

Certainty of Determining Heirs of Different Religions And Implications In Preparing An Inheritance Certificate

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ABSTRACT

This study aims to analyze the legal certainty in determining heirs of different religions and its implications in the issuance of a Certificate of Inheritance (SKW) in the Indonesian legal system. The problem of interfaith inheritance creates a dilemma between the normative provisions of Islamic inheritance law that prohibit inheritance between parties of different religions and the demands of justice in a pluralistic society. Normatively, the Compilation of Islamic Law emphasizes that religious differences are a barrier to inheritance, so that non-Muslim heirs do not have the right to inherit from Muslim heirs. However, in judicial practice, the Supreme Court through its jurisprudence provides a solution through the mechanism of mandatory wills to bridge the tension between legal certainty and substantive justice. This study uses a normative juridical research method with a statutory regulatory approach and a case approach, particularly through an analysis of court decisions related to interfaith inheritance. The results of the study indicate that the certainty of determining heirs of different religions is not only determined by written legal norms, but also by the development of jurisprudence that provides legal protection for non-Muslim heirs through mandatory wills. The implications of issuing a SKW place notaries in a limited position, namely, merely formalizing legal facts based on court rulings and not having the authority to determine the status of heirs. Therefore, notaries are required to exercise prudence and ensure that every deed they create complies with applicable law to ensure its legal validity.

Keywords: legal certainty, heirs of different religions, mandatory wills, Inheritance Certificate.

1. INTRODUCTION

In the Indonesian legal system, religious law—including Islamic law—remains strongly legitimate in resolving inheritance matters. The validity of Islamic law as a legal regime within society is inseparable from Indonesia's character as a state based on the rule of law that accommodates a plurality of legal systems. However, the dynamic development of modern society has given rise to various new issues that cannot be fully addressed by standard normative provisions. Inheritance law, as an integral part of family law, plays a strategic role in maintaining the balance of kinship relations and ensuring the equitable distribution of inherited assets. Inheritance regulations are not only related to economic aspects but also reflect the social, cultural, and religious values prevailing in society. In the Indonesian context, the inheritance system is pluralistic, encompassing Islamic inheritance law, Western civil law, and customary law, each with its own distinct characteristics and basic principles (Projodikoro, 1983; Griffiths, 2005). (Billah & Rahma, 2021)

In Islamic inheritance law, inheritance provisions are systematically regulated through the science of faraid, which determines who is entitled to inherit and what portion of the inheritance they receive. One of the fundamental principles of Islamic inheritance law is the equality of religion between the testator and the heirs. This principle normatively positions religious differences as a barrier to inheritance, as reflected in classical doctrine and provisions in the Compilation of Islamic Law. However, social reality shows that Indonesian society is increasingly pluralistic and open, making the phenomenon of religious differences within a family unavoidable. These differences can arise due to conversion by a family member, either before or after marriage. This situation raises legal issues when a Muslim testator dies and leaves heirs of a different faith. The textual application of Islamic inheritance law often creates tensions with the prevailing sense of justice within society. This is particularly true when non-Muslim heirs have strong blood or marital ties to the testator and contribute to family life. In such circumstances, the absolute elimination of inheritance rights is seen as not fully reflecting substantive justice (Muhibbin, 2009; Khasanah et al., 2024). (Ernik et al., 2024)

The Compilation of Islamic Law, the primary guideline for resolving inheritance cases in Indonesia, does not explicitly address religious differences as a barrier to inheritance in its normative provisions. This situation leaves room for interpretation for judges in deciding interfaith inheritance cases. In practice, judges often invent laws to address gaps or ambiguities in the norms. One such legal invention is the application of the concept of a mandatory will for non-Muslim heirs. A mandatory will serves as an instrument to provide legal protection to those who are formally barred from inheriting but have a close relationship with the testator. This concept reflects an effort to bridge normative provisions with the demands of justice in society (Billah & Rahma, 2021; Susilo et al., 2021). (Fatmah & Juhriati, 2024)

