

## Legal Analysis of the Position of Heirs Who Change Religion According to Civil Law and Islamic Law

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**Abstract.** *This study aims to analyze: 1) The position of heirs who change religions according to civil law and Islamic law. 2) Legal protection that can be guaranteed for heirs who change religions. This type of research is included in the scope of normative legal research. The approach method in this study is the statute approach. The type and source of data in this study are secondary data obtained from literature studies. The analysis in this study is prescriptive. The results of the study concluded: 1) The position of heirs who change religions according to civil law and Islamic law, namely civil law does not differentiate heirs based on religion. There is no prohibition for heirs of different religions to inherit the testator's inheritance. While Islamic law does not provide inheritance rights by kinship to heirs who change religions. Heirs who change religions cannot inherit property from Muslim testators. However, the provision of property between people of different religions can still be done in the form of grants, wills, and gifts. If there is an heir who changes religion, the heir should discuss it with the other heirs before he dies. 2) Legal protection that can be guaranteed for heirs who change religions can be guaranteed through several mechanisms, namely the Civil Code still provides inheritance rights regardless of religion, while Islamic Law can still provide rights through grants or wills. Through a family mediation approach, a peaceful agreement can also be reached. An approach through mediation or family agreement can be a peaceful and mutually beneficial solution. With mediation, families can reach an agreement on the division of assets fairly, including providing a portion for heirs who change religions. This path allows for out-of-court settlements, avoids conflict, and maintains good relations between family members. This protection is in line with the principle of justice in Maqasid Syariah and Human Rights to ensure that the rights and welfare of heirs remain protected.*

**Keywords:** Civil; Code; Heirs; Islamic; Religion.

## 1. Introduction

One of the legal actions in transferring control of land and/or building rights that is most often carried out by the community is through inheritance. Every natural event related to death will give rise to/give birth to civil legal events, both related to the deceased/deceased (the testator) and to the people left behind (the heirs), which inevitably must be resolved immediately by the heirs.<sup>1</sup>

Indonesia has three types of inheritance law systems that are applicable and accepted by society, namely Islamic inheritance law, customary inheritance law, and Western inheritance law.<sup>2</sup> Inheritance is one of the things that is quite important in the existence of every person's life because inheritance matters often cause disputes or even quarrels between siblings/families who are heirs to the inheritance left by the testator. These disputes or quarrels often occur when the heirs feel injustice in the distribution of inheritance. One factor that can cause injustice in the distribution of inheritance is if in a family there is one or more family members who have a different religion/belief from other family members.<sup>3</sup>

Several legal experts in Indonesia have tried to provide a formulation regarding the definition of inheritance law, one of which is according to Wirjono Prodjodikoro who states that inheritance is a matter of whether and how the various rights and obligations regarding a person's wealth at the time of his death will be transferred to the living.<sup>4</sup> Civil inheritance law is the most famous inheritance law in Indonesia and some of its guidelines are like western culture. Inheritance can be given to the main beneficiary who has a will or a family who has a genetic relationship such as a child, guardian, relative, grandfather, grandmother to the family member of the relative. The system used in the law for this kind of inheritance uses an individual system, which means that each individual beneficiary is eligible to receive inheritance depending on their respective portions. Meanwhile, when using a will, only those who are eligible are listed in the will. The prerequisite for making a will is that you must be eighteen years old and married. According to the Civil Code there are two methods for obtaining inheritance, namely as an heir according to the law or because it is appointed in a will (testament).<sup>5</sup>

Islam as a system of life and society, universally encompasses the whole value system aspect the life of Muslims. Of the many aspects of Islamic teachings, one

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<sup>1</sup>Umi Setyawati, Antonius Iwan Murdianto, Amin Purnawan, Deed of Confirmation of Heir Certificate as a Substitute for Heir Certificate in the Process of Transferring Heir Names at the Semarang City Land Office, *Jurnal Akta*, Vol 5 No 1 January 2018, Unissula, Semarang, p.40

<sup>2</sup>Eman Suparman, 2005, *Indonesian Inheritance Law in the Perspective of Islamic Custom and BW*, Bandung Refika Aditama, Bandung, p. 5

