

The Value of Religious Moderation in Compulsory Wills to Non-Muslims Through the Application of Maqasid Shari'ah

Agustiar

Madani Tarbiyah Science College, Yogyakarta, Indonesia
agustiar@stitmadani.ac.id

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Abstrak

Penelitian ini mengkaji putusan nomor 263/P.Dt.G/2007/Pta.Sby untuk mengidentifikasi nilai-nilai moderasi beragama yang diterapkan oleh hakim. Penelitian bertujuan untuk mengetahui dan menganalisis nilai-nilai moderasi beragama dalam pemberian wasiat wajib kepada non-muslim melalui penerapan maqasid al-syari'ah dalam putusan nomor 263/P.Dt.G/2007/Pta.Sby. Sumber informasi mengenai hal ini adalah putusan nomor 263/p.dt.g/2007/pta.sby. Keputusan tersebut dianalisis menggunakan analisis konten. Langkah-langkah yang diambil adalah mengumpulkan data, mengaturnya, menyajikannya secara tertulis, dan menarik kesimpulan. Hasil penelitian menunjukkan bahwa nilai moderasi beragama yang diterapkan oleh hakim pengadilan agama dalam putusan di atas berdampak positif, meliputi: menjaga kedamaian dan stabilitas lingkungan keluarga, memajukan kedamaian dan kemakmuran di masyarakat, menjamin perlindungan harta benda, memberikan perlindungan bagi kepentingan beragama, melindungi keberadaan keharmonisan keluarga, dan menjamin keadilan sosial di masyarakat, dan mencerminkan fleksibilitas ajaran Islam.

Kata Kunci: Maqasid al-syari'ah, Moderasi, Non- muslim, Wasiat wajib.

Abstract

This research examined decision number 263/P.Dt.G/2007/Pta.Sby to identify the values of religious moderation implemented by the judge. This research aims to find out and analyze the values of religious moderation in the granting of mandatory wills to non-Muslims through the application of maqasid al-syari'ah in decision number 263/P.Dt.G/2007/Pta.Sby. The source of information regarding this matter is decision number 263/p.dt.g/2007/pta.sby. The decision was analyzed using content analysis. The steps taken are collecting data, organizing it, presenting it in writing, and drawing conclusions. The research findings show that the value of religious moderation implemented by religious court judges in the decision above, have a positive impact includes: maintaining peace and stability in the family environment, promoting peace and prosperity in society, ensuring the protection of property, providing protection for religious interests, protecting the existence of family harmony, and ensuring social justice in the community, and reflecting the flexibility of Islamic teachings.

Keywords: Compulsory wilss, Non-muslims, Maqasid al-syari'ah, Moderation

Introduction

In Indonesia, religious courts have a very important role in resolving various legal issues faced by Muslims, especially those related to family law and inheritance. Social reality shows that the country has a high level of religious diversity, so that legal cases often arise involving families with members from various religions. In this context, the granting of obligatory wills to non-Muslims becomes one of the most relevant issues. Although traditional Islamic law restricts inheritance rights for non-Muslims, the social reality calls for a more inclusive and adaptive approach. (Hassan & Osman, 2019).

The phenomenon of blended families, where family members come from different religious backgrounds, is increasing in Indonesian society. These families often face complex legal challenges, particularly in terms of inheritance and other family rights. In some cases, religious courts have shown flexibility in applying Islamic law, taking into account the values of religious moderation in line with the principles of justice and social welfare. (Rahman & Mustafa, 2021).

Religious moderation is a concept that emphasizes balance, tolerance and inclusiveness in religious life. This concept is particularly relevant in the context of pluralistic Indonesia, where harmonious relations between followers of different religions are essential to maintaining social peace and stability. Religious courts, through their verdicts, often reflect the principles of religious moderation even though they do not explicitly use the terminology (Kamali, 2010). (Kamali, 2010).

The application of *maqasid al-syari'ah* or the objectives of *shari'ah* in religious court decisions is one way to realize the values of religious moderation. *Maqasid al-syari'ah* includes the protection of religion, soul, mind, offspring, and property. In the context of granting mandatory wills to non-Muslims, the application of *maqasid al-syari'ah* shows how Islamic law can function dynamically and flexibly to meet changing social needs. (Albayrak, 2022).

Decision No. 263/P.Dt.G/2007/Pta.Sby is a clear example of how religious courts apply *maqasid al-syari'ah* in inheritance cases involving non-Muslims. Analysis of this decision shows that the judge considered the values of religious moderation to achieve justice and benefit. This reflects the realization that the law must be able to respond to complex and diverse social realities. (Hassan & Osman, 2019).

In an increasingly pluralistic society, it is important for legal institutions, including religious courts, to adopt an inclusive and adaptive approach. The values of religious

moderation can be a guide in resolving cases involving religious differences, so as to create justice for all parties involved. The application of maqasid al-syari'ah in religious court decisions is an important step towards creating a more responsive and humane legal system. (Lamido, 2016).

The formulation of this research problem is how the application of religious moderation values in the granting of mandatory wills to non-Muslims through the maqasid al-syari'ah perspective in the context of the Religious Courts in Indonesia. This research aims to explore and analyze how the values of religious moderation are applied in the granting of mandatory bequests to non-Muslims through the maqasid al-syari'ah perspective. By using content analysis method, this research will examine verdict number 263/P.Dt.G/2007/Pta.Sby to identify the values of religious moderation implemented by the judge.

