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The Loss of the Right of Non-Muslim Substitute Heirs to Inherit (A Study of the Wates Religious Court Decision Number 84/Pdt.G/2022/Pa.Wt)

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Non-muslim Substitute Heirs; Jurisprudence; Islamic Inheritance Law; Civil Code; Mandatory Will

ABSTRACT
The Wates Religious Court's decision in case number 84/Pdt.G/2022/PA.WT ruled not to appoint a non-Muslim substitute heir from the first wife's lineage due to their Christian faith, as per Islamic inheritance law, which prohibits non-Muslims from inheriting. This study examines the judge's reasoning and considers the values of justice, legal certainty, and legal utility. Using an empirical juridical approach supported by library and field research, the study finds that the judge's decision aligns with the Compilation of Islamic Law (KHI), particularly Article 171 letter (c), which prohibits non-Muslims from inheriting. However, the judge could have utilized the Supreme Court Jurisprudence No. 1/Yur/Ag/2018 to allow for a mandatory will and made a legal discovery by interpreting the Civil Code more extensively. While the decision adheres to legal certainty under Islamic law, it does not align with the principles of justice or legal utility, nor does it reflect the legal certainty found in the Civil Code and Supreme Court jurisprudence.

INTRODUCTION

The inheritance laws in Indonesia are threefold: positive law, Islamic inheritance law, and customary law (Azharuddin, 2025; Judiasih & Fakhriah, 2018; Rasyid et al., 2024; Wardi et al., 2024). This is because in Indonesia, the law must be based on Pancasila, so Islamic inheritance law uses these three laws: positive law regulated in the Civil Code, Islamic inheritance law regulated in the Compilation of Islamic Law, and customary law based on the local customary law of each region, if applicable. Given Indonesia's predominantly Muslim population, there is a strong desire for the incorporation of Islamic inheritance law into the national framework, alongside considerations for local customs and cultural practices (Wardi et al., 2024).

Based on Islamic inheritance law, one of the obstacles to receiving an inheritance is a difference in religion. This is reinforced by the opinions of scholars and the sayings of the Prophet Muhammad SAW (Ibn Mājah, 2007).

لَا يَرِثُ الْمُسْلِمُ الْكَافِرَ وَلَا الْكَافِرُ الْمُسْلِمَ

The hadith of the Prophet Muhammad SAW said that the position of non-Muslim (infidels) is considered unable to inherit from each other (Zubair et al., 2022). Based on the

meaning of that explanation, it can be said that the explanation contained in Islamic inheritance law is that non-Muslim heirs cannot receive inheritance from the deceased. However, it is important to remember that the relationship between a child and their parents never changes (Pratiwi, 2021). It is justifiable to grant justice to non-Muslim heirs or substitute heirs who take their place. Provisions in the Civil Code regulate the rights of non-Muslim substitute heirs, allowing them to inherit property as substitute heirs equivalent to Muslims because the most important factor is the family relationship with the deceased, and there are no restrictions on adhering to a particular religion.

In the distribution of inheritance, the rights of substitute heirs based on the provisions of Article 209 of the Compilation of Islamic Law can be granted through *wasiat wajibah* (a mandatory will). The article states that a mandatory will can only be given to adopted children and adoptive parents. However, there is a Supreme Court jurisprudence Number 1/Yur/Ag/2018 that expands the meaning of Article 209 of the Compilation of Islamic Law by stating that a mandatory will can be given not only to adopted children and adoptive parents but also to heirs who are not Muslim (Supreme Court Jurisprudence Decision Directory Number 1/Yur/Ag/2018). The provision of the mandatory will aims to grant justice rights to non-Muslims, with the condition that the share of inheritance received by non-Muslim heirs through the mandatory will must not exceed one-third of the estate.

In Indonesia, there are several inheritance lawsuit cases in the Religious Courts where the judges' decisions do not align with the concept of mandatory wills as regulated by the applicable laws. As occurred in the reality of the Wates Religious Court Decision Number 84/Pdt.G/2022/PA.Wt, in that decision, the judge did not appoint a non-Muslim substitute heir from the marriage line of the first wife, while a Muslim substitute heir from the marriage line of the second wife was appointed as the heir. What is actually being disputed by the plaintiffs is two certificates that have already become the property of one of the heirs from the second wife's lineage, without the knowledge of the other heirs. Therefore, the plaintiffs demand that the Wates religious court judge return the two lands under the name of the testator and appoint all substitute heirs from both the first and second wives' lineages as substitute heirs. However, the ruling of the Wates religious court judge is very interesting because the judge excluded substitute heirs from the lineage of the first wife because they are non-Muslim. The reasons and legal considerations of the judge are centered on the Compilation of Islamic Law and the hadith of the Prophet Muhammad.