<sup>3</sup>Dessy Gea, *The Position of Children Who Convert to Inheritance in the Perspective of Islamic Law*, Law Article, Faculty of Law, Udayana University, p. 2

<sup>4</sup>Tinuk Dwi Cahyani, 2018, *Inheritance Law in Islam*, Muhammadiyah University of Malang, Malang, p.9

<sup>5</sup>Subekti, 1996, *Civil Code*, Pradnya Paramita, Jakarta, p.123.

of them is the law relating to the inheritance system.<sup>6</sup>According to Islamic law, inheritance comes from the Arabic *Al-miirats*, in Arabic it is the *masdar* (infinitive) form of the words *waritsa-yaritsu-irtsan-miiratsan*. The meaning according to language is the transfer of something from one person to another. Or from one tribe to another.<sup>7</sup>The science that studies inheritance is called the science of mawaris or better known as fara'id. The word fara'id is the plural form of faridah, which is interpreted by the scholars of 'farridiyun as meaning the word mafrudah, namely a portion whose amount has been determined.<sup>8</sup>Inheritance means the transfer of property rights from a deceased person to his or her living heirs.<sup>9</sup>Inheritance, which in fara'id terms is called tirkah (legacy), is something left behind by a person who dies, whether in the form of money or other material that is permitted by Islamic law to be passed on to his heirs.<sup>10</sup>Meanwhile, in legal terminology, inheritance can be interpreted as the law that regulates the distribution of inheritance left by heirs, knowing the parts received from the inheritance for each heir who is entitled to receive it.<sup>11</sup> Heir in the study of Islamic law is a person who is entitled to receive a portion of the deceased's property. According to the Compilation of Islamic Law, heirs are people who at the time of death have blood relations or marital relations with the testator, are Muslim, and are not prevented by law from becoming heirs. According to the Civil Code, heirs are people who are entitled to receive the testator's inheritance and are permitted by law.

The Civil Code does not regulate inheritance of different religions or prohibitions for heirs who inherit the testator's estate if the testator and the heirs change religions or have different religions. Meanwhile, in the KHI, until now there is also no article that specifically prohibits inheritance for testators and heirs who have different religions. The legal analysis of the position of heirs who change religions according to civil law and Islamic law is a complex and relevant aspect to study. A change of religion made by a person can have a serious impact on the inheritance rights that he or she has, especially in the context of the duality of civil law and Islamic law applied in Indonesia.

## 2. Research Methods

This type of research is normative legal research. The approach method in this research is the statute approach. The type and source of data in this research are

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<sup>6</sup>Ridwan Jamal, 2016, Bilateral Inheritance Between Heirs of Different Religions in Civil Law and Compilation of Islamic Law, Jurnal Ilmiah al-Syir'ah, Volume 14, Number (1), p. 1.

<sup>7</sup>Muhammad Ali Ash-Shabuni, 1996, Distribution of Inheritance According to Islam, Gema Insani Press, Jakarta. p. 33.

<sup>8</sup>Dian Khairul Umam, 1999, Fiqh Mawaris, Pustaka Setia, Bandung, p. 11.

<sup>9</sup>Ahmad Rofiq, 1995, Fiqh Mawaris, Raja Grafindo Persada, 2nd ed., Jakarta. p. 13.

<sup>10</sup> Maman Abd Djalal, 2006, Mawaris Law, CV Pustaka Setia, Bandung, p. 39.

<sup>11</sup>Ahmad Rofiq, 2000, Islamic Law in Indonesia, Raja Grafindo Persada, 4th ed., Jakarta, p. 355.

secondary data obtained through literature studies. The analysis in this research is prescriptive.

