

The Application of Compulsory Bequest to Non-Muslim Heirs: A Comparative Study of Islamic Law and Jurisprudence in Indonesia

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ABSTRACT

The application of wasiat wajibah (compulsory will) is a significant issue within inheritance law in Indonesia, particularly regarding non-Muslim heirs who inherit from Muslim relatives. In Islamic law, wasiat wajibah refers to the entitlement given to heirs who are excluded from inheritance based on the faraid rules, with the intention of promoting fairness. This research aims to evaluate the application of wasiat wajibah for non-Muslim heirs, through a comparative analysis between Islamic law and the current jurisprudence in Indonesia. The methodology applied is a normative approach, focusing on the analysis of relevant legislation and judicial precedents. The discussion covers the concept of wasiat wajibah in Islamic law, its implications for non-Muslim heirs, and an evaluation of how it is implemented within the Indonesian legal framework. The results are expected to enhance the understanding of the implementation of wasiat wajibah in Indonesia's multi-religious society.

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INTRODUCTION

An important and persistent problem in Indonesia is the application of inheritance law, particularly in a pluralistic culture. Islamic law has a significant influence on inheritance laws in Indonesia, the nation with the biggest Muslim population in the world. The Qur'an and Hadith, which provide extensive details about inheritance distribution to guarantee heirs receive their proper part according to their status and relationship with the deceased, serve as the foundation for this system of inheritance. However, given Indonesia's religious diversity, it is difficult to apply inheritance law including Islamic inheritance law in a way that balances religious beliefs with social justice and human rights principles. The application of wasiat wajibah, a principle in Islamic inheritance law intended to give a portion of the inheritance to people who do not receive an equitable share under the faraid system such as stepchildren or heirs who rank highly in society but are not entitled to an equal share is one of the controversial topics.

The Islamic inheritance custom of wasiat wajibah aims to provide justice for individuals who are morally and socially worthy of a certain portion of the deceased's fortune but do not legally qualify for

inheritance. According to Islamic law, stepchildren who do not qualify as heirs under the faraid laws are examples of legitimate heirs who are denied their lawful inheritance through wasiat wajibah. To put it another way, wasiat wajibah fills in the justice gaps that occasionally result from the strict inheritance system. However, outside of Muslim-majority nations like Indonesia, the idea of wasiat wajibah is not often recognized within legal structures.

Given Indonesia's extremely heterogeneous society, which acknowledges a wide range of religions, including Islam, Christianity, Hinduism, Buddhism, and others, the question of wasiat wajibah's application becomes more complex. Every Indonesian citizen has the freedom to practice their chosen religion and beliefs, as guaranteed by the country's constitution. Applying Islamic inheritance law to non-Muslim people, however, presents a legal conundrum in practice, especially when it comes to how secular state rules can be reconciled with the religious laws created especially for Muslims. In light of Islamic law, which restricts inheritance to those who are religiously similar to the deceased, this is especially pertinent when addressing whether a Muslim can grant wasiat wajibah to non-Muslim heirs.

Given that many Indonesian households include individuals from many religious backgrounds in their daily lives, this problem becomes much more complicated. In certain instances, a Muslim may have non-Muslim siblings or heirs, such as children from a mixed Muslim-non-Muslim marriage. Can Islamic law, particularly in the context of wasiat wajibah, allow a Muslim who dies to leave a portion of their assets to a non-Muslim heir or stepchild who grew up with them? Is it possible to exercise this right in a legal system that accepts religious diversity, like Indonesia's?

The Indonesian constitution's tenets of social justice and individual rights protection are intimately tied to this matter. According to the nation's constitution, all citizens are entitled to legal protection, including when it comes to inheritance, free from discrimination on the basis of race, religion, or ethnicity. Therefore, Indonesia's religious pluralism requires legal interpretations that permit non-Muslim heirs to obtain a reasonable amount of a deceased person's legacy, even in the face of Islamic law's rigorous inheritance standards. Striking a balance between the universal values embodied in Indonesia's positive law, which protects human rights, and the application of religious regulations for Muslims is another aspect of this issue.