There are several previous studies that are relevant to this research. The research written by Agustiar titled The Juridical Basis of Religious Court Judges in Granting Mandatory Will Right to Non-Muslims: Study of the Analysis of Religious Court Decision Number 263/Pdt.G/2007/PTA.Sby (Agustiar, 2024). The research findings indicate that the judge in decision number 263/Pdt.G/2007/PTA.Sby granted a mandatory will to a non-Muslim. This research concludes that based on legal opinion, heirs of different religions can inherit property from the deceased through a mandatory will granted by a court decision as seen in the Supreme Court jurisprudence numbers 51/K/Ag/1990 and 368/K/Ag/1995, for the sake of justice, humanitarian values, and law as a tool to prevent social threats, and in accordance with the concept of *maslahah mursalah* which is beneficial for the public, including granting inheritance

to non-Muslims as a judge's *ijtihad*. Another research written by Ramdan Fawzi, Encep Abdul Rojak, Ilham Mujahid, and Mualimin Mochammad Sahid titled Legal Discovery Method for Non-Muslim Heirs as Recipients of *Wasiat Wajibah* (Fawzi et al., 2024). The research concludes that the Supreme Court has granted a compulsory will to non-Muslims based on the good family relationship between the heir and the non-Muslim heir, thus serving as an example of legal discovery by applying an extensive interpretation by expanding Article 209 of the Compilation of Islamic Law on compulsory wills.

The subsequent research was continued because there is an interesting issue related to decision number 84/Pdt.G/2022/PA.Wt What needs to be investigated regarding the problems occurring in the inheritance dispute at the Wates Religious Court, as the judge did not grant the mandatory bequest to the non-Muslim substitute heirs. This research will discuss the judges of the Wates Religious Court in decision number 84/Pdt.G/2022/PA.Wt using the theory of legal discovery and Gustav Radbruch's theory related to justice, legal certainty, and the utility of law based on the judges' legal considerations in that decision.

Therefore, this study aims to analyze the judge's legal considerations in the decision and explore opportunities for the application of mandatory wills for non-Muslim heirs based on existing jurisprudence. The benefit of this research is to contribute thinking in the development of a fairer and more inclusive inheritance law, as well as to be a reference for judges and legal practitioners in handling similar cases in the future.

METHOD

The research used a literature review type of research by examining literature readings, supported by field research through interviews with judges from the Wates Religious Court. The nature of this research was descriptive-analytical: descriptively, it described the facts of the events that occurred in a specific area and time. Analytically, these events were analyzed using theories. The approach used was empirical juridical, which examined the effectiveness of the legislation applied in the decision by relating its relevance to the factual legal issues that occurred and the views of the Wates Religious Court judges through interviews.

Data collection techniques were carried out in two ways: literature review and field research. The literature review involved examining various primary and secondary sources, such as legislation (*the Compilation of Islamic Law*, *the Civil Code*), court decisions, Supreme Court jurisprudence, as well as books, journals, and scholarly articles related to inheritance law, substitute heirs, and mandatory wills (*wasiat wajibah*). Meanwhile, field research was conducted through semi-structured interviews with judges from the Wates Religious Court who handled the case, in order to gain an in-depth understanding of the legal considerations, factual context, and application of legal principles in the decision.

The collected data were then analyzed qualitatively using content analysis and legal reasoning techniques. The analysis was carried out in three stages: data reduction, data presentation, and drawing conclusions. Data from interviews and document studies were sorted and grouped according to key themes, such as religious considerations, justice, legal certainty, and the use of mandatory wills. Subsequently, the data were presented narratively and linked to the theories applied, enabling the identification of alignments or discrepancies between the legal application in the decision and the values of justice, certainty, and utility. Through this process,

the research sought to provide relevant legal interpretation and recommendations for the future development of judicial practice.

RESULTS AND DISCUSSIONS

How does the Islamic Law in Force in Indonesia Govern Non-Muslim Substitute Heirs?

As time progresses, society becomes increasingly dynamic, leading to issues in inheritance that, although clearly stated in the Qur'an, still have some problems that have developed and are not yet clearly explained regarding the distribution and determination of heirs who are entitled to inherit, especially substitute heirs. This becomes very important for the role of law formation to address these increasingly dynamic and contemporary issues, but it must still not contradict what has already been established in the Qur'an. An Islamic country also creates laws to regulate issues that have not been addressed in the Qur'an, such as in Indonesia itself, which is guided by legislation, namely the Compilation of Islamic Law and jurisprudence.