### **3. Results and Discussion**

#### **3.1. The Position of Heirs Who Change Religion According to Civil Law and Islamic Law**

Inheritance law is one part of civil law as a whole and is a small part of family law. Inheritance law is very closely related to the scope of human life, because every human being will definitely experience death. The legal consequences that arise, with the legal event of someone's death, include the problem of how to manage and continue the rights and obligations of a person who has died. The settlement of rights and obligations as a result of someone's death is regulated by inheritance law.<sup>12</sup>

Inheritance law is the law that regulates the transfer of assets left behind by someone who dies and the consequences for the heirs.<sup>13</sup> Furthermore, inheritance law is a collection of regulations that regulate the law regarding assets due to a person's death, namely regarding the transfer of assets left by the testator to his heirs, the portion received and the relationship between the heirs and third parties. That inheritance law is the laws or rules that regulate whether and how the various rights and obligations regarding a person's assets at the time of his death will be transferred to other people who are still alive. In essence, inheritance law aims to regulate the distribution of inheritance to heirs, so that there are no disputes when the inheritance is distributed. So inheritance law is about whether and how the various rights and obligations over a person's property at the time of his death will be transferred to other people who are still alive.<sup>14</sup>

In Indonesia, there are three types of inheritance law systems that apply and are accepted by society, namely Islamic inheritance law, customary inheritance law, and Western inheritance law.<sup>15</sup> Discussing inheritance law, there are two main problems, namely about people who have passed away or died leaving their wealth as an inheritance and leaving people who are entitled to receive and receive the inheritance itself. The descendants of the deceased (inheritor) are entitled to inherit the inheritance called heirs.<sup>16</sup>

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<sup>12</sup>Eman Suparman, 2005, Indonesian Inheritance Law in the Perspective of Customary Islam and BW, PT Refika Aditama, Bandung, p. 5

<sup>13</sup>Effendi Purangin, 1997, Inheritance Law, Raja Grafindo Persada, Jakarta, p. 3

<sup>14</sup>Prodjodikoro Wiryono, 1983, Inheritance Law in Indonesia, Sumur Bandung, Bandung, p.13.

<sup>15</sup>Ridwan Jamal, 2016, Bilateral Inheritance Between Heirs of Different Religions in Civil Law and Compilation of Islamic Law, Jurnal Ilmiah al-Syir'ah, Volume 14, Number (1), p. 1

<sup>16</sup>Suhrawardi K. Lubis and Komis Simanjuntak, 2017. Islamic Inheritance Law (Complete & Practical). Fifth edition. Sinar Grafika. Jakarta, p. 218

The Civil Code itself does not have a specific article that provides an understanding of inheritance law, only Article 830 states that inheritance only occurs due to death.<sup>17</sup> So, new inheritances are open to be inherited if the testator has died (Article 830 of the Civil Code) and the heir must still be alive when the inheritance is open to be inherited (Article 836 of the Civil Code).<sup>18</sup>

According to Article 830 in conjunction with Article 832 of the Civil Code, inheritance will occur due to death, and inheritance occurs to people who are entitled to be heirs, heirs in principle are blood relatives, both those who are legitimate according to law and those who are not married, and the husband or wife who lives the longest and if there are no blood relatives and the husband or wife who lives the longest, then all inherited assets become the property of the state, which is obliged to pay off the debts of the deceased, as long as the value of the inherited assets is sufficient for that.<sup>19</sup> This means that in principle an heir is a family member who has a legitimate blood relationship. Inheritance law in the Civil Code has 3 elements, namely:

1. Heir (efflater)

Referring to (Article 830 of the Civil Code), many people say that an heir is anyone who has died. Because inheritance law will not be questioned if a deceased person does not leave behind any property, the elements that must be met to be eligible to be called an heir are a person who has died and left behind property.<sup>20</sup>

2. Heirs (erfgenaar)

Heirs (erfgenaar) are all people who have the right to receive an inheritance.<sup>21</sup> In the Civil Code, the definition of heirs is members of the legal blood family or outside of marriage as well as husband and wife who live outside of marriage and the husband and wife who live the longest (Article 832 of the Civil Code). Furthermore, in (Article 833 of the Civil Code) it is stated that all heirs automatically by law obtain ownership rights over all goods, all rights and all receivables of the deceased. So there are two requirements to become an heir, namely:

- a. Heirs determined by law.

