

ABSTRACT

THE CHOICE OF LAW IN DIVIDING DIFFERENT RELIGION INHERITANCE (A STUDY TOWARD RELIGION COURT VERDICT AND DISTRICT COURT OF MEDAN 2011 – 2016)

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Different religion inheritance in Indonesia is practiced on three stipulations. They are the application in Islamic religion, the application in civil law (in District Court), and the application in customary law. In this research, the writer focuses on the law application in Religion Court of Medan, the law application in Civil Court of Medan, and law certainty used by judges in deciding different religion inheritance matter.

This research is normative value research, with statute approach, case approach, and comparative approach. These approaches are hoped to be able to answer the formulation of problem and achieve the purpose of the research.

From discussion that has been done, it can be concluded that according to Religion Law, different religion can be an obstacle in dividing inheritance. However, practically, in Religion Court, people who are not Muslim can get the inheritance from their parents or relatives in the form of testament according to the jurisdiction of Supreme Court of Indonesia No. 51/K/AG/1999, like verdict No. 9/P.dt.P/2016/PA.Mdn, and 2/P.dt.G/2011/PA.Kbj Meanwhile, the application of different religion inheritance law in District Court of Medan, the judges use Civil Law and do not apply the stipulation in Islamic Law though there is an Islamic person in one side, like in verdict No. 152/Pdt.G/2014/Mdn.

According to the verdict result, there is a collision between the past rule in Hadis and the consensus of Muslim scholars, and the compilation of Islamic Law which clearly state that people who are not Muslim do not have the right to get the inheritance from a Muslim because of different religion. Moreover, it is not stated that they get the testament like what Supreme Court has established. That verdict is an expansion of law for the sake of justice and rule of law for plural society nowadays.