There are several previous studies related to this topic. Arifin (2019) in his research entitled "Religious Moderation in the Perspective of Islamic Law in Indonesia" discusses the concept of religious moderation in Islamic law in Indonesia, focusing on the application of the principles of justice and inclusiveness in religious courts. Dewi (2020) through the article "Implementation of Maqasid al-Syari'ah in Religious Court Decisions" explores how maqasid al-syari'ah is applied in various religious court decisions in Indonesia, including inheritance cases involving non-Muslims. Fahmi (2018) in "The Position of Non-Muslims in Islamic Inheritance Law in Indonesia" examines the position and rights of non-Muslims in Islamic inheritance law in Indonesia, as well as how religious courts address related issues.

Hidayat (2019) in "The Maqasid al-Syari'ah Approach to Family Dispute Resolution" discusses the application of maqasid al-syari'ah in resolving family disputes in religious courts, focusing on efforts to achieve justice and benefit. Mustofa (2021) in his research "Religious Moderation in Islamic Family Law" analyzes the concept of religious moderation in Islamic family law, as well as how these principles are implemented in religious court decisions. Rahmawati (2020) in "The Role of Religious Courts in Maintaining Religious Harmony" discusses the role of religious courts in maintaining religious harmony through decisions that reflect moderation and inclusiveness.

Saleh (2018) through his research "Maqasid al-Syari'ah and the Granting of Compulsory Wills to Non-Muslims" explores the application of maqasid al-syari'ah in granting compulsory wills to non-Muslims, as well as its impact on justice and social harmony. Syafii (2019) in his article "Justice Values in Religious Court Decisions" analyzes

the values of justice reflected in religious court decisions, focusing on inheritance cases involving non-Muslims. Wardani (2021) in "Tolerance and Moderation in Islamic Inheritance Law" discusses the concepts of tolerance and moderation in Islamic inheritance law, as well as how religious courts apply these principles in their decisions. Yulianto (2020) through the article "Maqasid al-Syari'ah Perspective on Inheritance Law in Indonesia" explores the maqasid al-syari'ah perspective on inheritance law in Indonesia, focusing on efforts to achieve justice and benefit in religious court decisions.

There are several gaps found between this research and previous research. Previous studies such as those conducted by Arifin (2019) and Rahmawati (2020) have discussed religious moderation in Islamic law and the role of religious courts in maintaining religious harmony. However, this study specifically focuses on the application of religious moderation values in court decisions related to mandatory wills to non-Muslims, which have not been discussed in depth in the previous literature. In addition, Dewi (2020) and Hidayat (2019) have explored the application of maqasid al-syari'ah in various religious court decisions. This research provides an in-depth analysis of a specific case, namely decision number 263/P.Dt.G/2007/Pta.Sby, which has not been discussed in detail in previous studies.

Previous studies tend to use a qualitative approach with interviews and literature studies. This research adds a content analysis method that focuses more on the text of court decision documents, providing a new and more detailed perspective on how the values of religious moderation and maqasid al-syari'ah are applied in a legal context (Krippendorff, 2018; Saldaña, 2021). In addition, the specific location of the research at the Surabaya Religious Court provides a clearer context and allows this study to explore how local and cultural factors influence the application of Islamic law. This is in contrast to previous studies that were more general or theory-focused without a specific context.

Although many studies have addressed inheritance law in Islam and the rights of non-Muslims, such as those conducted by Fahmi (2018) and Saleh (2018), this study provides a specific focus on the granting of mandatory wills to non-Muslims. It provides a new contribution to the understanding of how religious courts can apply maqasid al-syari'ah principles to achieve justice in cases involving religious differences. In addition, this study utilizes an interdisciplinary approach by combining the perspectives of law, sociology, and religious studies, in contrast to many previous studies that tend to focus on one discipline alone (Patton, 2020; Miles et al., 2019).

By identifying this gap, this research seeks to fill the void in the existing literature and make a significant contribution to the development of understanding of the application of religious moderation values and maqasid al-syari'ah in religious court decisions in Indonesia.

Research Method

This research was conducted at the Surabaya Religious Court, East Java. This court was chosen because it has a significant history of decisions, including decision number 263/P.Dt.G/2007/Pta.Sby, which is the main focus of this research. The object of the research is the decision of the Surabaya Religious Court number 263/P.Dt.G/2007/Pta.Sby, which contains aspects of religious moderation in the granting of mandatory wills to non-Muslims. This research will examine how the values of religious moderation are applied through the maqasid al-syari'ah perspective in the decision.

The data used in this research consists of two types: primary and secondary data. Primary data was obtained directly from the Surabaya Religious Court decision document number 263/P.Dt.G/2007/Pta.Sby. Secondary data is obtained from various related literatures, including journals, books, and articles that discuss religious moderation, maqasid al-syari'ah, and Islamic inheritance law. Data collection was done through documentation techniques: This technique was used to collect primary data from Surabaya Religious Court judgment documents. In addition, documentation techniques were also used to collect secondary data from related literature. The data analysis technique used in this research is content analysis. This technique was used to analyze text from decision documents.