Substituted heirs are essentially heirs by substitution, meaning those who become heirs because their parents, who had the right to inherit, passed away before the testator; thus, they step in to replace them (Tisnawati & Purwaningsih, 2021). Substitute heirs have not been clearly explained in the Qur'an, so in the increasingly complex development of inheritance, adjustments must be made according to the circumstances, and as minimally as possible, not contradicting what has been established in the Qur'an. The substitute heirs of both parents who have passed away to inherit the estate from their grandparents find it very difficult. The position of the grandchild as a substitute heir is very weak, considering they belong to the last group in the inheritance hierarchy. Heirs and their shares according to Islamic inheritance law include (Purnamasari, 2012).

1. The *Dzul Faraidh* group or *Ashabah Furudh* (Specific and Certain Parts)

The group of *dzul faraidh* heirs can be said to be heirs who are guaranteed to receive a portion of the deceased's inheritance when the entire inheritance is distributed. The primary heirs in the *dzul faraidh* group include the deceased's father or mother and the deceased's husband or wife. After the deceased's father or mother and the deceased's husband or wife have received their inheritance first, the remaining inheritance will then be distributed to other heirs such as the deceased's sons or daughters. The distribution of inheritance for the *dzul faraidh* group will be explained through the following table:

Table 1. The Distribution of Inheritance for the Dzul Faraidh Group

No	Type of Heirs	Distribution of the Received Property	Terms and Conditions
1	Husband	1/4	Has a child or children.
		1/2	Does not have a child.
2	Wife	1/8	Has a child or children
		1/4	If there is more than one wife, then it will be divided according to *syirkah.*

No	Type of Heirs	Distribution of the Received Property	Terms and Conditions
3	Father or Mother	1/6	The heir has a child
		1/3	The heir has no a child. If the heir's mother is the beneficiary, there are additional requirements that the heir does not have male children or male grandchildren from his male descendants, and the heir does not have two or more siblings, whether from the same father or the same mother.
4	Daughter	1/2	Is a single daughter, the direct heir, or does not have any siblings, either male or female.
		2/3	If the heir has two daughters and no son.
5	Sister	1/2	Is a biological sibling (*ukhtun aqiqah*) or the sole heir from the same father (*ukhtun liah*). The condition is that they must be truly alone.
		2/3	The heir has two biological sisters and does not have a father or grandfather, nor does he have any brothers. The heir has two or more half-sisters (*uktun liah*) where the heir no longer has a father or grandfather, nor does he have any brothers.
		1/3	two or more brothers and sisters with the same mother, provided that the heir has no sons or daughters, the father or elder brother of the heir has passed away, and the heir has two or more siblings.
		1/6	Half-sister, same father.
			Half-sister, same mother.
6	Brother	1/3	two or more brothers and sisters with the same mother, provided that the heir has no sons or daughters, the father or elder brother of the heir has passed away, and the heir has two or more siblings.
		1/6	Half-brother, same mother.
7	Granddaughter of the heir of the son of the heir	1/2	She is the only granddaughter of the heir of the male heir. The condition is that the granddaughter must be alone, meaning the male heir has passed away, so she is replaced by his daughter or the granddaughter of the heir.
		2/3	When the heir has two granddaughters from his son, with the condition of not having any grandsons, and there are no living children of the heir.
		1/6	Grandchildren of the heir's son, one or more in number.
8	Grandmother	1/6	Grandmother of the heir from the father or mother of the heir, when the mother of the heir has passed away, and the grandmother is still alive.

Source: Excerpted from Irma Devita Purnamasari, A Complete Guide to Popular Practical Law Smart, Easy, and Wise Tips for Understanding Inheritance Law Issues (Bandung: Kaifa, 2012), pp. 35–38

2. The *Dzulqarabah* or *Ashabah* group (the portion that receives the remainder of the inheritance)

The group of *dzulqarabah* heirs can be said to be heirs who will receive a portion of the testator's inheritance from the remaining inheritance that has already been distributed from the group of *dzul faraidh*, so the heirs in the *dzulqarabah* group receive an uncertain inheritance. The dzulqarabah or *ashabah* group, namely the heirs whose share they receive, is the remainder after the inheritance has been distributed to the heirs of the *dzul faraidh* group or *ashabah furudh* (Masut & Sarono, 2022). The distribution of inheritance for the *dzulqarabah* group will be explained as follows:

a) Descendants All Males (*Ashabah Binafsihi*)

For example, from a child, all males from the male descendants; from the father, namely the grandfather and father; from the male siblings, it can be from the same father, full siblings, along with their descendants; from the uncle or the father's younger brother, it can be full siblings, paternal uncle, and their descendants.

b) Descendants All Females (*Ashabah Bil Ghoiri*)

For example, from a child, all females when with a male sibling; a granddaughter from the lineage of a male child when with a male grandchild or a male uncle's child; a full sister when with a male sibling; a half-sister when with a male sibling.

c) *Ashabah Ma'al Ghoiri*

For example, it is from a full sister or a half-sister (same father) when together with a daughter, while the heir does not have a son.

