Different Religion Heritage In Scholars Perspective And Its Implementation In Religious Courts Medan North Sumatra - Indonesia

Asmuni, Siti Mujiatun

Abstract: The purpose of this study is to find the legal basis on the different religious heritage in the opinion of the scholars and their implementation in the Religious Courts of Medan. There is a contradictory opinion between the opinions of Ulama and the Decision of Religious Judges of Medan. In accordance with the consensus opinion of the scholars, that people of different religions should not inherit each other. This provision is based on the hadith narrated by Imam Bukhari. However, children as different heirs of religion can receive the inheritance from both parents. The data collection of this research is interview, literature study and observation in Medan Religious Court. Based on the data obtained in the documents in the Religious Courts that the heirs of different religions are based on the Supreme Court Jurisprudence No. RL. 51.K / AG / 1999 dated September 29, 1999, which asserts that non-Muslim heirs are entitled to an inheritance based on a mandatory bequest that is equal in part to that of the Muslim heirs. Furthermore, Jurisprudence of the Supreme Court of the Republic of Indonesia no. 368.K / AG / 1995 dated July 16, 1998, states that non-Muslim girls are the same inheritance with the children's share of Muslim daughters by mandatory will.

Index Terms: Inheritance, different religion, mandatory will

1 Introduction
Islam views wealth as something very important in the life of mankind. However, Islam does not justify all possessions except through justified means. Islam, has forbidden his people to gain wealth in an illegal way such as stealing, robbing, the proceeds of gambling, prostitution, corruption and so on. This provision is stated which means: And do not consume one another's wealth unjustly or send it [in bribery] to the rulers in order that [they might aid] you [to] consume a portion of the wealth of the people in sin, while you know [it is unlawful]. (Quran, 2: 188) One way that is justified by Islam in obtaining wealth is through the division of inheritance. However, not all heirs can obtain inheritance than inheritors, if there are obstacles such as killing or different religions. In this connection Rasulullah Saw has said that means: can not inherit the Muslims from the unbelievers, and nor can inherit the unbelievers from the Muslims. (Bukhari; 21, p.7). Thus, parents of different religions with their children can not inherit each other, because it is firmly prohibited by the Prophet Muhammad. There is, however, another path that can be taken for people with blood relationships to gain inheritance. The trick is through the will and obligation of this rule applied in Indonesia. Thus the heirs who were initially prevented from getting inheritance due to different religions, he finally got it. This is the study that will be poured in this paper, hope it will be useful.

2 THEORETICAL STUDY
1. Understanding of Inheritance
According to the Hanafi school of thought, inheritance is the wealth left behind by the deceased from the possession of another. According to the scholar of the Syafi school of thought, inheritance is everything that belongs to a person at the time of his life and is abandoned after his death, whether in the form of wealth, rights or matters of a special nature (Shaykh Kamil Muhammad 'Uwaidah; 2002, p. 504). It can be concluded that the inheritance is the property left by the heir because he died, both material and non material, after being issued various obligations such as to pay off the debts of the dead, the will, the administration of the corpse, and others.

2. The Causes of Inherited Rights
Islamic law has stipulated that not everyone can get the inheritance of the deceased. In this connection, there are 3 (three) causes a person can be entitled to get the inheritance, i.e (Muhammad Ali Ash-Shabuni; 2013, p.38).

a. Nasab or descendants, people who have blood relationships such as father, mother, child, brother and sister, uncle and others. This provision is based on the word of God which means: For men there is a right of the inheritance of the mother and father, and to the woman there is a right of part of the property of the mother of the father and of her relatives, whether small or large according to the portion Has been established. (an-Nisa : 7)

b. Marriage, namely the occurrence of a legitimate marriage contract between a man and a woman. This provision applies in general even after having never had a husband and wife relationship, nor have children. This provision is based on the word of God which means: And for you (husbands) half of the wealth left by your wives, if they have no children (an-Nisa : 12).

c. Al-Wala 'ie freeing the servant. If someone frees slaves to become independent they can inherit each other. This provision is based on the hadith of the prophet which means: Truly wala 'is for the liberator. In another
hadith it is stated that Wala 'is as family as family because nasab. (HR At-Tabrani)

3. Factors that can prevent from getting inheritance in Islam

In the opinion of the Scholars, 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 of the Prophet which means: Then indeed the Prophet said: there is no heirloom for the murderer (Imam Malik's Hadith).