Results Research and Discussion

1. Moderation

Basically, moderation has actually been taught by Islam which has been described in the Qur'an. (Abror, 2020). In the Qur'an, the term moderation is called *Al-Wasathiyyah*, but there is also a debate about the understanding of moderation in the current context. (Prayitno & Nursikin, 2023).. The word "*al-Wasathiyyah*" comes from the word al-wasath (with the letter sin which is sanctioned) and al-wasath (with the letter sin which is fathah-kan) both of which are isim mashdâr from the verb wasatha. Simply put, the definition of *Wasathiyyah* terminologically derives from its etymological meanings, which means a praiseworthy characteristic that keeps a person from the tendency to be extreme. (Ma'arif, n.d.).

From the basic definition of *Wasathiyyah* in these Arabic dictionaries, it can be concluded that the concept of *Wasathiyyah* etymologically has two major meanings, namely:

First, as a noun (ism) with a zharf pattern that is more concrete (hissî), namely as an intermediary or connector (interface / al-bainiyyah) between two things or two conditions or between two opposing sides. Secondly, it is more abstract (theoretical) meaning fair, choice, main and best (*superiority/al-khiyar*).

The great scholar Sheikh Yusuf Al-Qardhawi explained, *Wasathiyyah* which is also called *at-tawazun*, is an effort to maintain a balance between two opposite or contradictory sides / edges / edges, so as not to let one dominate and emphasize the other. For example, spiritualism and materialism, individualism and socialism, realism and idealism, and so on. Being balanced in responding to it is by giving a fair and proportional portion to each side/party without overdoing it, either because there is too much or too little. (Winata et al., 2020).

People who have a just nature will always maintain a balance and always be in the middle in handling or dealing with two problems or situations. (Darmayanti & Maudin, 2021). The word *wasath* in Arabic indicates the middle of the two ends of something. This word has a good meaning, as the Prophet Muhammad said in a hadith, "The best of affairs is *awsathuha* (the middle)" because those in the middle position will always be protected from defects or disgrace that usually hit the ends or edges. Basically, good traits are accommodations and also the middle of two bad traits, for example, the trait of being fond of sharing that mediates between wastefulness and miserliness, then the trait of courage that mediates recklessness and fear.

If seen from the above understanding, then in Islam there will be no such thing as *extremism* and *radicalism*, because Islam teaches justice and balance. In its relations and views on other religions, Islam applies the firm and polite principle that your religion is for you, my religion is for me in accordance with the words of Allah SWT: "For you is your religion and for me is my religion" (QS. Al-Kafirun verse 6).

Islam has taught that among humans there must be differences, both in terms of culture, ethnicity, tribe and differences in beliefs, all of which are *fitrah* and *sunnatullah* or have become God's decree, the main purpose and purpose is for them to know and interact with each other (QS.al-Hujurat verse 13). The existence of diversity is a social reality, something that is inevitable and cannot be denied, especially in the country of Indonesia which has the basis of Pancasila with the motto *Bhinneka Tunggal Ika*, although different but still one. Religious moderation is needed as our cultural strategy in maintaining Indonesianness and diversity. As a very heterogeneous nation, since the beginning the founding fathers have

succeeded in bequeathing a form of agreement in the nation and state, namely Pancasila in the Unitary State of the Republic of Indonesia, which has succeeded and succeeded in uniting all ethnic groups, languages, tribes, cultures and religions. Indonesia is not declared as a religious state, but it also does not separate religion from the daily lives of its citizens. Religious values are preserved, integrated and united with the values of local customs and wisdom, there are even some religious laws institutionalized by the state, so that the implementation of religious and cultural rituals runs peacefully and harmoniously. (A. K. Sari et al., 2021).

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2. Maqasid al-Syariah

One of the important and fundamental concepts that is the subject of discussion in Islam is the concept of *Maqasid Sharia* which emphasizes that Islam is present to realize and maintain the maslahat of mankind. (Paryadi, 2021). This concept has been recognized by scholars and has become a basic reference in Islam. The spirit of the *Maqasid Syariah* concept is to realize the good while avoiding the bad or attracting benefits and rejecting harm. The term that is commensurate with the core of *Maqasid Sharia* is maslahat, because Islam and maslahat are like twin brothers that cannot be separated. (Iqbal et al., 2023)..

Maqasid Syariah consists of two vocabularies, namely *al-maqasid* and al-shariah. (WILLY, 2023). *al-maqasid* is a plural form of the word *almaqasid* from the root word al-qasd. Etymologically, al-qasd has several meanings, including the following: First, the straight path (*istiqamah al-tariq*). this meaning refers to the word of Allah surah al-Nahl (16): 9 that Allah has the right to explain the straight path and invites the creatures to always be on the straight path. This invitation is based on irrefutable evidence and arguments. The opposite word al-qasd is al-jair (deviant path). The second is the ultimate goal (*ali'timad wa al-amm*). This meaning is often used and referred to by fiqh scholars and ushul fiqh scholars.

(Hula, 2020). Purpose (*almaqasid*) is a reference in every action of the mukallaf and the law changes with changes in purpose (*al-maqasid*). It is the deepest element that makes the basis for every action of a person.

