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An Islamic Legal Analysis of the Determination of the Mandatory Inheritance Share for a Common-Law Wife When the Deceased Has a Legitimate Wife (A Study of the Muara Bulian Religious Court Decision Number 183/Pdt.G/2023/PA.Mbl)

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Abstract: This study analyzes the validity of mandatory wills for unregistered wives based on Decision Number 183/Pdt.G/2023/PA.Mbl. The background of this study is the existence of inheritance conflicts due to the practice of unregistered marriages that are not registered with the state, which creates uncertainty about inheritance rights for the parties concerned. This study aims to determine the validity of the legal status of mandatory wills for unregistered wives according to Islamic law and Indonesian legislation. This study uses normative legal methods with a statutory and conceptual approach. The results of the study concluded that under positive law and Supreme Court Circular Letter Number 2 of 2019, unregistered wives do not have inheritance rights because their marriages are not registered. However, the judge made a legal breakthrough by granting mandatory wills (a maximum of one-third of the assets) to unregistered wives for the sake of justice for their services in caring for the heir. The implication is that although mandatory wills provide protection for unregistered wives, this policy has the potential to cause economic injustice for legal wives and weaken the legal order of marriage registration and the prevention of unregistered polygamy.

Keywords: Mandatory Bequests, Unregistered Wives, Inheritance Law, Judicial Rulings, Public Interest.

INTRODUCTION

Marriage is a legal event, a natural part of human nature, because it balances our relationship as creatures created in pairs. Marriage is a natural way of life (Shihab, 2015). Ibrahim Hosen defines marriage as a contract that makes sexual relations between a man and a woman lawful. According to Sajuti Thalib, marriage is a strong and enduring covenant for a man and a woman to live together lawfully, forming a lasting family characterized by mutual support, love, peace, and happiness (Amri & Tulab, 2018).

In society, there are various forms of marriage, both legally registered and unregistered. One type of unregistered marriage is known as a unregistered marriage. While recognized as valid under religious law, a nikah siri is not publicly announced or officially registered with the state: it does not involve officials from the KUA (Office of Religious Affairs) and is typically conducted in a simple ceremony at home or in a private setting (Zakaria & Saad, 2021). As for the legal implications of a serial marriage, a wife in such a marriage is not recognized as a legal spouse. As a result, she has no right to spousal support, is not entitled to inherit her husband's estate if he dies, and is not entitled to a share of marital property in the event of a divorce.

Marriage not only unites two people but also creates a legal bond consisting of the rights and obligations of husband and wife under civil law, which gives rise to inheritance, joint property, and the protection of heirs in the future. In Islamic law, inheritance refers to the rules established to govern the transfer of assets from a deceased person (the decedent) to surviving individuals or family members, known as heirs (those who receive the assets). Article 171 (a) of the Compilation of Islamic Law states: "Inheritance law is the law that governs the transfer of ownership rights to the estate (tirkah) of the decedent, determines who is entitled to be an heir, and specifies each heir's respective share".

In general, inheritance rights are divided into two categories: separate property and community property. Marital property begins to accumulate on the date the marriage takes place and ends when the marriage is dissolved, whether due to divorce or the death of one of the spouses. Separately held property, on the other hand, consists of assets owned by each spouse before or after marriage, acquired through their own efforts, as gifts, or through inheritance. The legal consequence of a person's death is the legal transfer of assets from that person to their heirs. Article 171 (c) of the Compilation of Islamic Law states: "An heir is a person who, at the time of death, has a blood relationship or a marital relationship with the decedent, is a Muslim, and is not legally barred from becoming an heir". Meanwhile, under the Civil Code, heirs may be determined through blood relations (biological family), marriage ties, or through a will for parties who have no family relationship.

Legally, a common-law wife does not have the same inheritance rights as a legally married wife. A legally married wife has inheritance rights that are guaranteed by law. A marriage without legal validity results in disadvantages for the couple and their children. Children born to, and couples who enter into, a common-law marriage or a marriage that is not registered are not entitled to legal protection (Najmuddin & Adi Laksono, 2022).

The transfer of inherited assets can also be carried out through a will. A will is a voluntary gift of assets that takes effect only after the testator's death: such gifts are limited to a maximum of one-third of the estate. When a Muslim wishes to give away a portion of their assets, Islam provides two methods: a gift (hibah) and a will (wasiat). The key difference between the two is that a gift must be made while the donor is still alive, whereas a will takes effect only after the testator has passed away (Farikha & Zuhri, 2021). In Islamic law, the requirements for a will consist of, first, the existence of the testator (al-muhshi), second, the existence of the beneficiary (al-mushilahul) and third, the existence of the bequeathed property (al-musha bihi) (Kurniawan Akbar, 2019).

