

Interpretation Heirs of Different Religions From The Perspective of Islamic Inheritance Law And Notariality

Sevira Eka Nur Salsabila^{1*}, Abdul Rachmad Budiono¹, Rachmi Sulistyarini¹

¹Faculty of Law, Brawijaya University Malang, Indonesia

*Corresponding Author Email: seviraekanur@student.ub.ac.id

Article History: Received: January 24, 2026; Accepted: March 17, 2026

ABSTRACT

This study aims to analyze the legal interpretation of determining heirs of different religions from the perspective of Islamic inheritance law and its implications for notarial practice in Indonesia. The research focuses on the legal status of heirs of different religions from a Muslim testator and the implications for drafting inheritance-related deeds by notaries. This research uses normative legal research with statutory, conceptual, and case approaches. Legal materials are obtained through literature studies consisting of legislation, court decisions, books, and scientific journals related to inheritance law and notarial practice. The study examines the development of legal interpretation in judicial practice, particularly regarding the granting of inheritance portions to non Muslim heirs through the mechanism of a mandatory will. In classical Islamic inheritance law, religious differences between the testator and the heir constitute an obstacle to inheritance. However, in Indonesian judicial practice, courts have developed progressive interpretations that allow non Muslim heirs to receive a share of the estate through a mandatory will to achieve substantive justice. This development reflects efforts to balance the objectives of law, namely justice, legal certainty, and legal benefit. From the perspective of notarial practice, these interpretations have significant implications because notaries frequently prepare deeds related to inheritance distribution, wills, and inheritance certificates. Notaries do not have the authority to determine the status of heirs but must ensure that deeds are made in accordance with applicable legal provisions and court decisions. Therefore, the role of notaries is essential in ensuring legal certainty and implementing judicial interpretations in inheritance practice in Indonesia's pluralistic legal system.

Keywords: Heirs of Different Religions, Islamic Inheritance Law, Mandatory Wills, Notaries, Legal Objectives.

1. INTRODUCTION

Inheritance law is an important part of the family law system because it regulates the transfer of rights to a person's assets after death to their heirs. In the Indonesian legal system, inheritance regulations are pluralistic, encompassing Islamic inheritance law, civil inheritance law derived from the Civil Code (KUHPerdara), and customary inheritance law that has developed in society (Projodikoro, 1983; Griffiths, 2005). For Muslims, inheritance regulations essentially refer to Islamic inheritance law, which has been normatively formulated in the Qur'an, hadith, and developed in the science of faraid (Muhibbin, 2009; Khasanah et al., 2024). Islamic inheritance law systematically regulates the parties entitled to receive an inheritance, the amount of each heir's share, and conditions that prevent someone from receiving an inheritance.

However, the increasingly pluralistic development of modern society has given rise to various problems in inheritance practices, particularly when within a family there are religious

differences between the testator and the heirs. This condition often raises legal debates regarding the position of non-Muslim heirs within the Islamic inheritance law system (Billah & Rahma, 2021; Susilo et al., 2021). In practice, religious differences often create problems when a Muslim testator dies while some of his family members are non-Muslim. The textual application of Islamic inheritance law, which requires a shared religion between the testator and the heirs, is often considered unable to fully answer the sense of justice in society, especially when the non-Muslim heirs are close family members such as children or spouses.

In Indonesian judicial practice, the issue of interfaith inheritance has given rise to various court decisions that demonstrate the development of legal interpretation. One such development is the recognition of the mandatory will mechanism for non-Muslim heirs. Through this approach, the courts still acknowledge that religious differences are a barrier to inheritance under Islamic inheritance law, but provide room for non-Muslim heirs to obtain a certain portion of the testator's estate through the mandatory will mechanism as a form of legal protection and a manifestation of substantive justice. However, the concept of mandatory wills for interfaith heirs has not been explicitly regulated in the Compilation of Islamic Law, which essentially only regulates mandatory wills for adopted children and adoptive parents as stipulated in Article 209 of the Compilation of Islamic Law. This condition has led to differences in interpretation in judicial practice, which are reflected in various court decisions regarding interfaith inheritance. The difference can be seen, among others, in the Supreme Court Jurisprudence Number 721 K/Ag/2015 which provides space for non-Muslim heirs through the mandatory will mechanism, with the Sidenreng Rappang Religious Court Decision Number 361/Pdt.G/2019/PA.Sidrap which interprets the provisions of the Compilation of Islamic Law more textually and does not provide mandatory wills to heirs of different religions.