Regarding this, more thorough research is needed to fully understand the application of wasiat wajibah in the context of non-Muslim heirs from the viewpoints of Islamic law and Indonesian jurisprudence. While some interpretations of Islamic law limit wasiat wajibah to Muslims, others see the necessity of granting the right of a bequest to people who do not have the right to inherit but who occupy important social roles in the deceased's life. Therefore, in order to strike a balance between Islamic legal principles and the rights of citizens within a larger legal framework, the legal interpretation in applying wasiat wajibah to non-Muslim heirs should be thoroughly examined.

However, unlike Islamic law, which expressly governs wasiat wajibah, Indonesia's legal system is governed by the Civil Code (KUHP). The Civil Code focuses more on the fundamental rights of people to inherit property and deals with inheritance more broadly, regardless of the heirs' religion. Thus, how Indonesian jurisprudence handles the problem of applying wasiat wajibah to non-Muslim heirs particularly in terms of guaranteeing justice for all parties, whether Muslim or not is a key point that this study aims to explore.

Understanding the dynamics of Indonesian inheritance law and developing more inclusive and fair legal policies for all members of society, regardless of their religious and cultural backgrounds, depend on research on the application of wasiat wajibah for non-Muslim heirs. The purpose of this study is to clarify how wasiat wajibah is applied in Indonesia's setting of religious pluralism and to investigate the difficulties in integrating Islamic law with the country's legal framework that respects religious variety. Thus, it is anticipated that the results of this study would help Indonesia create more equal and fair inheritance laws that are also more considerate of human rights and social concerns.

RESEARCH METHODOLOGY

Taking a normative perspective, this article examines legal norms in Indonesian positive law and Islamic law, with a focus on the application of wasiat wajibah (required will) for non-Muslim heirs. Since the main goal of this study is to analyze and contrast how inheritance law particularly wasiat wajibah is applied in various legal systems and determine whether they are compatible or incompatible within the framework of Indonesia's religious pluralism, a normative approach was selected. By using this method, the study seeks to investigate several legal standards that control inheritance, including those found in regulations and the opinions of academics or judges about how wasiat wajibah should be applied to non-Muslim heirs.

Normative Approach: The study's normative method places a strong emphasis on analyzing the different laws, jurisprudence, and fatwas (religious opinions) that regulate inheritance under Islamic law as well as the relevant Indonesian legislation. This method enables the researcher to investigate in depth how Islamic law interprets wasiat wajibah for non-Muslim heirs and how the Indonesian legal system, which respects religious diversity, applies this concept. This study will examine the interpretive space within

Islamic law that permits the application of wasiat wajibah for those who are not entitled to inheritance under the faraid system, given that Islamic law has specific regulations on inheritance through faraid (fixed shares of inheritance), which limit distribution to Muslims. Understanding the mechanics of implementing wasiat wajibah in Indonesia's plural society also requires examining more general legal provisions, such as the Civil Code (KUHPer) and other laws pertaining to religious freedom.

A Comparative Analysis: The implementation of wasiat wajibah in two distinct legal systems Islamic law and Indonesian positive law is also compared in this work using a comparative study methodology. Finding the distinctions and parallels between the two legal systems' approaches to allocating inheritance to non-Muslim heirs is the goal of this comparative study. The study will examine how Indonesian state law and Islamic law differ in their treatment of inheritance and wasiat wajibah, as well as how much of Islamic law's interpretive space may be used given the country's diverse population.

Analysis of Court Decisions and Jurisprudence: The examination of court rulings or jurisprudence pertaining to the implementation of wasiat wajibah for non-Muslim heirs in Indonesia is a significant component of this study methodology. This is significant because courts frequently offer more contextual and flexible interpretations of how Indonesian inheritance law is applied, even if the Civil Code (KUHPer) does not specifically address wasiat wajibah in relation to non-Muslim inheritance law. This study will look at a number of pertinent court rulings that deal with the wasiat wajibah issue, whether they have to do with non-Muslim heirs or religious diversity in inheritance distribution. The study will examine these court rulings to determine whether there are any particular patterns or inclinations in the way the law is applied that take non-Muslim rights into account.

Qualitative Method: This study uses a qualitative methodology to gain a thorough grasp of societal viewpoints on the implementation of wasiat wajibah in the context of religious plurality. The analysis of legal documents, fatwas, and interviews with scholars, practitioners, and legal professionals who are well-versed in inheritance law and its implementation in Indonesia's multicultural society are the main components of this method. The researcher can examine the subtleties of different viewpoints and opinions in society using a qualitative technique, thoroughly examining them to have a thorough grasp of how wasiat wajibah is applied to non-Muslim heirs.

