

Inheritance of Different Religions from the Perspective of Shaykh Yusuf Al-Qaradhawi

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Abstract: *The provisions of inheritance in Islam are very clear, the provisions of the prohibition of inheritance between Muslims and non-Muslims have been agreed upon by classical jurists. The purpose of this study is to determine the Inheritance of Different Religions in the Perspective of Yusuf Al-Qaradhawi. This research uses descriptive analysis method. This type of research is qualitative then analysed normative juridical, namely by looking for the legal basis and regulations, by analysing the Supreme Court Decision Number 16K / AG / 2010, and Yusuf Al-Qardhawi's opinion in the book Fatwa Ma'ashira. The problems that occur in families where the husband leaves an heir, namely a wife who is of a different religion from him, one of the obstacles for the heir to get his rights is due to different religious factors. The results of the study explain that according to Yusuf Al-Qaradhawi, inheritance of different religions can be given to heirs of different religions without the term mandatory will as has been determined by the Supreme Court decision Number: 16K / AG / 2010 related to the opinion of Yusuf Al-Qaradhawi about inheritance of different religions is supported by Ibn Taymiyyah.*

Keywords: *Heirs; Inheritance; Religions.*

1. INTRODUCTION

The Indonesian nation consists of various ethnicities, cultures and religions, all of which affect family formation. What is meant by family formation is a process where a person will make a new relationship in life by means of marriage, if he is already bound by marriage then indirectly the family is bound by inheritance issues. Muslim society in this case there are laws that have regulated the relationship between one human being and another, which Allah Swt has determined including about family and the distribution of inheritance. Mentioned with the family because of the reality that occurs

in the field there are also many Muslims who marry people of different religions, how then the issue of inheritance will be faced if it turns out to be preceded by a marriage of different religions as Islam is actually not justified, therefore it is necessary to discuss the inheritance of different religions by looking at the Supreme Court's decision preceded by the PA and PTA decisions on inheritance of different religions, but this paper will focus more on the study of Yusuf Al-Qaradhawi's opinion.¹

The provisions of inheritance in Islam are very clear, there are three important elements, namely knowing who is entitled to inheritance and who is not entitled to inheritance (people who are veiled), provisions regarding the share obtained by each heir, and knowing how to calculate it. The causes of the person entitled to inheritance in the provisions of Islamic law are three, namely kinship relations (*al-qarabah*), marital relations (*al-musaharah*) and relationships due to freeing slaves or servants (*al-wala*). Likewise, an explanation of who is prevented from getting inheritance there are three causes, namely murder (*al-qatl*), different religions (*ikhtilaf al-din*) and the last is slavery (*al-abd*).²

The diversity that exists in Indonesia does not rule out the possibility that someone who is Muslim will have a family relationship or marriage with a person of a different religion even though in essence it has been regulated by the State that the State does not allow interfaith marriages which are found in Article 2 paragraph (1) of the Marriage Law which states, "Marriage is valid, if it is carried out according to the laws of each religion and belief." Article 2 paragraph (2) of the Marriage Law states, "Every marriage shall be recorded in accordance with the applicable laws and regulations."³ Although it has been regulated in the article, but the marriage of different religions can not be prevented many people also do marriage of different religions in various ways, it's just that this kind of marriage has an impact on the issue of how the problem of inheritance if one of the couples of different religions dies whether the couple inherits or does not inherit, this is based on the decision of the Religious Court number 732/Pdt.G/2008/PA Mks, Religious High Court number 59/Pdt.G/2009/PTA Mks and Supreme Court decision number 16K/AG/2010.⁴

The problem of inheritance of the transfer of inheritance property only occurs between the testator and the heirs who are both Muslims. However, if there is a difference in belief (religion) then there is no right to inherit each other. The provisions that become a barrier in the inheritance there are three: religious differences, murder, slavery.

¹ Muhibbin and Abdul Wahid, 2017, *Hukum Kewarisan Islam Sebagai Pembaharuan Positif di Indonesia*, Jakarta Timur: Sinar Grafika, p. 2.

² Ahmad Rofiq, 2012, *Fiqh Mawaris*, Jakarta: PT. Raja Grafindo Persada, p. 4.

³ Source Constitutional Court of the Republic of Indonesia <https://www.mkri.id/index.php?page=web.Berita&id=18494&menu=2>

⁴ Ahmad Azhar Basyir, 2001, *Hukum Waris Islam*, Ed. Revisi, Yogyakarta: UII Press, p. 21.

Regarding religious differences the Prophet has explained in his hadith. ⁵ narrated by Usamah bin Zaid ra:

لَا يَرِثُ الْمُسْلِمُ الْكَافِرَ، وَلَا يَرِثُ الْكَافِرُ الْمُسْلِمَ

Meaning: "Usamah bin Zaid (may Allah be pleased with him) reported that the Messenger of Allah (may Allah's peace and blessings be upon him) said: A Muslim does not inherit from a disbeliever, and a disbeliever does not inherit from a Muslim."⁶

The legal basis that prohibits heirs who kill is the word of the Prophet Muhammad Saw. among them is the hadith narrated by al-Nasa'i:

قَالَ رَسُولُ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ لَيْسَ لِقَاتِلٍ مِنَ الْمِيرَاثِ شَيْءٌ (رواه النسائي)

Meaning: The Messenger of Allah (saw) said: "The murderer has no right whatsoever to inherit." (HR. Al-Nasa'i).⁷