These differences in interpretation have implications for notarial practice. Notaries, as public officials authorized to draw up authentic deeds, are often faced with requests from parties to draw up deeds related to the distribution of inheritance, including in inheritance cases involving heirs of different faiths. On the one hand, notaries must adhere to applicable normative provisions, particularly the Compilation of Islamic Law. However, on the other hand, notaries are also faced with developments in court jurisprudence that provide space for non-Muslim heirs through specific mechanisms. This situation places notaries in a dilemma because the deeds they draw up have perfect evidentiary force, while notaries do not have the authority to resolve disputes like judges. Therefore, in exercising their authority, notaries are required to be careful and able to provide comprehensive legal explanations to the parties. In this context, analysis based on the principles of legal objectives, which include justice, legal certainty, and expediency, is crucial to finding a



balance between applicable legal norms and the needs of society. Based on this description, the issue of determining heirs of different religions in Islamic inheritance law is not only a normative issue but also has practical implications in the notarial field. Therefore, further study is needed regarding the interpretation of determining heirs of different religions from the perspective of Islamic inheritance law and its implications for notarial practice based on the principle of legal objectives.

2. RESEARCH METHODS

This research is normative legal research with a juridical-normative approach focusing on the study of legal norms, principles, and concepts related to inheritance for heirs of different religions and their implications for notarial practice. Normative legal research examines legislation, legal principles, doctrines, and court decisions through library research (Ibrahim, 2006; Nasution, 2008). The approaches used include statutory, conceptual, and case approaches to analyze legal provisions, judicial interpretations, and legal theories relevant to the research problem.

3. RESULTS AND DISCUSSION

Interpretation of Inheritance Distribution Disputes for Heirs of Different Religions (Non-Muslim) in Judicial Practice Based on the Principles of Justice, Benefit, and Legal Certainty in the Islamic Inheritance Law System in Indonesia

1. The Regulation of Interfaith Inheritance Law in the Indonesian Legal System between Classical Fiqh, Compilation of Islamic Law, and the Development of Religious Court Jurisprudence

A notary is a public official with a crucial position in the Indonesian legal system, particularly in civil law. The existence of a notary is inseparable from the public's need for legally binding written evidence that can provide legal certainty for parties involved in a legal act. In the practice of social life, various legal acts such as agreements, sales transactions, the establishment of legal entities, gifts, and various other legal acts require valid written evidence that can be used as a basis for proof in the event of a future dispute. The regulations regarding inheritance in Islamic law are essentially rooted in the provisions of the Qur'an, hadith, and the *ijtihad* of scholars, which then developed in various schools of Islamic jurisprudence. In classical *fiqh*, scholars agree that religious differences are one of the obstacles to inheritance (*mawāni' al-irith*). This principle is based on the hadith of the Prophet Muhammad SAW which states that a Muslim cannot inherit from a non-Muslim and vice versa. Thus, in the construction of classical Islamic inheritance law,



religious unity is one of the main requirements for the existence of an inheritance relationship between the testator and the heir.

