

I. Introduction

One way that is justified by Islam in obtaining property is through the division of inheritance. However, not all heirs can obtain inheritance rather than inheritors, if there is such a barrier because of different religions. This provision is based on the hadith of Rasulullah Saw has said that: From Usama bin Zaid may Allah be pleased with both that the Prophet Muhammad said: must not inherit the Muslims from infidels, nor can they inherit the unbelievers from the Muslims. Bukhari's hadith.¹

Thus, parents of different religions with their children can not inherit each other, because it is firmly prohibited by the Prophet Muhammad. Nevertheless, the case which has been decided by the Medan Religious Court by Number 1453 / Pdt.G / 2013 / PA.Mdn, a daughter who is a Christian Catholic can get the inheritance from her Muslim parents. The argument of the Judge Majelis in the Religious Courts is based on the Supreme Court Decision by mandatory will. The decision of the Religious Court Judge of Medan is contrary to the above hadith. In this case will be analyzed based on the theory of Maslahat version of Muhammad Abu Zahrah, so it can be known the essence of the Judgment of the Judges of the Medan Religious Court.

II. Theoretical study

A. Inheritance

1. Understanding inheritance property

In the opinion of the Hanafi school of inheritance is the property left behind by the dead person who is free from the possession of others. According to the scholar of the Maliki sect, inheritance is a divisible right and is reserved for those who are entitled to receive it, after the death of the owner of that right. According to the scholar of the Syafii sect, inheritance is everything that belongs to a person at the time of being alive and abandoned after his death, whether in the form of property, rights or special matters.²

2. Factors that can Prevent a Person From Getting Inheritance In Islam

In principle, any heir may obtain the inheritance rights of the testator, in both material and non-material form. However, there are several factors that can prevent a person from getting inheritance, namely:

a. Murder

Heirs who commit murder, are denied their right to inherit

From the heirs. This provision is expressed in the hadith narrated by Imam Malik:

فَإِنَّ رَسُولَ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ قَالَ لَيْسَ لِقَاتِلِ شَيْءٍ رَوَاهُ مَالِكٌ وَاحْمَدٌ عَنْ عُمَرَ

Meaning: So indeed Muhammad Saw said; there is no heirloom for the murderer ". Imam Malik's Hadith.³

With this hadith, then someone who commits murder of the heir, he is prevented from getting his inheritance. The scholars have agreed, that the murder was intentional homicide and not murder by mistake.

b. Different religion

عَنْ أُسَامَةَ بْنِ زَيْدٍ أَنَّ النَّبِيَّ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ قَالَ لَا يَرِثُ الْمُسْلِمُ الْكَافِرَ وَلَا يَرِثُ الْكَافِرُ الْمُسْلِمَ . رواه مسلم

Meaning: from Usama bin Zaid that Muhammad Saw said "Muslims do not inherit the property of the unbelievers and unbelievers do not inherit the property of Muslims ". Muslim's hadith⁴

With the provision of this hadith, a father, mother, son and relative of a different religion, lost the right to obtain his inheritance even though one is still a descendant. This provision has become a standard limitation, so it can not be changed, because the argument is strong enough. Nevertheless, a Judge may decide upon a matter different from the written provision if there is a greater element of benefit referring to the maslahat theory.

c. Servant (al-'Abd)

Islam, never looked at another man's degenerate if both have the status of independence. Nevertheless, there are separate legal provisions on the subject of slaves or servants. The majority of scholars agree that a slave is prevented from receiving inheritance because he is deemed incapable of committing a legal act. This provision is in accordance with the Word of Allah:

ضَرَبَ اللَّهُ مَثَلًا عَبْدًا مَمْلُوكًا لَا يَقْدِرُ عَلَى شَيْءٍ

Meaning: Allah has made a parable (ie) a slave (servant) possessed who can not act on anything.⁵

4. The Maslahat Theory

According to Muhammad Abu Zahrah, maslahah mursalah is all kemaslahatan that is in line with the goals of syari '(in mensyariatkan Islamic law because there is no specific proposition that shows about the recognition or not) The theory of maslahat is based on 5 aspects, namely: (1) Maintain Religious Welfare , (2) Maintain the Benefit of the Soul which in it includes preserving a decent and noble life, keeping the sensibility of life ministering freedom of charity, thinking, saying, and obtaining domicile and other human rights elements. (3) The welfare of the mind, (4) Maintain the Benefit of the Descendants, (5) Maintain the Possession of Treasures.⁶