However, the existence of mandatory wills still raises issues regarding legal certainty. This is because their provisions are not explicitly stipulated in legislation but rather develop through jurisprudence. Consequently, differences in interpretation and application arise in judicial practice. This difference is evident in Supreme Court decisions, which tend to be progressive compared to the more textual decisions of first-instance courts. The Supreme Court, through its jurisprudence, allows non-Muslim heirs to receive a share through mandatory wills, while some religious courts adhere strictly to normative provisions. (Herenawati et al., 2020)

This dual approach has significant implications for legal practice, particularly in the notarial field. As public officials authorized to issue authentic deeds, notaries often face complex situations in determining the status of heirs of different religions when drafting a Certificate of Inheritance. In exercising their authority, notaries must adhere to positive legal provisions, but also face the societal need for justice. This situation places notaries in a dilemma, as they must ensure

that the deeds they create do not conflict with the law while still providing a fair solution for all parties. (Irfani, 2025)

Furthermore, a notary public does not have the authority to adjudicate disputes like a judge, but the deeds they produce have the power of proof. Therefore, every notarial act must be carried out carefully to avoid future legal issues. In this context, the principles of legal objectives, including justice, legal certainty, and expediency, become highly relevant for analysis. These three principles must be integrated in a balanced manner into notarial practice, particularly in handling interfaith inheritance cases. (Julyano & Sulistyawan, 2019)

The legal uncertainty resulting from differing court decisions demonstrates the need for a more comprehensive study of the certainty of determining heirs of different faiths and its implications for issuing Inheritance Certificates. This is crucial for providing clear guidance for notaries in exercising their authority. Therefore, the issue of interfaith inheritance is not only a normative issue in Islamic law but also a practical issue. Therefore, this research is crucial for examining in depth how legal certainty can be achieved and its implications for notarial practice from the perspective of legal objectives. (Kusuma & Chalim, 2018).

2. RESEARCH METHODS

This research is a normative legal research with a normative juridical approach that focuses on the study of legal norms, principles, and concepts related to the distribution of inheritance for heirs of different religions (non-Muslims) in Islamic inheritance law and their implications in notarial practice. Normative legal research is conducted through literature study by examining various relevant legal materials to obtain legal arguments systematically and logically. The approaches used in this research include the statute approach, the case approach, and the conceptual approach. Meanwhile, the conceptual approach is used to examine the concepts, principles, and legal principles underlying the research problem, particularly the principles of legal objectives which include justice, legal certainty, and benefit. The legal materials used consist of primary, secondary, and tertiary legal materials. Primary legal materials include relevant laws and court decisions. Secondary legal materials consist of legal literature, books, scientific journals, and expert opinions related to Islamic inheritance law and notarial law. Meanwhile, tertiary legal materials include legal dictionaries, encyclopedias, and other supporting sources. Legal material search techniques are conducted through literature studies, while legal material analysis is conducted using grammatical and systematic interpretation methods to gain a comprehensive understanding of the legal norms being studied (Ibrahim, 2006; Nasution, 2008). (Ardhwisata, 2000).

3. RESULTS AND DISCUSSION

The Concept of Heirs of Different Religions 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

Before the advent of Islam, inheritance systems in Arab society were influenced by various legal traditions, such as Jewish law, Roman law, and local customs that developed at the time. All three systems were characterized by a tendency to place men as the dominant party in inheritance. Women generally did not receive a share of the inheritance, as they were considered to have no significant economic or social role in a patriarchal society. Thus, pre-Islamic inheritance systems reflected significant gender inequality. In the Jewish legal system, inheritance rights were granted exclusively to sons, with the eldest son receiving twice the share of all other brothers. Women did not receive a share of the inheritance but were only entitled to a guarantee of livelihood until they reached a certain age. A similar situation was also seen in the Roman legal system, where inheritance rights were based on blood relations or certain status, but women were still not recognized as independent recipients of inheritance. In the pre-Islamic Arab customary system, inheritance rights were not only based on blood relations but could also arise from adoption or oaths of allegiance (bai'at). However, inheritance was still limited to adult males capable of fighting and defending their group. This condition shows that inheritance during that period placed more emphasis on physical strength and military contributions than on family relationships alone. (Khasanah et al., 2024)