These provisions are essentially part of the inheritance system reform implemented by Islam regarding the inheritance practices of pre-Islamic Arab society. In the pre-Islamic era, the inheritance system in force was heavily influenced by Jewish, Roman, and Arab customary law, which placed men as the sole party entitled to receive inheritance. Women and children generally did not receive a share of the inheritance. Through the provisions of the Qur'an, particularly in Surah An-Nisa' verses 7 and 11, Islam then expanded the scope of inheritance recipients by granting rights to all family members who are related by kinship, both men and women. This reform demonstrates that Islamic inheritance law is built on the principle of justice within the family while still considering the structure of social responsibility in society. In the context of Indonesian national law, inheritance regulations for Muslims are formally accommodated in the Compilation of Islamic Law (KHI), which was established through Presidential Instruction Number 1 of 1991. The KHI serves as a material legal guideline for judges in religious courts in resolving inheritance cases. Book II of the KHI on Inheritance Law emphasizes that religious differences are one of the barriers to becoming an heir. This provision demonstrates that the KHI adopts the classical fiqh principle that places religious similarity as a prerequisite for an inheritance relationship between the testator and the heirs.

The most significant developments in interfaith inheritance arrangements in Indonesia have not arisen from legislative changes, but rather from the dynamics of religious court jurisprudence, particularly through Supreme Court decisions. Several important decisions frequently cited include Supreme Court Decisions No. 368 K/AG/1995 and No. 721 K/Ag/2015. In these decisions, the Supreme Court emphasized that non-Muslim heirs remain ineligible to inherit under the faraidh system because religious differences constitute a barrier to inheritance. However, the Supreme Court provided a legal solution by granting a share to non-Muslim heirs in the form of a *wajibah* will. This approach demonstrates the Supreme Court's efforts to maintain a balance between the normative provisions of Islamic inheritance law and the need to protect civil rights in families with different religions. In other words, classical Islamic jurisprudence principles are maintained, but their application is adapted to the social conditions of pluralistic Indonesian society. Through this approach, judges not only apply the law textually but also interpret the law, considering the values of justice, expediency, and legal certainty as the primary objectives of the legal system.

2. Basic Aspects of Judges' Interpretation Based on the Principles of Justice, Certainty, and Benefit

a. Basic Aspects of Judges' Interpretation in Supreme Court Jurisprudence Number 721 K/Ag/2015

The issue of interfaith inheritance is a crucial issue in the development of family law in Indonesia, particularly in the practice of religious courts. In Islamic inheritance law, as incorporated in the Compilation of Islamic Law (KHI), religious differences between the testator and the heirs constitute an obstacle to inheritance. However, in practice, this often creates a dilemma when religious differences arise within a family. Judges are not only required to apply positive law but also to consider the values of justice prevailing in society. Therefore, in several decisions, judges have employed more progressive legal interpretations to seek just solutions, one of which is through the application of mandatory wills, as seen in Supreme Court Jurisprudence Number 721 K/Ag/2015. In the process of legal reasoning, judges attempt to balance the three main objectives of law: justice, legal certainty, and expediency. These three values are often difficult to harmonize due to the influence of various social, cultural, and religious factors. However, judges still strive to produce proportional decisions by considering these three values as the basis for legal considerations.

1) Value of Justice

When analyzed through Gustav Radbruch's theory of justice, the Supreme Court's decision demonstrates an effort to balance the values of justice, legal certainty, and expediency. While rigidly applying inheritance rules may provide legal certainty, it does not necessarily reflect justice when heirs who are blood relatives of the testator are excluded from the inheritance simply because of religious differences. Therefore, the judge awarded a share to non-Muslim heirs through the mandatory will mechanism as a form of protection for family relationships. This approach is also in line with John Rawls' theory of justice as fairness, which emphasizes protection for those in a disadvantaged position. In the context of interfaith inheritance, non-Muslim heirs are in this position because they do not have direct inheritance rights under Islamic law. By awarding a share through a mandatory will, the judge attempted to create a more equitable distribution. Furthermore, this concept can also be analyzed through Aristotle's theory of distributive and corrective justice. Granting a share to non-Muslim heirs can be viewed as a form of distributive justice that provides proportional distribution to family members, as well as corrective justice to correct imbalances arising from religious differences.

