

The Consequences of Interfaith Marriage Law on the Inheritance of Wives and Children Reviewed from the Compilation of Islamic Law

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ABSTRACT

Indonesia's multicultural and multi-religious society often leads to interfaith marriages, which present complex legal implications, particularly regarding the rights of spouses and children in matters of inheritance. Interfaith marriage raises significant legal questions under Islamic law, especially in terms of the status of heirs when religious differences exist between the deceased and the beneficiary. This study aims to examine the legal position of wives and children from interfaith marriages as heirs within the framework of the Compilation of Islamic Law (Kompilasi Hukum Islam/KHI). Employing a normative legal research method, this study analyzes statutory regulations, legal principles, and authoritative interpretations of Islamic inheritance law. The findings reveal that interfaith marriages give rise to legal consequences in three main areas: the legality of the marriage itself, the division of marital property, and the rights of children as descendants. According to KHI and prevailing Islamic jurisprudence, heirs who differ in religion from the deceased are not entitled to inheritance. However, the concept of mandatory will (*wasiat wajibah*) offers an alternative legal remedy, allowing non-Muslim heirs to receive a portion of the estate under certain conditions. This research implies the need for greater legal clarity and public awareness regarding inheritance rights in interfaith marriages to ensure justice and certainty for all parties involved.

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INTRODUCTION

Indonesia is one of the multicultural countries, home to various types of ethnicities, races, cultures, and religions. The existence of this diversity means that Indonesian people must have a high tolerance and open mind to the boundaries of the norms that govern it. This is done in order to create harmony in the lives of people who live side by side.

In addition to society that must have tolerance for existing diversity, it is undeniable that the existence of diversity also has different regulations and customs. As is the case with marriage, the culture in marriage is diverse, as well as the rules in it that cannot be separated from the influence of religion, community beliefs and knowledge as well as religious leaders who are in the community environment. For example, in inter-tribal marriage which later became such a high tolerance in Indonesia, its existence made kinship and closeness between tribes strong (Barkah & Asmita, 2018; Jayusman et al., 2022; Novitasari et al., 2019; Samsidar, 2019; Ulfa, 2022). Humans are creatures that are always in contact with other humans and interact in groups. In an effort to continue their offspring, humans perpetuate a marriage. Marriage itself

is a bond between a man and a woman to form a harmonious and legitimate family in the eyes of the state.

Basically, marriage is not a complicated problem if both couples embrace the same religion, but in practice life in society is very contrary to existing assumptions, there are still many who violate religious values and norms by holding interfaith marriages. Even if it is considered to violate religious values and norms, the existence of interfaith marriage cannot simply be eliminated by legal regulations, because loving others cannot be limited by religion. The integrity and harmony of the relationship is the dream for all married couples, including married couples of different religions (Fuadi et al., 2022; Hermanto et al., 2022; Pratama et al., 2023; Septian & Sulisty, 2023; Tohari & Hazyimara, 2023a)

Marriage which in religion is called the term *nikah* which means to perform a contract or agreement to bind oneself between a man and a woman in order to allow sexual relations between the two parties, based on the voluntary race and the pleasure of both parties to realize a happiness in family life that is covered with love and peace in ways that are pleased by God (Ahmad Azhar, 1997-10). In this case, what is meant by the covenant itself is not only innate but also inwardly accompanied by belief in the One God. This is proof that humans are social creatures who are interdependent and need each other and then these two people are united in a marriage (Aslami et al., 2023; Santoso, 2016; Soemiyati, 1999; Suprayogi, 2023; Yopani Selia Almahisa & Anggi Agustian, 2021).

The existence of Law number 1 of 1974 which discusses marriage relatively provides answers to problems related to marriage for all Indonesian people. But it does not mean that this law regulates all aspects related to marriage. In this law, there are several aspects that are not regulated in it such as divorce, mixed marriage, contract marriage, interfaith marriage, and serial marriage (Anggereany haryani putri & Sari, 2019).

Basically, when viewed from a religious point of view, the existence of interfaith marriage is not legalized, but it is undeniable that it is not an obstacle for them to carry out marriage in order to run the ark of the household, few of them think about the impact that will occur in the future, one of which is related to children who will directly carry out the impact of the consequences of interfaith marriage.

From a marriage, it is definitely hoped that the birth of a child will be a tool to be able to strengthen the relationship between a husband and wife. Its existence is a gift from God. Marriage is something that is very closely related to religion or spirit. So that marriage is one of the most important things physically and spiritually as well as in terms of educational rights and responsibilities. In this case, it means that children born from a marriage are also entitled to spiritual rights and educational responsibilities given by their parents. Every child born also has the right to be respected as well (Aulia & Mukrimun, 2022).