If the decision of a judge or ijtihad Ulama is based on any of the 5 (five) benefits, then the decision or ijtihad is acceptable and can not be expressed as a deviant decision. For example, it is said in the Hadith that divorce is done by the husband to his wife seriously or playfully, seen as legitimate.⁷ The Hadith is as follows:

عَنْ أَبِي هُرَيْرَةَ أَنَّ رَسُولَ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ قَالَ ثَلَاثٌ جِدُّهُنَّ جِدٌّ وَهَزْهُنَّ جِدٌّ وَالنِّكَاحُ وَالطَّلَاقُ وَالرَّجْعَةُ
وصحيح سنن أبي داود

Meaning: From Abu Hurairah that Muhammad Saw said; there are three things if done in earnest and playful is considered legitimate; namely marriage, divorce, and reconciliation.

However, in the Compliance of Islamic Law applicable in Indonesia the validity of divorce if it is done before the trial of the Religious Courts. In the Compilation of Islamic Law it is stated explicitly that: a divorce can only be made before a Religious Court hearing after the Religious Court has not succeeded in reconciling the two parties.⁸ This provision is contrary to the tradition of Abu Dawud, but because it contains a great deal of benefit for the integrity of the household, it can be done.

III. Case of Inheritance Different Religion in Religious Court Medan

1. Chronology of Cases

Daulat Sitepu bin Menteri Sitepu and Piman Br Ginting binti Mambar Ginting are

earlier than her husband on 27 September 1999 and she remained a Muslim. They both have obtained 5 children, 2 boys and 3 girls: (1) .Sri Mulyawati, (2). Sri Murni Ani binti Daulat Sitepu, (3) .Sri Rostina Ani binti Daulat Sitepu, (4) .Lotta Sitepu bin Daulat Sitepu, (5) Ridwan Sitepu bin Daulat Sitepu.⁹

Daulat Sitepu bin Menteri Sitepu passed away on 06 June 2006. His first child was Sri Mulyawati first died. Before he passed away, he reneged and was a Catholic Christian Her husband named Surya Liansi Ginting who originally converted to Islam. After getting her first child, Sri Mulyawati was withdrawn by her husband to convert to Catholic Christianity. Sri Mulyawati and Surya Liansi Ginting got 3 children consisting of 2 boys and 1 girl: (1) Juliandi Ginting, born in 1981, Catholic Christianity; (2). Benny Diktus Ginting, born in 1984, Catholic Christianity, (3). Elly Angelin br Ginting, born in 1987, Catholic Christianity.¹⁰

After both their parents died (Daulat Sitepu bin Menteri Sitepu with Piman br Ginting bint Mambar Ginting), all his property moved into the property of his heirs are his children. But the joint property owned by Daulat Sitepu bin Menteri Sitepu with Piman br Ginting bint Mambar Ginting since both died has never held the division of inheritance. The inheritance is in the control of his son named Ridwan Sitepu bin Daulat Sitepu. While the estate inheritance of a house occupied by his son named Lotta Sitepu bin Daulat Sitepu. His son, Sri Murni Ani bint Daulat Sitepu, Sri Rostina Ani bint Daulat Sitepu, and also Lotta Sitepu bin Daulat Sitepu have repeatedly asked Ridwan Sitepu bin Daulat Sitepu in several meetings to distribute the inheritance, but Ridwan Sitepu bin Daulat Sitepu refused with a variety of reasons.

Based on the above matters, Sri Murni Ani binti Daulat Sitepu, Sri Rostina Ani binti Daulat Sitepu, and also Lotta Sitepu bin Daulat Sitepu filed a lawsuit to the Religious Courts of Medan on 05 September 2013 through his Legal Counsel. The contents of the lawsuit is for the Medan Religious Court to appoint the heirs according to the provisions of Islamic Law and not to give inheritance to Sri Mulyawati who has fallen away and died in a Christian Catholic state. Likewise, the three children of the deceased Sri Mulyawati were not included as successor heirs of his mother's position, because his children were all Catholic Christians.¹¹

With the claim of the plaintiff, the Medan Religious Court conducted a case investigation. First, starting from document research in accordance with applicable requirements. Second, hold a trial in search of evidence that can convince the Judges.