Furthermore, the legal basis for slavery to be a barrier to inheritance is Al-Qur'an surah Al-Nahl verse 75:

ضَرَبَ اللَّهُ مَثَلًا عَبْدًا مَمْلُوكًا لَا يَقْدِرُ عَلَى شَيْءٍ (النحل ١٦/٧٥)

Meaning: "Allah made the example of a slave under the rule of another, who is powerless to do anything." (Qs. Al-Nahl (16): 75)⁸

Based on the generality of the above Hadith, the prohibition of inheritance between Muslims and non-Muslims had occurred at the time of the Prophet Muhammad. When he wanted to divide the inheritance of Abu Talib who died in a state of disbelief. The Prophet Muhammad SAW. only divided the inheritance to Uqail and Talib, while his other children, Ja'far and Ali did not get the inheritance because both were Muslims.⁹

The prohibition of inheritance between Muslims and non-Muslims has been agreed upon by classical jurists (the majority of scholars represented by the four madhhabs), that different religions between the heir and the heir is one of the barriers to receiving inheritance rights. The majority of scholars, as quoted by Ibn Qudāmah, are of the opinion that the Hadīth of Usamah ibn Zayd is so clear that it does not need any other understanding. Moreover, the Prophet (SAW) had also practised this method when dividing the estate of Abu Talib who died in a state of disbelief, and only his disbelieving heirs were given a share. In addition, inheritance is a means of connecting

⁵ Komite Fakultas Syari'ah Universitas al-Azhar Mesir, 2004, *Hukum Waris, alih bahasa, Addys Aldizar dan Fathurrahman, cet. 1*, Jakarta: Senayan Abadi Publishing, p. 47.

⁶ Al-Imam Abu Abdillah Muhammad ibn Ismail ibn al-Mugīrah ibn Bardizbah al-Bukhārī, Ṣaḥīḥ al-Bukhārī, Juz 4, Beirut Libanon: Dār al-Fikr, 1410 H/1990 M, p. 194.

⁷ Ahmad Rofiq, 2012, *Fiqh Mawaris*, Jakarta: PT. Raja Grafindo Persada, p. 31.

⁸ Source, *Nahdlatul Ulama*, <https://quran.nu.or.id/an-nahl/75>

⁹ Fatchur Rahman, 1981, *Ilmu Waris*, cet. II, Bandung: al-Ma'arif, p. 99.

between the heirs with the testator. If there is a difference in religion between them then the relationship has been broken and no longer exists.

So, religious status becomes an important factor that determines the occurrence of inheritance between the testator and the heirs. Where there is tension between Muslims and non-Muslims, which leads to the inability to inherit between Muslims and non-Muslims.¹⁰

However, the explanation above is different from the opinion of contemporary fiqh scholars, namely Yusuf Al-Qaradhawi, which in his book *Fatawi Mu'asirah* states that Muslims can inherit from non-Muslims and vice versa non-Muslims can inherit Muslims on the grounds that non-Muslims are categorised as kafir dzimmni, namely kafirs who coexist peacefully with Muslims.

From the explanation and problems above, the author is interested in discussing how Yusuf Al-Qaradhawi's perspective on Inheritance of Different Religions in the implementation of Supreme Court Decision No. 16K / AG / 2010.

2. RESEARCH METHODS

This research is conducted using qualitative research, which is a research procedure that produces analytical descriptive data in writing by describing the circumstances or phenomena related to inheritance of different religions and then juridically analysed by looking for the legal basis and regulations. The approach method uses normative juridical method by analysing the Supreme Court Decision and Yusuf Al Qaradawi on inheritance of different religions. With this method, literature materials can be collected in the form of court decisions, journals, theses, writings and other theoretical sources as a basis for solving the main problem. In this research, the sources are based on:

1. Primary Research Materials, namely legal materials in the form of Supreme Court Decision Number 16K/AG/2010, and Yusuf Al-Qardhawi's opinion in the book *Fatwa Ma'ashira*.
2. Secondary Research Materials, namely materials that are closely related to primary legal materials in the form of books related to the object under study.

3. RESULT AND DISCUSSION

3.1 Inheritance Division in Review of PA Decisions

The example of a case about inheritance of different religions that occurred in the Religious Court is in the decision of the Makassar Religious Court Number: 732/Pdt.G/2008/PA.Mks, dated 2 March 2009, which reads that it states that it rejects the Defendant's exception, the defendant's exception is:

¹⁰ Ibnu Qudāmah, 1998, *al-Mughnī jilid 8*, Kairo: Matba'ah al-Iman, IX: h, 663.

1. That the identity of the Defendant Evie Lany Monsita is Christian, therefore the absolute competence to hear the case is subject to the authority of the District Court;
2. That the marriage between Ir. Muhammad Armaya Bin Rangreng, M.Si and Evie Lany Monsita was recorded at the Civil Registry office which has the legal effect of not being subject to Islamic law;
3. That the Plaintiff's claim is vague because the claim should be addressed to the legal subject who factually controls the disputed goods. Therefore, the plaintiffs should have made the legal subject (the party who has controlled the disputed object) as one of the defendants in this case. The object in question in this case is as stated in the plaintiffs' lawsuit, namely immovable property, where the property has been in the possession of another party (there has been a sale and purchase).