2) Certainty Value

From a legal certainty perspective, the decision adheres to applicable legal regulations, particularly the provisions of the Compilation of Islamic Law, which states that religious differences constitute a barrier to inheritance. This demonstrates the judge's continued consistency with the prevailing legal system. According to Lon L. Fuller's theory of the inner morality of law, a legal system must have clear, consistent rules that can serve as guidelines for society. In this context, the rules regarding barriers to inheritance due to religious differences provide clear boundaries regarding who is entitled to inherit. However, the judge also interprets the law to ensure that these rules remain rationally applicable. In line with Gustav Radbruch's view, legal certainty must be maintained, but justice must not be neglected. Therefore, through the mandatory will mechanism, the judge maintains the principles of Islamic inheritance law while providing a clear legal solution for the parties.

3) Utility Value

From the perspective of legal utility, the decision can be analyzed through Jeremy Bentham's utilitarian theory, which emphasizes that the law must provide the greatest benefit to society. In the context of interfaith inheritance disputes, rigid application of the law has the potential to lead to injustice and family conflict. Through the mandatory will mechanism, the judge seeks to create a balance between legal norms and social utility. Granting a share to non-Muslim heirs not only protects family relationships but also avoids prolonged conflict and maintains family harmony. This approach also reflects the reality of Indonesia's pluralistic and multicultural society. Thus, Supreme Court Decision No. 721 K/Ag/2015 demonstrates that the judge's interpretation of the law is not only based on written legal norms but also considers the social impact of the decision. Through the implementation of the mandatory will, the judge seeks to realize broader legal benefits while maintaining social stability and public trust in the judicial system.

b. Basic Aspects of Judges' Interpretation in Sidenreng Rappang Religious Court Decision Number 361/Pdt.G/2019/PA. Sidrap

The fundamental purpose of law is to protect and promote human welfare. Law is required to coordinate and address various issues that arise in society. Therefore, law aims to create an orderly social order and protect the interests of each individual. To achieve this goal, law must regulate the distribution of rights and obligations for each individual in society, while providing a fair dispute resolution mechanism and guaranteeing legal certainty. For law to address current issues and remain relevant in the future, an ideal legal concept is required. According to Gustav Radbruch's theory, ideal law must address three basic legal values: justice, legal certainty, and



utility. These three values are fundamental elements that constitute the primary purpose of law. Therefore, every judge's decision should consider the balance between these three values. In the context of interfaith inheritance disputes, particularly regarding non-Muslim heirs, legal regulation and interpretation are needed that can address the various issues that arise in society. The judge's considerations in a decision are expected to reflect a balance between the values of justice, legal certainty, and legal utility. Therefore, this study analyzes whether the judge's considerations in the Sidenreng Rappang Religious Court Decision Number 361/Pdt.G/2019/PA.Sidrap have reflected the three legal objectives.

1) Value of Justice

When analyzed through Gustav Radbruch's theory of justice, the decision demonstrates the relationship between three basic legal values: justice, legal certainty, and utility. Radbruch stated that the law must be able to create a balance between these three values. In this case, the judge emphasized the importance of legal certainty by consistently applying Islamic inheritance laws. Legal certainty is considered essential so that the public can clearly understand their rights and obligations in the distribution of inheritance. Although the rejection of the lawsuit may create a sense of injustice for those who do not receive the inheritance, the judge considered that consistent application of the legal rules is still necessary to maintain the stability of the legal system. Thus, the decision demonstrates the judge's efforts to maintain the balance between the values of justice and legal certainty, as stated by Radbruch.

This analysis can also be examined through the theory of justice proposed by John Rawls. According to Rawls, justice must be based on the principle of fairness, or justice as fairness. In the context of inheritance, the existence of clear rules regarding who is entitled to receive an inheritance can provide certainty for each family member regarding their legal position. In this case, Judges view the consistent application of Islamic inheritance laws as part of an effort to create a predictable and fairly enforced legal system. Furthermore, analysis can be conducted using Aristotle's theory of justice, which distinguishes between distributive justice and corrective justice. Distributive justice relates to the proportional distribution of rights based on certain criteria established by law. In Islamic inheritance law, these criteria include family relationships, status as an heir, and shared religion with the testator. Therefore, when a judge rejects a lawsuit from an heir who shares a different religion, the decision can be seen as an application of the principle of distributive justice, as the distribution of the inheritance is based on criteria established by law.