The birth of a child from the existence of interfaith marriage also raises a problem that is quite crucial in the household which of course has an impact on children. Some people question the status of children born from interfaith marriages and other issues are regarding the inheritance rights that will be obtained by husbands/wives and children. These problems arise due to the impact of interfaith marriage because actually the existence of interfaith marriage is not heeded, but as we often hear the more it is banned, the more it will be implemented, as well as what happens in interfaith marriage. The existence of interfaith marriages that are prohibited in Indonesia does not make people give up, so they often carry out interfaith marriages abroad and then record them in the civil district court (Tohari & Hazyimara, 2023b).

Its existence raises questions related to the marriage that has been carried out, because in the marriage it has consequences that give rise to assumptions related to the status of the marriage, and with the existence of the marriage, what needs to be considered at the time of interfaith marriage is related to the discussion of inheritance. The distribution of inheritance in interfaith marriages also occurs in the community as a result of mixed marriages, this is as

referred to in Article 57 of Law Number 1 of 1974 which has undergone changes which are then regulated in Law Number 16 of 2019, but the discussion of the distribution of inheritance does not regulate interfaith marriages (Azmur et al., 2023).

Previous studies have explored aspects of interfaith marriages and their legal implications in Indonesia. For instance, Notonegoro and Listyawati (2024) examined the regulation of interfaith marriages in Indonesia, highlighting the lack of explicit legal provisions governing such unions and the resultant legal uncertainties. Another study by Daud (2021) focused on the distribution of inheritance rights to heirs of different religions, discussing the application of compulsory wills (*wasiat wajibah*) as a means to address inheritance issues in interfaith contexts. However, these studies have not specifically addressed the combined legal status of wives and children from interfaith marriages concerning inheritance rights under the KHI. This research fills that gap by providing a comprehensive analysis of both spouses' and offspring's legal positions in interfaith marriages, offering a more holistic understanding of the inheritance implications within the Indonesian Islamic legal framework.

The purpose of this study is to find out the position of wives and children from interfaith marriages as heirs. The benefits of this research are divided into two, namely theoretical and practical benefits. Theoretically, this research contributes to the development of legal science, especially regarding the legal position of wives and children in interfaith marriages according to the Compilation of Islamic Law. Meanwhile, practical benefits are intended for relevant parties dealing with the issue of the legal status of wives and children in this context, helping them to better understand and handle this issue.

RESEARCH METHODS

Types of Legal Research

Based on the title that will be discussed in this study in order to get results and benefits, this research uses normative legal research. Normative law research itself is a research that focuses on the study of laws and regulations, court decisions, legal principles, legal systematics, legal synchronization, research on legal history, and comparative legal research. In this writing, the scope that the author will use is by studying laws and regulations, court decisions and drawing on legal principles.

Research Approach

The approach method used in the preparation of this thesis is normative legal research. In this study, the author uses a statutory approach (Statute Approach), a legal concept approach (Conceptual approach)

In this study, laws and regulations (Statute Approach) are used, such as the Civil Code, Marriage Law No. 1 of 1974, and the Compilation of Islamic Law. The conceptual approach (Conceptual Approach) is a method with an approach to legal norms, conceptual frameworks, thinking frameworks, or theoretical foundations on legal issues in research. This conceptual approach is researched from the views and/or doctrines that are born in legal science.

Legal Materials

Legal materials related to the issues submitted consist of primary legal materials, secondary legal materials and tertiary legal materials. What is meant in primary legal material itself is an authoritative legal material which means it has authority (Marzuki, 2006) or primary legal materials are also often referred to as norms that contain rules, which are the result of actions or activities carried out by authorized institutions such as laws and regulations, in this matter the primary legal materials used are:

- 1) Civil Code (KUHPer),
- 2) Law No. 1 of 1974 concerning Marriage,

3) Compilation of Islamic Law

4) Law number 16 of 2019 amendments to law number 1 of 1974

In addition to using primary legal materials on this issue, the author also uses secondary legal materials by studying books, legal journals, scientific works, and judges' decisions such as: Constitutional Court Decision Number 24/PUU-XX/2022, Sema 2 of 2023.

