SECTION ON INHERITANCE RIGHTS OF DIFFERENT RELIGION CHILDREN IN INDONESIA NATIONAL LEGAL PERSPECTIVE

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Abstract: The prevalence of interfaith marriages in Indonesia has resulted in complicated and difficult legal implications in disputes over Islamic civil law in Indonesia. Among the implications of the legal issues that occur are children's inheritance rights as a result of interfaith marriages by both parents. Therefore this paper aims to examine, related to the inheritance rights of children of different religions from the perspective of positive law and Islamic law in Indonesia as unification law in the national legal order in Indonesia, as a legal system (*the legal system*) which works as a means of social control or work as a means of maintaining social order in the midst of a plurality of religions, cultures, ethnicities and customs, as well as the dynamic polarization of social relations. In this study the authors used qualitative methods with the aim of developing knowledge through exploration between proving and discovering the law of inheritance rights for children of different religions from the perspective of positive law and Islamic law as laws that are unified in the Indonesian national legal order. Through a phenomenological and juridical-normative approach, the purpose of using this approach is that the author uncovers and finds data from interfaith marriage events on children's inheritance rights, as well as interpretations of several grounded theories as a means of exploration to prove and find legal inheritance rights for children as a result of their parents' marriage. different religions. The next step the writer did *comparative approach* to the content discussed from data and reading literature which is a source of primary and secondary data with the aim of comparing it to then be descriptive from induction-interpretation to deduction-interpretation, so as to be able to provide a description of the focus of the problem with concrete explanations. From the data and the results of reading the data sources, it is imperative for the author to use or make a literal interpretation, namely legal discovery which is carried out by explaining the texts of legal arguments whether to get or not to get the inheritance of children of different religions in the perspective of positive law and Islamic law which unification into the Indonesian national legal order. The types of data in this paper include primary data sources, namely from laws, government regulations, legal books, legal journals, research results and jurisprudence that have permanent legal force in cases of children's inheritance rights due to the difference in the religion of their parents. The data collection technique was taken by means of document studies (literature review), namely collecting primary data sources that explain the inheritance law system for children of different religions from the perspective of positive law and contemporary Islamic law. While the data analysis techniques in this paper include: data reduction, data presentation, data verification, and data validity testing. The research results revealed and found that: *First*, According to Islamic Inheritance Law, children born from interfaith marriages do not have the right to inherit if they are not of the same religion as the heir, this is based on Article 171 letter c of the Compilation of Islamic Law (KHI). However, if the heir is Muslim while the heir is not Muslim (non-Muslim), then they still have the right to inherit from each other. This is based on the blood relationship between the inheritor and the recipient, as stipulated in the provisions of Article 832 of the Civil Code. Therefore, in order not to give exceptions to Muslim parents and non-Muslim children, as stipulated in article 171 point c KHI, the government issued a legal stipulation regulated in the jurisdiction of the Supreme Court of the Republic of Indonesia. Number: 368 K/AG/1995 Dated 16 July 1998 and the jurisdiction of the Supreme Court of the Republic of Indonesia. Number: 51 K/AG/1999 Dated 29 September 1999 which among other things stated in its considerations that non-Muslim biological children are not heirs, but are entitled to inherit assets based on a 1/3 obligatory will with the amount obtained after *Dzawil furud's* share of heirs has been get the share. *Second,* The juridical implications of the legal status of the inheritance rights of children born out of unregistered marriages can be interpreted from Article 6 paragraph (2) of the KHI which makes the child punished as an illegitimate child, that is, only having a mutual inheritance relationship with the mother and the mother's family, and not with the father. and his father's family, so that there is no visible form of the principle of legal protection and the principle of justice for the child based on several regulations, including regulations on the material law of the Convention on the Rights of the Child (CRC) there are 54 articles that regulate children's rights and mechanisms for implementing children's rights by the state as parties who must implement and ratify the CRC Act. No. 39 of 1999 concerning Human Rights, and UU. No. 23 of 2002 as amended by law. No. 35 of 2014 concerning child protection has emphasized the responsibility of protecting children to parents, families, communities, government and the State.

Keyword: Inheritance Rights, Children Different Religion, Indonesian National Legal Prespektif

INTRODUCTION

The problem of legal implications that is very broad, complicated and difficult to resolve disputes that occur in Islamic family law (Islamic civil law) in Indonesia is marriage. Indonesia as a majority Muslim country and also as a country that is plural in religion, culture, ethnicity and customs, makes Indonesia have a dynamic social structure in society. The plurality and dynamic polarization of social relations requires that the Indonesian state must make and give birth to laws that work as social control tools. (*social control*) or as a means of maintaining social order (*social order*) in society (Suhartono, 2020).

