

Disparity in Supreme Court Decisions and Medan Religious Court Decisions Regarding the Determination of Heirs

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Abstract

The Supreme Court, through Decision Number 485 K/Ag/2013, issued a decision regarding determining the inheritance rights of non-Muslim heirs through the 'aşabah sababiyah route. The legal basis regarding 'aşabah sababiyah is not contained in the marriage law or the compilation of Islamic law. In its decision, the Supreme Court referred to the 'aşabah sababiyah theory of Egyptian inheritance law. This decision is a legal effort based on the decision of the Medan Religious Court Number 751/Pdt.G/2011/PA.MDN, which stated that, in inheritance law, the number of ulama agreed to require that heirs and heirs must have the same religion, namely Islam. This problem is interesting to study in more depth through the views of the Medan Religious Court judges and analyze based on a progressive legal perspective. This research is empirical legal research with a qualitative approach, and data collection in this research uses observation, interview techniques, and then analysis. This research found that 'aşabah sababiyah is an asabah in the class of heirs, which occurs because of freeing both male and female slaves. The views of the Medan Religious Court judges regarding Supreme Court decision Number 485 K/AG/2013 concerning the Determination of the Heirs of 'Ashabah Sababiyah are in two groups, namely accepting the decision and rejecting the decision. If the disparity in the decisions of the Supreme Court and the Medan Religious Court in determining heirs of different religions is viewed based on progressive law, then Supreme Court Decision Number 485 K/AG/2013 is closer to the value of legal progressivity because one form of application of progressive law by judges is to realize social justice through the method of legal discovery by placing social justice in society above statutory regulations.

Keywords: Decision Disparity; Determination of Heirs; Progressive Law



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INTRODUCTION

The inheritance system is one of the reasons for the transfer of ownership, namely the transfer of property and material rights from the party who inherited it after the person concerned dies to the recipients of the inheritance by way of succession based on law. (Nasution, 2012) Inheritance law is part of family law, which is very closely related to the scope of human life because every human being will experience a legal event called death. (Maman Suparaman, 2015). Islamic inheritance law is part of the construction of religious teachings contained in the holy verses of the Koran. The Qur'an has regulated how to distribute inheritance, heirs, the requirements for being an heir, wills, and other matters that discuss inheritance in detail. (Anshori, 2002)

Heirs are entitled to the inheritance left by the person who died. Basically, men receive a larger share than women. This is in line with the provisions in Article 176 of the Compilation of Islamic Law (KHI) that: "If there is only one daughter, she gets half the share; if there are two or more people, they get two-thirds of the share; and if the daughter is together with the son, boys, then the share of boys is two to one with girls."

There are two reasons for the existence of the right to inherit between one person and another, or in other words, there are two reasons for mutual inheritance according to Islamic law as stated in the Compilation of Islamic Law (KHI) Article 171 letter (c), namely, kinship relations (*nasab*) and marriage relations. (Pangeran Harahap, 2014). The heirs' portions of the heir's inheritance are grouped into two categories: *ashab al-furud al-muqaddarah* and *'asobah/tashib*. The term *ashab al furud* in inheritance law means a group of heirs who receive a share in a certain amount determined by the Koran. Meanwhile, inheriting through *asabah* is the second way to give assets to heirs because heirs who inherit a fixed share (*ahabul fur*) take precedence over *asabah*. After the portion is taken by the recipient of the permanent portion, the remainder is given to the *asabah*. (Assyafira, 2020) *asabah* is divided into two, namely: *asabah nasabiyah* (because of *nasab*) and *asabah sababiyah* (because of reasons). This second type of *asabah* is caused by freeing slaves. Therefore, a master (slave owner) could become the heir of a former slave he freed if the slave had no children. (Wardiono et al., 2021) Meanwhile, in the Compilation of Islamic Law, there are no rules governing the heirs of *asabah sababiyah*.