2) Certainty Value

The basic aspect of the judge's interpretation in rejecting the inheritance distribution dispute for heirs of different religions in the Sidenreng Rappang Religious Court Decision Number 361/Pdt.G/2019/PA.Sidrap can be analyzed through the principle of legal certainty using the theory of Lon L. Fuller and Gustav Radbruch. Legal certainty is one of the fundamental elements in the legal system that functions to provide protection for individuals and guarantee clarity regarding their rights and obligations. In this concept, the law must be stated in clear, written rules and applied consistently so that the public can know their legal position.

Lon L. Fuller put forward the concept The inner morality of law, a set of principles that a legal system must adhere to in order to function effectively. These principles include the existence of clear legal rules, rules that are publicly announced, consistency between rules, and the application of laws that do not conflict with previous provisions. In the context of interfaith inheritance, the existence of a rule stating that religious differences are an obstacle to inheritance is a form of application of the principle of legal certainty. This rule provides clear guidance to the community regarding who is entitled to inherit according to Islamic law.

Furthermore, Fuller emphasized the importance of consistency in the application of the law. In this case, the judge attempted to consistently apply inheritance rules by adhering to the provisions of the Compilation of Islamic Law. This consistency demonstrates that dispute resolution is based on previously established rules. This view also aligns with Gustav Radbruch's theory, which states that legal certainty is a fundamental value in the legal system. Legal certainty ensures that the law can be applied consistently and predictably by society. In this case, legal certainty is reflected in the application of the rule that expressly states that religious differences are a barrier to inheritance.

3) Utility Value

The judge's interpretation in rejecting the inheritance distribution dispute for non-Muslim heirs in the Sidenreng Rappang Religious Court Decision Number 361/Pdt.G/2019/PA.Sidrap can also be analyzed through the principle of legal utility according to Jeremy Bentham. In utilitarianism theory, Bentham stated that the purpose of law is to create the greatest happiness of the greatest number, namely the greatest happiness for the greatest number of people. Therefore, legal utility is not only seen from the interests of certain individuals, but also from its impact on society at large.

In this case, the judge rejected a lawsuit for inheritance distribution filed by an heir of a different religion from the testator. This rejection was based on Islamic inheritance law, which



states that religious differences constitute an obstacle to mutual inheritance. When analyzed through Bentham's theory of legal utility, this decision can be understood as an effort to maintain consistent legal norms in society. Consistent application of the law can create social stability and provide certainty in legal relationships.

If a judge issues a decision that conflicts with applicable legal provisions without a clear basis, it has the potential to create legal uncertainty and new conflicts in society. Therefore, by rejecting the lawsuit, the judge seeks to maintain social order and ensure that the law continues to benefit society at large. Thus, the judge's interpretation of the decision demonstrates an effort to maintain the benefits of the law through the consistent application of Islamic inheritance law. This decision provides clear guidance to the community regarding the limits of inheritance rights in cases of religious differences and helps prevent the emergence of broader disputes in the future.

Legal Implications of the Interpretation of Disputes over the Distribution of Inheritance of Heirs of Different Religions in Judicial Practices Regarding the Making of Deeds Related to Inheritance in the Notary Sector

1. Notary's Position in Inheritance Cases

In the Indonesian national legal system, notaries have a very important position in providing legal certainty for various civil legal acts, including inheritance matters. Notaries act as public officials authorized to create authentic deeds that have perfect evidentiary power in civil law (Budiono, 2010). In the context of inheritance disputes involving heirs of different religions, notaries must carefully ensure that deeds are prepared in accordance with applicable law and judicial decisions (Pertiwi & Lukman, 2023).