The arrival of Islam through the teachings of the Prophet Muhammad (peace be upon him) did not immediately change the entrenched inheritance system. In the early phase of the mission in Mecca, legal changes were not yet significant due to the weak position of Muslims and the limited number of followers. Therefore, inheritance practices in the early period were still heavily influenced by pre-existing traditions. Changes began to appear after the Prophet Muhammad's migration to Medina. In this context, social solidarity was formed between the Muhajirin and Ansar as a form of strengthening Islamic brotherhood. In the early stages, this brotherhood even served as the basis for granting inheritance rights as a form of social protection for the Muhajirin who lost their property and homes. As revelations gradually descended, the Islamic inheritance system underwent a fundamental reformulation. Islam expanded the scope of inheritance recipients, no longer limiting it to men, but also granting rights to women and children. This principle is emphasized in Surah An-Nisa', which places men and women as legal subjects with equal rights to inheritance. (Muhibbin, 2009)

The next reform was the elimination of inheritance rights based on non-genealogical relationships, such as the brotherhood between the Muhajirin and the Ansar. Through provisions in Surah Al-Ahzab, Islam emphasizes that inheritance rights are only granted to those related by blood or biological kinship. Thus, the concept of lineage became the primary basis of the Islamic inheritance system. Furthermore, Islam also corrected the practice of adoption, which previously had legal consequences equivalent to blood relations. The Qur'an emphasizes that adopted children cannot be equated with biological children in terms of lineage and inheritance. Therefore, adoption is recognized only as a social relationship without legal implications for inheritance. In a normative context, the hadith of the Prophet Muhammad (peace be upon him) further emphasizes the principles of inheritance, including the prohibition of mutual inheritance between Muslims and non-Muslims. This provision places religious similarity as an important requirement for inheritance, thus categorizing religious differences as an obstacle to inheritance (mawāni' al-irth). (Nasution, 2008)

In Indonesia, these principles were later adopted in the Compilation of Islamic Law (KHI), which serves as substantive law in religious courts. The KHI emphasizes that religious differences are one of the factors preventing someone from becoming an heir. Therefore, normatively, the national legal system still maintains classical fiqh principles in inheritance. However, the KHI also regulates the concepts of wills and mandatory wills as complementary instruments in the inheritance system. Mandatory wills were originally intended to protect the interests of adopted children and adoptive parents who are not related by blood. Although this provision does not explicitly regulate non-Muslim heirs, it opens up room for broader interpretation. In practice, judges make legal discoveries by extending the application of mandatory wills to non-Muslim heirs who are closely related to the testator. This approach is based on considerations of justice and welfare, so that there is no significant inequality in families of different religions. (Projodikoro, 1983)

This development is further strengthened by the Supreme Court's jurisprudence, which demonstrates a progressive trend in handling interfaith inheritance cases. The Supreme Court maintains the principle that religious differences constitute a barrier to inheritance according to faraidh, but provides a solution through the mechanism of wajibah wills. This approach reflects a shift from textual interpretation to a more contextual and teleological one. Judges not only adhere to legal texts but also consider the objectives of the law and the evolving social conditions of society. Thus, the development of Islamic inheritance law in Indonesia demonstrates the dynamic relationship between classical norms and modern needs. This transformation demonstrates that law is not static but continues to evolve through the process of interpretation and legal discovery. Ultimately, the legal constructions developed through this jurisprudence provide practical

guidelines for religious courts in handling similar cases. This demonstrates that, in addition to laws, jurisprudence also plays a crucial role in creating legal certainty in the Indonesian legal system. (Ramulyo, 1993).