Which is the subject matter of the case:

1. Granting the Plaintiff's claim in part; Declaring Ir. Muhammad Armaya bin Renreng, deceased on 22 May 2008; Declaring as heirs of the deceased: Ir. Muhammad Armaya bin Renreng, as follows:
 - a. Halimah Daeng Baji (biological mother);
 - b. Dra. Hj Murnihati binti Renreng, M.Kes. (sister);
 - c. Dra. Hj Mulyahati binti Renreng, M.Si (sister);
 - d. Djelintahati binti Renreng, SST (sister);
 - e. Ir. Muhammad Arsal binti Renreng (brother).;
2. Declare as joint property the deceased Ir. Muhammad Armaya bin Renreng, and the Defendant as follows:
 - a. 1 (one) unit of permanent house along with its land, covering an area of approximately 216 m² located at Jl. Hati Murah No. 11, Mattoangin Urban Village, Mariso Sub-District, Makassar;
 - b. 1 (one) unit of permanent house building and its land, covering an area of approximately 100 m² located at Jl. Manuruki, BTN Tabariah Complex G 11/13;
 - c. Life Insurance from PT. AIA Indonesia Insurance, in the amount of IDR50,000,000,- (fifty million rupiah);
3. Declare that the Defendant is entitled to 1/2 share of the aforementioned joint property and the other 1/2 share is the inheritance property which is the right or share of the heirs of the deceased Ir. Muhammad Armaya bin Renreng, with details of their respective shares as follows with the subject matter of 30 shares:
 - a. Halimah Daeng Baji (biological mother) gets $1/6 \times 30 = 5$ parts;
 - b. Dra. Hj Murnihati binti Renreng (sister), gets $1/5 \times 25 = 5$ shares;
 - c. Dra. Hj Mulyahati binti Renreng (sister), gets $1/5 \times 25 = 5$ shares;
 - d. Djelintahati binti Renreng (sister), received $1/5 \times 25 = 5$ shares;
 - e. Ir. Muhammad Arsal bin Renreng (brother), received $2/5 \times 25 = 10$ parts;
4. Order the Defendant to hand over half of the joint property (inheritance) to the Plaintiff;
5. Stating that if 1/2 of the joint property of 1 (one) unit of house at Jl. Hati Murah No. 11 cannot be handed over in kind, then it will be sold by auction and then handed over to the Plaintiff's part;
6. To declare that the seizure placed by the bailiff on 16 January 2009 is valid and valuable;
7. Declare that the plaintiffs do not accept the other side and the rest;

8. Punishing the Plaintiffs and Defendants to pay jointly and severally the costs of the case in the amount of IDR 3,436,000 (three million four hundred thirty six thousand rupiahs);¹¹

That against the decision of the Makasar Religious Court, the respondent was dissatisfied and filed an appeal to the Makasar Religious High Court by way of appeal.

However, according to the view of the majority of scholars, Muslims do not inherit from disbelievers, just as disbelievers do not inherit from Muslims. Religious differences are a barrier to inheritance. As the explanation.

جمهور الفقهاء يذهبون إلى أن المسلم لا يرث الكافر، كما أن الكافر لا يرث المسلم، وأن اختلاف الملة أو الدين مانع من الميراث، واستدلوا بالحديث المتفق عليه: لا يرث المسلم الكافر، ولا الكافر المسلم

والحديث الآخر: «لا يتوارث أهل ملتين شتى رواه أحمد وأبو داود

وهذا الرأي مروى عن الخلفاء الراشدين إليه ذهب الأئمة الأربعة، وهو قول عامة الفقهاء، وعليه العمل كما قال ابن قدامة

"The majority of scholars are of the view that a Muslim does not inherit from a kaafir, just as a kaafir does not inherit from a Muslim. The difference in religion prevents inheritance. They cite the Prophet's statement: "The Muslim does not inherit from the disbeliever, and the disbeliever does not inherit from the Muslim." (HR Bukhari and Muslim from Usamah bin Zaid) and another hadith "Two people of different religions do not inherit from each other." (This is the view of the Khulafaur-Rashideen, the Imams of the four madhhabs (Shafi'i, Hambali, Maliki and Hanafi), the opinion of most scholars, and the one that is followed by most Muslims, as Ibn Qudamah said.

This is the view of the Khulafaur-Rashideen, the Imams of the four madhhabs (Shafi'i, Hambali, Maliki and Hanafi), the view of the majority of scholars, and the view that most Muslims follow, as Ibnu Qudamah said. Imam Hanifah, Malik, Shafi'i, and their followers say that it is not permissible for a disbeliever to inherit the tirkah of a Muslim and vice versa, whether due to the relationship of freeing a slave (*al-wala*), marriage (*al-zaujiyyah*), or kinship (*al-qarabah*). Likewise, if a Muslim dies, he leaves a non-Muslim wife (*al-kitabiyah*) or non-Muslim relatives then they convert to Islam before the tirkah *al-muwarrits* is distributed, then they still do not get inheritance rights. Referring to the above hadith.¹²

3.2 Division of Inheritance in Review of the PTA Decision

The Religious High Court after studying the case file appealed against along with the minutes of the trial and the evidence submitted by the parties and having also paid attention to the legal considerations underlying the decision of the Religious Court, the Religious High Court is of the opinion that on the basis of what is considered and

¹¹DecisionNumber32/pdt.G/2008/PA.Mks,<https://putusan3.mahkamahagung.go.id/direktori/index/pengadilan/pamakassar/tahunjenis/putus/tahun/2009.html>