The ushuliyin and fuqaha often do not limit the meaning of the word *al-maqasid*. This word can be understood in its etymological context after being coupled with other words, such as the rule that says, "all actions depend on the purpose or intention of the perpetrator" (*al-umur bi maqasidiha*). In this context, *al-maqasid* is interpreted as something that underlies a person's actions and is implemented in concrete form (*al-fi'il*), or such as al-Ghazali's (d. 505 AH) statement that the objectives (*maqsud*) of sharia are five; protecting religion, soul, mind, offspring and property. (Dongoran, 2022; LESTARI, 2022)..

Broadly speaking, the scholars provide an overview of the *Maqasid Sharia* theory, namely that *Maqasid Sharia* must be centered and based on five main benefits, namely: the benefit of religion (*hifz al-din*), the benefit of the soul (*hifzal-nafs*), the benefit of reason (*hifz al-aql*), the benefit of offspring (*hifz al-nasl*) and the benefit of property (*hifz al-mal*). Each level has its own classification, namely the primary / primary rank (*dharuriyyat*), the need / secondary rank (*hajjiyat*) and the complementary / tertiary rank (*tahsiniyyat*). (Mu'alim, 2022).

In the determination of the law, this rank order will be seen in importance when it conflicts in its benefit. The *dharuriyyat* rank comes first, then the *hajjiyat* precedes the *tahsiniyyat* rank. It can be interpreted that the third rank complements the second rank and the first rank is complemented by the second rank. *Dharuriyyat* is interpreted as a need that can not be allowed or delayed its existence to maintain the integrity of the five basic benefits (*al-umur al-khamsah*), either by upholding the main joints, establishing the rules, rejecting misery (*al-mafasid*) that or will occur. Delaying or denying this first rank will cause the existence of the five essentials to be jeopardized. *Hajjiyat* is a condition that does not threaten the existence of the five principles but will only cause hardship. For example, the *rukhsah of being* allowed to make up the fasts or jamak for travelers. Meanwhile, *tahsiniyyat* is defined as a need that supports the improvement of human dignity in society and before God, of course paying attention and conformity with its appropriateness.

3. Compulsory Wills

Initially, the *mandatory will* know in Indonesia was only intended for adopted children and adoptive parents, as stated in Article 209 of the Compilation of Islamic Law which reads (Noviyanti & Mulati, 2019). The inheritance of adopted children is divided based on articles

176 to 193 mentioned above, while the adoptive parents who do not receive a will are given a *mandatory will* as much as one third of the inheritance of their adopted children. Against adopted children who do not receive wills *wajibah* as much as one-third of the inheritance of his adoptive parents.

Article 171 letter h of the Compilation of Islamic Law states that an adopted child is a child in whose maintenance for daily life, education costs, and so on switches its responsibility from its original parents to its adoptive parents based on a court decision. The Compilation of Islamic Law Article 171 letter f states that a will is a gift of an object from the testator to another person or institution that will take effect after the testator dies. The rules regarding this will are regulated in the Compilation of Islamic Law starting from Article 194 to Article 209. Articles 194 through 208, regulate wills in general which are common as in classical fiqh. However, Article 209 contains *mandatory wills* for adoptive parents and adopted children.

Article 209 of the Compilation of Islamic Law above, especially in paragraph (2), illustrates that adopted children can receive *mandatory wills* as much as 1/3 of the inheritance of their adoptive parents. The provision of *mandatory wills* in the Compilation of Islamic Law is a bridge that covers the imbalance that has occurred so far between adopted children and adoptive parents who do not inherit each other, because there is no provision for mutual inheritance between the two. Meanwhile, adopted children who have been very meritorious, caring for and maintaining adoptive parents do not get inheritance when their adoptive parents die, or vice versa, unless the adoptive parents or adopted children have first made a will. Otherwise, the adopted child or adoptive parent does not receive any property. This has been felt to be unfair in society. The adopted child who has served so long for the benefit of the adoptive parents or vice versa does not get a share of the property. (Bula et al., 2023).

It can be understood from the information above that adopted children have the right to inheritance, which is regulated based on certain articles, namely from Article 176 to Article 193 in the Compilation of Islamic Law. However, for adoptive parents who do not receive a will, they are entitled to a mandatory will as much as one-third of the inheritance of their adopted child. Conversely, for adopted children who do not receive a *will*, they are entitled to a maximum of one-third of the estate of their adoptive parents.

4. Decision Number 263/P.dt.G/2007/PTA.Sby

Obligatory wills are one of the cases that are not always brought to the Religious Courts even though they fall within their absolute jurisdiction. As of mid-2018, a number of cases had been resolved by religious judges and posted on the Supreme Court website. This is in contrast to other cases such as divorce, inheritance and marriage which continue to increase each year in all religious courts in Indonesia. On the one hand, the scarcity of compulsory testament cases can be understood because Muslims rarely bequeath their assets except for a handful of people. From these cases, two decisions of religious judges of the Supreme Court were selected. They have permanent legal force and will be briefly described in the following explanation.

The first case is Decision Number 263/P.dt.G/2007/. PTA.Sby concerning the granting of compulsory bequests to non-Muslims. In this case, a mother bequeathed five of her seven children her property. One of the contents of her will was to set aside some of her property to be given to one of her Christian children, who would be given to her after her death. When the mother died, one of her Muslim children challenged her will. He took the matter to the Religious Court in December. In the end, one of the seven siblings objected and did not accept the decision of the court judge who decided to grant the will to the non-Muslim sibling, even while in Jember. The Religious Court declared her mother's will invalid.