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<sup>17</sup>Civil Code, 2007, Wipress, Jakarta, p. 194

<sup>18</sup>Ibid., p.195

<sup>19</sup>Waris H, 2021, Inheritance Rights of Children Who Have Different Religions from Their Parents Based on Islamic Law" USM Law Review Journal, p. 8

<sup>20</sup>Anasitus Amanat, 2001, Dividing inheritance based on the articles of Civil Law BW, Raja Grafindo Persada, Jakarta, p. 6

<sup>21</sup>Ibid., p. 6

The heirs determined by law are people who have the right to receive inheritance, as determined in the applicable laws and regulations. These heirs are regulated in (Article 832 of the Civil Code) according to the law those who have the right to become heirs are blood relatives, whether legal or extramarital, the husband or wife who lives the longest.<sup>22</sup>If there is no blood relative or the oldest surviving spouse, then all the assets of the deceased become the property of the state, which is obliged to pay off all debts, provided the assets left are sufficient for this purpose.

Heirs due to blood relations are reaffirmed in (Article 852 a of the Civil Code). In the case of inheritance and a husband or wife who has died first, the husband or wife who is left behind, in applying the provisions of this chapter, is equated with a legitimate child of the deceased, with the understanding that if the marriage of the husband and wife is a second or subsequent marriage. And from the previous marriage there are children or descendants of the children, the new husband or wife may not inherit more than the smallest portion received by one of the children, or by all of his successor's descendants if he dies first, and in any case the share of the wife's or husband's inheritance may not exceed a quarter of the testator's inheritance (Article 852 b of the Civil Code) if the husband or wife who survives the longest divides the inheritance with other people who are not children or further descendants of the previous marriage, then he or she is authorized to take for himself or herself some or all of the household furniture under his or her power.<sup>23</sup>

#### b. Heirs determined by will

Heirs according to a will are heirs who receive an inheritance because of a will (testament) from the testator to the heirs which is stated in the will.<sup>24</sup>In (Article 875 of the Civil Code) it is explained that a will (testament) is a deed containing a person's statement about what he wants to happen after he dies, and can be revoked by him.

### 3. Inheritance (Inheritance)

According to western law in the Civil Code, inheritance means wealth (vermogen) in the form of assets or liabilities or rights and obligations of monetary value which will be transferred from the deceased testator to the male or female heirs.<sup>25</sup>

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<sup>22</sup>Ibid., p.199

<sup>23</sup>Ibid., p. 199

<sup>24</sup>Salim HS, 2002, Introduction to Written Civil Law (BW), Sinar Grafika, Jakarta, p.142

<sup>25</sup>Hilman Adikusuma, 1991, Indonesian Inheritance Law According to the Viewpoint of Customary Law, Hindu-Islamic Religious Law, Citra Aditya Bakti, Bandung, p. 10

There are several things that can invalidate a person's right to inherit the deceased's inheritance. People who are not entitled to inherit from the heir as regulated in Article 838 are as follows:<sup>26</sup>

1. Those who have been convicted of murder or attempted murder or serious injury to the deceased.
2. Those who were found guilty of slander by a judge's decision have filed a complaint against the deceased, namely a complaint of having committed a crime that is punishable by 5 years in prison or a heavier sentence.
3. Those who by force or other acts prevent the deceased from making or revoking his will.
4. Those who have embezzled, damaged or falsified the will of the deceased.

According to Article 840 of the Civil Code, children of unworthy heirs may not be harmed by the fault of their parents, if the children become heirs on their own strength (*uiteigen hoofde*), meaning if according to inheritance law the children without the intermediary of their parents receive the rights as heirs. The consequences of the actions of the unworthy heirs regarding the inheritance are void, and that a judge can declare it unworthy in his position without having to wait for guidance from any party.

Not all families related to the heir will inherit. The position of the new lineage offers the possibility of inheritance. Regarding who is entitled to be an heir is not specifically regulated as well as if an heir is of a different religion. In this modern era, freedom is a human right. Freedom in this case can be further interpreted in terms of religion, thus giving rise to the understanding that religion is a human right in terms of freedom to decide and choose for oneself. Islam as a religion has said that there is no coercion in deciding on a religion that is believed, therefore apostasy or changing religion cannot be a problem and cannot be allowed.