¹² Yusuf Al-Qaradhawi, 2003, *Fatwa Ma'ashirah*, Damaskus: Kantor Islam, h. 693.

decided by the Religious Court is correct and correct, however, the Religious High Court considers it necessary to add the following considerations:

That from the results of the first level examination it was found that the respondent/appellant (Evie lany Monsita) had married Ir. Muhammad Armaya bin Rangreng M.Si, through the Civil Registry Office on 1 November 1990 in Bo'e, Poso Regency. With the aforementioned marriage, in accordance with the provisions of Article 35(1) of Law No. 1 of 1974, The creation of joint property between the respondent and her husband Ir. Muhammad Armaya bin Rangreng, M.Si, and further based on Article 37 of Law No. 1974 in the event of a divorce, either a living divorce or a death divorce, then the joint property is regulated according to their respective laws, namely Islamic law, customary law, and other laws where each party is entitled to half of the joint property, the division is based on Islamic law KHI articles 96 and 97 and according to customary law contained in the permanent jurisprudence of the Supreme Court, among others, can be seen in the Supreme Court decision dated 9 December 1959 Number 424 K / Sip / 1959.

Thus even though the marriage of the respondent/appellant with Ir. Muhammad Armaya bin Rangreng, M.Si, still has a share of the joint property, namely half or one second of the amount of joint property and the property becomes the inheritance of Ir. Muhammad Armaya bin Rangreng, M.Si which will be inherited by the heirs. Because Ir. Muhammad Armaya bin Rangreng, M.Si passed away on 22 May 2008 and based on the fact that he died in the status of a Muslim, then to settle the inheritance is the authority of the Religious Court because in the inheritance that the heir is Muslim, it must be resolved according to Islamic law even though there are family members / heirs who are non-Muslims. That with these considerations, the exception of the defendant/appellant must be rejected as has been considered by the first level. In the subject matter of the first instance court on the basis of what has been considered and decided in the subject matter is appropriate and correct and the Religious High Court in case No. 59/Pdt.G/2009/PTA.Mks, takes the following considerations into its own consideration.¹³

Based on the explanation above, it can be concluded that in this case, the decision of the Makasar Religious Court and the Makasar Religious High Court is in line with the opinion of the majority of scholars, namely Imam Hanifah, Malik, Hambali, Shafi'i and his followers, who say that non-Muslims cannot inherit the property of Muslims, in accordance with the Hadith of the Prophet SAW: "The Muslim does not inherit from the disbeliever, and the disbeliever does not inherit from the Muslim." (HR Bukhari and Muslim from Usamah bin Zaid).¹⁴

¹³DecisionNumber59/Pdt.G/2009/PTA.Mks,<https://putusan3.mahkamahagung.go.id/direktori/putusan/905df568071e9175e31d91057db48294.html>

¹⁴ Yūsuf al -Qardhawī, 1988, *Fatwa Fatwa Kontemporer*, trans. As'ad Yasin, Jakarta: Gema Insani Press, p.851.

3.3. Inheritance Distribution in Light of the Supreme Court Decision

The marriage certificate citation number 57/K/.PS/XI/1990 states that there was a marriage on behalf of Ir. Muhammad Armaya bin rengreng and his wife Evi Lany mosinta on 1 November 1990 in bo'e, poso district. The marriage lasted for 18 years during which time the two were not blessed with children. On 22 May 2008 Ir. Muhammad Armaya bin rengreng passed away leaving five heirs namely: Halimah Daeng Baji (mother); Dra. Hj Murnihati binti Renreng, M.Kes. (sibling); Dra. Hj Muliyahati binti Renreng, M.Si. (sibling); Djelintahati bintirenreng, SST. (sibling); and Ir. Arsal bin Renreng (sibling). The deceased Ir. Muhammad Armaya bin Renreng, M.Si besides leaving heirs also left joint assets in the form of:

1. One unit of permanent house along with its land, covering an area of 216 m located at Jl. Hati Murah, Number 11, Mattoangin Urban Village, Mariso Subdistrict, Makassar.
2. One unit of permanent house building along with its land, covering an area of 100 m located at Jalan Manuruki, BTN Tabariah Complex G 11/13.
3. One unit of Honda Supra Fit motorcycle with number DD 5190 KS in black colour.
4. Life insurance money from PT Asuransi AIA Indonesia, amounting to IDR 50,000,000.00 (fifty million rupiah).

The property mentioned above was obtained during the lifetime of the plaintiff according to the law this property became joint property between the two of them which the property was still in the control of the defendant, the plaintiff had made various efforts so that the property could be given according to his rights in a family manner but the defendant did not respond to this so the plaintiff filed a lawsuit with the Makassar religious court to make a division of the joint property according to Islamic law. The considerations of the Supreme Court in deciding this case include: That the marriage between the Defendant/Case Petitioner and Ir. Muhammad Armayabin Renreng, M.Si., alias Ir. Armaya Renreng has been going on for quite a long time, namely 18 years, which means that the Defendant/Case Petitioner has been devoted to the Heir for quite a long time, therefore even though the Cassation Petitioner is non-Muslim, it is feasible and fair to obtain her rights as a wife to get a share of the inheritance in the form of a mandatory will and a share of joint property as the jurisprudence of the Supreme Court of Indonesia. The issue of the position of non-Muslim heirs has also been studied by many scholars, including Yusuf Qardhawi, interpreted that Muslims who live side by side peacefully cannot be categorised as kafir harbi, as well as the cassation applicant and the testator during their lifetime got along peacefully even though they have different beliefs, therefore it is appropriate and feasible for the cassation applicant to obtain part of the testator's estate in the form of a mandatory will.