The assets left behind by a deceased person must be distributed fairly among the rightful heirs. In Islam, this principle is studied in the science of inheritance. Simply put, the science of inheritance teaches us four main things: first, which family members are legally entitled to inherit. Second, which family members are not entitled to receive an inheritance. Third, the size of the share of the estate each person receives. Fourth, the procedures for distributing the assets in accordance with the rules. This field of study is considered crucial, often even referred to as "half of religious knowledge". The reason is that while most religious knowledge governs how people live their lives while they are still alive, the science

of inheritance serves as a guide for how a person's assets are managed after their death (Ash-Shiddieqy, 2015).

In Islamic law, there are strict limitations regarding the execution of wills, including: First, wills that are not recommended are *makruh* (rejected). If someone makes a will when their assets are insufficient to meet the needs of their heirs, then the will is not recommended because it can harm heirs who are more in need. Second, wills that are prohibited are haram (forbidden). Exceeding the limit, making a will exceeding one-third of the total assets is prohibited in Islam. Giving a will to an unworthy person, to someone who only desires wealth or tends to destroy it, is prohibited. Third, wills that are permitted but not recommended are not in accordance with sharia. Giving a will to a wealthy person who does not need the inheritance is also permissible, but is not recommended because it does not align with the main purpose of a will, which is to help those in need.

The provisions regarding mandatory bequests are set forth in Article 209 of the Compilation of Islamic Law. That article explains that mandatory bequests are intended for adopted children and adoptive parents. Adopted children have a distinct legal status under Islamic law with regard to their entitlement to an inheritance (Nofitasari, 2021). In Indonesia, the rules regarding mandatory bequests in the Compilation of Islamic Law are quite specific. These rules apply only to two parties: adopted children and adoptive parents. If an adoptive parent does not have the opportunity to make a will, the adopted child is still entitled to receive a share of the adoptive parent's estate. Likewise, if an adopted child dies, the adoptive parent is entitled to receive a share of the adopted child's estate. The amount of assets received through this mandatory bequest is limited to a maximum of one third (1/3) of the total estate.

The purpose of this study is to determine the legal validity of a mandatory bequest to a common-law wife when the decedent also has a wife who is legally recognized under state law. This mandatory bequest represents a new approach that offers benefits to both the heirs and other recipients of the estate.

The theory used is Jasser Auda's theory of *maqasid al-shari'ah*. Jasser Auda is a contemporary scholar who developed the theory of *maqasid al-shari'ah*. Jasser Auda divides *maqasid al-shari'ah* into three categories, namely:

First, Maqasid al-Ammah refers to legal principles that encompass all forms of universal public interest, such as justice, equality, tolerance, ease, and others. Maqasid al-Ammah encompasses six aspects of protection, namely: protection of religion (hifz ad-din), protection of life (hifz an-nafs), protection of property (hifz al-mal), protection of intellect (hifz al-aql), protection of lineage (hifz an-nasl), and protection of honor (hifz al-irdh). Second, Maqasid al-Khassah, or specific orientation, can also be understood as the legal objectives within a specific discussion (purpose of the chapter). These specific objectives relate to those contained in specific chapters of Islamic law, such as child welfare in family law, protection from crime in criminal law, protection of monopolies in economic law, and so on. Third, Maqasid al-Juz'iyyah, namely specific orientation, can be interpreted as the goal that a particular law wants to realize, such as the goal of being honest, eliminating difficulties in carrying out obligations, providing food for those in need, etc (Auda, 2015).

In light of the background discussed above, the author can now present the main issues to be addressed in this study, namely: What is the validity of a mandatory bequest to a common-law wife if the decedent has a legally married wife, as per Decision Number 183/Pdt.G/2023/PA.Mbl?

METHOD

The type of research used in this study is normative legal research. According to Peter Mahmud Marzuki, normative law or library research focuses on document studies, namely using various secondary data such as legislation, court decisions, legal theories, and the

opinions of scholars (Mahmud, 2011). This aims to uncover the meaning, implications, and developments of relevant laws. This normative research focuses on examining the application of rules or norms in positive law (Mahmud, 2017). Judgment Number 183/Pdt.G/2023/PA.Mbl plays a crucial role as a primary data source in this study, as it reflects how the judiciary interprets and applies the law in practice. This legal study employs a statutory approach: this approach was chosen because the study is normative in nature and thus focuses on the analysis of secondary legal materials, such as applicable norms and regulations. It also employs a conceptual approach aimed at conducting an in-depth analysis of legal materials in order to formulate an accurate interpretation of the legal terminology that is the subject of the study. The legal sources used in this study include primary sources, namely Law Number 1 of 1947 on Marriage and the Compilation of Islamic Law, as well as secondary sources such as books, legal journals, documents, and expert opinions, which were carefully selected to align with the research's objectives and scope. The method used to collect legal materials for this study involved a literature review using libraries, the internet, and e-journals (Soekanto & Sri Mamudji, 2013). The purpose of the literature review is to identify theories, doctrines, principles, and legal provisions related to the issue under study. This study employs a legal analysis technique using deductive logic to interpret and explain the research findings. Legal provisions serve as the major premise, which is then linked to relevant legal facts as the minor premise. Through the process of syllogism, conclusions regarding the issue under investigation can be derived.