2. The Position of Heirs of Different Religions in Islamic Inheritance Law

In Indonesia's Islamic inheritance law system, heirs of different religions from Muslim heirs are not recognized as direct heirs. This provision is emphasized in the Compilation of Islamic Law (KHI), specifically Article 171 letter c, which requires a shared religion as one of the main elements for obtaining inheritance rights. This principle is also in line with classical Islamic jurisprudence doctrine, which states that religious differences are an obstacle to inheritance (*mawāni' al-irth*), so that inheritance relationships between Muslims and non-Muslims are not recognized under Islamic law. However, legally, the familial relationship between the heir and family members of different religions remains recognized in the national legal system. Status as children, parents, or spouses is not lost simply because of religious differences. What changes are the legal consequences in the context of inheritance, namely the absence of the right to receive inheritance through the *faraidh* mechanism. This demonstrates a clear distinction between the sociological relationship of the family and the legal legitimacy of being an heir. (Adicahya, 2023)

In this context, heirs of different faiths occupy a unique position. They remain recognized as part of the family socially and legally, but do not have inheritance rights under Islamic inheritance law. Conceptually, they are categorized as parties prevented from inheriting (*mahjub bi al-ikhtilaf al-din*), not as parties who have completely lost legal ties with the testator. Thus, kinship relations continue to exist, although they do not directly impact inheritance rights. The development of judicial practice in Indonesia has subsequently demonstrated a dynamic approach to addressing this issue. The Supreme Court, through various decisions, has begun to develop a more progressive approach that considers aspects of substantive justice. In this regard, the concept of *wajibah* wills is used as an instrument to provide a share to heirs of different faiths, even though they are not recognized as heirs according to *faraidh*. (Billah & Rahma, 2021)

A mandatory will is essentially a legal construct originally intended for adopted children and adoptive parents, as stipulated in Article 209 of the Compilation of Islamic Law (KHI). However, in practice, the Supreme Court has expanded its meaning through judicial *ijtihad* to accommodate heirs of different faiths as recipients of mandatory wills. This step is a response to the need for justice in an increasingly pluralistic society. Through this approach, heirs of different faiths are not positioned as heirs in the formal sense, but rather as beneficiaries through alternative legal mechanisms. This demonstrates a shift from a rigid normative approach to a more flexible and contextual one. Judges not only adhere to legal texts but also consider the values of justice and the public interest. In the practice of resolving inheritance disputes, the mandatory will mechanism

is an important means for heirs of different faiths to obtain legal protection. They can submit requests or obtain a share through a religious court decision that takes into account the concrete circumstances of the parties. Thus, even if they are not formally recognized as heirs, access to justice remains open. (Ernik et al., 2024)

This situation reflects the dualism in inheritance law in Indonesia, particularly regarding interfaith inheritance. On the one hand, Islamic law maintains normative principles regarding barriers to inheritance. On the other hand, judicial practice strives to accommodate demands for justice through available legal instruments. This dualism demonstrates the process of legal adaptation to evolving social dynamics. Thus, the status of interfaith heirs in Islamic inheritance law in Indonesia can be understood as a dualistic construct. Normatively, they are not recognized as direct heirs, but in practice, they still receive legal protection through the mandatory will mechanism. This construction reflects efforts to harmonize legal certainty, justice, and expediency within Indonesia's pluralistic legal system. (Fatmah & Juhriati, 2024).