b. Different religion

The scholars have agreed that one of the conditions for obtaining the inheritance should be one religion, meaning that it must be equally Muslim. If there is a religious difference, it cannot be inherited. This provision is based on the Hadith of the Prophet which means: Muslims do not inherit the property of infidels and unbelievers do not inherit the property of Muslims . (Hadith narrated by Muslim).

c. Servant (al-Abd)

Islam, never saw another human being as low as if they were free men. 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 God which means: Allah has made a parable (specifically) a slave (servant) possessed who can not act against anything (an-Nahal: 75)

d. Heirs In The Compilation Of Islamic Law

In the Compilation of Islamic Law it is stated clearly that conditions can be mutually inherited if they are both Muslims. This provision is expressed in article 172 with the expression "Heirs are considered to be Muslims if they are known from Identity Cards or acknowledgments or deeds or testimonies, whereas for newborns or immature children, be religious according to their father or the environment". Further, the person impeded to inheritance is stated in article 173, with the expression "A hindered being an heir if by a judgment of a judge who has had a permanent legal force, is punished for: (1). blamed for killing or attempting to kill or severely persecute the heirs. (2), is falsely blamed for filing a complaint that the heir has committed a crime punishable by a sentence of 5 years in jail or a more severe sentence.

4. Mandatory Will

The definition of testament is the act of giving one’s right to others to have something either in the form of objects or benefits voluntarily and not to expect reward (tabbaru’) whose execution is suspended after the death of the person giving the testament (Rachmat Syafe'i, p.117). According to Mustafa Ahmad Shalabi, the testament has a very important position as a solution rather than a family dispute. The chaos sometimes comes from family members who are not entitled to receive heritage property by way of inheritance. Usually the person is quite meritorious in the procurement of the treasure, or a poor grandchild who is hindered by his rich uncle, or because of different religions and so forth. So with the system of wills, which is regulated in Islamic law, the disappointment can be overcome through the will system (Ahmad Rofiq, 184) According to the four Imams of the sect (Hanafi, Malik, Shafii and Hambali), the will is sometimes obligatory, sometimes sunnah, sometimes haram, sometimes makruh and sometimes Jaiz (may), this is related to the question being asserted (Kamaruddin 2015,hlm. 4). The argument about the obligation of having a will for the one who has possessions and already there are signs of his death is the word of God which means: It is required of you, if one of you comes (signs) death, if he abandoned the rich treasure,having a will for his mother and father and dear relatives in mAtruf; (This is) an obligation on those who fear Him (Al-Baqarah: 180). This will is different from the meaning of the mandatory will. Mandatory will shall be an act of imposition by a judge or an institution which has the right to the property of a deceased person, but not to make a voluntary will, in order to obtain the right or heritage to be given to a certain person under certain circumstances (Ahmad Rofiq, 184). Mandatory will shall be an act performed by a ruler or a judge as a state apparatus forcing or giving a mandatory judgment for a deceased person, given to a certain person under certain circumstances, as such, a mandatory will is a testament deemed to have been performed by a person who died, although in fact he did not leave the will (Zulfia Hanum and Afli Syahri, 2016). Mandatory will is a testament whose implementation is not influenced or does not depend on the will of the deceased. Testament must still be done whether spoken or not spoken either desired or unwanted by the deceased person. Accordingly, the exercise of the testament does not require proof that the will is spoken or written or desired, but its implementation is based on legal reasons justifying that the will be executed (Irwanto Krc; 2015). Mandatory will can also be interpreted as a compulsory gift to the heir or the family, especially the grandchildren who are prevented from receiving the inheritance because the mother or father died before their grandparents died together. This is because based on the inheritance law they are prevented from obtaining the ancestral property and grandmother because there are heirs of uncle or aunt to the grandchild (Irwanto Krc; 2015) This act of imposition or coercion according to Fatchur Rahman is justified. The reason, because the concerned does not pay attention to the recommendation of Shari’ah. It is said to be mandatory will, for two things are; First, the loss of an endeavor to the testator and the emergence of an element of obligation through legislation or a decree irrespective of the willingness of the will and consent of the recipient (Ahsin W. Alhafidz; 89). Secondly, there is a resemblance to the division of inheritance in the case of men's acceptance of two portions of women (Ahmad Rofiq, 185). The will is mandated to grant a right or a share of property to persons who are kinship-related by blood, but whose position includes the classification of zhai al-arham or ghairu i heritage. For example, the granddaughters of the female line, or the female line grandchildren (Ahmad Rofiq, 185). The Implementation of Different Religion Heritage In Medan Religious Court