The enactment of several laws and regulations is the answer that the Indonesian state exists to guarantee social order, peace, welfare and social justice for all its people. Law No. 1 of 1974 concerning marriage as amended by No. 16 of 2019 that a marriage has been declared valid if it is carried out according to the laws of each religion (RI Law Number 16 of 2019 concerning Amendments to Law Number 1 of 1974 concerning Marriage, 2019). In addition, every marriage must be recorded, as stipulated in Law no. 32 of 1954 concerning registration of marriages, divorces and reconciliation (RI Law Number 32 of 1954 concerning Determining the Applicability of RI Law of November 21, 1946 No. 22 of 1946 concerning Registration of Marriages, Divorces and Referrals in All Areas Outside Java and Madura, 1954). This can also be seen reinforced by Government Regulation no. 9 of 1975 which regulates the implementation of the Marriage Law (Government Regulation Number 1 of 1975, 2014).

Thus a marriage is declared valid if it fulfills the terms and conditions, both based on statutory regulations and religious regulations for those who enter into marriage. for the sake of upholding the national legal system, as well as a tool for social control and as a tool for maintaining social order for the benefit and justice in society.

Basically, the teachings of all religions that regulate matters regarding marriage, want a legal bond between a man and a woman to come from one religion. Because it is understood that religion is the main basis and is very important in determining the success of one's household life. But there are still many phenomena found in Indonesian society, interfaith marriages occur, whether the marriage is carried out in private or even openly, so that it often creates implications and consequences for the birth of legal problems. Call it the impact of the implications of these legal issues, which are related to civil relations such as marital status itself (Said, 2023), child status and children's rights due to household problems that have an impact on inheritance rights.

After Law No. 1 of 1974 jo changes to law no. 16 of 2019, in article 8 letter (f) it is stated that "Marriage is prohibited between two people who have a relationship whose religion or other regulations apply, marriage is prohibited" (Law No. 1 of 1974 concerning Marriage, 1974). Therefore, interfaith marriages for whatever reason, whether based on religious law or national law, are not justified and invalid, because they have other legal implications and also the result of the marriage does not carry legal consequences for all consequences arising from the marriage.

The legal consequences referred to here are all the consequences arising from marriage, such as potential heirs or children born from the marriage will find a problem both in national law and religious law. as Islamic teachings in Islamic inheritance law that one hijab inheritance rights caused by differences in religion (Al-Bukhori, 1893). So that a child who adheres to a religion other than the religion of his Muslim parents is automatically prevented from obtaining inheritance rights based on the hadith of the Prophet Muhammad.

But there are some companions who differ in understanding the hadith, such as: Mu'adz, Mu'awiyah, Masruq, Sa'id bin al-Musayyib and others and the last contemporary scholars such as Yusuf al-Qardawi opined in his book*hadyu al-Islam Fatawi Mu'asirah* that Muslims can inherit property from non-Muslims while non-Muslims may not inherit property from Muslims (Qaradawi, 2002). Presumably this opinion looks unbalanced, when viewed from the side of universal justice that the purpose of Islamic law as syar'i is to bring benefit to humanity universally. That the method of extracting law with basic principles must always be actualized in order to be able to realize Islamic law *rahmatan li al-'alamin*.

Apart from the existence of hadith texts which explain different religions as a hijab for the right to inherit and some of the opinions of scholars that allow Muslims to inherit non-Muslim assets. Whereas children who are born as a result of a bond between parents of different religions, do not want legal issues to be addressed to their parents, as well as to be addressed to the child. precisely as a child expects and demands his rights to get a decent life as the responsibility of his parents, as a result of his birth from the marriage bond. Isn't it in the text of the Qur'an Surah an-Nisa' verse 9 Allah SWT warns parents to be wary of leaving weak children for the welfare of their children in the future (Religion of the Republic of Indonesia, 2019). Regardless of whether parents have the same or different religious status, what is clear is that the warning is addressed to parents to be responsible for the welfare of their children.

Likewise in the civil law code, which among other things is part of positive law, its application is specifically and generally binding and is national in nature which is enforced or recognized by the state. In the Civil Code, there is no explanation of the rules prohibiting inheritance of different religions, in Article 838 the Civil Code (KUH Perdata) only relates to people who are considered not to be heirs to (4) four things or causes.

As for civil law, there are (2) two causes of inheritance, namely: 1) legally*From the intestate* (heirs according to the Civil Code in article 832, that those who are entitled to receive a share of the inheritance are blood relatives, both legal and illegitimate and the husband or wife who lives the longest), and 2) legally*testimonial* (heirs because they are appointed in a will =*testimony*in article 899, that the owner of the

property makes a will for his heirs designated in a will/testament) (Khalid, 2018). However, if we look closely at article 832 of the Civil Code, there is a principle that according to the law, in order to inherit a person must have a blood relationship with the heir, namely a relationship that arises as a result of a valid marriage according to article 2 of Law No. 1 of 1974 in conjunction with amendments to Law no. 16 of 2019 concerning marriage. Meanwhile, according to the civil law code of inheritance, it is the person who has the closest blood relationship who has the right to inherit as stated in Article 852 of the Civil Code. Very close blood relations are grouped into (4) four groups. Based on the description of the background in this paper, it is important to know the conception of the inheritance of children of different religions. Is it obstructed or can the right of inheritance be granted in accordance with the section according to the provisions of positive law and Islamic inheritance which will be described in the discussion chapter of this paper.