RESULTS AND DISCUSSION

A marriage to be conducted by a couple, in which the marriage does not involve or require notification to the religious affairs office, but is carried out in accordance with Islamic law, with the presence of the bride and groom, two witnesses, the exchange of vows (ijab kabul), and a dowry. A siri marriage is valid according to religious law, but from the perspective of positive law, a siri marriage is not legally valid. This is because a siri marriage is considered not to comply with the provisions of Marriage Law Number 1 of 1974 on Marriage; Article 2, paragraph 1 states that a marriage is valid if it is conducted in accordance with the laws of the respective religion and faith. Paragraph 2 states that every marriage must be registered in accordance with applicable laws and regulations. In Indonesia, marriages are conducted by the Office of Religious Affairs for Muslim couples, while the Civil Registry Office handles marriages for non-Muslim couples (Susanto, 2007).

From an Islamic perspective, a siri marriage is a marriage that meets all the requirements and pillars of validity. It requires a marriage contract (ijab qabul), a guardian, and witnesses. However, the couple (husband and wife), the guardian, and the witnesses agree to keep the marriage secret from the public. Often, the groom specifically requests the two witnesses not to reveal the marriage to anyone. The impact of a siri marriage is that marriages conducted outside of applicable laws can create numerous problems for the individuals involved. These include unclear status regarding the child, due to the lack of authentic proof that the parents were legally married. According to Indonesian Muslim law, husbands and wives cannot inherit from each other, and their children are not recognized as having any blood relationship with their father.

Judgment Number 183/Pdt.G/2023/PA.Mbl is a civil judgment issued by the Muara Bulian Religious Court. The judgment highlights an inheritance dispute arising from the decedent's unregistered marriage to Defendant I, who controls the entire estate. The decedent sold a house and a palm oil plantation, which were joint property with Plaintiff I, and the proceeds from the sale were used to purchase the assets now in dispute and controlled by Defendant I, who refuses an amicable settlement. Assets acquired during the valid marriage to Plaintiff I have the status of joint property (*gono-gini*), so Plaintiff I's right to half of the share must be separated before the inheritance calculation is conducted.

Meanwhile, Plaintiff I, as the lawful wife, together with Plaintiff II (the child of the second concubine), and due to the actions and conduct of Defendant I, who sought to unlawfully take control of the estate left by the decedent, Plaintiffs I and II filed a lawsuit through the legal channels at the Religious Court to have their rights to the distribution of the estate left by the decedent who was the husband of Plaintiff I and the parent of Plaintiff II as well as Defendants II and III, as grandchildren, in accordance with applicable law, as said estate is currently controlled by Defendant I.

Because the marriage between Defendant I and the decedent was a customary marriage (siri) that was not registered by a marriage registrar and does not have a Marriage Certificate issued by the Office of Religious Affairs, as provided for in Law Number 1 of 1974, Article 2, paragraphs 1 and 2, and the Compilation of Islamic Law, Articles 4, 5, and 6, legally, a marriage conducted outside the supervision of a marriage registrar has no legal force. Therefore, legally, Defendant I has no right to the deceased's estate.

Based on the evidence presented during the hearing in Judgment Number 183/Pdt.G/2023/PA.Mbl, the judge found that the decedent had entered into two unregistered marriages without permission from the religious court, as required by the provisions of Supreme Court Circular Letter Number 2 of 2019, subparagraph (f), which states: marriages to a second, third, and fourth wives conducted without court permission and in bad faith do not give rise to legal consequences regarding the property rights between husband and wife, such as spousal support, joint property, and inheritance. Referring to this decision, Defendant I, who is the wife married by the decedent in a religious marriage and who also did not obtain court permission in accordance with formal requirements, has no legal standing to inherit.

The Panel of Judges reviewed the claim that Defendant I should not be included as an heir due to her status as the decedent's common-law wife, a relationship that legally confers no right to inheritance or community property. However, the facts on the ground indicate otherwise; witnesses stated that the decedent's relationship with Defendant I was very close. Given that the decedent's first wife had been traveling frequently to Java since 2012 for medical treatment, it was Defendant I who served as the decedent's primary caregiver until his passing.