Therefore, based on the above considerations, in the opinion of the Supreme Court, there are sufficient reasons to grant the petition for cassation: EVIE LANY MOSINTA and cancelling the decision of the Makassar High Religious Court Number: 59/pdt.G/2009/PTA. Mks, dated 15 June 2009. Coinciding with the 22nd of Rajab 1430 H. which upheld the Decision of the Makassar Religious Court Number 732/pdt.G/2008/PA. Mks,

dated 2 March 2009, coinciding with 5 Robiul Awal 1430 AH. Based on what has been mentioned above, the Supreme Court will JUDGE the case itself, namely: In Exception: Declare that the Defendant's exception is rejected; In the Matter of the Case:

1. To grant the Plaintiff's claim in part;
2. Declare that Ir. Muhammad Armaya bin Renreng, M.Si., alias Ir. Armaya Renreng passed away on 22 May 2008;
3. Declare the heirs of the deceased Ir. Muhammad Armaya bin Renreng as follows:
 - a. Halimah Daeng Baji (mother);
 - b. Dra. Hj Murnihati binti Renreng, M.Kes. (sibling);
 - c. Dra Hj Mulyahati binti Renreng, M.Si. (sibling);
 - d. Djelintahati binti Renreng, SST. (sibling); and
 - e. Ir. Arsal bint Renreng (sibling).
4. Declare the joint assets of the deceased Ir. Muhammad Armaya bin Renreng and the respondent as follows:
 - a. One unit of permanent house building with its land, covering an area of 216 m² located at Jl. Hati Murah, Number 11, Mattoangin Urban Village, Mariso District, Makassar.
 - b. The price of one unit of permanent house building with its land, covering an area of 100 m² located at Jalan Manuruki, Complex BTN Tabariah G 11/13IDR 70,000,000.00 (seventy million rupiah).
 - c. Life Insurance from PT Asuransi AIA Indonesia, amounting to IDR 50,000,000.00 (fifty million rupiah).
5. Declare that the Defendant is entitled to ½ of the aforementioned joint property and the other half is the inheritance which is the right or share of the heirs of Ir. Muhammad Armaya bin Renreng, with details as follows with the subject matter of 60 shares:
 - a. Halimah Daeng Baji (biological mother) gets 10/60 shares;
 - b. Evie Lany Mosinta (wife) receives a mandatory bequest of 15/60 shares.
 - c. Dra. Hj Murnihati binti Renreng, M.Kes. (sister) receives 7/60 shares;
 - d. Dra. Hj. Mulyahati binti Renreng, M.Si. (sister) gets 7/60 shares;
 - e. Djelintahati binti Renreng, SST. (sister) gets 7/60 shares; and
 - f. Ir. Arsal bint Renreng (brother) gets 14/60 shares.
6. Order the Defendant to give ½ of the joint property (inheritance) to the Plaintiff;
7. Declare that if the portion of the joint property of one unit of permanent house along with its land, covering an area of 216 m² located at Jl. Hati Murah, Number 11 cannot be obtained in kind, then it will be sold by auction and then handed over to the Plaintiffs;
8. Declare that the confiscation placed by the bailiff on 16 January 2009 is valid and valuable;
9. Declare that the Plaintiffs do not accept the other side and the rest;
10. Punishing the Plaintiffs and Defendants to pay jointly and severally the costs of the case in the amount of IDR 3,436,000.00 (three million four hundred thirty six thousand rupiah);
11. Punish the Cassation Respondents/ Plaintiffs to pay court costs in this cassation in the amount of IDR 500,000.00 (five hundred thousand rupiah);¹⁵

¹⁵DecisionNumber16K/AG/2010,<https://putusan3.mahkamahagung.go.id/yurisprudensi/detail/11eadf086b586f509ef9323230333034.html>

The explanation of the Supreme Court's decision above shows that the judges used Yusuf Al-Qaradhawi's opinion in giving a share to wives of different religions, but the judges did not use the decision directly based on Yusuf Al-Qaradhawi's opinion in determining the inheritance of non-Muslim wives, but rather by making a mandatory will as an alternative to the issue.

3.4. Religious Inheritance According to Yusuf Al-Qaradhawi

One of the most debated inheritance issues in modern times is the issue of inheritance of different religions. So this religious difference is a cause of obstruction to inheritance if the heir or muwaris of which one of them is Muslim and non-Muslim. The problem of inheritance in Islam scholars differ in opinion about inheritance of different religions, according to the majority of scholars argue;

جمهور الفقهاء يذهبون إلى أن المسلم لا يرث الكافر، كما أن الكافر لا يرث المسلم

Meaning: "The Muslim does not inherit from the disbeliever, just as the disbeliever does not inherit from the Muslim." The reasons for the view of the majority of scholars are;

وأن اختلاف الملة أو الدين مانع من الميراث

Meaning: "Religious differences are an obstacle to inheritance" They use the argument that the Prophet's words,

لا يرث المسلم الكافر، ولا يرث الكافر المسلم

Meaning: "A Muslim shall not inherit from a disbeliever and a disbeliever shall not inherit from a Muslim."(HR. Bukhari and Muslim from Usman bin Zaid)¹⁶