3. Granting a *Wajibah* Will to Heirs of Different Religions

The granting of a mandatory will to heirs of different religions is a legal solution that has developed in religious court practice in Indonesia to bridge the tension between Islamic inheritance law norms and the social reality of a pluralistic society. Normatively, the Compilation of Islamic Law (KHI) through Article 209 only regulates mandatory wills for adopted children and adoptive parents with a maximum limit of one-third of the inheritance. However, the KHI does not explicitly regulate heirs of different religions, so this normative gap was then filled through the development of Supreme Court jurisprudence. From a legal perspective, the granting of a mandatory will to heirs of different religions is a form of *ijtihad* judges to overcome the legal gap while maintaining a sense of justice within the family. The Supreme Court, through various decisions, has expanded the meaning of mandatory wills, not only limited to adopted children and adoptive parents, but also to include non-Muslim heirs. This expansion demonstrates the adaptation of the law to the needs of society, without changing the basic principles of Islamic inheritance law, which still places religious differences as a barrier to direct inheritance. (Irfani, 2025)

Conceptually, this solution is important because it maintains a balance between two primary interests. On the one hand, Islamic inheritance law maintains its normative principles, while on the other hand, it continues to provide legal protection to family members of different religions. Thus, heirs of different religions are not positioned as recipients of inheritance based on *faraidh*, but rather as recipients of a portion through the legally valid mechanism of a mandatory will. From a legal perspective, the granting of a mandatory will reflects the fulfillment of the aspects of justice, benefit, and legal certainty. Justice is achieved because family relationships

remain substantially respected, benefit is seen in the reduced potential for family conflict, and legal certainty is achieved through the consistency of Supreme Court jurisprudence, which serves as a guideline for judges. Thus, a mandatory will is a form of legal reconstruction that is adaptive to societal developments. (Julyano & Sulistyawan, 2019)

In practice, a *wajibah* will remains limited, not exceeding one-third of the inheritance, as stipulated in the Compilation of Islamic Law (KHI). This limitation is crucial to maintaining balance so that the rights of Muslim heirs are not neglected. Therefore, this concept can be understood as a compromise solution that does not alter the basic structure of Islamic inheritance law, but rather provides a just solution for those who are normatively prevented from inheriting. Therefore, the legal rationale for granting a *wajibah* will to heirs of different faiths lies in the effort to harmonize legal norms and substantive justice. Through the active role of judges in legal discovery, the Islamic inheritance law system in Indonesia demonstrates an adaptive and responsive character, oriented not only toward normative certainty but also toward the values of justice and utility in a pluralistic society. (Kusuma & Chalim, 2018).

4. The Concept of Implementation the Judge's Interpretation Based on the Principle of Legal Objectives in Examining Inheritance Disputes between Heirs of Different Religions

a. Basic Concept of Judge's Interpretation of Supreme Court Jurisprudential Decision Number 721K/Ag/2015 Based on The Principle of Legal Objectives

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 the Islamic inheritance law system, religious differences between the testator and the heirs are normatively viewed as a barrier to obtaining inheritance rights. This provision is reflected in the Compilation of Islamic Law (KHI), which serves as the primary guideline for resolving inheritance cases for Muslims. However, in practice, the conditions of a pluralistic society often show religious differences within a single family, giving rise to complex legal issues. This situation creates a dilemma for judges in deciding interfaith inheritance cases. On the one hand, judges must adhere to the prevailing positive legal provisions, but on the other hand, judges are also required to consider the prevailing sense of justice in society. This has led to the emergence of progressive decisions that attempt to provide more equitable solutions, one of which is Supreme Court Jurisprudence Number 721 K/Ag/2015, which introduces the mandatory will mechanism for non-Muslim heirs. (Ardhwisata, 2000)

From a juridical perspective, judges function not only as enforcers of laws but also as active interpreters of the law. Legal reasoning is a crucial component in producing argumentative and rational decisions. Through this process, judges strive to integrate legal norms with social reality, ensuring that the resulting decisions are not only normatively valid but also socially legitimate. However, harmonizing legal objectives is not easy. Many non-legal factors, such as

social, cultural, religious, and psychological factors, influence the decision-making process. In interfaith inheritance cases, this complexity is even more apparent because it involves close family relationships. Therefore, judges are required to balance three primary legal objectives: justice, legal certainty, and expediency. (Budiono, 2010)