An authentic deed drawn up by a notary has perfect evidentiary force (*volledig bewijs*) in civil evidence law. This means that everything stated in the notarial deed must be considered true by the judge as long as it cannot be proven otherwise through valid evidentiary procedures. In the context of inheritance, a notary has a strategic function in formalizing various legal actions related to the transfer of rights to the testator's inheritance to the heirs. This role includes, among others, the preparation of a Deed of Inheritance Information, a Deed of Inheritance Distribution, a Deed of Gift, a Deed of Will, a Deed of Sale and Purchase of inherited assets, and a Deed of Relinquishment of Inheritance Rights.

Legally, religious court decisions regarding interfaith inheritance disputes have direct implications for notarial practice. Based on Article 171 letter (c) of the Compilation of Islamic Law, heirs of a different religion from the testator are considered prevented from receiving an inheritance. Therefore, a notary cannot immediately issue a Deed of Distribution of Inheritance



that lists non-Muslim heirs as entitled to receive a portion of the inheritance from a Muslim testator. However, in modern legal practice, a legal solution can be reached through the mechanism of a mandatory will, which allows for the granting of a certain portion to a non-Muslim party as long as there is a legally binding court decision.

The notary's role in inheritance matters does not determine who becomes an heir. A notary is only authorized to document and formalize existing legal relationships or those established under applicable law, either through an agreement between the parties or a court decision. Therefore, a notary does not have adjudicatory authority to resolve inheritance disputes or determine a person's legal status as an heir.

Inheritance issues in Indonesia become more complex when there are religious differences between the testator and the heirs. This is due to the plurality of legal systems in force in Indonesia: Islamic inheritance law for Muslims, civil inheritance law derived from the Civil Code for non-Muslims, and customary inheritance law applicable in certain communities. The existence of these various legal systems demonstrates that the Indonesian legal system adheres to legal pluralism, where more than one legal system exists and applies simultaneously in society.

In the context of interfaith inheritance, the authority to determine who is entitled to inherit rests with the judiciary. For Muslim heirs, this authority rests with the Religious Court, while for non-Muslim heirs, it rests with the District Court. The court's decision or determination regarding the heirs serves as the legal basis that must be used by notaries when drafting deeds related to inheritance. Therefore, the notary's role in inheritance matters is administrative and verifiable, not adjudicative.

In carrying out their duties, notaries are also required to apply the principle of caution as regulated in Article 16 paragraph (1) letter a of the Notary Law, which states that notaries are required to act honestly, carefully, independently, impartially, and protect the interests of the parties involved in legal acts. This principle of caution is very important in inheritance cases, especially when there is the potential for disputes or differences in interpretation regarding inheritance rights.

The verification process is part of the notary's responsibility to ensure that the deed meets both formal and material requirements for validity, thereby providing legal certainty for the parties. The notary's role in inheritance cases involving heirs of different religions can also be analyzed through the theory of legal pluralism. This theory states that more than one legal system can apply simultaneously in a society, whether derived from state law, religious law, or customary law. In the context of inheritance in Indonesia, legal pluralism is evident in the interaction between Islamic inheritance law, Western civil inheritance law, and customary inheritance law.



In addition, the position of a notary can also be analyzed through theory. Party autonomy or freedom of contract. This theory emphasizes that in civil law, the parties have the freedom to determine the content of their legal relationship as long as it does not conflict with statutory regulations, public order, and morality. In inheritance practice, the parties' wishes are often expressed through various legal acts, such as the creation of a deed of inheritance distribution through deliberation, the creation of a will, or an agreement on the distribution of inherited assets among heirs.

However, the parties' freedom is not absolute. The parties' wishes must still comply with applicable legal provisions, including Islamic inheritance law if the testator is Muslim. In cases where heirs have different religions, the will to distribute a portion to non-Muslim heirs cannot be directly executed through inheritance mechanisms but must be channeled through other legal mechanisms recognized by the legal system, such as a will or a mandatory will. Thus, the notary's position is at the meeting point between the wishes of the parties and the applicable legal provisions. The notary not only functions as a recorder of the wishes of the parties, but also as a guardian of legality who ensures that every legal act stated in the deed does not conflict with applicable law.