Interestingly, the Supreme Court, through Decision Number 485 K/Ag/2013, issued a decision regarding determining inheritance rights through the *asabah sababiyah* route. The legal basis regarding *asabah sababiyah* is not contained in the Marriage Law or the Compilation of Islamic Law. In its decision, the Supreme Court referred to the *asabah sababiyah* theory of the Egyptian Inheritance Law. Supreme Court Decision Number 485 K/AG/2010 was decided by the Panel of Judges of the Supreme Court on October 4, 2013. The original case was a lawsuit filed by the plaintiff at the Medan Religious Court against the Heir Determination issued by the Medan Religious Court Number 66/PEN/1990/1990/PA.MDN dated February 20, 1990, against the assets of the heir named Ngerajai Meliala (Islamic religion). The decision of the Medan Religious Court has determined that Edy Meliala and Dewi Sari Br. Meliala are her father's heirs. However, it was recently discovered that Edy Meliala and Dewi Sari Br. Meliala are not the biological children of the heir (Ngerajai Meliala); Edy Meliala and Dewi Sari Br. Meliala are just pets or adopted children. Ngerajai Meliala never had biological children but had siblings who were still alive when the heir died in 1978, namely Jendam Br. Meliala (the biological mother of Plaintiff VI and Plaintiff VII). The other heir brother is Dumengen Br. Meliala (grandmother of Plaintiffs I to Plaintiffs V), who died in 1974.

Twenty-one years later, the decision of the Medan Religious Court was challenged by the plaintiffs, who claimed to be the grandchildren and children of the heir's siblings (Dumengen Br. Meliala and Jendam Br. Meliala). Plaintiffs I to IV, who are Muslims, are the grandchildren of Dumengen Br. Meliala (a non-Muslim died before the Heir). Meanwhile, Plaintiffs V and VI are also Muslims and are the children of Jendam Br. Meliala (a non-Muslim still alive when the heir dies). The lawsuit was filed at the Medan Religious Court

with case registration number 751/Pdt.G/2011/PA.MDN. The petition is that the Decree of the Medan Religious Court Number 66/PEN/1990/1990/PA.MDN dated February 20, 1990, be canceled, or declared to have no legal force and then determine the plaintiffs as heirs of Ngerajai Meliala. In its decision, the Medan Religious Court stated that the Plaintiff's claim was not accepted (NO) because the Plaintiffs and Heirs did not have the right to become heirs because the grandmother of Plaintiffs I to Plaintiffs V was named Dumengen Br. Meliala, and the biological mother of Plaintiff VI and Plaintiff VII, Jendam Br. Meliala (the Heir's siblings), are both non-Muslims (animisme), so the Plaintiffs' rights were cut off because the Plaintiffs' grandmother and mother were of different religions to the Heir.

In the legal considerations, the judge in decision Number 751/Pdt.G/2011/PA.MDN stated that, in inheritance law, the majority of ulama agreed to require that the heir and the heirs must have the same religion, namely Islam. And if the plaintiffs want to be designated as heirs, they must link their inheritance lineage to the grandfathers of plaintiffs VI and VII, or they must request to be designated as *zawil arham* of Ngerajai Meliala Sembiring or established through a mandatory will. Then the plaintiffs filed an appeal with the Supreme Court. The Supreme Court, with its Decision Number 485 K/AG/2013, granted the plaintiff's lawsuit. The Supreme Court determined that the plaintiffs were heirs. Plaintiffs I to V became heirs by means of *asabah sababiyah*. The considerations of the Supreme Court of Justice in handing down the decision were: that the Medan Religious Court has the authority to hear a *quo case* and the Religious Court has the authority to cancel its own decision because the decision is voluntary, therefore it can be canceled through a contradictory lawsuit by the Court concerned. Regarding the relationship between Muslims and non-Muslims in inheritance and wills, the jurisprudence of the Supreme Court of the Republic of Indonesia has provided an example of the latest developments.

That the Supreme Court Panel, in determining Plaintiffs I to/Plaintiff V as *asabah sababiyah* based on the Egyptian Heritage Code, regulates the order as follows: *Ashabul furudh*, *Ashabah Nasabiyah*, *Dzawil Arham*, *Ashabah Sababiyah*, people who are categorized as belonging to other people's *Nasab*, people who receive the will, and *baitul mal* The Supreme Court Decision Number 485 K/AG/2013, which determined Plaintiffs I to Plaintiff V as *asabah sababiyah*, is an error in determining the law because the legal basis regarding the heirs of *asabah sababiyah* is not contained in the regulations regarding inheritance law in Indonesia. In the KHI itself, there is no term *asabah sababiyah*, and only the term "asabah" is mentioned. Meanwhile, in *fiqh*, the term *asabah sababiyah* is defined as *asabah*, which occurs because of the liberation of slaves, both male and female. (Sriani, 2018)