In contrast to the majority of scholars, Umar bin Khattab was of the opinion that Muslims can inherit from disbelievers and disbelievers cannot inherit from Muslims, as he explained;

وروي عن عمر ومعاذ ومعاوية: أنهم ورثوا المسلم من الكافر، ولم يورثوا الكافر من المسلم وحكي ذلك عن محمد بن الحنفية، وعلي بن الحسين وسعيد بن المسيب ومسروق، وعبد الله بن معقل والشعبي، ويحيى بن يعمر وإسحاق

Meaning: "The report of 'Umar ibn Khattab, Mu'az ibn Jabal, and Mu'awiyah ibn Abu Sufyan in the book of Mughni states that they allowed Muslims to inherit from disbelievers and disbelievers cannot inherit from Muslims."

Similar to 'Umar ibn Khattab, Mu'az ibn Jabal, and Mu'awiyah ibn Abu Sufyan, Yahaya ibn Ya'mar was of the opinion that the Muslim should inherit from the disbeliever and the disbeliever should not inherit from the Muslim;

¹⁶ Narrated by al-Bukhari in al-Maghazi, and al-Fara'id on the authority of Osama bin Zaid, and also by Muslim in the Book of Obligations (1614).

It means: "Muslims inherit" The reason for Yahya bin Ya'mar's explanation above is that;

توريث المسلم من الكافر

Meaning: "He used his statement that a Muslim inherits from a disbeliever."

The above opinion arose from two brothers, a Jew and a Muslim, who quarreled over the inheritance of their disbelieving brother, then Yahya ibn Ya'mar gave the inheritance to the Muslim. The legal basis for the two opinions above are;

معاذاً حدثه أن رسول الله ﷺ قال:الإِسْلَامُ بَزِيدٌ وَلَا يَنْقُصُ¹⁷، يعني : أن الإسلام يكون سبباً لزيادة الخيرلمعتنقه، ولا يكون سبب حرمان ونقص له

Meaning: "Mu'adz narrated that the Messenger of Allah (saw) said: "Islam always increases and never decreases." (Ahmad, Abu Dawud, and Al-Hakim), meaning that Islam is a cause of increasing goodness and is not a cause of poverty and deprivation for its adherents."

Another Hadith that is similar to the above Hadith also states that the height and glory of Islam without having to be exalted, a Hadith states;

الإِسْلَامُ يَعْلو وَلَا يَعْلى¹⁸

Meaning: "Islam is superior and unsurpassed."(HR Al-Baihaqi and Daruquthni)

لأننا ننكح نساءهم، ولا ينكحون نساءنا ، فكذلك نرثهم ولا يرثوننا

The meaning of the above explanation is: "Similarly, because we (Muslim) men can marry disbelieving women, but they (disbelieving men) cannot marry Muslim women, we inherit from them and they do not inherit from us."

The above description of the scholarly opinion differs from the opinion of Yusuf Al-Qaradhawi, according to him, the strongest opinion or (*ar jah*) is;

وأنا أرجح هذا الرأي، وإن لم يقل به ،الجمهور، وأرى أن الإسلام لا يقف عقبة في سبيل خير أو نفع يأتي للمسلم يستعين به على توحيد الله تعالى وطاقته ونصرة دينه الحق والأصل في المال يرصد لطاعة الله تعالى لا لمعصيته، وأولى الناس به هم المؤمنون، فإذا سمحت الأنظمة أن

¹⁷ Narrated by Ahmad in his Musnad 5/230, 236, Abu Dawud (2912) and (2913), and Al-Hakim and included Abu al-Aswad on the authority of Moaz and authenticated by 4/ 345, and Al-Dhahabi agreed with him. He said in "Al-Fath": He traced the interruption between Abu Al-Aswad and Muadh, but it is possible to hear it from him. Al-Fayd, 179/3.

¹⁸ Narrated by al-Daraqutni, al-Bayhaqi, al-Ruyani, and al-Dia' on the authority of Aidh ibn Amr, and classified as hasan in Sahih al-Jami' al-Saghira (2778).

الوضعية لهم بمال أو تركة فلا ينبغي أن نحرمهم منها، وندعها لأهل الكفر يستمتعون بها في أوجه قد تكون محرمة أو مرصودة لضررنا¹⁹

It means: "I confirm and agree with this opinion. Although the majority of scholars do not agree with it. I do not think that Islam is opposed to any way of doing good that is beneficial to the interests of its ummah. Moreover, the wealth that is left behind or inherited can help to glorify Allah, to obey Him and to help establish His true religion. In fact, wealth is intended as a means to obey Him, not to disobey Him. Of course, the most important people to have it are those who believe in Him. So, when the laws of the country allow them to inherit or inheritance, we should not prevent it and let the disbelievers take advantage of it. This is because it can be haram in many ways. In fact, it becomes a danger and threat to us (Muslims)²⁰

As for the hadeeth, "A Muslim does not inherit from a disbeliever and a disbeliever does not inherit from a Muslim", we interpret it as the Hanafis did, if we want to understand the above hadith about the prohibition of inheriting from different religions, then we must understand the hadeeth interpreted by the Hanafis as follows, "A Muslim does not kill a disbeliever."