The following is a more complete description of the position of heirs who change religions according to the Civil Code:

1. The position of heirs who change religion according to Article 832 of the Civil Code

This article stipulates that those who have the right to inherit are blood relatives, both legal and illegitimate, and the longest surviving husband or wife. Heirs in the Civil Code are prioritized based on blood or marriage relations with the testator. Those who have blood relatives and legal partners

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(legal husband or wife) will be prioritized. Changing religion is not mentioned as a reason that can cancel the rights of an heir.

## 2. The principle of family as the basis for inheritance rights

According to the Civil Code, heirs are divided into four groups:

1. Group I: Children and their descendants as well as surviving husband/wife.
2. Group II: Parents and siblings.
3. Group III: Family in a straight line upwards (grandparents).
4. Group IV: Family in the lateral line (uncles, aunts, cousins, etc.).

As long as a person is included in the group of heirs mentioned above, changing religion is not a reason for the elimination of the right to inherit. So, in the context of the Civil Code, inheritance rights are still recognized regardless of the religion or beliefs held by the heir. Thus, heirs who change religions still have the same position as other heirs in the civil law system.

## 3. Inheritance rights of heirs who change religion

The articles in the Civil Code do not contain provisions that exclude or eliminate the rights of heirs based on changes in beliefs. This means that, in the civil law system, changing religion will not affect a person's right to inherit the testator's estate as long as he or she has a legitimate family relationship.

## 4. Distribution of Inheritance

The Civil Code regulates the distribution of inheritance among heirs based on the order of priority in these groups. Article 833 of the Civil Code confirms that heirs automatically obtain ownership rights to inherited property after the testator dies, without regard to religion or belief. As explained in Article 833 paragraph (1) which states that heirs, by law, automatically obtain ownership rights to all goods, all rights, and all receivables of the deceased. The distribution of inheritance is carried out according to the proportions set, without any religious restrictions.

## 5. Testament or Will

The Civil Code also stipulates that the heir has the right to make a testament or will that regulates who will receive his inheritance. Provisions regarding wills are regulated in Article 874 of the Civil Code and so on. This will must be respected according to the wishes of the testator, without considering the religion of the designated heir. As explained in Article 874 of the Civil Code



that all the inheritance of a deceased person falls to all his heirs, according to the law, merely that the property by the testator has not been legally inherited by another person. If the testator has stipulated in his will that someone (including those who have changed religions) is entitled to a portion, then the will must be carried out as long as it does not violate applicable legal provisions.

Inheritance Law according to Islamic Law as one part of family law (Al ahwalus Syahsiyah) is also important to learn so that in the implementation of the distribution of inheritance there are no mistakes and can be implemented as fairly as possible, because by studying Islamic inheritance law, Muslims will be able to fulfill the rights related to inheritance after being left by the muwarris (heir) and delivered to the heirs who are entitled to receive it. In article 171 of the Compilation of Islamic Law (KHI), there are several provisions regarding this inheritance, namely inheritance law is the law that regulates the transfer of ownership rights of the heir's inheritance (tirkah), determining who is entitled to be an heir and how much each part is.

Based on article 174 of the KHI and Islamic inheritance law, the reasons for inheriting are limited to only three, namely, first, the reason for kinship (qarabah), or also called the reason for nasab (lineage), namely between the deceased (heir) and the heirs there is a genuine kinship relationship, both upwards (called ushul), for example the deceased with his mother or father, and downwards (called furu) for example between the deceased's children, grandchildren, and so on.

Second, because of marriage (mushaharabah), namely between the deceased (heir) and the heirs there is a marriage relationship. What is meant is a valid marriage according to Islam, not an invalid marriage, and a marriage that is still intact or not divorced or considered intact, namely still in the iddah period for talak rajji (one or two divorces) not talak ba'in (triple divorces).