The issue of determining the heirs of *'asabah sababiyah* is interesting to study further because the legal basis for determining the heirs of *'asabah sababiyah* in the Supreme Court Decision Number 485 K/Ag/2013 above is not based on the provisions regulated in the Marriage Law, the Compilation of Islamic Law, or the explanation regarding the definition of *'asabah sababiyah* contained in *fiqh* literature. This research aims to answer the problem of Islamic legal views regarding the determination of *'asabah sababiyah* heirs and analyze the views of Medan Religious Court judges regarding the disparity in Supreme Court decision Number 485K/Ag/2013 and decision Number 751/Pdt.G/2011/PA.MDN regarding determination heirs from a progressive legal perspective.

To avoid assumptions of plagiarism, below the author will describe previous research that is almost identical to the research the author carried out, namely: research written by Muhammad Baihaqi, a student at the UIN Sunan Kalijaga Postgraduate Program with the title, "Wajibah Wills in Cases of Inheritance of Different Religions (Study Supreme Court Decision Number: 16 K/AG/2010 Perspective of Maqāsid asy-Syarī'ah)". The relationship between the research above and the research carried out by the author is that they both study inheritance from different religions, but there are several differences. Specifically, the research conducted by Muhammad Baihaqi analyzed the determination of heirs from different religions through mandatory wills viewed from the perspective of Maqāsid asy-syarī' ah, while the research that the author carried out was to analyze the disparity in the decisions of the Supreme Court and the Medan Religious Court in determining heirs of different religions through 'aṣabah sababiyah viewed from a progressive legal perspective.(Fauzi, 2020)

Research written by Mulyadi, a Postgraduate Program student, Faculty of Sharia and Law, Raden Intan Lampung State Islamic University, has the title, "Analysis of Abdullah Ahmad An-Na'im's Thoughts Regarding Inheritance from Different Religions and Its Relevance to Inheritance Law in Indonesia." The relationship between the research above and the research carried out by the author is that they both study the inheritance of different religions, but there are several differences. Specifically, the research conducted by Muhammad Baihaqi analyzed the inheritance of different religions according to the thoughts of Abdullah Ahmad An-Na'im, while the research conducted by What the author has done is analyze the disparity in the decisions of the Supreme Court and the Medan Religious Court in determining heirs of different religions through 'aṣabah sababiyah viewed from a progressive legal perspective.(Baihaqi, 2017)

Research written by Sarah Nurul Izzati, student of the Family Law Study Program, Faculty of Sharia and Law, Syarif Hidayatullah State Islamic University Jakarta, has the title, "Progressive Legal Perspective in Determining Wajibah Wills for Apostate Husbands (Study of Supreme Court Decision Number 331K/AG/2018). The relationship between the research above and the research carried out by the author is that they both study inheritance from different religions, but there are several differences. Specifically, the research conducted by Sarah Nurul Izzati analyzed the determination of heirs from different religions through mandatory wills reviewed from a progressive legal perspective, whereas the research that the author carried out was to analyze the disparity in the decisions of the Supreme Court and the Medan Religious Court in determining heirs of different religions through 'aṣabah sababiyah viewed from a progressive legal perspective.(Herenawati et al., 2020)

RESEARCH METHODS

This research uses a qualitative research approach. Research that uses qualitative research aims to explore, build a proposition, or explain reality. This type of research includes empirical juridical research, namely case study legal research, because the problems studied are in a certain area and time. This research was carried out at the Medan Religious Court, North Sumatra Province. The source of information determined in this research is Dr. Muslim, S.H., M.A. (Medan Religious Court Judge), Dr. Sakwanah, S.H., M.H. (Medan Religious Court Judge), and Drs. Hm Husin Ritonga, M.H. (Judge of the Medan Religious

Court). Data collection techniques were carried out using observation, interviews, and document study. Meanwhile, the stages of data processing and analysis are editing, classification, verification, and analysis.