METODE

In this study the authors used qualitative methods with the aim of developing knowledge through exploration between proving and discovering the law of inheritance rights for children of different religions from the perspective of positive law and Islamic law as laws that are unified in the Indonesian national legal order. Through a phenomenological and juridical-normative approach, the purpose of using this approach is that the author uncovers and finds data from interfaith marriage events on children's inheritance rights, as well as interpretations of several grounded theories as a means of exploration to prove and find legal inheritance rights for children as a result of their parents' marriage. different religions.

The next step the writer did *comparative approach* to the content discussed from data and reading literature which is a source of primary and secondary data with the aim of comparing it to then be descriptive from induction-interpretation to deduction-interpretation, so as to be able to provide a description of the focus of the problem with concrete explanations. From the data and the results of reading the data sources, it is imperative for the author to use or make a literal interpretation, namely legal discovery which is carried out by explaining the texts of legal arguments whether to get or not to get the inheritance of children of different religions in the perspective of positive law and Islamic law which unification into the Indonesian national legal order.

The types of data in this paper include primary data sources, namely from laws, government regulations, legal books, legal journals, research results and jurisprudence that have permanent legal force in cases of children's inheritance rights due to the difference in the religion of their parents. The data collection technique was taken by means of document studies (literature review), namely collecting primary data sources that explain the inheritance law system for children of different religions from the perspective of positive law and contemporary Islamic law. While the data analysis techniques in this paper include: data reduction, data presentation, data verification, and data validity testing.

The data analysis techniques in this paper include:*First*, inventory primary data sources, namely from laws, government regulations, legal books, legal journals, research results and legal studies that have permanent legal force in terms of children's inheritance rights due to differences in the religion of their parents which are fundamental in nature to carry out preliminary activities towards the next stage;*second*, classify primary data source associated with cases of children's inheritance rights due to differences in the religion of their parents with the stages: a) vertical synchronization, namely trying to see the suitability of the legal aspects of the meaning contained in primary data source and understanding of the judges; b) horizontal synchronization, namely trying to see the harmonization of other legal aspects contained in the laws and regulations concerning cases of children's inheritance rights due to differences in the religion of their parents; *third*, identifying data, namely the process of testing or selecting a numberprimary data source and laws and regulations that deal withcases of children's inheritance rights due to differences in the religion of their parents which have been categorized with the aim of knowing the existence of legal normssection on the inheritance rights of children of different religions.

DISCUSSION

Definition of Positive Law and Islamic Law and Theoretical Basis for Inheritance of Children Due to Interfaith Marriage.

Definition of Positive Law

Before explaining the status of children of different religions in inheritance according to positive law, it is first important to know and understand positive law and Islamic law, just to provide an introduction to provide a substance correlation in the material discussed relating to the status of children of different religions in inheritance. So that in studying related to the big theme in this paper it remains on the rails, and does not provide a confused and contradictory understanding in the discussion.

Positive law is a translation of *put right* or *established right* from the Latin, which literally means "statutory law" (*established law*). So, the positive law is the law established by humans, because it is called in the ancient expression *firmly right* (Bruggink, 1999). In the Big Indonesian Dictionary, the word positive law is defined as the applicable law (Dendy, 2008). Regardless of the difference in understanding of the opinion of Algra K and Van Duijvendik, who equate the terminology "*positive right*" (positive law) with "*validity of law* (as current law). But what is certain is that the term positive law also comes from the Dutch language, which

is used to distinguish it from natural law terminology (*natural law*), and also to differentiate it from legal terminology that will exist (*to establish the right*) is still an (idea). Including positive legal terminology, in this case it is also used to distinguish it from non-positive legal terminology, namely unwritten legal norms that apply and are obeyed by the community, hereinafter referred to as "currently applicable law" (Suhartono, 2020).

According to Bagir Manan "positive law is a collection of written and unwritten legal principles and rules which are currently in force, and generally or specifically binding, enforced by or through the government or courts in Indonesia" (Jalil, 2018). Such a description of positive law provides an understanding that positive law consists of written law, in the sense that law is deliberately held by institutions or organs that have the authority to form laws, and laws that are formed in the process of community life without going through a stipulation by an institution or organ that has the authority to form law.

This opinion is different from John Austin, as a pioneer of legal positivism which states that positive law is related to the establishment of law by a power that has the authority to form law. Positive law is an order from legislators or authorities, considered a logical and closed system of norms (*closed logical system*). John Austin's opinion further asserts, that "every law or regulation is an order, or rather a law or regulation is a species of commandments". An order is a statement of will from an individual addressed to another individual. In this sense positive law manifests itself in the decisions of institutions or bodies that do have the authority to form law (Bruggink, 1999).

J.J.H. Bruggink, expressed his opinion that "positive law is a legal product of people authorized to make laws, regarding authorized persons are State Administrative Agencies/Officials, including legislatures (legislative), judicial bodies (judicative), and governmental bodies (executive) (Bruggink, 1999). To reinforce the understanding of positive law, as a product of power authorized to make laws, and at the same time to distinguish it from other norms, it is necessary to understand the character or characteristics of positive law, namely: a. Determined by the competent authority; b. Concerning observable human behavior, and not what exists in the realm of ideas; c. Is the result of rationalization, and not derived from revelation or supernatural powers; d. Has a certain existence, which is commonly known as law enforcement, both juridically, evaluatively, and empirically enforceable; e. Has a certain form, structure, and legal institution; and f. have goals to achieve (Suhartono, 2020).