وأما حديث: «لا يرث المسلم الكافر، ولا الكافر المسلم فنؤوله بما أول به الحنفية حديث: «لا يُقتل مسلم بكافر وهو أن المراد بالكافر: الحربي فالمسلم لا يرث الحربي - المحارب للمسلمين بالفعل - لانقطاع الصلة بينهما

The meaning of kafir in the above hadith is not kafir harbi. The Hanafi school of thought interpreted the hadith on inheritance to mean "kafir harbi" those who fight against Muslims. This means that Muslims only do not inherit from kafir harbi because of the disconnection between the two. From Yusuf Al-Qaradhawi's explanation above contained in the book *Fatwa Ma'ashira*, there is a hadith that is interpreted by the Hanafiyah madzhab as it reads "A Muslim does not kill a disbeliever". The meaning of the word kafir in the Hadith is kafir dzimni not kafir harbi, therefore it is permissible for Muslims to inherit from non-Muslims, because it can attract kafir dzimni to Islam. So the meaning of the above explanation is that hypocrites are not included in the group of disbelievers, they are distinguished as well as apostates. Therefore, the Hanafi madhhab interpreted the hadith about inheritance that the meaning of the word kafir there is kafir harbi, namely kafirs who fight Muslims, meaning that Muslims only cannot inherit the property of kafir harbi due to the disconnection between the two. Therefore, Yusuf Al-Qaradhawi only prohibits inheritance of different religions if the inheritance is given to kafir harbi.

Yusuf Al-Qaradhawi supports the opinion that Muslims can inherit the property of non-Muslims and vice versa, disbelievers (dhimmis) can inherit the property of Muslims, with the argument of the Prophet's hadith. "Islam is superior to none" (HR. Al-Baihaqi

¹⁹ Yusuf Al-Qaradhawi, 2003, *Fatwa Ma'ashirah*, Damaskus: Kantor Islam, h. 694.

²⁰ Yusuf Al-Qardhawi, 2022, *Fatwa-Fatwa Kontemporer Jilid 3*, Jakarta: Gema Insani Press, h.851.

and Daruqtuni). The meaning is that Islam is high, in the height of Islam is allowed to inherit the property of non-Muslims.

In line with the opinion of Yusuf Al-Qaradhawi, according to Ibn Taymiyyah and Ibnul Qayyim who said the problem of inheritance between religions contained in his book Ahkam Ahludz Dzimah, some opinions confirm that Muslims can inherit non-Muslims taken from the opinion of his teacher Ibn Taymiyyah, this can be seen in the expression below:²¹

قال شيخنا : ومما يؤيد القول بأن المسلم يرث الذمي ولا يرثه، أن الاعتبار في الإرث بالمناصرة، والمانع هو المحاربة. ولهذا قال أكثر الفقهاء: إن الذمي لا يرث الحربي

Meaning: "According to Ibn Taymiyyah, what supports the view that the Muslim inherits from the kafir dzimni and not vice versa is that inheritance is based on helping each other. Whereas the obstacle to inheritance is attacking (fighting the Muslims). That is why most scholars are of the view that the kafir dzimni does not inherit from the kafir harbi."

Those who are of the view that disbelief prevents inheritance and inheritance (Al-Maani'uun) state that disbelief prevents inheritance (whether inherited or inherited). Therefore a disbeliever cannot inherit from a free person, such as a murderer, while those who are of the opinion that he can inherit (al-mauruutsuun) say that the murderer is prevented from inheriting because it is related to the accusation and as a punishment for him in contrast to his purpose (killing in order to inherit). From this we can see that the cause of inheritance is a gift, religious differences are not included as a cause of inheritance, this can be seen in the following expression:

قال المانعون الكفر يمنع التوارث، فلم يرث به المعتق، كالقتل.

قال المورثون : القاتل يحرم الميراث لأجل التهمة، ومعاقبة له بنقيض قصده. وهاهنا علة الميراث الإنعام واختلاف الدين لا يكون من علة

Ibn Taymiyyah stated that this kind of inheritance is in accordance with the provisions of sharee'ah. The Muslims get the jizyah and are entitled to inheritance from the ahludz dzimah. This is because of protecting their blood, not killing them, protecting their wealth, and redeeming their captives. In other words, the Muslims benefit, help and defend them. Therefore, they (Muslims) are better and more entitled to inherit their property than the disbelievers. Those who say that Muslims are prevented from inheriting from disbelievers say that they are relying on the fact that guardianship (loyalty) is broken because of the difference between Muslims and disbelievers. The other group replied that this stipulation is not based on inner loyalties, which lead to reward in the Hereafter. As the enmity between the Muslims and the hypocrites has been established, as Allah says: "They are your enemies, so beware." (al-Munaafiquun: 4) However, in history they still inherit and are inherited. This is because loyalty of

²¹ Yusuf Al-Qaradhawi, 2003, *Fatwa Ma'ashirah*, Damaskus: Kantor Islam, h. 697.

heart is not a condition of inheritance. But, with a series of cooperation or help. Muslims help ahludz dzimmah, so they get inheritance from them. And the people of ahludz dzimmah do not help the Muslims, so they do not inherit from the Muslims, this can be seen in the following expression:

قال شيخنا: «والتوريث في هذه المسائل على وفق أصول الشرع، فإن المسلمين لهم إنعام وحق على أهل الذمة بحقن دمايتهم، والقتال عنهم، وحفظ دمايتهم وأموالهم، وفداء أسراهم. عنهم : فهم أولى بميراثهم من الكفار . والذين منعوا فالمسلمون ينفعونهم وينصرونهم ويدفعون الميراث قالوا : ميناه على بين المسلم والكافر، فأجابهم الآخرون بأنه ليس ميناه على المولاة الباطنة التي توجب الثواب في الآخرة، فإنه ثابت بين المسلمين وبين أعظم أعدائهم، وهم المنافقون الذين قال الله فيهم : (هُمُ الْعَدُوُّ فَاحْذَرَهُمْ) . فولاية القلوب ليست هي المشروطة في الميراث، وإنما هو بالتناصر ، والمسلمون ينصرون أهل الذمة فيرتبونهم، ولا ينصرهم أهل الذمة فلا يرتبونهم. والله أعلم . اهـ

It is also possible that inheritance in this case could include the will of a deceased father to his son. A will is permissible from a disbeliever to a Muslim, and from a Muslim to a disbeliever, not a harbi disbeliever. Therefore, it is permissible for anyone to make a will about his entire estate to anyone, even to his dog. Of course, bequeathing to one's children is preferable, as can be seen from the following expression:

ويمكن اعتبار هذا الميراث من باب الوصية من الأب المتوفى لولده، والوصية من الكافر، للمسلم، ومن المسلم للكافر غير الحربي: جائزة بلا إشكال، وعندهم يجوز للإنسان أن يوصي بماله كله، ولو لكلبه فلاينه أولى

The above expressions show that there are similarities between the opinions of Yusuf Al-Qaradhawi and Ibn Taymiyyah regarding the permissibility of inheriting Muslims and non-Muslims.

3.5. Author's Analysis of Religious Inheritance

The debate about inheritance between different religions among scholars is on the perception of infidels, infidels are divided into two according to scholars, namely infidels dzimni and infidels harbi. Infidels who can still be tolerated are dzimni infidels, namely infidels who coexist with Islam, while harbi infidels cannot be tolerated because harbi infidels are willing to fight Muslims, This difference in understanding also arises from the hadiths of the Prophet Muhammad Saw, namely the hadith "does not inherit a Muslim to a disbeliever and a disbeliever does not inherit a Muslim" but most scholars such as Yusuf Al-Qaradhawi and Ibn Taymiyyah understand that it is precisely the permissibility of inheritance of different religions that is seen as a disbeliever dzimni not a disbeliever harbi. So if people argue that there is no inheritance between religions, because they equate the views of kafir harbi and dzimni so they argue that there is no mutual inheritance for these kafirs. On the basis that "Islam is superior and not surpassed", the Hadith indicates that it is permissible for Muslims to inherit from their non-Muslim brothers, but the reverse is not the case because Islam is indeed superior and there is nothing that can match its superiority.

According to the author, Yusuf Al-Qaradhawi's opinion is more appropriate to be applied in everyday life, this opinion allows Muslims to inherit infidels but not vice versa, infidels do not inherit. The difference appears in the Supreme Court Decision No. 16K/AG/2010, although based on the opinion of Yusuf Al-Qaradhawi but the determination still uses the mandatory will, so that if this happens to the community then it must do the process in court first because the determination of the mandatory will cannot be done by anyone because the mandatory will has been set regulations. But according to Yusuf Al-Qaradhawi's opinion about the inheritance of different religions if it is done by deliberation in a family and everyone agrees with the provisions then the inheritance can be divided without a mandatory will, Yusuf Al-Qaradhawi's opinion is also strengthened by the opinion of Ibn Taymiyyah, "According to Ibn Taymiyyah, which strengthens the opinion that Muslims inherit from disbelievers *dzimni* and not vice versa, is because the inheritance is based on the attitude of helping. Whereas the obstacle to inheritance is attacking (fighting the Muslims). That is why most scholars are of the view that the *kafir dzimni* does not inherit from the *kafir harbi*.

4. CONCLUSION

The issue of inheritance of different religions always invites differences not only among scholars but also occurs among judges at the Religious Courts, High Courts and the Supreme Court, in the PA and PTA decisions do not apply inheritance of different religions and this is supported by the majority of scholars but this is different from contemporary scholars Yusuf Al-Qaradhawi, Ibn Taymiyah and Ibn Qayim. Differences of opinion do not only occur among scholars but also occur by judges in PA, PTA, and MA, as the Religious Court argues that there is no mutual inheritance of different religions, this is in line with the Religious High Court which is a reinforcement of the opinion of the Religious Court but the Supreme Court issued a different decision that allows inheritance of different religions even though it uses mandatory wills as an alternative way in this case the scholar who agrees with this opinion is Yusuf Al-Qaradhawi. According to Yusuf Al-Qaradhawi, inheritance of different religions can be given to heirs of different religions without the term mandatory will as has been determined by the Supreme Court Decision Number: 16K/AG/2010 related to the opinion of Yusuf Al-Qaradhawi about the inheritance of different religions, it turns out to be supported by Ibn Taymiyyah which Yusuf Al-Qaradhawi divides two types of kafirs, namely *kafir dzimni* and *harbi*, what is meant in the hadith about the impermissibility of kafirs being heirs by Muslims is *kafir harbi* while *dzimni kafirs* are kafirs who coexist with Muslims and do not fight, therefore they can get inheritance rights related to Supreme Court Decision Number. 16K/AG/2010 in which the wife is a *kafir dzimni* who always lives side by side and serves her Muslim husband, making her entitled to her husband's inheritance without the need for a mandatory will.

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