RESULTS AND DISCUSSION

Views of Islamic Law on Determining the Heirs of Asabah Sababiyah

Inheritance comes from Arabic, namely the plural form of the word mirats, which means inheritance left by a person who died and inherited by his heirs.(Sari, 2018) Linguistically, the word waratsa is the origin of the word inheritance used in the Koran. The word waratsa has several meanings, namely replacing, giving, and inheriting. (Ahmad Rofik, 2013). Inheritance is inherited assets plus part of the joint assets after being used for the heir's needs during illness until death, funeral costs (tanjiz), debt payments, and gifts to relatives.(Nasution, 2012)

Inheritance law events can be implemented after fulfilling the pillars and conditions of inheritance. The pillars of inheritance are something that must exist to create a share of inheritance, and a share of inheritance will not be obtained if there are no pillars of inheritance. There are three pillars of inheritance, namely:.(Soleman et al., 2022)

1. Al-Muwarris (heir), namely a person who dies either essentially (actually) or hukmi (a death declared by a judge's decision), such as mafqud (missing person).
2. Al-Waris (heir), namely the person who is alive when the testator dies and is the person who has the right to inherit even though he or she is still in the womb or is a lost person.
3. Al-Maurus (inheritance), namely property that becomes an inheritance. This also includes assets or rights that may be inherited, such as qia (civil) rights, the right to hold goods for which payment has not been made, and the right to hold mortgaged goods.

Inheritance conditions are something whose absence means there will be no inheritance distribution process. There are three conditions for inheriting, namely: (Muhibbussabry, 2020).

1. Death of the testator, whether essentially (death that occurs), hukmy (death by a judge's decision), or taqdir (death caused by or involved with another person). The deaths of muwarrits can be divided into three types:
 - a. namely Haqiqy Death (True Death), namely the loss of a person's life from his body, which can be proven by the five senses or by means of evidence.
 - b. Hukmy Death (According to the Judge's Decision), namely death caused by a verdict from the judge, even though in essence there is a possibility that the person is still alive or in between life and death. An example of a death sentence for someone, even though there is a possibility that the person is still alive, is a death sentence for a mafqud, namely a person whose news is unknown, whose domicile is unknown, and whose life or death is not known.
 - c. Taqdiry Death (According to Allegation): a death that is based on a strong suspicion that the person concerned is dead. for example, the death of a newborn baby due to beatings on the mother's stomach. This death is only based on strong suspicion because the death could also have been caused by other factors.
2. The life of the heir when the testator dies, either in essence or hukm. The problems that arise in relation to the living conditions of the heirs are regarding mafqud, children in the

womb, and the condition of dying simultaneously. A mafqud problem occurs if the existence of an heir is not known for certain, whether he is still alive or dead when the muwarrits die. If a case like this occurs, then the distribution of inheritance is carried out by considering that the mafqud is still alive. This is done to protect Mafqud's rights if it turns out he is still alive. If later, before the maximum waiting time has expired, it turns out that the mafqud arrives or is present alive, then the portion of the inheritance that has been provided for the mafqud is given to him. If within the specified time limit it turns out that the mafqud does not come, so that he can be presumed to have died, then his share is divided among the other heirs according to the ratio of their respective furudh. The problem of unborn children occurs in cases where the muwarrits wife is pregnant when the muwarrits die. In cases like this, the determination of the child's existence is carried out at the time of the child's birth. Therefore, the distribution of inheritance can be postponed until the child is born.

3. Know the reasons for receiving an inheritance, the relationship between the heir and his heirs, or the ins and outs of dividing inherited assets. Are you an heir because of marriage, blood relationship, or wala' (slave freedom)? The heir must be known for certain, both from the closeness of his kinship and his parts, as well as from hajib (those who are prevented) and mahjub (those who are prevented) from inheriting.

There are two reasons for the existence of the right to inherit between one person and another, or in other words, there are two reasons for mutual inheritance according to Islamic law as stated in the Compilation of Islamic Law (KHI) Article 171 letter (c), namely, kinship relations (nasab) and marriage relations. (Aksan, 2019) Meanwhile, the heirs' portions of the heir's inheritance are grouped into two, namely, ashab al-furud al-muqaddarah and 'asabah/tashib.

The term ashab al furud in inheritance law means a group of heirs who receive a share in a certain amount determined by the Qur'an. The number of certain parts that have been determined by the Qur'an consists of six types, namely: 1/2, 1/4, 1/8, 1/6, 1/3, and 2/3. Meanwhile, asabah is the second way to give assets to heirs because heirs who inherit a fixed share (ahabul furudh) take precedence over asabah. After the portion is taken by the recipient of the permanent portion, the remainder is given to the asabah.