This case was decided by a religious court judge in December No. 204/Pdt.G/2007/PA.Jr. The judge decided that PSP, who is a Christian, is one of the seven biological children of S as an heir, while the other six children are Muslim. The judge decided that PSP could not receive inheritance because her objective condition as a non-Muslim prevented her from being entitled to receive inheritance from her Muslim mother. The judge specifically cited one of the hadith arguments which states that a Muslim cannot inherit from a non-Muslim and vice versa. However, the judge transferred his position as a recipient of the 1/7th statutory bequest on the basis of his closeness to his mother and the affirmation of Article 209 of the Islamic Collection Law that allows it. In accordance with the provisions of Islamic law, the judge decided that the issue of compulsory bequest through a grant to PSP should take precedence over the distribution of inheritance to the other six siblings.

The case then reached the level of appeal. In this case, the applicant was one of the siblings of the six applicants, including PSP, who is a non-Muslim. The decision of the judge of the Surabaya Supreme Religious Court then upheld the decision of the Jember Religious

Court. The verdict stated that the defendant PSP was prohibited from receiving the inheritance of her heirs because of her status as a non-Muslim. However, she is entitled to receive a *mandatory will* through a grant from the testator's estate as stated in dictum number five, which is 1/7 of the share.

The case concerned a religious judge's decision to award inheritance to one of seven non-Muslim siblings through a mandatory will. Initially, 5 of the 7 siblings received a will from their mother when she was still alive. However, the will was annulled by the religious judge. However, the judge decided to give Christian inheritance through a *compulsory will*. The judge applied the concept of *hiyal* proposed by the Hanafiah school of thought. The judge annulled the testamentary bequest because the legal action violated the provisions of sharia law regarding grants and wills, where grants are given during life and wills after death. But then the judge restored the rights of one of the non-Muslim siblings through a *mandatory will*, because non-Muslims are not entitled to inherit the property of their Muslim mother but can receive property through a mandatory will. Thus, the principle of receiving inheritance for non-Muslims changed from testamentary bequests to *mandatory wills*.

Basically, there is a close relationship between grants and wills. Among them, grants and wills can be given to both Muslims and disbelievers. This is in accordance with the fiqh concept that a Muslim can make a will to a zimmi (a non-Muslim who has a peace treaty with a Muslim) and vice versa because the grant to him is considered valid. It appears that this decision was taken by the judges based on their opinion of the above fiqh thinking. The judges believed that it is permissible for a Muslim to give a grant to a disbeliever and vice versa. In the case of *compulsory bequests in the form of grants* decided by the judge in the above case, this is correct according to the view of qiyas. According to qiyas aulawi (mafhum muwafaqah), it is permissible to give and receive grants to and from non-Muslim relatives. This is relevant to the case under discussion, so the act of a Muslim mother giving a grant to her non-Muslim son is certainly more acceptable. Therefore, the religious judge's *ijtihad* in granting *compulsory bequests in the form of grants* to non-Muslim relatives is correct.

5. Values of Religious Moderation in the Granting of Compulsory Wills to Non-Muslims Through the Application of Maqasid Al-Shari'ah in Decision Number 263/P.Dt.G/2007/Pta.Sby

5.1 Maintaining Peace and Stability in the Family Environment

The judge used various *maslahah* considerations in an effort to find a way for non-Muslims without violating the provisions of Sharia law. First, preserving the soul (*hifz al-*

nafs). This case involved seven children (including one non-Muslim) who were the heirs of a deceased testator. But before dying, the testator made a will stating that the non-Muslim child would receive part of his property in the form of a grant. This situation can lead to major conflicts if not resolved by the religious court after the testator dies. Many cases of inheritance disputes have led to fights, persecution, and even murder between heirs. Thus, property, which essentially must be protected for the sake of survival, becomes the cause of the fundamental collapse of humanity and kinship. (Khalisha & Zubaedah, 2021). The judge's decision to issue a mandatory will to non-Muslims in the form of a grant can be an effective solution to avoid conflict between relatives.

Ensuring the safety of life in Islamic law is second only to the obligation to protect religion in this ruling. Pamilangan in his study explains that the issue of inheritance can cause family members who do not receive inheritance to break the law, and can even kill each other just because of property. (Pamilangan, 2022). The same thing was also emphasized by Praatiwi & et al. that the granting of mandatory wills by judges for non-Muslim heirs is oriented towards providing guarantees for family integrity (Pratiwi et al., 2022). (Pratiwi et al., 2020).. This kind of practice is not in accordance with the objectives of sharia (maqasid al-syari'ah), namely the religion of justice, peace, and the benefit of the universe (QS. al-Anbiya` (21): 107). Therefore, maintaining the integrity of the family is the main objective of Islam (QS. at-Tahrim (66): 6).

The impact of losses due to the killing of heirs who are not given a share of the inheritance can result in household breakdowns (Ash-Shahbuni, 1995). Moreover, this problem will be complicated and will continue in future generations because of revenge. This does not rule out the possibility of civil war between members of a family. As a preventive effort to overcome these problems, the judge's policy in granting wills through grants is the right action in accordance with the objectives of Islamic law, because one of the functions of the judge's decision in Islamic law is as a mediator and intermediary who stops and resolves the dispute.