It should be understood that when determining who will be the heirs, whether they belong to the group of *dzul faraidh* or *dzulqarabat*, it can change depending on the situation and conditions. If at the time of inheritance the daughter is entitled to inherit alongside the son, then the daughter falls under the category of *dzulqarabat* with the division of inheritance where the son receives 2 parts and the daughter receives 1 part, in short, 2:1. If it turns out that the heir has no sons and only has daughters, then the daughters fall under the category of *dzul faraidh* as the division has been explained in the table above in the sub-chapter on *dzul faraidh*.

3. The *Dzul Arham* group (Receiving a share of the inheritance because of substitution)

Dzul arham group, namely, heirs who are actually related by blood, but according to the provisions of the Qur'an, are not entitled to receive a share of inheritance, for example, grandchildren and daughters from the line of daughters (Purnamasari, 2012). The group of *dzul arham* heirs can be said to be the heirs who will receive a portion of the deceased's inheritance if the heirs from the *dzul faraidh* and *dzulqarabah* groups have already passed away. This group has the following requirements:

a) A distant relative of the heir who will be appointed as the substitute heir.
b) Will inherit when the group of *dzul faraidh* and *dzulqarabah* has passed away;

c) Will inherit if the heir has no children and no husband or wife, so if all heirs are still present, the ones entitled to inherit are the children, husband or wife, and the heir's father or mother.

Here are those who belong to the category of *dzul arham*, among them:

a) Grandson and granddaughter from a daughter;
b) Son and daughter of a granddaughter;
c) Maternal grandfather and paternal grandmother;
d) Son from a half-brother (same mother);
e) Biological niece, half-sister (same father), and half-sister (same mother);
f) Father's younger sister and grandfather's sister;
g) Younger half-brother (same mother) with father (uncle, same mother) and mother's younger sister (aunt on the mother's side).

The Compilation of Islamic Law has regulated the issue of substitute heirs in Article 185, paragraphs (1) and (2), which states that when an heir has passed away, they can be replaced by their child as a substitute heir. To understand the wording of Article 185, paragraph (1), in relation to the distribution of heirs explained in the previous subsection, the grandchild or substitute heir replaces the position of their parent as an heir from the same group their parent belonged to. Depending on the position of the parent, if they are included in the group of *dzul faraidh* heirs, the grandchild who becomes the substitute heir will replace their parent's position as a *dzul faraidh* heir as well. They will receive an inheritance share equal to the share their parent would have received if they were still alive (Mustofa, 2017).

Substitute heirs certainly have certain requirements to replace the deceased heirs. First, the position is valid as a substitute heir if the testator passed away, then the heir has passed away before the distribution of the inheritance, and the inheritance has not yet been distributed to the heir. Second, if there are multiple deaths, where the death did not only occur to the testator but also to the heir, causing the undivided inheritance to be replaced by the substitute heir. This state of death can occur at various levels of heirs, whether at the first, second, third generation, or at subsequent levels (Ismaya & Safriani, 2022). Third, the position of the transfer or succession of heirs to the rightful substitute heirs according to the law, as long as it does not include being barred from inheritance as referred to in Article 173 of the Compilation of Islamic Law, which states that heirs who are murderers, attempt murderers, perpetrators of assault, defamation, or report the testator for committing a crime punishable by a sentence of 5 years or more, will be barred from inheriting the testator's property.

In relation to being barred from inheritance, substitute heirs must also meet the requirements of Islamic inheritance law, which are being Muslim and still having a blood relationship with the heir and the testator from the line of descent. Fourth, substitute heirs who are not related by blood or marriage, such as adopted children and adoptive parents who replace the position of the deceased heir, are not allowed to receive more than 1/3 of the inheritance portion received by heirs who are in the same degree of kinship as the deceased heir, as explained in Article 185 paragraph (2) of the Compilation of Islamic Law. This is because the status of an adopted child and adoptive parent replacing the heir cannot be considered as a substitute heir, but they can still receive a portion of the inheritance through a mandatory will with a share not exceeding 1/3.

CONCLUSION

In the Wates Religious Court decision number 84/Pdt.G/2022/*PA.WT*, the judge ruled against appointing a non-Muslim substitute heir from the first wife's lineage due to conflicts with Islamic inheritance law, prioritizing religious grounds despite Supreme Court Jurisprudence No. 1/Yur/Ag/2018, which permits a mandatory will (*wasiat wajibah*) for non-Muslim heirs. While this upheld legal certainty under the *Compilation of Islamic Law* (*KHI*), it fell short on justice and legal utility, overlooking a more equitable application that could benefit all parties. For future research, scholars could empirically compare similar cases across Indonesian religious courts to assess the inconsistent application of *wasiat wajibah* and propose legislative amendments integrating *KHI* with civil law principles for enhanced fairness.

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