The word asabah was originally taken from the Arabic language:

عصب القوم بالرجال إذا اجتمعوا واحاطوا به من اجل احلماية والدفاع

Meaning: "Men group together with men, when they group together and associate with them, to look after each other and protect each other." (Muhammad Ali al-Shabuni, 1988).

In the Qur'an, the word asabah means the strong group, which is stated in Surah Yusuf verse 14 as follows:

قَالُوا لَئِنْ أَكَلَهُ الْدَّيْتُ وَنَحْنُ عُصْبَةٌ إِنَّا إِذًا لَّخٰسِرُونَ

Meaning: "They said: "If the wolf actually eats him, while we are the strong group, we will indeed be the ones who suffer losses." (Q.S. Yusuf: 14).

Asabah is divided into two, namely asabah nasabiyah and asabah sababiyah. According to the ulama, the first division of asabah nasabiyah takes precedence over asabah sababiyah because nasab (the descendant) is closer to the heir than sabab (the cause). Asabah nasabiyah, namely asabah, which is determined because of nasab (heredity), such as sons, grandsons of sons, and so on down, and qarabah (kinship), such as father, grandfather, brother biological, half-brother, half-brother's son, half-brother's son, half-uncle, half-uncle and half-uncle's son, and half-uncle's son, and half-uncle's son. Meanwhile, asabah sababiyah is asabah, which occurs because of the cause of freeing slaves, both male and female. (Agustin et al., 2022) In Islamic inheritance law, determining the heir of asabah sababiyah is only intended for heirs who are related to the heir due to freeing slaves. When a slave who has been freed dies and has no relatives by birth, the person who freed the slave can inherit his inheritance as asabah, as a reward for the kindness that freed the slave.

Analysis of the Disparity in Decisions of the Supreme Court and the Medan Religious Court in Determining the Heirs of 'Aşabah Sababiyah According to a Progressive Legal Perspective

1. Arguments of Supreme Court Judges in Decision Number 485 K/AG/2013 Concerning Determining the Heirs of 'Aşabah Sababiyah

One of the rulings of Supreme Court Decision Number 485 K/AG/2013 is that it states the law that Plaintiffs I to V are entitled to inheritance assets as heirs of 'ashabah sababiyah. The Supreme Court of Justices is of the opinion that even though the Compilation of Islamic Law (KHI) does not regulate the existence of Ashabah Sababiyah, the Supreme Court of Justices will refer to the Egyptian Law, which regulates the order as follows: Ashabul furudh, Ashabah Nasabiyah, Dzawil Arham, Ashabah Sababiyah, people who are categorized as other people's Nasab, people who receive wills, and baitul mal. So, the parties to the case have legal standing to litigate regarding the inheritance of the late Ngerajai Meliala because Plaintiffs I to V belong to Ashabah Sababiyah.

The Egyptian law referred to in the legal considerations of the Supreme Court Judge in the Supreme Court Decision Number 485 K/AG/2013 is Article 39-40 of the Egyptian Qonun Number 77 of 1943 concerning inheritance, which reads:

Article 39, Ashabah Sababiyah, includes:

- a. Guardian of the person who freed him, or the person who freed him (slave), or the person who freed him while he was also freed by someone else.
- b. A group of people who liberate (slaves), or a group of people who liberate them, or a group of people who liberate people who liberate them.
- c. A person who has responsibility for the inheritance of a female slave whose origins are unknown except from her father or grandfather, either genetically (clear lineage) or without genetic knowledge.

Article 40

- a. The person who frees them receives an inheritance from both male and female former slaves, or if the person who frees them dies, their descendants take their place in accordance with the order contained in Article 17.
- b. The order of inheritance if it starts from a grandfather, not less than one sixth of the grandfather's share, or if he is no longer there, then passes to the next descendant (a

second descendant or child), whether male or female, and if there are no subsequent offspring (a third descendant or grandchildren), then passes on to the next generation. This is what the distribution order looks like.