The decision of judges in religious courts to grant compulsory wills to non-Muslim heirs does have significant implications in safeguarding life and preventing quarrels and fights between heirs. The division of inheritance is often a trigger for conflict among family members, especially if there is dissatisfaction with the division. In cases where there are non-Muslim heirs, the judge's decision to grant them a *wajibah* will can prevent dissatisfaction

that could lead to conflict between family members. As such, it helps to maintain peace and stability within the family. (Muhammad Daud & Hj Azahari, 2018).

The argument presented by Qiana regarding the maqasid al-syari'ah principle applied in the settlement of inheritance disputes in religious courts, which includes the basic objectives of sharia such as preserving religion, soul, mind, offspring, and property, plays an important role in achieving a fairer and more harmonious dispute resolution. By using this approach, judges are able to consider a wider range of aspects than just positive legal provisions, including the social, economic and emotional conditions of the parties involved in the dispute. This allows judges to make decisions that are not only legal, but also ethical and humane, in accordance with the values of social justice desired by Islamic law.

In addition, he also added that the application of maqasid al-syari'ah in the settlement of inheritance disputes significantly contributes to preventing prolonged conflict and improving relations between heirs. Through the application of maqasid al-syari'ah principles, religious courts can accommodate the needs and interests of all parties more comprehensively, reducing the dissatisfaction that is often the main trigger of conflict in inheritance cases. Thus, decisions made based on maqasid al-syari'ah not only comply with the law but also support the creation of harmony and stability in families and society at large. This article emphasizes the importance of the maqasid al-syari'ah approach as a framework for formulating decisions that are more inclusive and just and relevant to the dynamic social context in Indonesia.

5.2 Peace and Prosperity in Society

The judge in his *ijtihad* refers to the concept of *maslahah mursalah*. Among the conditions for the validity of *maslahah mursalah* as Al-Ghazali's concept requires that the *maslahat* is a general *maslahat*. This is as explained by Khotib in his study of the concept of *maslahah mursalah* by Al-Ghazali. (Mohammad Hadi Sucipto & Khotib, 2020). This is very much in line with the purpose of sharia, which is to realize the public good without favoring personal tendencies.

The provision of mandatory wills to non-Muslim heirs can also be understood as an effort to fulfill the public good, including in maintaining inter-religious harmony and harmony in the community. (HARIDI, 2019). In a broader context, this decision can help strengthen tolerance and reduce the potential for interfaith conflict by demonstrating that Islamic law in Indonesia is able to adapt to the realities of existing multiculturalism. Religious moderation also involves protecting the weak and vulnerable in society. In the context of

mandatory wills to non-Muslim heirs, the judge's decision can be understood as a move to protect the rights of non-Muslim heirs, who may be in a more vulnerable position in the context of Islamic inheritance law.

Thus, the decision of judges in religious courts to grant mandatory wills to non-Muslim heirs indirectly contributes to safeguarding lives and preventing quarrels and fights between heirs, by creating an environment of harmony, peace and respect for religious differences. The judge's decision ultimately aims to promote peace and prosperity in society. By avoiding potential conflicts and violence related to the division of inheritance, judges help create a safe and peaceful environment for all citizens, regardless of their religion or beliefs.

6. Property Protection Guarantee (Hifz Al-Mal)

Wealth is something that humans fight to obtain, so it has value in human life. Heirs absolutely need inherited property from their parents. To ensure the security of property so that it is not destroyed and controlled by only a few heirs, the religious judge prevents such damage by deciding to make a mandatory will in the form of a will to a non-Muslim child, because the child cannot obtain property through inheritance.

The judge in his action, used the concept of *maslahah* which is popular among scholars including Al-Ghazali. This basic concept of *maslahah* guarantees the security of property either personally or collectively. (Ratna Pura et al., 2022).. The judge decided that the division of property should be done while the heirs were still alive. In this way, the heir witnesses the transfer of his estate and is responsible for distributing it to his non-Muslim children. Indeed, according to Islamic law, a will must be made after the holder dies. The way the judge determined that the will was in the form of a grant meant that it could be given during the testator's lifetime, because the grant was made during his lifetime. The judge adhered to two strong foundations (*maslahah*), namely on the one hand the implementation of the will and on the other hand providing leeway to uphold the rights of non-Muslim children without neglecting the rights of their Muslim children as they should.

There is something else in this ruling that also relates to the safeguarding and maintenance of property. Each heir receives their own share of the inheritance. Non-Muslim family members who do not receive the inheritance will more or less feel jealous of other heirs who receive the inheritance. In the Judge's view, social jealousy can lead to prohibited acts such as robbery, theft and destruction of other heirs' property. If something like this were to happen, it could cause huge losses for all parties, given the important role of property in the life of the community.

The decision of a judge in a religious court to grant a mandatory will to a non-Muslim heir has important implications in safeguarding the safety of the heir's property. Avoidance of the Risk of Waste and Abuse of Property. In cases where there are non-Muslim heirs, the neglect of a clear and formal distribution may increase the risk of waste or abuse of the estate. By granting compulsory probate to non-Muslim heirs, the judge provides legal certainty and order in the distribution of the estate, reducing the potential for abuse or waste of the estate.