Methods of Collection and Processing of Legal Materials

The research is carried out by analyzing the errors in the research through an approach to legal principles, as well as referring to legal norms contained in the laws and regulations in Indonesia and also using the type of legal material from the literature which is referred to as secondary legal material. The primary legal materials are the Civil Code (KUHPPerdata), Law No. 1 of 1974 concerning Marriage, Compilation of Islamic Law. Then secondary legal materials consisting of books, legal journals, scientific works and judges' decisions such as: Constitutional Court Decision Number 24/PUU-XX/2022, Sema 2 of 2023. Meanwhile, tertiary legal materials are general Indonesian dictionaries, legal dictionaries and Indonesian law encyclopedias.

Analysis of Legal Materials

The analysis of legal materials is to utilize the legal materials that have been collected to solve the problems in this research. The analysis in this study uses a normative research method. Then the legal material obtained is analyzed through a qualitative analysis approach, and researched with deductive logic, which means thinking from the general to more special.

RESULTS AND DISCUSSION

The Legal Position of Wives and Children in Interfaith Marriage Reviewed from the Compilation of Islamic Law

Inheritance law or inheritance law is a law that regulates the transfer of property ownership rights (tirkah) from heirs to heirs, as well as determining who can become heirs and determining how many parts of each.

In inheritance law, it is known as an heir. Heirs are people who have the right to inherit the inheritance of the heirs, such as biological children, parents, relatives, successor heirs and people who have a marital relationship with the heirs. In addition, it is also known as adopted children, stepchildren, and illegitimate children who are usually also given a share of the inheritance from the heirs if the heirs divide the inheritance between them. In addition, property can also be given from inheritance either through wills or grants.

The legal position of wives in interfaith inheritance is reviewed from the Compilation of Islamic Law

In Islamic law, what is meant by religious differences in wisan is religious differences that occur between heirs and heirs. For example, the religion of people who inherit Islam and the religion of non-Muslim heirs, then people who are Muslim cannot inherit from people who are Muslim. This is as stated in article 171 c of the Compilation of Islamic Law which states that an heir is a person who, at the time of death, has a blood relationship or marificial relationship with the heir, is Muslim and is not hindered by law to become an heir.

In Islam, religious differences can result in the loss of inheritance rights as affirmed in the hadith of the Prophet from Usamah bin Zaid, narrated by Bukhari, Muslim, Abu Dawud, At-Tirmizi and Ibn Majah who have mentioned that a Muslim does not receive an inheritance from a non-Muslim and a non-Muslim cannot receive an inheritance from a Muslim. From the existence of the hadith, it can be seen that the relationship between brothers or relatives of different religions in daily life only concerns associations that are not religious affairs.

However, when it comes to religious matters such as inheritance, they do not have that relationship as mentioned in the principles of inheritance and hadith in Islam.

Issues related to Islamic inheritance are regulated in book II of the compilation of Islamic law which contains about: general provisions, major heirs of their shares, auldan, rad, wills, and grants. Inheritance rights arising from the consequences of a marriage relationship cause various kinds of problems, such as one of them is the problem of inheritance from interfaith marriage, because as we know in Indonesia itself there are many religions that are embraced by the community, which inevitably the existence of interfaith marriage is one of the phenomena that occurs and develops in society

In interfaith marriages, if a husband or wife dies, the law used in inheritance is the law of the heir. This is corroborated by the existence of MARI jurisprudence No.172/K/Sip/1974 which states "that in an inheritance dispute, the inheritance law used is the law of the heir.

There is a grouping of heirs in Islamic law, this can be seen in article 174 paragraph 1 of the Compilation of Islamic Law which is divided into two, namely; Heirs who are included in the group have blood relations such as children, mothers, fathers, uncles, brothers, grandparents; The heirs who are included in the class that comes from marriage are widowers and widows.

In the explanation contained in article 174 of the Compilation of Islamic Law, it is clearly stated that widows or widows are included in the class of heirs who come from marital relationships. However, in the context of interfaith relationships and then seen from Islamic law, a widow or widower who comes from a cross-religious marriage relationship is not included in the heirs if he is not Muslim. This is as stated in article 171 c of the Compilation of Islamic Law which states that an heir is a person who at the time of death has a blood relationship or marital relationship with the heir and is not prevented by law from becoming an heir.

From the information above, we can see that there is no inheritance relationship between a Muslim and a non-Muslim, this is also agreed by several existing scholars, but the existence of article 171c of the Compilation of Islamic Law and the opinions of existing scholars do not in fact make a basis for a judge to decide a similar case. Because in practice there are still judges who give inheritance rights to non-Muslim heirs. This can be seen from the decision of the Supreme Court No.16K/AG/2010, which grants inheritance rights to a wife who is of a different religion from her husband.