2. Argumentation of the Medan Religious Court Judge Who Accepted the Supreme Court Decision Number 485 K/AG/2013

The arguments put forward by the judges who accepted the decision were due to the need to expand the terminology of 'ashabah sababiyah in Egyptian Law Number 77 of 1943 concerning inheritance and the realization of justice for heirs, which is based on fairness, certainty, and legal benefit. The value of legal progressiveness is that it gives judges the authority to adjust terminology according to the needs of the times. An example in this case is the definition of a mandatory will, which has experienced an expansion in meaning. In the understanding of Islamic law in Indonesia, it is interpreted as a will whose implementation is not influenced by or does not depend on the wishes or will of the deceased. This will must still be carried out, whether spoken or unspoken, whether the deceased wants it or not. (Munarif et al., 2022)

In terms of justice, it can be understood as the value of creating ideal relationships between humans and other humans as members of society by providing them with full rights according to their abilities and by imposing legal and moral obligations. This is based on the opinion of several experts, including Plato, who stated that justice is the ability to treat people according to their respective rights. Roscoe Pound saw justice in the results he could bring to society. For Sudikno Mertokusumo, the definition of justice is an assessment of one's treatment of other people using certain standards as a benchmark. (Sugiarto, 2021)

Regarding the benefits of law, this means that good laws must bring benefits to society. Benefit can also be interpreted as happiness, where everyone hopes for benefit and happiness in the law enforcement process. Because the law is for the people, its enforcement must also provide benefits for the community. Don't let it have the opposite effect. Law enforcement creates public unrest. The benefit itself can be interpreted as optimizing the social objectives of the law. Apart from creating order and regularity as the main goal, every law also aims at certain social goals, namely the benefits that are to be realized through the law, whether they originate from individuals. or the people of their country.

The principle of legal certainty is one of the characteristics of a rule-of-law state. A rule of law, as we all know, is a state where every political step is temporary or implemented by the government based on law. Likewise, those who are protected by the law must act according to clear rules, so they are expected to be able to direct and implement the law without hesitation. Otto also looked at the limits of legal certainty further and then defined legal certainty as a possibility in certain situations, namely when:

- a. There are clear, consistent, and easily accessible rules.
- b. There is a ruler (government) who always applies and enforces these rules.
- c. Civilians who adapt their behavior to these rules.
- d. Independent and impartial judges who consistently apply the rule of law when resolving legal disputes.
- e. Special court decisions that can be implemented. (Sinaga, 2020)

The assessment of the decision is also based on the judge's authority to interpret the law in accordance with the principles of progressive law. From a progressive legal perspective, interpretation gives meaning to regulatory texts and therefore cannot stop literal reading. In this way, the law becomes progressive because it can serve the community. Because the law has served society, the law has served contemporary life, and therefore the law has become progressive. Progressive legal orientation relies on aspects of regulations and behavior (rules and behavior). Regulations will give birth to or build a positive legal system that is logical and rational. Meanwhile, behavioral, or human aspects will drive the regulations and systems that have been and will be built. Because of the assumption built here, that law can be seen in the social behavior of law enforcers and the community. (Amin, 2019)

3. Arguments from the Medan Religious Court Judge Who Rejected Supreme Court Decision Number 485 K/AG/2013

The Medan Religious Court judge who rejected Supreme Court Decision Number 485 K/AG/2013 argued that the understanding of the meaning of 'ashabah sababiyah does not correspond to its true meaning, and the use of Egyptian Law Number 77 of 1943 concerning inheritance regarding inheritance cannot be submitted as an argument for building a legal decision. 'aşabah is divided into two, namely 'aşabah nasabiyah and 'aşabah sababiyah.

According to the ulama, the first division of 'aşabah nasabiyah takes precedence over 'aşabah sababiyah because nasab (descendant) is closer to the heir than sabab (cause). 'aşabah nasabiyah, namely 'aşabah, which is determined because of nasab (heredity), such as sons, grandsons of sons, and so on down, and qarabah (kinship), such as father, grandfather, brother biological, half-brother, half-brother's son, half-brother's son, half-uncle, half-uncle, and half-uncle's son, and half-uncle's son. Meanwhile, 'aşabah sababiyah is 'aşabah, which occurs because of the freeing of slaves, both male and female.

Wala' al-Itqi (freeing slaves) is 'ashabah *sababiyah*, or the relationship between the master and the people he frees. Wala' can make the master, or ashabah, of the master who has the right to inherit the property of the person he liberates, if he dies while there are no relatives to inherit it. (Wahbah az-Zuhaili). Sababiyah heirs, namely inheritance relationships that arise due to certain reasons, namely: legal marriage (al-musaharah), freeing slaves (al-wala'), or because of an agreement to help each other. As members of the sababiyah inheritance, they can receive an inheritance if the husband and wife's marriage is valid, and the relationship that arises due to freeing their slave servant should be proven according to applicable law. (Suryati, 2017). In the distribution of 'ashabah, Egyptian legislation Number 77 of 1943 places more emphasis on the emancipation of slaves.