From a justice perspective, Supreme Court Decision No. 721 K/Ag/2015 reflects an effort to achieve substantive justice. If the law were applied rigidly, non-Muslim heirs, even those closely related by blood, would receive no share. Therefore, through the mandatory will mechanism, judges provide a solution to maintain fairness in the distribution of inheritance. This approach also aligns with the theory of justice, which emphasizes protection for the less advantaged. Non-Muslim heirs are in a weak position because they are not recognized as heirs. With the mandatory will, a more proportional distribution occurs, so that family relationships remain respected within the legal framework. (Griffiths, 2005)

In terms of legal certainty, the ruling maintains consistency with the basic principle of Islamic inheritance law, which states that religious differences constitute an obstacle to inheritance. The judge did not change this norm but instead provided an alternative solution within the applicable legal framework. Thus, legal certainty is maintained without neglecting the need for justice. Meanwhile, in terms of legal utility, this ruling has a positive impact on society, particularly in maintaining family harmony and preventing prolonged conflict. By providing a share through a mandatory will, the law serves not only as a rigid rule but also as a means to create prosperity and social order. This demonstrates the law's ability to adapt to societal dynamics without losing sight of its fundamental principles. (Ibrahim, 2006).

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 the welfare of humans in social life. Law is required to coordinate various interests and provide solutions to problems that arise in society. Therefore, law functions to create an orderly system while protecting the rights and interests of each individual. To achieve this goal, law must regulate the distribution of rights and obligations and provide a dispute resolution mechanism that guarantees legal certainty. To be able to respond to the dynamics of an ever-evolving society, law needs to be built within an ideal conceptual framework. Gustav Radbruch's theory asserts that ideal law must consider three basic values: justice, utility, and legal certainty. These three values cannot be separated but must operate in balance. Many legal experts argue that the existence of law essentially aims to realize these three values proportionally in social life. (Muhibbin, 2009)

In the context of interfaith inheritance, the need for an ideal legal concept becomes increasingly important. The issue of inheritance distribution between Muslim and non-Muslim

heirs presents complexities that cannot always be resolved textually. Therefore, judges are required to consider various aspects so that their decisions reflect a balance between justice, legal certainty, and expediency. Therefore, this study seeks to analyze whether the judges' considerations in the decisions reviewed reflect these three legal objectives. From a justice perspective, the analysis can be conducted through the thinking of Gustav Radbruch, who emphasized the importance of a balance between the values of justice and legal certainty. In decisions denying inheritance rights to heirs of different faiths, judges strive to consistently uphold the applicable legal rules. Although this may create a sense of injustice for certain parties, judges view consistent application of the law as part of efforts to maintain the stability of the legal system as a whole. (Nasution, 2008)

This view can also be analyzed through John Rawls's theory of justice, which emphasizes the principle of fairness. From this perspective, the existence of clear and consistent legal rules provides certainty for each individual regarding their legal position. The judge in this case considered that the consistent application of Islamic inheritance rules constitutes procedural justice, as all parties are treated based on the same provisions without any discrimination in the application of the law. Furthermore, Aristotle's theory of justice provides a perspective on distributive and corrective justice. In this context, the judge's decision to reject the lawsuit of an heir of a different religion can be seen as an application of distributive justice, as the distribution of rights is based on criteria determined by law, including the testator's shared religion. Meanwhile, corrective justice is not considered relevant because the judge deemed there was no imbalance that needed to be corrected, considering that the legal rules have provided clear boundaries. (Projodikoro, 1983)

