution. An obligatory bequest is designated for heirs or relatives who do not receive a share of the inheritance due to religious obstacles, with an amount equal to 1/3 of the inheritance. In interfaith families involving non-Muslims, civil law

can be applied. Thus, the inheritance legal system in Indonesia reflects cultural, religious, and customary diversity, and resolving issues may involve aspects from all three systems, depending on the context and case at hand.

In interfaith family cases, the harmonization of inherited asset distribution can be a solution to achieve harmony and agreement among heirs. This harmonization can be achieved through consensus or mediation outside the court. If harmonization is not attainable, the court can be an alternative dispute resolution, as seen in some jurisprudence recognizing non-Muslim heirs' rights to inherit from a Muslim deceased. In achieving harmonization, it is important to note that court decisions can vary depending on the case context and applicable laws.

The regulation of inheritance distribution between religions requires a unified form of regulation. Therefore, harmonization between the inheritance distribution systems in Indonesia, namely Civil Law, Islamic Law, and Customary Law, is needed. Couples are advised to share the same religion before marriage since Indonesia does not regulate interfaith marriages, including inheritance distribution.



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