The Indonesian legal system follows the civil law tradition, whose main characteristic is codified legislation. Meanwhile, Islamic law, although it has written sources in the Qur'an as-Sunnah and the opinions of the fuqaha (fiqh doctrine), is generally not codified in the form of a statutory book that is easy to refer to. Therefore, Islamic law in Indonesia is like Also, customary law is often seen as unwritten law in the form of legislation. Reading historical records from the post-independence period, it can be said that the awareness of Muslims to implement Islamic law has increased. Their struggle for Islamic law does not stop only at the level of recognition of Islamic law as a living legal subsystem in society but also reaches a

further level, namely legalization and legislation. They want Islamic law to be part of the national legal system, not merely in substance but in a formal and positive legal manner.

Lawrence M. Friedman's legal system theory states that, as a legal system of a social system, law includes three components, namely.(Nelken, 2017)

- a. Legal substance: the rules, norms, and real patterns of human behavior within the system, including products produced by people within the legal system, including the decisions they issue or the new rules they compose.
- b. Legal structure is the framework, the part that remains, the part that gives a kind of shape and boundaries to the entire law enforcement agency. In Indonesia, the structure of the legal system includes, among others, institutions, or law enforcers such as advocates, police, prosecutors, and judges.
- c. Legal culture (legal culture) is the state of mind of the system and social forces that determine how the law is used, avoided, or misused by society.

If the disparity in the decisions of the Supreme Court and the Medan Religious Court in determining heirs of different religions is viewed based on progressive law, then Supreme Court Decision Number 485 K/AG/2013 is closer to the value of legal progressivity because one form of application of progressive law by judges is to realize social justice through the method of legal discovery by placing social justice in society above statutory regulations. Progressive legal thinking is legal thinking that places human factors more important and above regulations. Apart from that, the understanding of justice adopted by Indonesia is justice based on Pancasila, namely social justice. Social justice is justice that prioritizes the welfare of the Indonesian people. The application of progressive law by judges to realize social justice is through the method of legal discovery, namely interpretation and argumentum, by placing social justice in society above statutory regulations.(Setiawan, 2018)

However, the use of the Egyptian Qonun on Inheritance as the legal basis for determining the heirs of 'aşabah sababiyah for Plaintiff I to Plaintiff V in Supreme Court Decision Number 485 K/AG/2013, according to the author, cannot be justified. The meaning of 'aşabah sababiyah as stated in Egyptian Law Number 77 of 1943 concerning inheritance is the same as the meaning of 'aşabah sababiyah contained in fiqh, namely in the scope of giving inheritance to people who are free slaves, so the author believes that the meaning of 'aşabah sababiyah cannot be expanded beyond the provisions referred to in the Egyptian Qonun concerning inheritance. In achieving justice, the author considers that the determination of the heirs of aşabah sababiyah to Plaintiffs I to Plaintiffs V in the Supreme Court Decision Number 485 K/AG/2013 is more appropriate if they are classified as people who are entitled to inherit property based on a mandatory will because of the legal basis for granting inheritance. Based on the mandatory will, the provisions are contained in Article 209 of the Compilation of Islamic Law and Jurisprudence of the Supreme Court.

CONCLUSION

'Aşabah sababiyah is 'asabah in the class of heirs who occur because of freeing slaves, both male and female. In Islamic inheritance law, determining the heirs of 'asabah sababiyah is only intended for heirs who have a kinship relationship with the heir due to freeing slaves. If a slave who has been freed dies and has no relatives, the person who freed the slave can

inherit his inheritance as *ashabah*, as a reward for the kindness of the person who freed the slave.

The views of the Medan Religious Court judges regarding Supreme Court decision Number 485 K/AG/2013 concerning the Determination of the Heirs of '*Ashabah Sababiyah*' are in two groups, namely accepting the decision and rejecting the decision. If the disparity in the decisions of the Supreme Court and the Medan Religious Court in determining heirs of different religions is viewed based on progressive law, then Supreme Court Decision Number 485 K/AG/2013 is closer to the value of legal progressivity because one form of implementing progressive law by judges is realizing social justice through the method of legal discovery by placing social justice in society above statutory regulations.

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