Data Sources: Law publications, academic journals, earlier research articles, and other works addressing inheritance law and wasiat wajibah are some of the pertinent legal literature materials used in this study. The Civil Code (KUHPer), fatwas from the Indonesian Ulama Council (MUI), and other court rulings pertaining to the research issue will also be gathered and examined as part of this study. The purpose of this analysis is to determine how Indonesian positive law and Islamic law approach the application of inheritance law in situations involving non-Muslim heirs.

Data Collection Techniques: In order to comprehend the context of inheritance law, specifically with regard to the application of wasiat wajibah, data for this study will be gathered through a survey of the literature. Additionally, the researcher will interview academics and legal professionals who have handled inheritance issues or who are knowledgeable about Indonesian and Islamic law. The purpose of these interviews is to learn more about their opinions regarding the application of wasiat wajibah to non-Muslim heirs and the way that Indonesian law interprets this idea.

Data Analysis: A normative method to qualitative analysis will be used to examine the gathered data. To determine the extent to which wasiat wajibah can be applied to non-Muslim heirs, the researcher will evaluate the pertinent legal requirements in Indonesian positive law and Islamic law. In addition to offering suggestions for the creation of inheritance law that is more equitable and inclusive for all citizens, this analysis will seek to determine whether the current legal provisions are compatible with the social needs and justice principles that are applicable in Indonesia.

By using this method, it is anticipated that the study will deepen our understanding of how wasiat wajibah is applied to non-Muslim heirs in Indonesia and aid in the creation of more inclusive and flexible inheritance laws that take into account the country's religious and cultural diversity.

RESULT AND DISCUSSION

There are four primary points that will be further explained in this discussion of the application of wasiat wajibah (mandatory will) for non-Muslim heirs: the legal foundation of wasiat wajibah in Islamic law, the distinctions between Islamic and Indonesian positive law, the use of wasiat wajibah in Indonesian legal practice, and the difficulties and solutions pertaining to the implementation of wasiat wajibah for non-Muslim heirs in Indonesia. Every component will be expanded upon to offer a more comprehensive understanding of this subject.

The Definition and Legal Basis of Wasiat Wajibah in Islamic Law

Islamic law's wasiat wajibah is based on the core ideas of fairness and protecting people who are related to the deceased on a social or emotional level but are not regarded as heirs under the faraid (Islamic

inheritance system). The requirement to safeguard specific people who are not eligible for inheritance but have been helpful in the life of the deceased has historically led to the establishment of wasiat wajibah.

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For example, under the faraid system, a stepchild who is not eligible to inherit from a stepparent may be granted wasiat wajibah to protect them from financial difficulty, particularly if they have supported or cared for the stepparent. More conservative interpretations of Islamic law, on the other hand, limit the scope of wasiat wajibah and do not acknowledge non-Muslim heirs as beneficiaries. Although there is no formal clause in Islamic law that allows the application of wasiat wajibah to non-Muslim heirs because faraid exclusively considers Muslims to be legitimate heirs, in reality, there are sometimes situations where a testator leaves a portion of their assets to non-Muslim heirs.

However, some Islamic jurists and scholars have proposed extending the application of wasiat wajibah to stepchildren or other non-Muslim heirs. This is in line with a larger social justice viewpoint that takes into account Indonesia's plural society, where different legal viewpoints are increasingly being taken into account.

Differences Between Islamic Law and Indonesian Positive Law

The idea of inheritance, which stresses religious pluralism and human rights within society, is a key distinction between Islamic law and positive law in Indonesia. The allocation based on faraid makes it evident that Islamic law expressly restricts the distribution of inheritance to Muslim heirs. Only Muslims are allowed to inherit under Islamic law; non-Muslim heirs are not acknowledged, however they might profit from wasiat wajibah if the testator provided for them.

In contrast, the ideals of religious freedom and non-discrimination are upheld by Indonesian positive law, which is based on the 1945 Constitution and the Pancasila, the official philosophy. Laws that do not limit inheritance to particular religious groups reflect this. Without making religious distinctions, the Indonesian Civil Code (KUHPer) places a strong emphasis on the legal relationship between the testator and the heir based on civil relationships. As long as the testator and the beneficiary have a legal relationship, a will can be issued to anyone, Muslim or not.