1. Chronology of Cases

Daulat Sitepu bin Menteri Sitepu and Piman Br Ginting bint Mambar Ginting had died earlier than
her Muslim husband on September 27, 1999. In the marriage between Daulat Sitepu bin Menteri Sitepu with Piman Br Ginting bint Mambar Ginting has been blessed with 5 children, 2 boys and 3 girls: (1). Sri Mulyawati bint Daulat Sitepu ; (2). Sri Murni Ani bint Daulat Sitepu; (3). Sri Rostina Ani bint Daulat Sitepu; (4). Lotta Sitepu bin Daulat Sitepu; (5). Ridwan Sitepu bin Daulat Sitepu. Before Daulat Sitepu bin Menteri Sitepu passed away on October 21, 2009, on 06 June 2006 his first child, a girl named Sri Mulyawati, died in Christian Catholic state for apostasy after marriage with a man, a man named Surya Liansi Ginting, originally the husband who converted to Islam, but after their first child was born, Sri Mulyawati was withdrawn by her husband into Christian Catholicism. Sri Mulyawati with Surya Liansi Ginting in her marriage has been blessed with 3 children consist of 2 boys and 1 girl: (1). Juliandi Ginting, born in 1981, Christian Catholic religion; (2). Benny Diktus Ginting, born in 1984, Christian Catholic religion; (3). Elly Angelin br Ginting, born in 1987, Christian Catholic religion. During the marriage between Daulat Sitepu bin Menteri Sitepu and Piman Br Ginting bint Mambar Ginting besides being blessed with children, they also have some relics in the form of inheritance mainly in the form of: (1). A plot of land along with the permanent house building that stood on it located at Jalan Cinta Karya Lingkungan II, Sari Rejo Subdistrict, Medan Polonia Subdistrict, Medan City. Based on the Certificate issued by the Head of Sari Rejo Village, dated June 9, 2003 and known and signed by the Head of Medan Polonia Sub-district, on June 10, 2003 under the Registry No. 594/763 / SK / MP / VI / 2003 on behalf of Daulat Sitepu 540.00 Square meter. (2). A plot of land along with the permanent house building that stood on it located at Environmental Street IX Street, Sari Rejo Sub-district, Medan Polonia Sub-district, Medan City, with size $6 \times 17 = 102 M^2$ Square on behalf of Daulat Sitepu. (3). A plot of land along with the permanent house building that stood on it located in the Village Sigarang-garang, District Namantran, Kab. Tanah Karo, with size $5 \times 15 = 75 M^2$ Square on behalf of Daulat Sitepu. (4). A plot of land located in the village of Sigarang-garang, District Namantran, Kab. Tanah Karo, an area of $\pm 2$ rante, on behalf of Daulat Sitepu. All the property mentioned above are obtained in the marriage period between Daulat Sitepu bin Menteri Sitepu and Piman Br Ginting bint Mambar Ginting, thus the property is clearly a joint property between Daulat Sitepu bin Min Sitepu and Piman Br Ginting bint Mambar Ginting. After Daulat Sitepu bin Menteri Sitepu and Piman Br Ginting bint Mambar Ginting passed away, the property automatically transferred ownership to the heirs of his children. But the joint property owned by Daulat Sitepu bin Menteri Sitepu with Piman Br Ginting bint Mambar Ginting since they passed away has never been divided inheritance because the treasure in the number 1,3,4 is in the control of his son named Ridwan Sitepu bin Daulat Sitepu. While the property is in number 2 is occupied by his son named Lotta Sitepu bin Daulat Sitepu. Sri Murni Ani bint Daulat Sitepu, Sri Rostina Ani bint Daulat Sitepu, and also Lotta Sitepu bin Daulat Sitepu have repeatedly pleaded with Ridwan Sitepu bin Daulat Sitepu in several meetings to distribute the inheritance, but Ridwan Sitepu bin Daulat Sitepu refused it with various reason. Based on the above matters, Sri Murni Ani bint Daulat Sitepu, Sri Rostina Ani bint Daulat Sitepu, and also Lotta Sitepu bin Daulat Sitepu through his proxy and referred to as Plaintiffs register his lawsuit by letter dated 05 