In line with this opinion, J.J.H. Bruggink stated that a system of positive legal norms must have basic principles consisting of: a. because it gets its positive form from an agency or institution authorized to form laws, for example a legislative body; b. solely in terms of its formal form, for example statutes, government regulations, and so on; c. Legal content (material) is acknowledged to exist, but it is not legal science material, because it can undermine the scientific truth of jurisprudence (Bruggink, 1999). Based on the description of the meaning and explanation of positive law, it can be assumed that currently there are a number of laws that are unifying for all people in Indonesia, both Muslim and non-Muslim, which are stated in laws, government regulations, jurisprudence, and other regulations issued by authorized institutions referred to as positive law which are related to the themes discussed, for example, among others:

a. Law No. 1 of 1974 as amended by law No. 16 years 2019 About Marriage;
b. Kitab Undang-Undang Hukum Perdata (Indonesia Civil Code)
c. Presidential Instruction Number 1 of 1991 Concerning Compilation of Islamic Law in conjunction with Decree of the Minister of Religion Number 154 of 1991;
d. Indonesian Supreme Court Jurisprudence. Number: 368 K/AG/1995 dated 16 July 1998 and the Jurisprudence of the Indonesian Supreme Court. Number: 51 K/AG/1999 dated 29 September 1999 and the Jurisprudence of the Supreme Court of the Republic of Indonesia. Number: 16 K/AG/2010 Dated 16 April 2010; and other relevant regulations.

Thus, Law Number 1 of 1974 in conjunction with changes to Law No. 16 of 2019 concerning Marriage is a positive law that applies in general to every citizen in Indonesia. While the Compilation of Islamic Law and Jurisprudence of the Supreme Court of the Republic of Indonesia. Number: 368 K/AG/1995 dated 16 July 1998 and the Jurisprudence of the Indonesian Supreme Court. Number: 51 K/AG/1999 dated 29 September 1999 and the Jurisprudence of the Supreme Court of the Republic of Indonesia. Number: 16 K/AG/2010 dated 16 April 2010, is a positive law that applies specifically to indigenous Muslims. Likewise, the Civil Code (Burgerlijk Wetboek voor Indonesie) is a positive law that applies specifically to non-Muslim natives.

Definition of Islamic Law

In the Qur'an and legal literature in Islam, no word of Islamic law is found. Commonly used are Islamic Sharia, Islamic law, jurisprudence, and Sharia/Syarak. In western literature there is the term Islamic law, which can literally be called Islamic law (Jauhari, 2020). Joseph Schacht (1967) defined Islamic law: "the entire book of God that regulates the life of every Muslim in all its aspects". This definition shows that Islamic law is closer to the meaning of Islamic Sharia (Jalil, 2018). If the term law is connected with Islam, then Islamic law means "a set of rules based on God's revelation and the Prophet's Sunnah regarding the behavior of mukalaf people which is recognized and believed to be valid and binding for all Muslims".

From this definition, Islamic law includes the notion of syarak law and fiqh law, because the meaning of syarak and fiqh is included in it. So it can be said that Islamic law is law based on the revelation of Allah SWT, the purpose of which is to create benefit for mankind. It is said in the qaidah of ushul fiqh:

ما شرع من حكم إلا وفيه مصالح للناس

"The law is not established, but in it there are benefits for mankind"

The definition of Islamic law according to Mohammad Daud Ali is called Islamic law because it is taken from the existence of two terms used to denote Islamic law, namely: (1) Islamic Shari'ah and (2) Islamic Jurisprudence. Daud Ali Gives the understanding "Islamic law is a set of behavior that regulates the relationship of a human being with Allah SWT, fellow humans and the natural surroundings that come from Allah SWT" (Ali, 2009). While Hasbi Ashshidieqy states that Islamic law is "laws that are general in nature and *Cock* which can be applied in the development of Islamic law according to the conditions and situations of society and the period (Ash-Shiddieqy, 1975).

In terms of fiqh, Islamic family law is often interpreted with*al-ahwal al-syakhsiyyah* and cage interpreted with*nidham al-usrah*, or*usrah*. In Indonesian, the term used is not only Islamic family law, but is also called Islamic marriage law, or individual law, which in English is usually called*Personal law* or*Family law* (Nasution, 2009). The fiqh scholars provide a somewhat varied definition, such as Abdul Wahhab Khalaf interpreting family law "*al-ahwal al-syakhsiyyah*"is a law that regulates family life starting from the beginning of forming a family whose purpose is to regulate the relationship between husband, wife and family members. Meanwhile, according to Wahbah al-Zuhaily, family law is the law regarding human relations with his family which begins with marriage and ends with the distribution of inheritance (Suyono, 2018).