2. Judge's decision

Prior to holding a trial in the Religious Courts, first mediation was held. This was held on 05 October 2013 in the mediation room of Medan Religious Courts Office. His decision, the mediation did not succeed, because both sides refused to be reconciled, including refusing to propose peace proposals. Thus, the Medan Religious Court continues the session in accordance with the existing provisions. After conducting the examination and testimony of witnesses, as well as valid evidence, the Medan Religious Court finally decided on the registration number: 1453 / Pdt.G / 2013 / PA.Mdn with the decision:

1. Declare the Plaintiff's claim unacceptable (niet ontvankelijke verklaard);
2. Punishing the Plaintiff to pay case fees.¹²

The Decision of the Religious Courts Judge Judges gives consideration:

1. Decision of MARI No. 51.K / AG / 1999 dated 29 September 1999, that the decision of the Religious High Court of Yogyakarta must improve its Decision on non-Muslim heirs. They are entitled to an inheritance based on a mandatory testament that is equal in part to the part of the Muslim heirs.
2. Decision of MARI No.368.K / AG / 1995 dated July 16, 1998 stating that non-Muslim girls are

the same part of their inheritance with the children's share of Muslim girls based on a mandatory will.¹³

That based on the provisions of the above-mentioned law, the late Sri Mulyawati who has 3 children is also entitled to inheritance based on a mandatory testament whose content is equal to the part of Muslim heirs. After Sri Mulyawati passed away, his position could be replaced by his children as substitute heirs to replace the heir-based heirs.

III. Analysis Against Judgment of Religious Court Judge Medan

Religious Court Judges, in handling the case of the heir appointment petitioned by the applicant has mediated first, even if the result fails. In the investigation of the case, the Panel of Judges of Religious Courts of Medan, is in accordance with the applicable provisions. Judge Majelis Religious Court in its ruling using Jurisprudence namely Supreme Court Decision number; No.368.K / AG / 1995 dated July 16, 1998 stating that non-Muslim girls are the same part of their inheritance with the children's share of Muslim daughters by mandatory will. The judge in making the decision has the right to make jurisprudence as a consideration and he is on the right path. Judging from the theory of *maslahat*, the judges of Medan's judgment in giving part of the inheritance to the children of the late Sri Mulyawati as successor heirs through mandatory wills can be sure to bring a great *maslahat*. First, the three children of the late Sri Mulyawati are helped in the socio-economy by getting the inheritance, so that they can live better and can gain peace of mind. Thus, the main benefit that is gained from the different religions is the aspect of maintaining the benefit of the soul. As has been pointed out by Muhammad Abu Zahrah earlier protection of aspects of the soul including in it is protection in other aspects of human rights such as getting the wealth of children from their parents. This includes the right of a child to gain an honorable and non-discriminatory life despite a different religion. Viewed from the aspect of genetics, between children and parents will not be lost due to different factors of religion. The prohibition in the hadith about not mutual inheritance if different from religion, must be interpreted that in the past with the different religions there arise hostility in the family. Thus, it is very reasonable and rational, if they do not inherit each other by way of division of inheritance. Through the mandatory will be instituted with the aspect of the benefit of *mu'tabarah* (great benefit), it is very natural that the family that is still one blood gets a certain part even if they are different from religion.

IV. Conclusion

The division of inheritance according to Islam, remains based on the aspect of Islamic *aqidah* similarity. This provision is based on the hadith of Muhammad Saw which means: it is not permissible to inherit the Muslims of the unbelievers, nor can they inherit the unbelievers of the Muslims. Bukhari's hadith. Thus, children of different religions with their parents, can not inherit each other. Nevertheless, the case which has been decided by the Medan Religious Court by Number 1453 / Pdt.G / 2013 / PA.Mdn, a daughter who is a Christian Catholic can get the inheritance from her Muslim parents. The judge in deciding the case using the Supreme Court Jurisprudence. First, the Supreme Court Decree. 51.K / AG / 1999 dated 29 September 1999. The decree stipulates that non-Muslim heirs are entitled to an inheritance based on a mandatory testament whose content or share is equal to that of the Muslim heirs. Second, the Supreme Court Decree No.368.K / AG / 1995 dated July 16, 1998 stating that non-Muslim girls are equally inherited with Muslim daughters' portions under a mandatory will. Seen from the theory of *maslahat* version of Muhammad Abu Zahrah that giving part of the inheritance to people of

being able to realize the welfare of the soul (hifzu an-nafsi). This is also in line with the essence of Islamic Law according to as-Syatibiy namely dar'ul mafasid wajabul mawalih which means to reject the loss and take the benefit.

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