Unauthorized or unlawful distribution of inheritance can result in unauthorized claims from other parties, especially if there are non-Muslim heirs who are officially denied their share of the inheritance. By granting compulsory bequests to non-Muslim heirs, judges help protect the estate from unauthorized claims, maintaining the security and integrity of the estate.

Previous research supports these findings. For example, a study by Erna (2019) showed that the application of *maqasid al-syari'ah* in Islamic inheritance law can help maintain the security of property and avoid conflict. Research by Gita also found that the application of *maqasid al-syari'ah* in family law cases can prevent the misuse of inherited property. (Gita Sartika et al., 2024).. Hana (2021) added that the role of religious courts in maintaining social justice through Islamic inheritance law is very important to prevent waste and abuse of property.

On the other hand, Rinaldi argues that religious courts often use *maqasid al-syari'ah* principles to assess the social impact of their decisions and to ensure that they promote social welfare and reduce the potential for conflict. In the context of protecting the property of non-Muslim heirs, Rinaldi asserts that religious courts have a responsibility to ensure that the property rights of non-Muslim heirs are recognized and protected. With this approach, religious courts can play an important role in supporting the creation of social justice and harmony in diverse societies. This approach allows religious courts to be more responsive to complex social dynamics and ensure that Islamic inheritance law can be applied in a way that promotes justice and well-being for all parties involved, including non-Muslim heirs. (Rinaldi et al., 2017)..

7. Protection of the Existence of Family Harmony

Among the values contained in the originality of Islamic law is maintaining the integrity of the family lineage (*hifz al-nasl*). The judge's decision to give a mandatory testamentary inheritance in the form of a grant to a non-Muslim child can make a positive

contribution to the maintenance of kinship between heir children. The judge was of the opinion that the consequence would be the destruction of kinship if a non-Muslim child did not receive a share of his parents' property simply because he was of a different religion. In terms of lineage, he was born and had the same parents as his other siblings. This fact separates him from his other siblings for property reasons. With the judge's decision, he will remain bound to his siblings, so that the family ties that bind them remain intact. Therefore, property and the obligation to maintain it, which comes fifth in the *maqasid al-syariah*, cannot and should not be the reason for separating them, even though there is a way justified by *sharia* to give it to non-Muslims, namely through grants.

The judge's decision reinforces family values in the Islamic context, where maintaining the integrity of the family lineage (*hifz al-nasl*) is an important aspect. (Mingka, 2019). By granting obligatory wills to non-Muslim children, judges recognize that religious factors should not be an obstacle in maintaining harmonious family relations. This is in accordance with the principle that family ties should not be severed simply because of religious differences. Thus, the judge's decision not only fulfills the principle of justice in the distribution of inheritance but also respects the family values that are the foundation of the integrity of society in the Islamic view.

Furthermore, the decision reflects a deep understanding of *maqasid al-syariah*, the goals of Islamic law. *Maqasid al-syariah* is not only about fulfilling religious obligations, but also includes other aspects that contribute to the welfare and justice of society. Fikri et al. explain that although the preservation of property and inheritance is an important aspect of *sharia*, maintaining family ties and relationships between family members is also an equally important goal. (Fikri et al., 2023).. This is in line with Syarief's opinion that by prioritizing the continuity of family relationships, judges take steps that are in accordance with the main principles of *sharia* to achieve a balance between individual rights and the collective interests of society. (Syarief, 2021).

Furthermore, Kartika (2018) asserts that the application of *maqasid al-syari'ah* principles in inheritance cases in religious courts allows judges to make decisions that are not only legal but also ethical and humane. The *maqasid al-syari'ah* approach helps accommodate the needs and interests of all parties involved, including those in weak or vulnerable positions. By considering the social context and the impact of the decision on the welfare of the parties, religious courts can provide more inclusive justice and prevent prolonged conflict. Kartika argues that the application of *maqasid al-syari'ah* in Islamic

inheritance law is an important step towards achieving greater social harmony and justice in a multicultural society like Indonesia. This shows that maqasid al-syari'ah is not only a theoretical concept, but also practical in creating justice that is humane and relevant to social reality. (Herenawati et al., 2020).

8. Guarantee of Social Justice in Society

The judge's attempt to grant compulsory bequests by way of grants does not limit the understanding of the laws of inheritance, wills and grants to the scope of religion alone. The law of inheritance explains that a person who leaves Islam (apostate) has no right to inherit from his Muslim parents. Similarly, a Muslim cannot inherit from another non-Muslim. However, in this decision, the judge took another step by requiring wills and providing compensation to non-Muslim family members. The judge based his view by stating that Islam is not a discriminatory religion but one that embraces all humanity equally and is a mercy to the universe (QS. al-Anbiya` (21): 107).

The decision of judges in religious courts in Indonesia to grant mandatory wills to non-Muslim heirs shows the application of the value of religious moderation in the context of Islamic law in a country with a multicultural society. (Salma, n.d.). The decision to grant compulsory probate to non-Muslim heirs demonstrates the principles of justice and equality in Islamic law. Although Islamic law provides specific guidelines regarding the division of inheritance between Muslims and non-Muslims, this decision reflects respect for the rights of non-Muslim individuals in the context of state law that guarantees freedom of religion and equality before the law.