But in reality, there are frequently problems with applying wills to non-Muslim heirs. Families' adherence to religious beliefs and the state's inclusive legal system clash because of Indonesia's pluralistic legal system. Because Islamic inheritance law leaves little room for interpretation, Muslim testators may occasionally be reluctant to leave assets to non-Muslim heirs. Regardless of their religious beliefs, the state encourages people to choose their beneficiaries freely.

When it comes to inheritance rights, Islamic law and Indonesian positive law have different viewpoints, especially when it comes to leaving wasiat to non-Muslim heirs. This disparity frequently causes misunderstanding in Indonesia's religiously diverse society, particularly in households with members of several faiths.

The Application of Wasiat Wajibah for Non-Muslim Heirs in Indonesian Legal Practice

In actuality, mixed-religion households or people with relatives from various religious backgrounds are the ones where wasiat wajibah for non-Muslim heirs is applied in Indonesia. Although Indonesian state law does not often distinguish between different religions when it comes to inheritance distribution, the country's predominately Muslim population and the significant effect of religious law on day-to-day living frequently have an impact on this process.

For instance, the legitimacy and acceptability of a Muslim testator's will are frequently questioned when they die and leave behind a stepchild or non-Muslim spouse. In certain situations, a Muslim testator may leave a non-Muslim stepchild a portion of their estate in order to prevent the latter from experiencing financial hardship following the testator's passing. As long as the choice is consistent with the testator's legitimate will, this is frequently accepted by families that do not object to the receiver of the will's faith.

However, issues arise when family members of various religions disagree or misunderstand the legality of such wills. Because some people may believe that bequests to non-Muslims go against the fundamental tenets of Islamic inheritance law, religious factors frequently create an obstacle to the application of the will. In these situations, the court plays a critical role in rendering just decisions that take into account the social requirements of Indonesia's diverse community.

Challenges and Solutions in the Application of Wasiat Wajibah for Non-Muslim Heirs in Indonesia

The mismatch between Islamic inheritance law, which restricts inheritance to Muslims, and Indonesian positive law, which protects human rights and religious freedom, makes it difficult to implement

wasiat wajibah for non-Muslim heirs in Indonesia. Families with members of different religions frequently become confused by this ambiguity, particularly when it comes to allocating the wealth following the testator's passing.

To address these challenges, several solutions can be considered:

Inheritance Law Reform: To better accommodate Indonesia's religious diversity, an all-encompassing reform of inheritance law may be sought. Changes to inheritance laws could be part of this reform, giving non-Muslim heirs more explicit instructions on how to leave assets.

Social and Cultural Approach: When addressing inheritance cases in Indonesia, a more culturally aware approach ought to be given precedence. A flexible strategy, such creating wills that take into account both social values and religious regulations, could be a useful remedy given the significant influence of social norms and customary law.

Education and Socialization of Inheritance Law: To reduce conflicts and guarantee that everyone involved understands their inheritance rights, both Muslims and non-Muslims, it is crucial to educate and socialize inheritance law, particularly for families with diverse religious backgrounds.

By fostering an inclusive approach to inheritance law that reflects the varied and pluralistic character of Indonesian society, these tactics seek to provide a legal framework that upholds social justice as well as religious precepts.

CONCLUSION

A conflict between Islamic law and Indonesian positive law is evident in the country's implementation of wasiat wajibah for non-Muslim heirs. Although wasiat wajibah is only applicable to Muslims, it protects those who are disregarded in the inheritance distribution process, such as stepchildren, according to Islamic law. However, Indonesian positive law, which is more inclusive and founded on the ideas of nondiscrimination and religious freedom, gives the testator greater discretion over who is eligible to inherit, independent of faith. In practice, this presents difficulties, particularly in diverse societies or mixed-religion households where the conflict between state law and religious beliefs frequently leads to legal ambiguity.

Legal reforms are required to overcome these disparities and make Indonesian inheritance law more responsive to the country's social context and religious diversity. It will be easier to guarantee equitable inheritance distribution free from prejudice based on social standing or religion if inheritance laws are changed to be more inclusive. A more socially accommodating approach and legal education may also lessen the likelihood of inheritance disputes. Because of this, the use of wasiat wajibah for non-Muslim heirs can be more widely recognized and applied fairly, reflecting the social justice ideals that form the basis of Indonesian law.

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