In this case, it was explained that the plaintiff or applicant named Evie Lany Mosinta and r. Muhammad Armaya bin Renreng, M.Sc., alias Ir. Armaya Renreng, had married on November 1, 1990 with Marriage Certificate Citation Number 57/K.PS/XI/1990. The marriage of the Defendant or Cassation Petitioner with Ir. Muhammad Armaya bin Renreng, M.Si., alias Ir. Armaya Renreng has lasted for quite a long time, namely 18 years, in this case it means that the Defendant or Cassation Petitioner has devoted himself to the Heirs for quite a long time, therefore even if the Cassation Petitioner is not a Muslim and still worthy and fair to obtain his rights as a wife to get a share of the heritage in the form of a compulsory will and a share of joint property as per the jurisprudence of the Supreme Court RI. From this marriage, the plaintiff or applicant does not have children with heirs or the deceased.

Because the applicant or plaintiff is a non-Muslim, if viewed from Islamic law, the defendant or applicant is not an heir, while the five heirs of the deceased's brother or husband of the defendant are Muslims, in Islamic law the inheritance property falls to his heirs (pera penggugt). In this case, because the defendant did not give the heir's inheritance to the plaintiff or heirs, therefore the plaintiff demanded the defendant at the Makassar Religious Court so that the defendant could provide the plaintiffs' rights to the heir's inheritance.

In the Supreme Court's decision in the case of decision No. 16 K/AG/2010 which ruled that the defendant or respondent gets 1/2 of the property with his heirs and the rest is given to his

heirs. However, of the 1/2 of the heirs' property given to the heirs of the heirs, there is 1/4 of the defendant's share in the form of a mandatory will. This is contrary to Islamic law which has clearly explained that a Muslim does not inherit an infidel and vice versa. From here we can find the difference between the provisions of Islamic law and the Supreme Court decision.

The Supreme Court's decision No. 16 K/AG/2010 raises question marks for families and the community, especially in 1987 there was a national meeting of 9 national working meetings) it was established that if an heir dies, then the inheritance law is divided according to the religion embraced by the heir and in the year before the Supreme Court decision No. 16 K/AG/2010, There has been a similar case contained in the Supreme Court decision Number 368 K/AG/1995 where one of the children of deceased parents did not want to give inheritance rights to heirs who had changed religions.

Looking at these two decisions, the supreme court justice grants inheritance rights to those who are different from the heirs because by considering that children and widows who are different religions from the heirs are the closest people to the heirs. Because children are the result of marriage which means that she has a close relationship with her people, and the wife is a woman who faithfully accompanies her husband until the end of her life. Therefore, the judge decided that widows and children of different religions from the heirs can receive inheritance rights through compulsory wills.

This decision then caused confusion in the community about how the actual division or position of wives who are different from their husbands or heirs can receive inheritance, while in the arrangement it is stated that wives of different religions from heirs cannot inherit property. Because previously it was explained that the inheritance used in settling the inheritance uses the law of inheritance, here the law of the Muslim inheritance, should be in the process of deciding the case related to this matter should also be resolved using Islamic law where in Islamic law the wife who is of a different religion from her husband is not entitled to inheritance and become an heir.

In my opinion, the existence of the decision given by the Supreme Court is not appropriate, this right is because interfaith marriage is as stated in article 2 paragraph 1 of law number 1 of 1974 which states that marriage is said to be valid if it is carried out according to their respective laws and beliefs. In this case, it means that the existence of interfaith marriage is said to be legal if it is in accordance with religious law and belief, this means that there is a subordination of the law.

In cases like this related to interfaith marriages, what needs to be seen is which law applies when the marriage is carried out or held, not based on the religion adopted at the time of the dispute. If the marriage is carried out using Islamic law by being carried out or carried out in the KUA, then the law that applies to settle all cases in the marriage uses Islamic law.

The legal considerations used in the Supreme Court decision No.16K/AG/2010 when it is related to Islamic inheritance as explained in articles 2 and 49 paragraph 1 of Law 7 of 1989 concerning Religious Justice which has been amended by Law No. 3 of 2006, and the second amendment of Law No. 50 of 2009 concerning the Second Amendment of Law No. 7 of 1989 concerning Religious Justice which explains that the personal principles of Islam are subject to and can be subdued to the environment Religious courts are those who are Muslims while those who are non-Muslims cannot be forced to submit to religious courts.