Islamic law in another definition states "a set of norms that regulate human behavior in a society, both regulations or norms in the form of facts that grow and develop in the midst of society and regulations or norms that are made in a certain way and enforced by the authorities, whether the law is written or unwritten as law *al-'urf*/custom (Ali, 2009). Such is the understanding of Islamic law to provide a basis for understanding the focus of the discussion which will be specifically described regarding the share of children of different religions in inheritance according to Islamic law.

Theoretical Basis of Polemic Inheritance of Children Due to Interfaith Marriage.

In order to understand the problem of the status of children of different religions according to positive law and Islamic law.

Then the explanation of the basis of the rules or as a polemical theory that can be used is as follows:

First, in the epistemology of Islamic law studied aspects of the protection and fulfillment of human rights to determine the legal status of giving inheritance to children of interfaith marriages can be explained through the theory *mashlahah*. Term *maslahah* can be interpreted as taking benefits and rejecting harm (درء المفاسد وجلب المصلح) (Usman, 2002). That the main objective of Islamic law is *tahqiqu al-adalah* (create justice) and *jalbul masalah* (attracting benefits) that is always oriented towards people (Al-Jauziyyah, 2019), in order to preserve the purposes of syariah. As in the study of Ushul Fiqh, Abdul Wahab Khallaf thinks that *maslahah* can only be done if four conditions have been met, namely: (1) the results of ijtihad with the method *maslahah* cannot be against the law more *qath'i* (nash); (2) the result of ijtihad with *maslahah* should be reasonable (rational); (3) *maslahah* generally only applies in the field of muamalah jurisprudence and does not apply in the field of religious jurisprudence; (4) *maslahah* must be agreed upon *consensus'* by most scholars (Hakespelani, 2015).

*Second,*This is in line with the opinion of social justice theory (*the theory of justice*) by John Rowls. According to him, the most basic principle of justice is that everyone has equal rights from their reasonable positions. Therefore, in order for justice to be achieved, the political, economic, constitutional structure and regulations regarding property rights must be the same for everyone. Such a situation is called the fog of ignorance (*veil of ignorance*), in which everyone must put aside the attributes that distinguish them from other people, such as ability, wealth, social position, religious and philosophical views, as well as conceptions of value (Hakespelani, 2015).

Third, the theory of state power. In this case the author cites constitutional theory (*stage theory*) Adolp Merkel and Carl Scmith, which seems somewhat relevant to the thoughts of al-Mawardi, al-Maududi and Hans Kelsen. In the theory of state power, al-Mawardi, explained that the word *ta'at* in Q.S. An-Nisa'/4: 59 has something to do with words *shura'* in Q.S. Asy-Syuura/42: 38 and Q.S. al-Imran/3: 159. Al-Mawardi's views form the basis for law enforcement through the concept of separation of powers between *wazir* and *ahl al-hall wa al-'aqd* which has a legislative function with *caliph* and *sultan* which functions executive, as well *al-mazhalim court* which has a judicial function (Al-Mawardi, 1989).

According to Merkel and Schmith, the constitution is a legal system arranged hierarchically and priramidally, is universal and systematic, in which the law below may not conflict with the higher law. The constitution must contain aspects that guarantee the will of the people and the authorities through consensus (*social contract*). The influence of Hans Kelsen's positive law teaching theory on the Vienna school can be seen in the formulation of basic norms (*groundnorm*) in constitutional form (*constitution*) appointed by the head of state (executive), people's representatives (judicative), and judges/jurists (judicative) (Rasjidi, 2007).

Thus, when referring to the theory of justice, it appears that legal opinions that allow inheritance to children of marriages of different religions are based more on the interest of fulfilling a sense of justice. In other words, the sense of justice in question is the fulfillment of the child's inheritance rights to obtain inheritance through a mandatory will from both parents even though they are in a different religious marital status. In order to fulfill the state's obligation to guarantee the right to life of children, it can be seen that several aspects of rights and obligations between parents and children are regulated in the framework of child care (*gift*) in Law Number 1 of 1974 concerning Marriage. For example, several legal aspects of child maintenance

have been regulated in Chapter VI articles 30-34 regulating the rights and obligations of husband and wife in marriage, Chapter IX, articles 42-44 concerning the position of children in marriage, Chapter X articles 45-49 concerning rights and obligations between parents and children, and Chapter XI articles 50-54 concerning guardianship. Even though there are some contraindications to positive legal regulations (norm conflicts).

Conditions and Status of Heirs of Children of Different Religions According to Positive Law and Islamic Law

Provisions for heirs of children of different religions, when examined closely due to the emergence of cases as a social phenomenon in society. So it can be seen from several different perspectives, namely: children born as a result of the marriage of parents of different religions, and children who were originally Muslim from both parents who have the same religion, but then the child apostates or changes religion or vice versa one of the two parents changes religion which then the child follows the religion of the parents who have different religions. So that from cases of this phenomenon when an analysis is carried out on the portion of children's inheritance according to positive law, no differences appear that arise when an analysis of the provisions, status and legal impact is carried out. Differences occur when analyzed according to Islamic law.

As it is known that with the existence of a number of unification of regulations and laws which are later called positive laws such as the compilation of Islamic law (KHI) which applies to Muslims in Indonesia, it is stated that "inheritance law is a law that regulates the transfer of ownership rights to inheritance (tirkah) heirs, determines who has the right to become heirs and how many shares each" (Ministry of Religion, 2018).