September 2013, have filed suit inheritance against Ridwan Sitepu bin Daulat Sitepu who was named as the Defendant to the Religious Court of Medan with Registration Number: 1453 / Pdt.G / 2013 / PA.Mdn and appealed to the Chairman of the Medan Religious Court cq. Assembly of Judges appointed to hear this case so as to prescribe the heirs who mustahiq of alm. Daulat Sitepu bin Menteri Sitepu with Piman br Ginting bint Mambar Ginting. By Islamic law, Sri Mulyawati who has fallen away and died in a Catholic Christian state, can no longer inherit each other with the Daulat Sitepu bin Menteri Sitepu who is Muslim. Automatically against the three children of Sri Mulyawati also not a successor heir to replace his position because his children were Catholic Christian. Therefore, the Plaintiffs appealed to the Panel of Judges to hear this case to be able to pass the following verdict: (1). Grant the Plaintiff's claim wholly; (2). To declare confiscated conservation beslag is legitimate and valuable; (3) To appoint claimant I, II, III and Defendant as heirs of Daulat Sitepu bin Menteri Sitepu with Piman br Ginting bint Mambar Ginting; (4). Stipulate these property as common property Daulat Sitepu bin Menteri Sitepu with Piman br Ginting bint Mambar Ginting which has not been divided; (5). Establish these property into inheritance that must be shared with the heirs of alm. Daulat Sitepu bin Menteri Sitepu with Piman br Ginting bint Mambar Ginting, ie 4 children consisting of 2 sons and 2 daughters namely: (1). Sri Murni Ani binti Daulat Sitepu; (2). Sri Rostina Ani bint Daulat Sitepu; (3). Lotta Sitepu bin Daulat Sitepu; (4). Ridwan Sitepu bin Daulat Sitepu. (5). Stipulate each part of the heirs in accordance with Islamic Law; (6). Punishing the Defendant to divide the estate of Daulat Sitepu bin Menteri Sitepu with Piman br Ginting bint Mambar Ginting to the Plaintiffs by nature, otherwise it can be sold through auction and the results are divided according to the respective part of the heirs who mustahiq; (7). Punish the defendant to pay all costs incurred in this case. On 05 October 2013, a mediation process was conducted in the mediation court room of the Medan Religious Court, which, according to the mediator's report, the mediation was declared unsuccessful, as both sides refused to be reconciled, including refusing to propose peace origins. Then the Defendant namely Ridwan Sitepu bin Daulat Sitepu gave his denial which is among other things about the Plaintiff's lawsuit is less good because the description in the lawsuit that states because one of the sons of Daulat Sitepu bin Menteri Sitepu who named Sri Mulyawati who has 3 children convert Catholic Christianity, so not getting an inheritance is an assumption that is not based on applicable law, because in accordance with the permanent jurisprudence of the Supreme Court which states among others: (1). Decision of the Supreme Court of Republic of Indonesia no. 51.K / AG / 1999 dated September 29, which reads as follows: Whereas the decision of PT Agama Yogyakarta must improve the Decision of the Religious Courts of Yogyakarta regarding non-Muslim heirs, in which they are entitled to inheritance based on a mandatory testament whose content is equal to that of the expert Muslim inheritance,(2). The Decision of the Supreme Court of the Republic of Indonesia No.368.K / AG / 1995 dated July 16, 1998 stating the following: "Non-Muslim girls are the same inheritance with the child's share of Muslim daughters by mandatory will." That based on the provisions of the above-mentioned law, where 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, and because after Sri Mulyawati has passed away his position can be replaced by
his children. Her child as a replacement heir to replace the position of the recipient of the inheritance based on the mandatory will.