From the aspect of legal certainty, the decision reflects the application of the principle as stated by Lon L. Fuller regarding the importance of clear, written, and consistent legal regulations. In this case, the judge adhered to the provisions of the Compilation of Islamic Law, which expressly states that religious differences are an obstacle to inheritance. With clear regulations, the public can understand their legal status and understand the limits of rights in the distribution of inheritance. Furthermore, legal certainty can also be analyzed through the thinking of Gustav Radbruch, who emphasized that the law must be predictable and provide protection for individual rights. By consistently applying inheritance rules, the judge provides certainty for the parties and maintains the integrity of the legal system. From the aspect of utility, this approach can also be understood through the theory of Jeremy Bentham, where the rejection of inheritance claims from different religions is seen as an effort to maintain social order and prevent wider conflict. Thus, the decision not only reflects the application of legal norms, but also an effort to achieve greater benefits for society as a whole. (Ramulyo, 1993)

Implications of Determining Heirs of Different Religions in Making an Inheritance Certificate

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1. Notary's Position in Inheritance Cases

In Indonesia's national legal system, notaries play a crucial role in providing legal certainty for various civil legal acts, including inheritance. The notary's position as a public official is regulated by the Notary Law, which grants them the authority to draft authentic deeds with full evidentiary force. Deeds prepared by a notary must be deemed valid by a judge unless proven otherwise. In the context of inheritance, the notary's role is strategic because it relates to the formalization of the transfer of rights to inherited property to heirs through various forms of deeds. Legally, a notary does not have the authority to determine who is entitled to be an heir, but only to document existing legal relationships based on legal provisions or court decisions. In cases of interfaith inheritance, the provisions of the Compilation of Islamic Law state that religious differences constitute a barrier to inheritance. This implies that a notary cannot list non-Muslim heirs as beneficiaries in an inheritance deed unless there is another legal basis, such as a legally binding court decision (Budiono, 2010). (Billah & Rahma, 2021)

The complexity of inheritance practices in Indonesia is further enhanced by legal pluralism, the concurrent application of more than one legal system. In the field of inheritance, Islamic inheritance law, civil inheritance law, and customary inheritance law are recognized. These differences present a challenge for notaries in determining the appropriate legal basis for each deed. In cases of religious differences between the testator and the heirs, the notary must comply with the law applicable to the testator, and therefore cannot directly include non-Muslim heirs in the inheritance deed without a valid legal basis. In the context of disputes, the authority to determine the status of heirs rests with the judicial institution, specifically the Religious Court for Muslim heirs. This court ruling serves as the basis that notaries must follow when drafting deeds. Therefore, the notary's role is administrative and verifiable, ensuring that all parties listed in the deed have a clear legal basis. If the notary ignores this, the deed could potentially lose its legal force or even be annulled (Pertiwi & Lukman, 2023). (Ernik et al., 2024)

Furthermore, notaries are required to carry out their duties with the principle of prudence, namely acting honestly, thoroughly, and impartially. In inheritance cases, this principle is realized through the process of verifying documents such as death certificates, heir identities, proof of property ownership, and the determination of heirs by the court. This step is crucial to ensure that the deed meets the requirements for validity and is able to provide legal protection for interested parties. Thus, the notary's position in inheritance cases, especially those involving religious differences, is that of a legal enforcer who must bridge the gap between normative provisions and practical needs. The notary's function is not only to record the wishes of the parties, but also as a guardian of legality, ensuring that every legal action outlined in the deed does not conflict with

laws and regulations. This role demonstrates the notary's significant responsibility in maintaining legal certainty, order, and justice in society. (Fatmah & Juhriati, 2024).