Further provisions in KHI article 171 point c and article 173 state that a person is prevented from becoming an heir if a judge's decision that has legal force remains punished for (Ministry of Religion, 2018):

a. Article 171 letter c:
   Heirs are people who at the time of death have blood relations or marriage with the heir, are Muslim and are not hindered by law because they want to become heirs.
b. Article 173 namely:
   1. Blamed for having killed or attempted to kill or severely maltreated the heir.
   2. Convicted of slanderously proposing a crime punishable by five years imprisonment or a heavier penalty.

When viewed from the sound of the provisions of KHI rules article 171 and article 173, it can be said that the status of children of different religions (non-Muslims) is prevented from obtaining the right to inherit from the assets of Muslim parents. These provisions in Islamic law are based on the hadith of the Prophet Muhammad stated:

عن أسا مة بن زيد رضي الله عنه أن النبي صلى الله عليه وسلم قال: لآ يرث المسلم الكافر ولا الكافر المسلم.

"From Usamah bin Zaid Radiyallahu 'anhu that the Prophet, peace be upon him, said, "Muslims do not inherit the property of infidels and infidels do not inherit the property of Muslims." (H.R Muttafaq 'Alaih) (Al-Bukhori, 1893).

The understanding of Islamic law seen from the opinion of jurists regarding the inheritance rights of children of different religions or from the results of marriages of different religions and or as the point of view of cases that have been presented before, according to Hanafiyah, Malikiyah, Syafiiyah and Hanabilah scholars agree that religious differences between heirs and heirs become an obstacle to receiving inheritance. A Muslim cannot inherit from a non-believer, and conversely a non-believer cannot inherit from a Muslim, either because of blood relationship (*relatives*), as well as marriage (husband and wife) (Khalid, 2018).

While there are some scholars who argue that apostasy is an invalidation of the right to inherit. Based on the ijma of the scholars, apostasy is included in the category of religious difference so that apostates cannot inherit Muslims. As for the inheritance rights of a person whose relative is an apostate, there are differences of opinion. Jumhur fuqaha (Malikiyah, Syafi'iyah, and Hanabilah are valid) are of the opinion that Muslims cannot inherit property from apostates because Muslims do not inherit it from infidels, and apostates are classified as infidels. Based on the hadith of Rasulullah SAW. According to Hanafiyah, the property of an apostate can be inherited by his Muslim relatives. Even the Hanafi school of scholars say that all the assets left by apostates can be inherited by their Muslim relatives (Ash-Shabuni, n.d.), this understanding is based on that Islam is a high and noble religion.

Regarding children from interfaith marriages from the perspective of positive law in force in Indonesia, it can also be understood that children are the result of an illegitimate marriage based on the provisions of Article 2 of Law No. 1 of 1974 jo changes to law no. 16 of 2019 that marriage is legal if it complies with religious provisions and is emphasized by article 40 point c and article 44 KHI, so that the child is classified as a child outside of marriage if it is not carried out according to applicable legal provisions. However, there is a difference in jurisprudence which is also positive law, explaining that the position of a child can become valid when interfaith marriages are administratively legalized in accordance with the jurisprudence of the Supreme Court (MA), namely MA Decision No. 1400 K/Pdt/1986. The Supreme Court decision stated, among other things, that the Civil Registry Office at that time was permitted to enter into interfaith marriages. Then at this time a letter from the Dukcapil Directorate General of the Ministry of Home Affairs appeared. 472.2/3315/DUKCAPIL dated May 3 2019 which allows the registration of interfaith marriages.

In line with the Supreme Court jurisprudence, according to the conception of the Civil Code, regarding children out of wedlock which are defined as children born as a result of a relationship between a man and a woman who are not bound by marriage to other people and there is no prohibition on getting married, according to this legal conception, children can have civil relations with their parents if their biological parents

confess. This can be seen in articles 272 and 280 of the Civil Code, which contain that it can be concluded that children out of wedlock other than adultery and incestuous children can have a civil relationship with their father and mother if there is a confession. This recognition has legal consequences, namely the existence of a mutual inheritance relationship with both parents, as stated in article 863, article 865, and article 870 of the Civil Code (Book of the Civil Code Burgerlijk Wetboek, 2014).

Then a similar rule emerged after the Constitutional Court Decision Number: 46/PUU-VIII/2010 which explained that Article 43 paragraph (1) of the Marriage Law must be interpreted as follows:

"A child who is born out of wedlock apart from having a civil relationship with his mother and his mother's family also has a civil relationship with his father and his father's family, where this is proven by science and technology and/or other evidence which according to law is proven to have blood relations" (Name, 2014).

The implementation of this Constitutional Court Decision is embodied in article 49 paragraph (2) of the Law of the Republic of Indonesia Number 24 of 2013 concerning Amendments to the Law of the Republic of Indonesia Number 23 of 2006 concerning Population Administration which stipulates that recognition of children only applies to children whose parents' marriage has been valid according to religious law, but has not been registered or is not legal according to state law. Logically, this recognition will legally result in inheritance rights for the child, which are the same size as other heirs. However, implementing regulations regarding the inheritance of children of different religions have not yet been formed, so there is still a legal vacuum that guarantees that children out of wedlock will receive a share of the inheritance.