2. Implications for Making Inheritance Deeds, Wills and Wajibah Wills

a. Certificate of Inheritance

The Deed of Inheritance (AKW) is a legal document that plays a crucial role in inheritance practices in Indonesia, as it officially determines who is entitled to inherit after a deceased person. The AKW serves not only an administrative function but also a legal one, serving as the basis for various subsequent legal actions, such as land title transfers, bank withdrawals, asset transfers, and inheritance distribution. In the Indonesian legal system, the creation of an AKW follows the legal system applicable to each community. For Muslims, the determination of heirs is generally based on the Determination of Heirs issued by the Religious Court. Meanwhile, for non-Muslims, an AKW can be prepared by a notary based on the provisions of the Civil Code and land administration regulations.

Problems arise when, in an inheritance case, there are religious differences between the testator and the prospective heirs. In Islamic inheritance law, religious differences are considered an obstacle to inheritance (mawani' al-irs). This is as stipulated in Article 171 letter (c) of the Compilation of Islamic Law, which states that heirs must be Muslim and not be prevented by legal reasons from receiving an inheritance. The implication for notarial practice is that notaries cannot list non-Muslim heirs as legal heirs in the AKW if the testator is Muslim. If this is still done, the



deed drawn up has the potential to conflict with applicable legal provisions and could give rise to disputes in the future.

In judicial practice, a frequently used solution to accommodate the interests of non-Muslim heirs is through the mandatory will mechanism. Through this mechanism, parties of different religions can still receive a certain portion of the inheritance, but not as heirs but as beneficiaries of the will determined by the court. Therefore, when drafting a Deed of Inheritance, a notary must apply the principle of prudence and ensure that the deed complies with applicable legal provisions to ensure legal certainty and avoid potential future disputes.

b. Deed of Will

A will is a legal instrument that allows a person to express their wishes regarding the distribution or distribution of their assets after death. In notarial practice, a will is prepared by a notary, a public official authorized to document these wishes in an authentic deed with full evidentiary force. In inheritance cases involving religious differences between the testator and the heirs, a will plays a crucial role as a legal means of allocating a portion to those who cannot directly receive the inheritance. This is because, under Islamic inheritance law, religious differences between the testator and the potential heirs constitute a barrier to obtaining inheritance rights.

The Compilation of Islamic Law allows testators to continue to provide a portion of their assets to certain parties through a will. Under its provisions, testators may bequeath a portion of their assets, up to a maximum of one-third of the total estate, unless all heirs agree to a donation exceeding this limit. In practice, notaries play a crucial role in ensuring that wills are drawn up in accordance with applicable law. Notaries are required to verify the testator's identity, ensure their legal capacity, and examine the status of the assets to be bequeathed to avoid future legal issues.

Furthermore, a notary is also obligated to provide legal explanations to the testator regarding the limitations and consequences of making a will, including potential objections from legal heirs. This is crucial to prevent disputes that could lead to the annulment of the will in court. Therefore, a will serves a crucial function as a legal instrument that can accommodate the testator's wishes while ensuring compliance with applicable legal provisions. Through the notary's role and the application of the principle of prudence, a will can provide legal certainty and create a more equitable distribution of inheritance for all parties.

c. Mandatory Will and Testament Deed

A mandatory will is an adaptation of Islamic law that grants rights to certain parties who are not direct heirs, such as grandchildren of a predeceased child or non-Muslim relatives related to the testator. In the context of religious differences, a mandatory will provides a legal



mechanism that allows for the transfer of a portion of property to non-Muslims without violating the basic principles of Islamic inheritance law. In Indonesian legal practice, the concept of a mandatory will is reinforced by Supreme Court Decision Number 368 K/AG/1995, which grants non-Muslim children of Muslim testators the right to receive a portion through the mandatory will mechanism. This decision serves as an important legal basis in judicial practice and provides guidance for notaries in dealing with inheritance cases involving heirs of different religions.