2. Granting a Wajibah Will to Heirs of Different Religions

a. Certificate of Inheritance

The Certificate of Inheritance (SKW) is a legal instrument that plays a crucial role in inheritance practices in Indonesia. This document serves to officially determine who holds the status of heir of a deceased person. The existence of the SKW is not only administrative but also has legal force because it serves as the basis for various further legal actions, such as the transfer of rights to inherited assets, disbursement of funds from financial institutions, and the administration of other civil rights. In the Indonesian legal system, the mechanism for issuing an SKW is not a single mechanism, but rather depends on the legal system applicable to each legal subject. For Muslims, the determination of heirs is generally carried out through a ruling by a Religious Court, while for non-Muslims, an SKW can be issued by a notary based on the Civil Code and related administrative regulations. This difference demonstrates the existence of dualism and even legal pluralism in the field of inheritance in Indonesia. The problem becomes more complex when there are religious differences between the testator and the prospective heirs. In Islamic inheritance law, religious differences constitute an obstacle to inheritance (*mawani' al-irs*), as stipulated in the Compilation of Islamic Law. This provision is imperative, meaning that a person of a different religion from the Muslim testator cannot be recognized as an heir. The direct implication is that a notary cannot list a non-Muslim as an heir in the SKW if the testator is Muslim. (Julyano & Sulistyawan, 2019)

If a notary continues to list non-Muslim heirs without a valid legal basis, the deed is potentially legally flawed and loses its evidentiary force as an authentic deed. This can also give rise to future disputes, especially if other heirs feel disadvantaged. Therefore, notaries are required to exercise prudence by thoroughly verifying supporting documents, including death certificates, family relationships, and court-appointed heirs. In the development of legal practice, a solution has emerged through the concept of a mandatory will, which allows for the granting of a portion to a non-Muslim without designating them as an heir. This mechanism developed through jurisprudence and provides a compromise between the normative provisions of Islamic law and the demands of social justice. In this case, a notary can incorporate these rights into the deed as long as there is a legal basis in the form of a legally binding court decision. (Kusuma & Chalim, 2018)

The implications of issuing a Decree of Inheritance (SKW) in this context can be analyzed through the theory of legal pluralism, where various legal systems coexist and influence each other. The notary acts as the party implementing this interaction into an authentic deed. This requires a comprehensive understanding of the applicable legal system and the ability to adapt notarial

practices to the specific circumstances of the parties. Furthermore, the theory of the will of the parties is also relevant in understanding inheritance practices. Heirs often reach agreements through deliberation regarding the division of assets, including granting portions to parties who are not legally considered heirs. In this case, the notary's role is to formalize these agreements, but must still ensure that the contents of the deed do not conflict with applicable law. Therefore, issuing a Decree of Inheritance (SKW) in interfaith inheritance cases places the notary in a strategic and responsible position. The notary not only serves as a recorder of the parties' wishes but also as a legal guardian, ensuring that every deed is in accordance with legal provisions. Therefore, the application of the principle of caution, document verification, and adherence to court decisions are key to ensuring legal certainty, justice, and benefit in inheritance practices in Indonesia. (Nabila et al., 2023).

4. CONCLUSION

The certainty of determining heirs of different religions in the Indonesian legal system is essentially based on the normative provisions of Islamic inheritance law, which emphasize that religious differences are an obstacle to inheritance. This provision provides a clear basis for legal certainty, particularly as stipulated in the Compilation of Islamic Law, so that a non-Muslim cannot be determined as an heir of a Muslim testator. However, in judicial practice, this legal certainty is not always rigid, because judges, through jurisprudence, have made legal discoveries by expanding the application of the concept of mandatory wills to non-Muslim heirs. This development demonstrates that legal certainty is not only built on written norms, but also on the dynamics of judicial practice that seeks to integrate the values of justice and benefit in a pluralistic society. (Budiono, 2010)

The legal implications of determining heirs of different religions for the issuance of a Certificate of Inheritance (SKW) place notaries in a strategic but limited position. Notaries do not have the authority to determine the status of heirs, but only the authority to formalize legal relationships that have been established based on legal provisions or court decisions. In this case, if the heir is Muslim, the notary cannot include non-Muslim heirs in the SKW as parties entitled to the inheritance, unless there is a legal basis in the form of a court decision granting rights through the mandatory will mechanism. Therefore, notaries are required to apply the principle of prudence by conducting a thorough verification of documents, including the determination of heirs, to avoid legal defects in the deed drawn up and prevent potential disputes in the future. (Griffiths, 2005).

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