But not to give exceptions to children out of wedlock who are equated with children of different religions from their parents, in this case the parents are Muslims and the children are non-Muslims, as stipulated in article 171 point c. KHI, through the principles of justice and human rights and refusing harm to attract benefit, is due to the inheritance rights of the hijab due to different religious status and the existence of other legal provisions in the KHI which allow parents to give obligatory wills or grants, on the basis of fulfillment and child protection rights. So according to the author, it is appropriate that the law stipulation is regulated in the jurisprudence of the Supreme Court of the Republic of Indonesia as Decision Number: 368 K/AG/1995 dated July 16, 1998 and Decision Number: 51 K/AG/1999 dated September 29, 1999 which, among other things, stated in its consideration that non-Muslim biological children are not heirs but are entitled to inheritance based on a mandatory will with an amount of 1/3 (Ministry of Religion, 201 8) the portion determined for heirs of different religions, for the sake of justice.

According to the author's opinion, there are several reasons for judges in establishing a mandatory will for heirs who are prevented from receiving inheritance due to differences in religion (Nugraheni et al., 2010), these reasons include the following:

a. Factor *historical* because of the prohibition on giving inheritance to heirs who are not Muslim;
b. Method use *sociological interpretation* in making legal discoveries, in this case it is the obligation of the judge to find the law for each case he examines (*the court knows*), because each judge has the authority to carry out legal excavations and discoveries (*legal finding*), as a basis which is a mandate derived from article 5 paragraph (1) of the Judiciary Powers Law;
c. Method use *argument by analogy* in making legal discoveries by finding other legal provisions that are similar, have similarities, and there are demands in society to obtain the same assessment as the provisions of the obligatory will in Article 209 of the Compilation of Islamic Law;
d. The existence of Islamic inheritance law among other systems of inheritance law; It is. The choice of religion as part of human rights, therefore the state prohibits any form of discriminatory action against its citizens who have differences in religion; And
f. Legal theory recognizes legal principles and deviations from legal principles, such as the application of this obligatory will, the judge will give the right to a share of the inheritance to heirs who previously did not receive inheritance due to differences in religion.

Based on the six reasons mentioned above, the authors are of the opinion that legal reasoning is the basis for judges' considerations in granting inheritance to heirs of different religions (non-Muslims) by using a mandatory testament as a form of ijtihad/*legal finding* (legal discovery) used by religious court judges to resolve cases of inheritance distribution as a result of marriages of different religions. However, a new problem arises when one of the heirs of a different religion, for example a non-Muslim, submits a dispute over his inheritance to the District Court, even though a person who is Muslim should have his inheritance dispute examined, tried and decided by the Religious Court. Based on the authority of the religious courts regulated in article 49 of Law Number 3 of 2006 in conjunction with amendments to Law Number 7 of 1989 concerning Religious Courts.

Legal Impact of Children's Status as Heirs

The impact of the child's status as an heir in Positive Law and Islamic Law in Indonesia, can be viewed from a juridical perspective. It means that the child as a legal heir is proven by the existence of a legal marriage according to Islamic religious law by fulfilling the pillars and conditions of marriage according to article 2 paragraph (1)Law No. 1 of 1974 as amended by law No. 16 of 2019 and article4 KHI, as is also emphasized in Article 2 paragraph (2) of Law No. 1 of 1974 as amended by law No. 16 of 2019 and articles 4, 5 and 6 KHI. Man dates that legal marriages must also be recorded at state institutions.

Meanwhile, in other regulations, the impact of a child's status as an heir from the consequences of a child out of wedlock or marriage like this if in Qiyas is also the status of a child of different religions who is not registered, according to articles 272 and 280 of the Civil Code as positive law that applies specifically to non-Muslim natives, that the impact of the child's status can have a civil relationship with his father and mother if there is a confession. This is also in line with the Constitutional Court Decision Number: 46/PUU-VIII/2010 which explains that Article 43 paragraph (1) of the Marriage Law must be interpreted that a child born outside of marriage besides having a civil relationship with his mother and his mother's family also has a civil relationship with his father and his father's family, where this can be proven by science and technology and/or other evidence which according to law is proven to have blood relations. If interpreted with the existence of these regulations according to state law, whether or not a child's legal status arises as an heir, depends on the perspective in which the regulation is interpreted. as illustrated as follows:

First, arrangements for legitimate children that have an impact on inheritance rights in Islamic law, and KHI as a unification of positive law have similarities and differences. The problem is that according to Islamic law, the marriage law and KHI are both born from legal marriages (Law No. 1 of 1974 concerning Marriage, 1974), apart from that, having the status of a legitimate child will both create family relations and civil relations between parents and their children. The difference is that in Islamic law to prove whether or not a child is legitimate from a marriage which results in a family relationship and a civil relationship, it is sufficient to prove the recognition of the husband. while in the Marriage Law and KHI the proof must be in the presence of a birth certificate or it can also be possible with the presence of other evidence (Ministry of Religion, 2018). *Second*, arrangements for children out of wedlock which have an impact on the inheritance rights of children out of wedlock in Islamic law, and KHI as a unification of positive law have no differences, only have similarities. This difference can be seen in the provisions of the Civil Code as followsapplies specifically to native non-Muslims who are also in line according to the provisions of the Marriage Law, that children out of wedlock only have civil relations with the mother and the mother's family as contained in the Marriage Law chapter IX concerning the position of the child, article 43. The difference is in the Civil Code which outlines that the relationship of an illegitimate child with his mother and his mother's family does not automatically exist, but must be done with recognition from his parents before the parents enter into marriage, from which a civil relationship arises between the two as well as a mutual inheritance relationship between illegitimate children recognized by their parents as stated in the Burgerlijk Civil Law Act...., Article 272 and Article 280 in conjunction with Article 863, Article 865 and Article 870.

However, after the emergence of the Constitutional Court Decision Number: 46/PUU-VIII/2010. Concerning Judicial Review Against Article 2 paragraph (2) and Article 43 paragraph (1) of the Marriage Law, the civil status of children out of wedlock which also gives rise to a mutual inheritance relationship between children born out of wedlock and their biological father is protected by law on condition that it can be proven by science and technology and/or other evidence, as the Constitutional Court's decision on Judicial Review of article 2 paragraph (2) and article 43 paragraph (1).Regulations concerning the impact of the status of children out of wedlock and the inheritance rights of children out of wedlock or as a result of unregistered marriages and if they are equated also as the status of children of different religions who are equated are not recorded or not recognized by Islamic law or KHI as a unification of national law (positive law), Article 100 of KHI states that "a child out of wedlock only has a family relationship with his mother and his mother's family".

Third,Arrangements regarding the impact of legitimate children's status and inheritance rights of legal children according to the Civil Code as unification according to state law (positive law). It was concluded that every child can be judged as a legitimate child ifThe marriage carried out by the parents is legal according to their religion and beliefs, while the inheritance rights of legal children in state law are still based on the provisions of the Civil Code, namely article 852 of the Civil Code and after the Constitutional Court decision Number: 46/PUU-VIII/2010. So the legal status of children out of wedlock can be recognized, if it can be proven by science and technology and or other evidence, resulting in the emergence of a civil relationship with the mother as well as the father. As can be seen in the following figure:

CONCLUSION

According to Islamic Inheritance Law, children born from interfaith marriages do not have the right to inherit if they are not of the same religion as the heir, in this case the heir is Muslim, this is in line with Article 171 letter c of the Compilation of Islamic Law (KHI). However, if the heir is Muslim while the heir is not Muslim (non-Muslim), then they still have the right to inherit from each other. This is based on the blood relationship between the heir and the heir, as stipulated in the provisions of Article 832 of the Civil Code. Therefore, in order not to provide exceptions to children who have different religions from their parents, in this case the parents are Muslims and the children are non-Muslims, as stipulated in article 171 point c, the government issued a legal stipulation regulated in the jurisdiction of the Supreme Court of the Republic of Indonesia. Number: 368 K/AG/1995 Dated 16 July 1998 and the jurisdiction of the Supreme Court of the Republic of Indonesia. Number: 51 K/AG/1999 Dated 29 September 1999 which among other things stated in its considerations that non-Muslim biological children are not heirs but are entitled to inherit assets based on a 1/3 obligatory will with the amount obtained after Dzawil furud's heirs have received their share.

The juridical meaning that influences the impact of the legal status of inheritance rights for children born out of marriages that are not registered according to KHI can be studied based on Article 2 of the Marriage

Law jo. Article 3 and Article 45 of Government Regulation Number 9 of 1975 jo. Article 6 of the KHI, that the rules regarding the legality of marriage in the KHI have been adapted to the changing times and do not violate the basic laws of Islamic law and the Marriage Law, namely regarding marriages carried out without registration which will result in not having legal force, but on the other hand the legal status of children born out of marriages that are not recorded by the KHI has not yet been clearly regulated, so that children who are born are punished as children out of wedlock which will have an impact on the legal certainty of children born out of wedlock, because the child will lose civil relations and family relations with his father and his father's family, so that it will automatically result in the loss of mutual inheritance relations with the father and his father's family.

The juridical implications of the legal status of the inheritance rights of children born out of unregistered marriages can be interpreted from article 6 paragraph (2) of the KHI which makes the child punishable as an illegitimate child, namely only having a mutual inheritance relationship with the mother and the mother's family, and not with the father and the father's family, so that there is no visible form of the principle of legal protection and the principle of justice for the child based on several regulations, among others, the material provisions of the Convention on the Rights of the Child (CRC) there are 54 articles governing children's rights and the mechanism for implementing children's rights by the state as the party that must implement and balance ification of CRC Law. No. 39 of 1999 concerning Human Rights, and UU. No. 23 of 2002 as amended by law. No. 35 of 2014 concerning child protection has emphasized the responsibility of protecting children to parents, families, communities, government and the State.

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