In this case, the judge decided the case with the consideration that the marriage between the defendant and the heirs had been long enough, namely for 18 years, this means that the defendant had devoted himself to the heirs for a long time, therefore the cassation application filed by the defendant who is a non-Muslim, he still deserves to obtain his rights and is fair to obtain his rights as a wife to obtain the inheritance property in the form of a compulsory will and a joint share as court jurisprudence Agung in accordance with justice.

- a) The issue of compulsory testaments raises debate because basically the discussion of similar cases is not regulated or clearly listed in the Compilation of Islamic Law, but is only discussed in article 209 which states that; Adopted children who do not receive a will are entitled to a mandatory will of a maximum of one-third of the inheritance of their adoptive parents; Adoptive parents who do not receive a will are entitled to a mandatory will of a maximum of one-third of their adopted child's inheritance.
- b) The position of children as heirs of different religions is reviewed from the Compilation of Islamic Law

In interfaith marriages, there are children born as a result of a marital relationship that occurs between a man and a woman. Children born from interfaith marriages are considered illegitimate children.

Religious differences that occur in a marriage are very likely to cause inheritance disputes in it. Because as explained in the religion of Islam, heirs of different religions from the heirs are not entitled to inheritance (hindered). However, there are several scholars and jurisprudence that allow heirs of different religions to obtain inheritance, namely through a mandatory will.

The permissibility of giving inheritance to heirs of different religions through a compulsory will as contained in the decision of the supreme court Number 368 K/AG/1995 where in this decision one of the children of the deceased gang master did not want to give inheritance rights to heirs who had changed religions or beliefs.

The decision of case Number 368 K/AG/1995 states that the child is still entitled to a mandatory will based on the judge's decision, this judge's decision is based on the fact that the child is the result of marriage so that a child has a close relationship with his parents.

Complaints related to heirs of different religions and heirs according to Islamic law are not allowed, this is based on article 171c of the Compilation of Islamic law. In BW law or positive law, the existence of heirs of interfaith marriages is considered not a reason for a person to get his inheritance. And when viewed from customary law, the existence of heirs in interfaith marriages in their division depends on each of these customs.

In his case, in resolving problems related to inheritance, some judges have used the consideration of compulsory wills to give inheritance rights to non-Muslim heirs. As stated in article 194 of the Compilation of Islamic Law to article 209 which regulates wills, this article regulates the person who has the right to give a will or make a will (the subject of the will), the form of the will, the types of wills, the cancellation and revocation of wills, and other matters related to wills.

There are conditions for receiving a will, this is as stated in article 194 paragraph 1 of the Compilation of Islamic Law, the requirements for giving a will are that the testator must be at least 21 years old, the testator must be sensible, the testator must not be forced.

In principle, everyone can accept a will except the testator himself and those who are expressly excluded from being the beneficiaries of the will as stated in article 195 paragraph 3, article 207, and article 208 of the Compilation of Islamic Law which states: Heirs, this must be approved or approved by all heirs; The one who cares for a person and to the one who makes spiritual demands while he is sick until his death, except for this it is expressly and clearly prescribed to repay the service; Notaries and witnesses who make the will deeds concerned.

Legal ambiguity and uncertainty are related to the inheritance given to heirs of a different religion from the heir, because when viewed from Islamic law itself, heirs of a different religion from the heir are not entitled to an inheritance from the heir, but there are several Supreme Court decisions that stipulate the decision to give an inheritance to an heir of a different religion by making a mandatory will.

In terms of justice, according to the author, the existence of a decision related to allowing the supreme court justice to give an inheritance to the heir is the right thing, because basically the child, and the wife are the closest people to the heir who accompanies the heir during his

lifetime, who during his lifetime are those who accompany and assist the heir in carrying out his business. Moreover, according to the author, it is very unfair if later in a house there are two or more children who have different religions from each other, which then one of several children is considered entitled to inheritance from the heirs and some are considered not entitled to inheritance from the heirs because of differences in religion and beliefs from the heirs.

CONCLUSION

When viewed from Islamic law, children and wives who are of different religions from the heirs cannot inherit each other, as stated in article 171c of the Compilation of Islamic Law which states that an heir is a person who has a blood relationship or marificial relationship with the heir, is Muslim, and is not prevented by law from becoming an heir. However, heirs of different religions can obtain an inheritance in the form of a compulsory will. Based on this research, the author suggests that the public gain an understanding of marriage, especially interfaith marriage, which may occur in society. It is also recommended that couples who want to get married, especially interfaith marriages, make a marriage agreement that includes the arrangement of joint property and children's inheritance rights. This agreement should be made before or during the marriage to avoid inheritance disputes in the future.

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