2. Judge Considerations
In deciding a case, the Judge must always have legal grounds to be taken into consideration before deciding. In deciding cases with Register Number: 1453 / Pdt.G / 2013 / PA.Mdn as for legal considerations given by the Judge among them are: (1). Considering that after reading the Plaintiff's lawsuit and hearing the statements of the Plaintiffs in the hearing that the main problem in this case is that the Plaintiffs demand that they be appointed as the rightful heirs and at the same time demand the distribution of inheritance that has never been distributed to all heirs who are entitled fairly and rightly according to the law of fara'id. (2). Considering whereas based on the statement of the Plaintiffs, Daulat Sitepu bin Menteri Sitepu died while leaving 2 (two) boys named Lotta Sitepu (Plaintiff III) and Ridwan Sitepu (Defendant) and 2 daughters, Sri Murni Ani binti Daulat Sitepu (Plaintiff I) and Sri Rostina Ani binti Daulat Sitepu (Plaintiff II), while a daughter named Sri Mulyawati binti Daulat Sitepu has been apostatized and died in 2006 in a Christian Catholic state. (3). Considering that the Defendant in his reply stated that the children of Sri Mulyawati, should also be included as the recipient of the property of his parents based on the mandatory will as cited in the Supreme Court Decision No.368 / K / AG / 1995 dated July 16, 1998, stating that Sri Mulyawati binti Daulat Sitepu who has passed away has not lost her right based on mandatory will, so her children are domiciled as a party that can represent their Mother, therefore the demand can be considered. (4). Considering that based on Jurisprudence No: 368.K / AG / 1995 dated July 16, 1995 and Number 51.K / AG / 1999 dated September 29, 1999 as quoted by the Defendant stating that the deceased Sri Mulyawati binti Daulat Sitepu may receive part of the estate his parents Daulat Sitepu on the basis of "Mandatory Will", therefore according to the Panel of Judges his rights are still attached and not fallen with the provisions can be replaced his position as the recipient of the will by drawing / involving his children as stakeholders in this case. (5). Considering that based on the statements of the Plaintiffs, Defendants and statements of witnesses presented by the Plaintiffs and Defendants of the Panel of Judges have found the following facts in the hearing: (a). That Daulat Sitepu bin MentrI Sitepu and Piman Br Ginting bint Mambar Ginting are as husband and wife; (b). That Piman Br Sitepu binti Mambar Sitepu passed away in 2006 in Medan due to illness and in a Muslim state; (c). That Daulat Sitepu bin MentrI Sitepu has also died in 2009 in Medan due to illness in the Islamic state;(d). That Daulat Sitepu bin MentrI Sitepu with Piman Br Ginting binti Mambar Ginting during his marriage has been blessed with 2 (two) boys and 3 (three) daughters respectively as follows: (1). Lotta Sitepu, biological son (Plaintiff); (2). Ridwan Sitepu (Defendant / male child); (3). Sri Mulyawati, a natural kin (had died in a Christian Catholic state) and had 3 (three) children; (4). Sri Murni Ani daughters (Plaintiffs); (5). Sri Rostina Ani, biological daughter (Plaintiff). (6). That Sri Mulyawati binti Daulat Sitepu leaves 3 (three) children as follows: (a). Juliandi Ginting, the real boy; (b). Benny Diktus Ginting, the real boy; (c). Elly Angelin Br Ginting, the biological daughter, all Catholic Christians. (7). Considering that since the Plaintiff only requested the rights entitled to the relics of the Daulat Sitepu bin MentrI Sitepu and Piman Br Ginting binti Mambar Ginting were the Plaintiffs and Defendants without including a biological daughter named Sri Mulyawati binti Daulat Sitepu who was not Muslim the party entitled to receive the mandatory will, the Plaintiff's lawsuit must be deemed ineligible and imperfect.

3. Judge's verdict
After conducting the session in accordance with the applicable provisions, the Judge ultimately gives a decision with the Register Number 1453 / Pdt.G / 2013 / PA.Mdn namely: (1). Declare the Plaintiff's claim unacceptable (niet ontvankelijke verklaard); (2). Punishes the Plaintiff to pay case fees.

3 Conclusion
Inheritance of different religions is not justified in Islam, in accordance with the consensus opinion of scholars who refer to the prophetic traditions of Imam Bukhari. However, children as different heirs may receive the inheritance from both parents through a mandatory will. Basic Judge in deciding cases of inheritance of different religions is the permanent jurisprudence of the Supreme Court. 51.K / AG / 1995 dated September 29, 1999, which asserts that non-Muslim heirs are entitled to an inheritance based on a mandatory bequest that is equal in part to that of the Muslim heirs. Furthermore, Jurisprudence of the Supreme Court of the Republic of Indonesia no. 368.K / AG / 1995 dated July 16, 1998, states that non-Muslim girls are the same inheritance with the child's share of Muslim daughters by mandatory will.

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