Third, the reason for freeing slaves (wala'), namely that there is a relationship between the deceased and the heirs because of freeing slaves. If someone frees his slave, then that person and his former slave will inherit each other. If the person dies and there are no heirs among the relatives, then the former slave is entitled to inherit. This type of inheritance is also called legal consanguinity (qarabah hukmiyah).

According to KHI Article 174 paragraph (1), Article 201 and Article 211, the way to obtain inheritance is based on blood relations, guardianship, religious relations, marital relations, based on a will, and based on a gift. A gift is a gift when the owner of the property is still alive, while a will is given when the owner of the property has died.

The position of a child who converts religion in Islamic law causes him to lose his right to inherit by kinship or lineage. Thus it is clear that a child who converts

religion cannot be made an heir. However, in its development, the Supreme Court has made a renewal of Islamic inheritance law where the heir who converts religion can still get his share of the testator's inheritance, by assuming the heir as an adopted child. Although he cannot be a legitimate heir, he can still get his rights as a legitimate child of the testator by receiving a will or gift.<sup>27</sup>

According to Article 209 paragraph (1) and (2) of the KHI, an adopted child or his adoptive parents are entitled to receive a mandatory will of up to 1/3 (one third) of the portion. If the adopted child or his adoptive parents do not receive a will, then a mandatory will is a way out for the adopted child or adoptive parents to obtain a portion of the inheritance.

This is in accordance with Article 195 paragraph (1) of the KHI, so that with a will it will be possible for someone who has excess assets to set aside some of these assets and not include them in the amount of inheritance that will be distributed to the heirs. Article 211 of the KHI explains that gifts given by parents to their children can be counted as inheritance.<sup>28</sup>The definition of "can" in the article does not mean a must, but is one of the alternatives that can be taken to resolve inheritance disputes. However, if there are some heirs who question the grant given to some other heirs, then based on Article 201 of the KHI, the grant can be calculated as inheritance, by calculating the grant that has been received with the portion of the inheritance that should be received, if the grant that has been received is still less than the portion of the inheritance then just add the shortfall, and if it exceeds the portion of the inheritance then the excess grant can be withdrawn to be handed over to the heirs who are short of their portion.<sup>29</sup>

### **3.2. Guaranteed Legal Protection for Heirs Who Change Religion**

The Compilation of Islamic Law (KHI) views that heirs of different religions are very different from the Civil Code. The Compilation of Islamic Law does not recognize inheritance to heirs of different religions, while the Civil Code does not make it a problem if the inheritance whose heirs have different religions, this very contradictory situation will have an impact on legal certainty regarding inheritance to heirs who have different religions. Based on the principle of *lex specialis derogat legi generali*, the rule used is the KHI which means that an heir who has a different religion from his parents who are Muslim cannot receive inheritance from his parents, but in reality, the resolution of inheritance cases involving Islam and non-Islam faces obstacles to access to justice).<sup>30</sup>The courts do not have the rules or

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<sup>27</sup>Dessy Gea, 2017, *The Position of Children Who Convert to Inheritance in the Perspective of Islamic Law*, Business Law, Faculty of Law, Udayana University, p. 4

<sup>28</sup>Amir Syarifuddin, 2004, *Islamic Inheritance Law*, Prenada Media, Jakarta, p. 6.

<sup>29</sup>Dessy Gea, 2017, *The Position of Children Who Convert to Inheritance in the Perspective of Islamic Law*, Law Article, Faculty of Law, Udayana University, p.3

<sup>30</sup>Amirin A, Amirulah A, "Contemporary Legal Istimbat: Study on the Theory of Changes in Fatwa According to Yusuf Qardhawi, *Journal of Islamic Law*, 2022, p. 6

authority to handle interfaith inheritance cases, which results in injustice between heirs of different religions and their Muslim parents.

In general, a will is a gift that will be given to a person or several people who are not heirs after someone dies. A will is a *tasharruf* (problem) that is inherited after death. According to the law, a will is an act carried out according to inner desires under any circumstances. Because it is not regulated in Islamic law or law, it must be enforced through a judge's decision. In order to clarify the will, it is necessary to discuss the definition of a will based on civil law, because Article 875 of the Criminal Code regulates the will of civil law, namely: "A will or testament is a deed containing a person's statement about what he wants to happen after he dies, and which can be revoked by him."