In practice, a notary can create a Mandatory Will Deed if there is a religious court ruling that stipulates the existence of a mandatory will for a particular party. Notaries do not have the authority to determine the recipient or the amount of the mandatory will, as this is the jurisdiction of the court. The notary's role is limited to documenting the court's decision in an authentic deed. Furthermore, when creating a mandatory will deed, the notary must maintain prudence by verifying the necessary documents and ensuring the consent of the legal heirs if the will exceeds one-third of the testator's estate. This is important to prevent future disputes.

From the perspective of legal pluralism theory, the existence of mandatory wills reflects the interaction between various legal systems in force in Indonesia, namely Islamic law, Western civil law, and customary law. Through this mechanism, the law seeks to align religious norms with the social needs of a pluralistic society. Therefore, the creation of mandatory wills in interfaith inheritance cases has important legal implications for notarial practice. Notaries must ensure that the deed is based on a valid court decision and complies with applicable legal provisions, thereby providing legal certainty and justice for all parties involved.

4. CONCLUSION

In Islamic inheritance law, religious differences between the testator and the heirs constitute a barrier to obtaining inheritance rights. This provision, as stipulated in the Compilation of Islamic Law, requires that the heirs be related by blood or marriage to the testator and be Muslim. However, in Indonesian judicial practice, through judicial interpretation and the development of jurisprudence, particularly Supreme Court Decision No. 368 K/AG/1995, a mechanism for granting a portion to non-Muslim heirs has emerged through the concept of a mandatory will. This mechanism represents a form of adjustment between Islamic inheritance law norms and the principles of justice in a pluralistic society.

The legal implications of this interpretation for the notarial field indicate that notaries play a crucial role in ensuring that all deeds relating to inheritance are drawn up in accordance with applicable law. Notaries do not have the authority to determine the status of heirs, but they do play a role in translating the will of the testator and court decisions into valid, authentic deeds.



Therefore, when drafting a Deed of Inheritance, a Will, or any other deed relating to a mandatory will, notaries are required to exercise prudence, comply with court decisions, and have a sound understanding of Islamic inheritance law. Thus, the deeds drawn up can provide legal certainty, protect the parties, and reflect the value of justice in resolving inheritance disputes.

REFERENCES

- Ardhwisata, YB (2000). Interpretation and construction of law. Bandung: PT Alumni.
- Budiono, H. (2010). General teachings of contract law and its application in the field of notaries. Bandung: Citra Aditya Bakti.
- Griffiths, J. (2005). Understanding legal pluralism: A conceptual description. In A. Akbar (Ed.), Legal pluralism: An interdisciplinary approach. Jakarta: Huma.
- Ibrahim, J. (2006). Normative legal research theory and methodology. Malang: Bayumedia Publishing.
- Khasanah, DD, Alhamdani, AK, Bhakti, ISG, Bariyah, ON, Ali, M., Kasiani, K., & Sholihah, H. (2024). Islamic inheritance law. Banten: Sada Kurnia Pustaka.
- Muhibbin, AW (2009). Islamic inheritance law as a reform of positive law. Jakarta: Sinar Grafika.
- Nasution, JB (2008). Legal research methods. Bandung: Mandar Maju.
- Projodikoro, W. (1983). Inheritance law in Indonesia. Bandung: Sumur Bandung.
- Billah, M., & Rahma, V. (2021). Interpretation of interfaith inheritance law in Indonesia. *Journal of Religion and Human Rights*, 10(2), 214–230.
- Herenawati, K., Sujana, IN, & Kusuma, IMH (2020). The status of inheritance from non-Muslim heirs and the application of mandatory wills for non-Muslim heirs. *DiH: Journal of Legal Studies*, 16(1), 25–37.
- Pertiwi, ATA, & Lukman, A. (2023). The validity of notarial deeds of interfaith inheritance reviewed from Islamic law and the Civil Code. *Journal of Social Sciences and Education*, 7(1), 82–88.
- Susilo, H., Junaidi, M., Sulistyani, D., & Arifin, Z. (2021). Inheritance rights of children of different religions from their parents based on Islamic law. *USM Law Review Journal*, 4(1), 175–189.