The Panel of Judges ruled that Defendant I is entitled to receive a share of the decedent's estate through the mechanism of a mandatory bequest. This is based on consideration of Defendant I's services in caring for the decedent during his or her lifetime, with a maximum limit of one-third of the estate. The value of the mandatory bequest was set equal to the smallest share of the heirs, namely Plaintiff I's share. Regarding assets acquired during the period of the unregistered marriage between the decedent and Defendant I, the Panel of Judges affirmed that such assets remain categorized as joint property of the decedent and the plaintiff. Therefore, these assets are divided into two equal parts: one half belongs to the plaintiff, and the remaining half is included in the estate to be distributed to the heirs.

According to the theory of mandatory bequests, this refers to an action taken by the government and judges, as enforcers of the law, to issue orders or make decisions regarding mandatory bequests left by a deceased person, ensuring that they are distributed to the designated recipients at the specified time (Rofiq, 2000). In the course of its development, specifically in the 20th century, the legal concept of a mandatory bequest emerged. This institution grants state authorities the power to distribute assets to specific individuals under certain circumstances, based on the public interest, through a mandatory bequest. As a mandatory bequest is an action or decision made by law or by a judge as a state official to enforce, or to issue a mandatory bequest for a deceased person, which is given to specific individuals under specific circumstances (Mardani, 2014).

If the Panel of Judges consistently bases its decision on Law Number 1 of 1974 on Marriage, the Compilation of Islamic Law, and Supreme Court Circular Letter Number 2 of 2019, subparagraph (f), then the legal status of a secret wife should not entitle her to any

rights to the decedent's estate. This is because such a siri marriage does not give rise to any legal consequences, including inheritance rights. The denial of these inheritance rights constitutes an educational sanction by the state against the practice of siri polygamy engaged in by the decedent and Defendant I.

From the perspective of Jasser Auda's theory of maqashid al-sharia, the existence of a mandatory bequest for a secret wife violates the aspect of maqashid al-Ammah known as hifz ad-din, as granting inheritance rights or a mandatory bequest to a secret wife risks creating a public perception that sanctions against the practice of secret polygamy lack a deterrent effect. Although this policy does not threaten the continuity of Islamic inheritance law principles since the rights of both blood-related (nasabiyah) and non-blood-related (sababiyah) heirs remain protected its implementation has the potential to cause harm to the legal wife regarding the distribution or fulfillment of her inheritance rights. A reduction in the inheritance share due to distribution to the concubine will certainly make it difficult for the legal wife to meet her economic needs after her husband's death. Furthermore, it undermines the enforcement of legal order through marriage registration as stipulated in Article 2, Paragraph 2 of Law of the Republic of Indonesia Number 1 of 1974 on Marriage, and could be exploited as a loophole to legitimize the practice of polygamy.

Not only that, but from the perspective of hifz an-nafs, inherited assets should be used entirely to support the livelihood of legitimate heirs such as children, parents, and the wife. However, the involvement of a secret wife in the distribution of the inheritance violates the principle of economic justice for the legitimate family. Although this situation does not necessarily threaten the first wife's physical existence, it clearly burdens her life. The losses suffered by the first wife are multidimensional; in addition to the economic burden, there is deep psychological trauma resulting from betrayal in the form of unauthorized polygamy, neglect of affection, and an imbalance of attention that often causes the first wife and children to live in deprivation, both emotionally and materially.

CONCLUSION

Based on an analysis of Judgment Number 183/Pdt.G/2023/PA.Mbl, the validity of granting a mandatory bequest to a common-law wife when the decedent has a legally recognized spouse is a form of judicial discretion based on considerations of public interest, particularly regarding the common-law wife's contributions in caring for the decedent during his lifetime. Although under positive law, a de facto marriage does not give rise to legal consequences such as inheritance rights, the Panel of Judges established the mandatory bequest as a legal solution to provide justice for the party who has rendered meritorious service, with a maximum limit of one-third of the estate. Theoretically, the application of the mandatory bequest in this case sparks debate from the perspective of the maqashid al-sharia, because on the one hand it is considered to serve the public interest for the recipient, but on the other hand it risks undermining legal order regarding marriage registration and has the potential to undermine the sense of justice for the legally married wife whose economic rights are diminished.

This study is expected to make a tangible contribution to enriching the discourse on Islamic inheritance law in Indonesia. These findings highlight the importance of aligning a textual approach to positive law with the values of maqashid al-sharia in every judicial decision. Furthermore, this study offers a critical perspective for legal practitioners regarding the sociological and economic impacts of granting wasiat wajibah outside the normative framework. This is crucial to curb the practice of unregistered secret polygamy, while ensuring the protection of the rights of heirs who are legitimate in the eyes of the state.

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