Between Civil Law and Islamic Law there are similarities when discussing wills, both laws discuss the validity of a will after the person who made the will dies. A person is very free to make or not make a will, however, for children of the testator who are of a different religion from the testator, it is better to make a will so that when the testator dies, the child of a different religion will still receive the inheritance from the testator.<sup>31</sup>

Legal protection for heirs who convert in Indonesia is a complex issue, especially due to the differences in rules between Civil Law and Islamic Law. Given that Indonesia has a pluralistic legal system, a careful approach is needed to ensure legal protection for heirs who convert. Here are some forms of legal protection that can be provided:

1. Protection Based on Civil Law (KUHPerdata)

In the Civil Code, there is no explicit rule stating that someone who changes religion loses their inheritance rights. Thus, in civil law, heirs who change religions still have the same rights to inherit property. Thus, heirs who change religions still have the right to receive inheritance based on the provisions of the Civil Code. If there is a dispute in the distribution of inheritance, they can file a lawsuit in the District Court to claim their rights. The Civil Code is neutral towards religion and does not discriminate against inheritance rights based on changes in religious beliefs.

2. Protection Based on the Principle of Justice in Islamic Law

According to Islamic Law, a person who changes religion is considered an apostate and has no inheritance rights. However, to protect the rights of

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<sup>31</sup>Aina Kholilah, 2023, Inheritance Rights of Children of Different Religions from Their Parents in the Civil Code and Islamic Law Book, *As-Syar'i: Journal of Family Guidance & Counseling*, Volume 5 Number 2, p. 5

heirs who change religions, an alternative approach can be taken through a gift or will.

3. Protection through non-litigation channels (mediation or family agreement)
4. Protection based on the principles of Human Rights (HAM)

Legal protection for heirs who change religions can be guaranteed through several mechanisms, both in Civil Law, Islamic Law, and non-litigation channels and Human Rights principles. It is important to find a solution that is fair and in accordance with the context of each case, while maintaining harmony in the family and justice for all parties.

Protection of inheritance rights for heirs who change religions can also be sought through several methods that are in line with Maqasid Syariah principles. Maqasid Syariah is a theory in Islamic law that focuses on the aim or maqasid (intent) of the Shari'a, namely to protect and realize the welfare of humanity by maintaining five main things, namely religion (ad-din), soul (an-nafs), reason (al-aql), offspring (an-nasl), and wealth (al-mal). In the context of legal protection for heirs who change religions, Maqasid Syariah theory can be used to assess whether policies or regulations related to inheritance fulfill the basic objectives of the sharia.

#### **4. Conclusion**

The position of heirs who change religions according to civil law and Islamic law is that civil law does not differentiate heirs based on religion. There is no prohibition for heirs of different religions to inherit the testator's inheritance. Meanwhile, Islamic law does not provide inheritance rights by kinship to heirs who change religions. Heirs who change religions cannot inherit property from a Muslim testator. However, the giving of property between people of different religions can still be done in the form of grants, wills, and gifts. If there is an heir who changes religion, the testator should discuss it with the other heirs before he dies.

Legal protection that can be guaranteed for heirs who convert can be guaranteed through several mechanisms, namely the Civil Code still provides inheritance rights regardless of religion, while Islamic Law can still provide rights through grants or wills. Through a family mediation approach, a peaceful agreement can also be achieved. The approach through mediation or family agreement can be a peaceful and mutually beneficial solution. With mediation, families can reach an agreement on the division of assets fairly, including providing a portion for heirs who convert. This path allows for out-of-court settlements, avoids conflict, and maintains good relations between family members. This protection is in line with the principle of justice in Maqasid Syariah and Human Rights to ensure that the rights and welfare of heirs remain protected. By combining these approaches, legal protection for heirs who convert can be guaranteed without ignoring religious values or state law.

This approach helps ensure that the rights of heirs who convert remain protected within the diverse legal framework of Indonesia and upholds justice and family welfare.

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