One of the principles of maqasid al-syari'ah is to maintain social welfare and justice. In the context of compulsory bequests, religious moderation demands that the distribution of inheritance is done fairly among heirs in accordance with the provisions of sharia. This means avoiding too large a gap between the shares received by heirs, as well as ensuring that the rights of all parties are respected and fulfilled. Encouraging the needs of the weak and vulnerable to be taken into account. This includes protecting the rights of widows, children, and economically disadvantaged groups. In the application of maqasid al-syari'ah, this can be realized by paying special attention to the distribution of inheritance that ensures that those in need receive sufficient support from the estate.

The decision also promotes the values of tolerance and justice in society. By recognizing the rights of non-Muslim individuals in the context of inheritance, the judges affirmed that all citizens have equal rights under the law, regardless of their religion or

beliefs. This creates the foundation for a more inclusive and just society for all individuals. The decision reflects respect for universal values of human rights and justice. Although in the context of Islamic law there are specific provisions related to inheritance, the recognition of the right of non-Muslim individuals to receive inheritance is a step consistent with the broader principles of humanity and equality.

Hariyanti (2021) revealed that religious courts have a very important role in achieving social justice through the application of Islamic inheritance law. Hariyanti explained that religious courts in Indonesia not only act as judicial institutions that apply positive law rigidly, but also as agents of social change that seek to apply the principles of *maqasid al-syari'ah* to achieve substantive justice. According to Hariyanti, in many decisions, religious court judges seek to consider the social, economic and cultural context of the parties involved, as well as the impact of the decision on social welfare and stability. This approach allows religious courts to deliver judgments that are more inclusive and just, reflecting the values of social justice that are the primary goal of Islamic law. (B.S. & Hariyati, 2020).

Meanwhile, according to Kamarudin, religious courts have a very important role in achieving social justice through the application of Islamic inheritance law. He explained that religious courts in Indonesia not only act as judicial institutions that apply positive law rigidly, but also as agents of social change that seek to apply the principles of *maqasid al-syari'ah* to achieve substantive justice. According to him, in many decisions, religious court judges seek to consider the social, economic and cultural context of the parties involved, as well as the impact of the decision on social welfare and stability. This approach allows religious courts to deliver judgments that are more inclusive and just, reflecting the values of social justice that are the primary goal of Islamic shari'ah. (Kamarudin, 2015).

In line with that, Ratna highlighted the importance of religious moderation in achieving fair and harmonious resolution of family disputes in religious courts. She explained that religious courts in Indonesia face great challenges in handling cases that involve differences in religious beliefs between the parties to the dispute. In this context, religious moderation becomes an important key to bridging differences and creating solutions that are acceptable to all parties. He revealed that the religious moderation approach allows judges to consider the values of justice, balance, and inclusiveness, which are crucial in achieving sustainable and harmonious settlements. (Ratna Pura et al., 2022).

9. Reflection on the Flexibility of Islamic Teachings

The judge also provided an understanding that Islamic law is not rigid. According to the judge, Islamic law can provide protection and a sense of justice even to non-Muslims. This is explained at length in the Quran, including in QS. an-Nisa` (4): 92 and the Sunnah of the Prophet SAW. The judge is not only guided by the specific rules of inheritance that aim to prevent joint inheritance between Muslims and non-Muslims but also guided by the general rules of justice contained in the verses of the Qur'an and the legacy of the Prophet SAW. Therefore, the decision was taken based on the principle of *mashalih al-mursalah*. In other words, the judge can find the virtue of *maslahah* even though it is not clearly proven by the arguments of the Qur'an and Sunnah. Nevertheless, the judge still emphasized that one of the non-Muslim brothers in this case was not an heir who was entitled to receive inheritance, but he could and did have the right to receive a compulsory bequest through a bequest of inheritance of property that he could not inherit from his heirs. This is motivated by the judge's view that it is not permissible to include his non-Muslim character in the group of infidels who are hostile and fighting against Muslims. In response to this, it can be understood that the religious judge's decision is a form of *ijtihad* within the framework of Islamic law reform that prioritizes the values of religious tolerance.

The decision of judges in religious courts to grant compulsory wills to non-Muslim heirs shows the flexibility of Islamic teachings in several aspects. Among them is Adjustment to Social Context. The decision reflects Islam's ability to adapt to diverse social contexts. In a multicultural society such as Indonesia, where there are various religions and beliefs, Islamic teachings can accommodate this diversity by providing flexibility in the application of its principles, including in terms of inheritance.

Previous research supports this view. For example, a study by Qiana (2020) shows that the application of *maqasid al-shari'ah* in the settlement of inheritance disputes can achieve more inclusive and harmonious justice. (Qiana, 2020). Research by Rina (2018) also found that religious moderation is important to maintain balance and justice in society. (Rina, 2018). Sari (2021) added that the application of *maqasid al-syari'ah* principles in religious court decisions can help achieve more inclusive and humane justice. (N. Sari, 2021).

Conclusion

The conclusion of this discussion shows that the application of religious moderation values in the granting of mandatory wills to non-Muslims through *maqasid al-syari'ah* in

religious courts is realized in the form of first, maintaining peace and stability in the family environment. Second, promoting peace and prosperity in society. Third, ensuring the protection of property. Fourth, providing protection for religious interests. Fifth, protecting the existence of family harmony. Sixth, it ensures social justice in society. Finally, it reflects the flexibility of Islamic teachings.

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